UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MEDIEVAL TIMES U.S.A., INC., **Plaintiff,** **v.** **MEDIEVAL TIMES PERFORMERS UNITED, and AMERICAN GUILD OF VARIETY ARTISTS,** **Defendants.**	Civ. No. 2:22-cv-6050 (WJM) **OPINION**

In this action for federal trademark infringement, Defendants Medieval Times Performers United and American Guild of Variety Artists (jointly "Defendants") move to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim. ECF No. 38. The Court decides this motion without oral argument. Fed. R. Civ. P. 78(b). For the reasons stated below, Defendants' motion to dismiss is **granted.**

I. BACKGROUND

Medieval Times U.S.A., Inc. ("Medieval Times" or "Plaintiff") is the owner of the entertainment brand MEDIEVAL TIMES® mark that has hosted medieval-themed dinner theater performances since the 1980s at its 11th century-style castle structures that feature exteriors with ramparts displaying crests and coats of arms, drawbridge and portico gated entryways, and interiors adorned with medieval décor, crests, coats of arms, suits of armor, and genuine medieval artifacts. Compl., ¶¶ 14, 17; ECF No. 1. The dinner performance features jousting on horseback and bouts of hand-to-hand combat between knights and other combatants. *Id.* at ¶ 16. Dinner is a medieval-style feast served in the stands by staff in period dress during the staged competitive tournament. *Id.* Each location also sells concessions, including other food and beverage, and features a gift shop where consumers can purchase commemorative Medieval Times branded or themed merchandise. *Id.* at ¶¶19-20. Medieval Times castles are located in: (1) Lyndhurst, New Jersey; (2) Buena Park, California 90620; (3) Myrtle Beach, South Carolina; (4) Dallas, Texas; (5) Schaumburg, Illinois; (6) Kissimmee, Florida; and (7) Scottsdale, Arizona 85258. *Id.* at ¶ 4.

Plaintiff's mark ("Medieval Times Mark") is the subject of U.S. trademark registration No. 1,515,854 for "Entertainment services, namely a dinner served in medieval style with an accompanying medieval tournament performance" and "Dinner served in medieval style preceding and accompanying a medieval tournament performance." *Id.* at ¶ 23. The Medieval Times Mark is most often displayed in a stylized font in either red or yellow meant to evoke the Middle Ages:

Medieval Times

Id. at ¶ 25; *see* https://www.medievaltimes.com/.

Defendant Medieval Times Performers United ("MTPU" or "Union") is an unincorporated association formed on or about June 28, 2022, headquartered at or near the Medieval Times castle location in Lyndhurst, New Jersey. *Id.* at ¶¶ 2, 31. In exchange for dues from its members, MTPU, represented by and in conjunction with Defendant American Guild of Variety Artists ("AGVA"), provides organizational services on behalf of its members including engaging in collective bargaining. *Id.* at ¶ 32. Plaintiff alleges that each Defendant "was the agent, principal, alter ego, joint venturer, partner, and/or co-conspirator of each other Defendant in this action and, at all relevant times mentioned herein, was acting within the course and scope of such capacities and with the consent of the other Defendant" in committing the alleged wrongful acts. *Id.* at ¶ 9.

MTPU promotes its goods and services through a website, Medieval Times Union | Medieval Times Performers United (mtunited.org). The logo displayed on the MTPU website homepage is:

Medieval Times Performers United

Medieval Times Performers • Represented by AGVA • Medieval Times Actors, Stunt Performers, and Stable Hands • UNITED

Medieval Times actors, stunt performers, and stable hands are joining together in union.
Represented by the American Guild of Variety Artists (AGVA).

Id. at ¶ 34. Plaintiff alleges that the elements featured in the MPTU logo (*i.e.,* castle, swords, old script style text) all resemble elements of Medieval Times's branding and

Middle Ages-themed décor. *Id.* at ¶ 35. The MPTU webpage includes a picture of show actors and performers, some in costume.

Id. at ¶ 38. Also listed on the MPTU website is an email address for those seeking to get in touch with "our union at the castle in Lyndhurst, NJ" as well as an email address for those seeking to contact "our union at the castle in Buena Park, CA." *Id.* at ¶ 37.

On various social media sites, such as Facebook, Twitter, and Instagram, MTPU's logo is displayed within a red and yellow banner that purportedly resembles the Medieval Times Mark's color scheme, castle image, and a scalloped border evocative of a crest or coat of arms:

Id. at ¶¶ 40-43. MTPU's Instagram page advertises the sale of merchandise bearing MTPU's logo:

Id. at ¶ 44.

On October 13, 2022, Medieval Times filed suit against Defendants MTPU and AGVA seeking monetary and injunctive relief for violations of the Lanham Act,

specifically trademark infringement under 15 U.S.C. § 1114 (Count I) and trademark infringement, unfair competition, and false designation of origin under 15 U.S.C. § 1125(a)(1)(A) (Count II). Plaintiff contends that Defendants' appropriation of Medieval Times's "themes, colors, imagery, private-property, and addresses" as well as use of the Medieval Times Mark in MTPU's name is likely to cause confusion and "could lead to the mistaken impression" that MTPU is sponsored or endorsed by Plaintiff and that Union membership is required. *Id.* at ¶¶ 51-53. Defendants move to dismiss the Complaint for failure to state a claim and also argue that the Court lacks jurisdiction to grant injunctive relief under the Norris-LaGuardia Act.

II. DISCUSSION

A. Rule 12(b)(6) Motion to Dismiss Standard

Fed. R. Civ. P. Rule 12(b)(6) provides for the dismissal of a complaint, in whole or in part, if the plaintiff fails to state a claim upon which relief can be granted. The moving party bears the burden of showing that no claim has been stated. *Hedges v. United States,* 404 F.3d 744, 750 (3d Cir. 2005). Dismissal is appropriate only if, accepting all of the facts alleged in the complaint as true, the plaintiff has failed to plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570 (2007). Although a complaint need not contain detailed factual allegations, "a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 555. A court must take well-pleaded allegations as true but need not credit "bald assertions" or "legal conclusions." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1429 (3d Cir. 1997). The factual allegations must be sufficient to raise a plaintiff's right to relief above a speculative level, such that the court may "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly,* 550 U.S. at 556). While "[t]he plausibility standard is not akin to a probability requirement' ... it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* In evaluating a Rule 12(b)(6) motion to dismiss, a court may consider only the complaint, exhibits attached to the complaint, matters of public record, and undisputedly authentic documents if the plaintiff's claims are based upon those documents. *Pension Benefit Guar. Corp. v. White Consol. Indus.,* 998 F.2d 1192, 1196 (3d Cir. 1993).

B. Trademark Claims

To prevail on trademark infringement, false designation of origin, and unfair competition claims, a plaintiff must establish that: (1) their marks are valid and legally

protectable; (2) they own the marks; and (3) defendants' use of their marks to identify goods or services is likely to create confusion concerning the origin of the goods or services. *See Checkpoint Sys., Inc. v. Check Point Software Tech., Inc.*, 269 F.3d 270, 279–80 (3d Cir. 2001) (setting forth elements of trademark infringement and unfair competition). Factors relevant to unfair competition and false designation claims under 15 U.S.C. § 1125 are "essentially the same" as those relevant to trademark infringement claim under 15 U.S.C. § 1114. *Fisons Horticulture, Inc. v. Vigoro Indus., Inc.*, 30 F.3d 466, 472–73 (3d Cir. 1994); *A&H Sportswear, Inc. v. Victoria's Secret Stores, Inc.*, 237 F.3d 198, 210 (3d Cir. 2000) (noting trademark infringement and false designation claims analyzed under identical standards). Both sections of the Lanham Act, 15 U.S.C. § 1114[1] and 15 U.S.C. § 1125(a)(1)(A),[2] also explicitly require that use of the mark be "in commerce." *Sensient Techs. Corp. v. SensoryEffects Flavor Co*., 613 F.3d 754 (8th Cir. 2010). Currently, Defendants do not dispute that Plaintiff has a valid and legally protectable mark or that Plaintiff owns the Medieval Times Mark. Thus, at issue is whether Defendant's use of Plaintiff's Mark is likely to create confusion and is "in commerce."

"To prove likelihood of confusion, plaintiffs must show that consumers viewing the mark would probably assume the product or service it represents is associated with the source of a different product or service identified by a similar mark." *Checkpoint Sys., Inc.*, 269 F.3d at 280 (internal quotes and citation omitted). In noncompeting goods cases, no single factor is determinative, but the factors to be weighed, commonly known as the *Lapp* factors, include:

> (1) [The] degree of similarity between the owner's mark and the alleged infringing mark;
> (2) the strength of the owner's mark;
> (3) the price of the goods and other factors indicative of the care and attention expected of consumers when making a purchase;
> (4) the length of time the defendant has used the mark without evidence of actual confusion;

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[1] 15 U.S.C. § 1114(1)(a) provides that any person who, without consent of the trademark holder, "use[s] in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive" is liable for trademark infringement.

[2] 15 U.S.C. § 1125(a)(1)(A) makes liable "[a]ny person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which--(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person."

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