

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ABBOTT LABORATORIES,)
)
 Plaintiff,) Civil Action No. 07-754 GMS
)
 v.)
)
 BANNER PHARMACAPS INC.,)
)
 Defendant.)

ORDER

1. On November 21, 2007, Abbott Laboratories (“Abbott”) filed the above-captioned action against Banner Pharmacaps, Inc. (“Banner”) alleging infringement of United States Patent Nos. 4,988,731 and 5,212,326 (the “patents-in-suit”).
2. On January 28, 2008, Banner filed an answer and counterclaim, seeking a declaratory judgment of non-infringement of the patents-in-suit and alleging a claim for unfair competition.
3. On February 20, 2008, Abbott filed an answer to Banner’s declaratory judgment counterclaim and a motion to dismiss Banner’s unfair competition counterclaim. Briefing on the motion was complete on March 20, 2008.
4. Subsequent to Abbott’s initial complaint and Banner’s answer and counterclaim, the patents-in-suit expired. Abbott then filed a motion for voluntary dismissal of its infringement claims (D.I. 18). Banner opposed the motion and, on September 10, 2008, the court held a teleconference with the parties to attempt to resolve the motion for voluntary dismissal, as well as Abbott’s motion to dismiss Banner’s unfair competition counterclaim. At the conclusion of the conference, the court directed the parties to discuss the motions further and

scheduled a status teleconference for October 10, 2008.

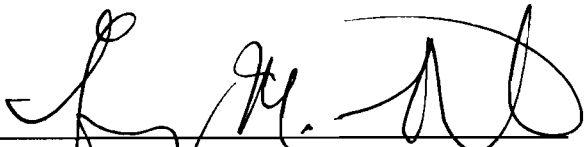
5. During the October 10, 2008 teleconference, the parties informed the court that they had agreed to a stipulation of dismissal for the patent infringement claims and declaratory judgment counterclaim. To this end, the parties filed a stipulation to dismiss Abbott's claims and Banner's first counterclaim (D.I. 28). The court granted the stipulation on October 10, 2008. As a result, Banner's unfair competition counterclaim is the only remaining claim in this action.
6. Presently before the court is the court's *sua sponte* inquiry regarding subject matter jurisdiction. *See Golden ex. rel. Golden v. Golden*, 382 F.3d 348, 354 (3d Cir. 2004); *Nesbit v. Gears Unlimited, Inc.*, 347 F.3d 72, 76-77 (3d Cir. 2003) (“[C]ourts have an independent obligation to satisfy themselves of jurisdiction if it is in doubt. . . . A necessary corollary is that the court can raise *sua sponte* subject matter jurisdiction concerns.”).
7. Having dismissed the parties' patent infringement and declaratory judgment claims, the court finds that Banner's unfair competition claim lacks an independent jurisdictional basis. Further, although 28 U.S.C. § 1338(b) gives the court subject matter jurisdiction over an unfair competition claim when it is joined with a substantial and related patent law claim, the court finds persuasive authority that affords it discretion to dismiss supplemental claims when the federal claims are dismissed prior to trial. *See Jason v. Fonda*, 526 F. Supp. 774, 778 (C.D. Cal.), *aff'd*, 698 F.2d 966 (9th Cir. 1981); *Dovenmuehle v. Gilldorn Mortgage Midwest Corp.*, 871 F.2d 697,699 n.2 (7th Cir. 1989); *Mays & Assoc. Inc. v. Euler*, 370 F. Supp. 2d 362, 371-72 (D. Md. 2005) (declining to exercise supplemental jurisdiction over state law claims after dismissing federal law claims). Accordingly, the court will dismiss

Banner's unfair competition claim without prejudice.

Therefore, IT IS HEREBY ORDERED that:

1. Banner's unfair competition counterclaim is DISMISSED without prejudice.
2. Abbott's Motion to Dismiss (D.I. 11) is DENIED as moot.
3. The Clerk of Court is directed to close this case.

Dated: November 25, 2008



CHIEF UNITED STATES DISTRICT JUDGE