

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

_____)		
F'REAL FOODS, LLC and)		
RICH PRODUCTS CORPORATION,)		
)	
Plaintiffs,)		
)	
v.)	C.A. No. 16-41 (GMS)	
)	CONSOLIDATED
)	
HAMILTON BEACH BRANDS, INC.,)		
HERSHEY CREAMERY COMPANY and)		
PAUL MILLS d/b/a MILLS BROTHERS)		
MARKETS,)		
)	
Defendants.)		
_____)		

ORDER

WHEREAS, on January 26, 2016, the plaintiffs f'real Foods, LLC and Rich Products Corporation (collectively, "f'real") brought this action against the defendants Hamilton Beach Inc. ("Hamilton Beach"), Hershey Creamery Company ("Hershey Creamery"), and Paul Mills d/b/a Mills Brothers Markets ("Mills") (D.I. 1);

WHEREAS, on March 29, 2016, Hamilton Beach filed an answer with ten counterclaims (D.I. 10);

WHEREAS, presently before the court are f'real's Motion to Dismiss (D.I. 19) and Motion to Bifurcate (D.I. 20) Counts IX and X of Hamilton Beach's Answer and Counterclaims;

WHEREAS, having considered the motions, the parties' positions as set forth in their briefs, as well as the applicable law;

IT IS HEREBY ORDERED THAT f'real's Motion to Dismiss and Motion to Bifurcate and Stay Counts IX and X are both DENIED.¹

¹ Federal Rule of Civil Procedure 12(b)(6) provides for dismissal if the non-movant "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). Pursuant to Rule 8(a), pleading a claim only requires a short and plain statement of the grounds for jurisdiction, entitlement to relief, and demand for relief. Fed. R. Civ. P. 8(a). In addition, a pleading "must contain sufficient factual matter, accepted as true to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This being said, the issue is not whether the non-movants will ultimately prevail, but whether they have offered sufficient factual basis to support the claims. *U.S. ex rel. Wilkins v. United Health Grp., Inc.*, 659 F.3d 295, 302 (3d Cir. 2011). "The District Court, in deciding a motion under Fed. R. Civ. P. 12(b)(6), [is] required to accept as true all factual allegations in the complaint and draw all inferences from the facts alleged in the light most favorable to the non-movant." *Phillips v. Cty. of Allegheny*, 515 F.3d 224, 228 (3d Cir. 2008). The non-movant's declarations however, must be more than mere conclusory allegations, and must rise above speculation. *Bell Atl. Corp.*, 550 U.S. at 555.

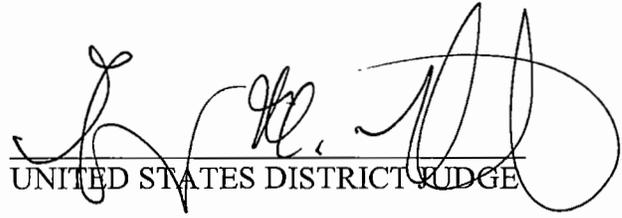
f'real moves the court to dismiss Counts IX and X of Hamilton Beach's counterclaims. Count IX alleges inequitable conduct by f'real's founder, Mr. Farrell, and Count X alleges violations of the Sherman Act and antitrust laws. (D.I. 10 at 21, 30.) f'real argues that neither claim is plausible on its face, and that much of Hamilton Beach's pleadings are "unsupported speculation." (D.I. 33 at 2.) In attacking Hamilton Beach's pleadings, f'real improperly seeks to disprove Hamilton Beach's factual assertions. The court does not analyze the factual disputes raised by f'real, but examines the sufficiency and plausibility of Hamilton Beach's claims.

The court finds Hamilton Beach's inequitable conduct pleadings satisfy the requirements laid out in *Exergen Corp. v. Wal-Mart Stores, Inc.* "[I]n pleading inequitable conduct in patent cases, Rule 9(b) requires identification of the specific who, what, when, where, and how of the material misrepresentation or omission committed before the PTO." *Exergen Corp. v. Wal-Mart Stores, Inc.*, 575 F.3d 1312, 1327 (Fed. Cir. 2009). The pleading must also "include sufficient allegations of underlying facts from which a court may reasonably infer that a specific individual (1) knew of the withheld information or of the falsity of the material misrepresentation, and (2) withheld or misrepresented this information with a specific intent to deceive the PTO." *Id.* at 1328–29. Hamilton Beach has adequately laid out factual explanations of the "who, what, when, where and how" of the alleged misrepresentations. (See D.I. 29 at 3–8; D.I. 10 at ¶¶ 51–73.) Hamilton Beach has also pled facts regarding Mr. Farrell's specific intent to deceive the PTO. (See D.I. 29 at 9; D.I. 10 at ¶¶ 67, 73–75.) Far from making conclusory allegations, Hamilton Beach lists specific facts to support its accusations. The court concludes that Hamilton Beach's inequitable conduct pleadings are plausible, and not conclusory or speculative.

The court also finds that Hamilton Beach has provided sufficient facts to plead an antitrust violation. Despite the monopoly nature of patents, a court may strip a patentee of antitrust immunity if (1) the patent was obtained "through knowing and willful fraud"; or (2) "the infringement suit was a mere sham to cover what is actually nothing more than an attempt to interfere directly with the business relationships of a competitor." *Nobelpharma AB v. Implant Innovations, Inc.*, 141 F.3d 1059, 1068 (Fed. Cir. 1998) (internal citations omitted). Drawing all inferences in a light most favorable to the non-movant, the court finds that Hamilton Beach has furnished sufficient facts alleging Mr. Farrell's inequitable conduct before the PTO and the baselessness of the current litigation. (D.I. 29 at 12–14; D.I. 10 at ¶¶ 79–108.) Accordingly, the court denies f'real's motion to dismiss Counts IX and X.

In the alternative, f'real requests the court to bifurcate and stay Counts IX and X. f'real argues that proceeding with Counts IX and X at this time will cause f'real a substantial burden, and that bifurcating and staying the counterclaims will conserve judicial resource and enhance juror comprehension of the case. (D.I. 21 at 19.) The court disagrees. The court has broad discretion to bifurcate a case "[f]or convenience or to avoid prejudice." Fed. R. Civ. P. 42(b). The decision to bifurcate "is a matter to be decided on a case-by-case basis and must be subject to an informed discretion by the trial judge in each instance." See *Lis v. Robert Packer Hosp.*, 579 F.2d 819, 824 (3d Cir. 1978). The court declines to bifurcate Counts IX and X at this time. If the parties deem it necessary to bifurcate the claims for the sake of the trial, the court will revisit the issue during the pretrial conference.

Dated: June 13, 2016


UNITED STATES DISTRICT JUDGE