UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

GIBRALTER, LLC, *et al.*,

Plaintiffs,

v.

DMS FLOWERS, LLC, *et al.*,

Defendants.

Case No. 1:24-cv-00174-CDB

ORDER GRANTING DEFENDANT TELEFLORA, LLC'S MOTION TO DISMISS THE FIRST AMENDED COMPLAINT WITH LEAVE TO AMEND

(Doc. 111)

21-DAY DEADLINE

Pending before the Court[1] is the motion of Defendant Teleflora, LLC ("Teleflora") to dismiss the first amended complaint ("FAC") of Plaintiffs Gibralter, LLC ("Gibralter"), and Divinely, Inc. ("Divinely") (collectively, "Plaintiffs"), filed on June 9, 2025. (Doc. 111). On June 23, 2025, Plaintiffs filed an opposition to the motion to dismiss, and on July 3, 2025, Teleflora filed a reply. (Docs. 115, 121). Following review of the parties' filings made in connection with the motion, the Court deemed the motion suitable for disposition without hearing and oral argument. (Doc. 122) (citing Local Rule 230(g)). For the reasons set forth herein, the Court will grant Teleflora's motion to dismiss the FAC with leave to amend.

[1] Following all parties' expression of consent to the jurisdiction of a magistrate judge for all further proceedings in this action, including trial and entry of judgment, on May 22, 2025, this action was reassigned to the undersigned pursuant to 28 U.S.C. § 636(c)(1). (Doc. 105).

I. Relevant Background

A. Procedural History

On February 6, 2024, Plaintiffs initiated this action with the filing of a complaint against Defendants Daniel Andrade ("Andrade"), Samantha Andrade, DMS Flowers, LLC, and Maria Pantoja (collectively, the "DMS Flowers Defendants"). (Doc. 1). In his answer to Plaintiffs' complaint (filed while appearing pro se), Andrade asserted a "crossclaim complaint" against Teleflora, a corporation allegedly doing business in Bakersfield, California. (Docs. 38, 39).

The scheduling of the case was complicated and significantly delayed given the entry of defaults against certain Defendants, their pro se status (initially), and the litigation of motions for default judgment and to set aside defaults. Following a scheduling conference at which the DMS Flowers Defendants appeared pro se, on November 22, 2024, the Court entered the operative scheduling order (*see* Doc. 68), and in the months that followed, the DMS Flowers Defendants retained counsel and successfully litigated the setting aside of defaults (*see* Docs. 44, 89).

On December 30, 2024, the Court granted the parties' construed joint motion for joinder of putative Defendant/Cross-Defendant Teleflora under either Rule 19(a)(1)(A) and (B) as a required party or under Rule 20(a)(2) as a permissive party. (Doc. 78). On March 24, 2025, the Court granted the parties' unopposed motions to amend the complaint and to amend the DMS Flowers Defendants' crossclaim against Teleflora. (Doc. 90). On March 25, 2025, the DMS Flowers Defendants filed the first amended cross-complaint and on March 27, 2025, Plaintiffs filed the operative, first amended complaint ("FAC"). (Docs. 92, 93). On May 15, 2025, the DMS Flowers Defendants filed an answer to the first amended complaint. (Doc. 99).

On May 28, 2025, the Court vacated all case management dates and deadlines and noted that an amended scheduling order will enter following the settling of the pleadings. *See* (Doc. 108 at 3). On July 14, 2025, the Court granted Teleflora's unopposed request for judicial notice and motion to dismiss the first amended cross-complaint with leave to amend certain claims. (Doc. 123). DMS Flowers Defendants filed the second amended cross-complaint against Teleflora on

July 25, 2025.[2] (Doc. 125). On August 4, 2025, the Court granted in part and denied in part Plaintiffs' motion to strike DMS Flowers Defendants' affirmative defenses to the FAC. (Doc. 127). DMS Flowers Defendants thereafter filed an amended answer to the FAC on August 25, 2025. (Doc. 131).

B. Factual Background of Plaintiffs' FAC

According to allegations contained in the FAC, DMS Flowers Defendants Daniel Andrade, Samantha Andrade, and Maria Pantoja are owners, business partners, shareholders, members, managers, or other authority figures of DMS Flowers, LLC, the successor in interest to Bloomingful Flowers, which continues to sell florals under the tradename "Bloomingful Flowers" in direct competition to Divinely. (Doc. 93 ¶¶ 18-22). Teleflora is a limited liability company that "is in the business of selling florals from various venders throughout the United States and Canada across its online platform" and provides "estores" on their affiliate network to individual and/or corporate flower shops. *Id.* ¶ 23.

Plaintiffs allege that this case arises from Defendants' (including DMS Flowers Defendants and Teleflora) infringement and continued use of Gibralter's registered trademark "BLOOMINGFUL" ("Mark")[3]. *Id.* ¶ 7; *see id.* ¶¶ 25-33, 38-52; *see id*. at 28-32, Ex. 4. Plaintiffs allege the MARK is "covered by an incontestable federal trademark Registration" and is "well known among floral wholesalers and consumers[.]" *Id.* ¶ 10. Plaintiffs allege Defendants, as direct competitors of Plaintiffs, began using the identical MARK for their floral business in May 2023.

[2] Teleflora filed a pending motion to dismiss DMS Flowers Defendants' second amended cross-complaint on August 7, 2025, which the Court will address in a forthcoming order. (Doc. 128).

[3] Plaintiffs allege that on August 14, 2018, Divinely registered the MARK on the principal register #5540108 before it was assigned to Cabrini, LLC ("Cabrini"), on November 10, 2021. (Doc. 93 ¶¶ 26, 27); *see id.* at 24-25, Exs. 1-2. Cabrini granted Divinely and its designated affiliates the sole and exclusive right to use the MARK. *Id.* ¶ 28. On July 15, 2023, Cabrini thereafter assigned the MARK to Gibralter, which reaffirmed the grant of sole and exclusive use of the MARK to Divinely. *Id.* ¶¶ 29, 30; *see id.* at 26-27, Ex. 3. On September 1, 2023, Gibralter filed the combined Declaration of Use and Incontestability application under Sections 8 and 15, which was accepted and approved by the United States Patent and Trademark Office. *Id.* ¶ 33. Plaintiffs allege that "[n]one of the Defendants are or were affiliated entities or individuals of Gibralter[], Cabrini[], nor designates nor [grantees] of Divinely[,]" and "[n]one … were granted any rights, permissions, and/or allowances from either" Gibralter, Cabrini, or Divinely. *Id.* ¶¶ 30, 31.

Id. ¶¶ 11, 12. Plaintiffs allege Defendants' infringing use of the MARK "in a manner to cause consumer confusion and to deceive the public regarding the source, sponsorship, and/or affiliation of the florals is unlawful and is causing irreparable harm to Plaintiffs' brand." *Id.* ¶ 13.

The FAC alleges that Teleflora "controls the contents of the 'estores' on their ecommerce platform utilized[,]" has "the power to supervise and monitor the infringing content and further has the ability to prevent and/or stop the infringing content of the Defendants[,]" and has "a direct financial interest in any order an 'estore' such as Bloomingful Flowers[] receives and/or places on the Teleflora ecommerce platform either by flat fee and/or commission." *Id.* ¶¶ 49-51. Plaintiff alleges Teleflora "knew or should have known that Bloomingful Flowers was infringing on [] Plaintiffs'' MARK." *Id.* ¶ 52.

Plaintiffs assert nine claims against Teleflora and DMS Flowers Defendants, including under the Lanham Act for (1) trademark infringement, (2) unfair competition, (3) trademark dilution, (4) unfair and deceptive trade practices, and (5) common law trademark infringement and unfair competition; (6) state trademark dilution and injury to business reputation; (7) violation of the Anti-Cybersquatting Consumer Protection Act ("ACCPA") – Cyberpiracy; (8) vicarious trademark infringement; and (9) contributory trademark infringement. *See* (Doc. 93 at 9-20).

Plaintiffs seek preliminary and permanent injunctive relief barring Defendants from distributing, marketing, or selling florals bearing the MARK or any words which are confusingly similar to the MARK, trebled monetary damages, disgorgement of Defendants' profits from sales of florals under the infringing MARK, and punitive damages, attorneys' fees, and costs. *Id.* ¶ 14.

II. Governing Authority

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) asks a court to dismiss a plaintiff's complaint for failing "to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A motion to dismiss under Rule 12(b)(6) tests the complaint's sufficiency. *N. Star Int'l v. Ariz. Corp. Comm'n.*, 720 F.2d 578, 581 (9th Cir. 1983) (citing *Peck v. Hoff*, 660 F.2d 371, 374 (8th Cir. 1981)). A complaint may be dismissed as a matter of law either for lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.

Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990) (citing *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 533-34 (9th Cir. 1984)).

To survive a motion to dismiss under Rule 12(b)(6), a complaint must provide sufficient factual matter to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see* Fed. R. Civ. P. 8(a)(2) (a complaint must contain a short and plain statement of the claim showing that the pleader is entitled to relief). A complaint satisfies the plausibility requirement if it contains sufficient facts for the court to "draw [a] reasonable inference that the defendant is liable for the misconduct alleged." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

When considering a Rule 12(b)(6) motion to dismiss for failure to state a claim, the court must accept as true all allegations put forth in the complaint and construe all facts and inferences in favor of the non-moving party. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citations omitted); *Hebbe v. Pliler*, 627 F.3d 338, 340 (9th Cir. 2010). The complaint need not include "detailed factual allegations," but must include "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678 (citations omitted). The Court is "not 'required to accept as true allegations that contradict exhibits attached to the Complaint or matters properly subject to judicial notice, or allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.'" *Seven Arts Filmed Entm't, Ltd. v. Content Media Corp. PLC*, 733 F.3d 1251, 1254 (9th Cir. 2013) (quoting *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010)). Nor does the court "necessarily assume the truth of legal conclusions merely because they are cast in the form of factual allegations." *Western Min. Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981).

III. Parties' Contentions

Teleflora contends the FAC's "threadbare" and conclusory allegations against it— that "Teleflora 'controls' content on its platform, … has the 'power to supervise and monitor' infringing content on its platform, and … somehow knew or should have known of the DMS Defendants' infringement based on infringement notices Plaintiffs sent to DMS Defendants (not Teleflora)"— are insufficient to form the basis of Plaintiffs' claims against them and the claims should be

dismissed. (Doc. 111 at 9) (emphasis removed). Teleflora argues that the FAC fails to specify which claims and allegations refer to which particular Defendant(s), and illustrate the absurdity in Plaintiffs' attempt to argue that Defendants collectively began to infringe on the MARK when DMS Flowers Defendants registered the "Bloomingful" name as an entity with the Secretary of State as "Teleflora did not and could not have been involved in DMS Defendants' entity registration." *Id.* Teleflora further argues that Plaintiffs' state law claims fail because, aside from failing to state a claim, they are barred by the Communications Decency Act, "which immunizes providers of interactive computer services (like Teleflora) from content created by third parties (like the DMS Defendants)." *Id.*

Plaintiffs contend the FAC sets forth detailed allegations establishing that Teleflora was not a "mere passive platform provider" but that it "exercised substantial control over its own website that listed, promoted, and profited from [DMS Flowers] Defendants' flower business" and "over the infringing e-store/online platform" operated by DMS Flowers Defendants, that Teleflora had actual or constructive knowledge of the infringement, and that Teleflora failed to mitigate or take timely remedial action. (Doc. 115 at 5). Plaintiffs argue its claims for direct, vicarious, and contributory infringement, and related state and common law claims, are sufficiently pled to survive a motion to dismiss. *Id.* Plaintiffs further contend that the CDA "does not immunize [Teleflora] for its role in materially contributing to infringing conduct." *Id.*

Teleflora argues in reply that Plaintiffs' opposition merely restates the FAC's conclusory allegations which are insufficient to state any claims asserted against it. (Doc. 121 at 2).

IV. Discussion

A. Claim 1: Trademark Infringement (15 U.S.C. § 1114(1)(a))

1. *Governing Authority*

"To establish a trademark infringement claim or an unfair competition claim under the Lanham Act, a plaintiff must show that (1) the plaintiff has a protectable ownership interest in the mark, and (2) that the defendant's use of the mark is likely to cause consumer confusion." *EVO Brands, LLC v. Al Khalifa Group LLC*, 657 F. Supp. 3d 1312, 1325-26 (C.D. Cal. 2023) (citing 15 U.S.C. §§ 1114(1), 1125(a)); *Brooksfield Comm'ns, Inc. v. W. Coast Ent. Corp.*, 174 F.3d 1036,

1046 (9th Cir. 1999)). The trademark owner "must establish a valid, protectable interest in order to proceed to the second prong of the trademark infringement analysis – the likelihood of confusion resulting from the defendant's alleged infringing use." *Applied Info. Scis. Corp. v. eBAY, Inc.*, 511 F.3d 966, 972 (9th Cir. 2007).

In the Ninth Circuit, courts examine eight non-exhaustive factors to determine whether a likelihood of confusion exists as between two parties' marks. *Murray v. Cable Nat'l Broad. Co.*, 86 F.3d 858, 860 (9th Cir. 1996). *See AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348-49 & n.11 (9th Cir. 1979) (identifying eight factors). The eight factors are: (1) the strength or distinctiveness of the mark; (2) the proximity or relatedness of the goods; (3) the similarity of the marks; (4) evidence of actual confusion; (5) marketing channels used; (6) types of goods and degrees of care likely to be exercised by the purchaser; (7) defendant's intent in selecting its mark; and (8) the likelihood of expansion into other markets. *Id.* at 348.

2. *Analysis*

Because Teleflora does not dispute that Gibralter is the registered owner of the MARK,[4] the Court proceeds to the second prong of the trademark infringement analysis. *See* (Doc. 111 at 16) ("Gibralter … is the registered owner of the Mark[.]"); *Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1124 (9th Cir. 2014) ("When proof of registration is uncontested, the ownership interest element of a trademark infringement claim is met.") (citing 15 U.S.C. § 1115(a)).

[4] Teleflora contends Divinely is not the owner of the MARK and lacks standing to bring a direct infringement claim. (Doc. 111 at 13). Standing under § 1114 "may exist where the licensing agreement both [1] grants an exclusive license and [2] grants to the exclusive licensee a property interest in the trademark, or rights that amount to those of an assignee." *Upper Deck Co. v. Panini Am., Inc.*, 533 F. Supp. 3d 956, 962 (S.D. Cal. 2021) (citing *Halcyon Horizons, Inc. v. Delphi Behavioral Health Grp., LLC*, No. 17-cv-00756-JST, 2017 WL 1956997, at *3 (N.D. Cal. May 11, 2017) and other cases). Because the FAC alleges that "Gibralter[] reaffirmed the grant of sole and exclusive use of the MARK to Divinely[] and its affiliated entities, if any, and/or individuals … as Divinely[] designates[,]" (Doc. 93 ¶ 30), and Teleflora does not contest the validity of this assignment, the Court finds that Divinely has standing here to assert a trademark infringement claim under § 1114. *See Ultrapure Systems, Inc. v. Ham-Let Grp.*, 921 F. Supp. 659, 666 (N.D. Cal. 1996) ("Ultrapure, as an exclusive licensee, does have a property interest in the trademark and qualifies as an assignee or successor of the registrant. … Therefore, Ultrapure does have standing to enforce the [] mark against Defendants.").

The Court finds that the FAC fails to cognizably alleges a claim under the Lanham Act for trademark infringement. "A plaintiff suing multiple defendants 'must allege the basis of [their] claim against each defendant to satisfy … Rule 8(a)(2)[.]'" *Altman v. PNC Morg.*, 850 F. Supp. 2d 1057, 1067–68 (E.D. Cal. 2012) (quoting *Gauvin v. Trombatore*, 682 F. Supp. 1067, 1071 (N.D. Cal. 1988)). "The primary purpose of Rule 8(a)(2) is to ensure the pleading gives a defendant 'fair notice of what plaintiff's claim is and the grounds upon which it rests' in order to enable the [defendant] to answer and prepare for trial, and to identify the nature of the case." *Segal v. Segal*, No. 20-cv-1382-BAS-JLB, 2022 WL 198699, at *6 (S.D. Cal. Jan. 21, 2022) (citation and quotation omitted); *see Adobe Systems Inc. v. Blue Source Group, Inc.*, 125 F. Supp. 3d 945, 964 (N.D. Cal. 2015) ("[W]hen a pleading fails 'to allege what role each Defendant played in the alleged harm,' this 'makes it exceedingly difficult, if not impossible, for individual Defendants to respond to Plaintiffs' allegations.'") (citing *In re iPhone Application Litig.*, No. 11-MD-02250-LHK, 2011 WL 4403963, at *8 (N.D. Cal. Sept. 20, 2011)). As Teleflora correctly argues, the FAC's allegations fail to articulate which specific conduct of Teleflora led to the claimed harm; instead, the FAC alleges generally that all "Defendants' use of the identical MARK of Plaintiffs' is likely to cause confusion[.]" *See* (Doc. 93 ¶¶ 58).

The only material allegations in the FAC addressing Teleflora's alleged conduct are that Teleflora "controls the content of the 'estores' on their ecommerce platform utilized[,]" that it "has the power to supervise and monitor the infringing content and … has the ability to prevent and/or stop the infringing content of the Defendants[,]", and that it "knew or should have known that Bloomingful Flowers was infringing on the Plaintiffs' MARK." *Id.* ¶¶ 49-52. But these conclusory allegations fail to give Teleflora fair notice of what "use" of Plaintiffs' MARK it has made that is likely to cause confusion. *See Segal*, 2022 WL 198699, at *7 ("[I]t is insufficient that the [first amended complaint] repeatedly alleges 'Defendants' collectively caused Plaintiff's copyrights and trademarks to be infringed.").

The FAC fails to adequately allege a likelihood of confusion on the part of Teleflora. There is no allegation that Teleflora itself used the MARK in commerce. *See Free Kick Master LLC v. Apple Inc.*, 140 F. Supp. 3d 975, 982 (N.D. Cal. 2015) ("With regard to the Lanham Act claims,

the [second amended complaint] refers to 'defendants' use of the [] mark, … but alleges no facts showing that [defendants] in fact 'used' the mark or that … 'use' created a likelihood of confusion."). Nor do Plaintiffs' allegations, liberally construed, in alleging Teleflora's facilitation of DMS Flowers Defendants' infringement based on Teleflora's control and knowledge support a claim for direct trademark infringement against Teleflora. *See Atari Interactive, Inc. v. Redbubble, Inc.*, 515 F. Supp. 3d 1089, 1101 (N.D. Cal. 2021) ("[An] alleged infringer must directly use the trademarks; a party that merely facilitates or assists others' use cannot be liable for direct infringement."); *Perfect 10, Inc. v. Giganews, Inc.*, No. CV11-07098 AHM (SHx), 2013 WL 2109963, at *14 (C.D. Cal. Mar. 8, 2013) ("Direct infringement requires that the defendant itself 'use' the mark; it is insufficient for direct infringement purposes to allege that a defendant allows third parties to use the mark.") (citing 15 U.S.C. § 1114(a)).

Plaintiffs' reliance (Doc. 115 at 8) on *Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc.*, 658 F.3d 936, 943 (9th Cir. 2011) for the proposition that its allegations of Teleflora's control, knowledge, and actions in allowing the MARK to be used on its e-stores is sufficient to establish "use in commerce" and consumer confusion is unpersuasive. As Teleflora correctly notes, *Louis Vuitton Malletier, S.A.* involved a claim for contributory trademark infringement, not direct infringement, and the Court's holding expressly was limited to contributory infringement claims. *Id.* ("Plaintiffs asserting contributory trademark infringement claims must prove that defendants provided their services with actual or constructive knowledge that the users of their services were engaging in trademark infringement.") (citation omitted). Therefore, the Court grants Teleflora's motion to dismiss Plaintiffs' first claim for direct trademark infringement.

While it does not appear Plaintiffs would be able to sufficiently allege that Teleflora "used" Plaintiffs' MARK to cognizably plead a direct infringement claim, the Court will adhere to the general rule that leave to amend a claim that is dismissed should be freely granted where the claim's deficiency could be cured. Fed. R. Civ. P. 15(a); *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

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B. Claim 2: Unfair Competition (15 U.S.C. § 1125(a))

1. *Governing Authority*

An action under the Lanham Act for unfair competition requires a plaintiff to show the defendant's use of the same or similar mark would create a likelihood of consumer confusion. *See Murray*, 86 F.3d at 860; *Pinterest Inc. v. Pintrips Inc.*, 15 F. Supp. 3d 992, 997-98 (N.D. Cal. 2014); *EVO Brands, LLC*, 657 F. Supp. 3d at 1324.

2. *Analysis*

Here, Plaintiffs' FAC fails to state a claim for unfair competition for the same reasons articulated above for Plaintiffs' failure to state a claim for direct trademark infringement. Accordingly, the Court grants Teleflora's motion to dismiss Plaintiffs' second claim under the Lanham Act for unfair trademark competition. As set forth above, although it is unlikely Plaintiffs would be able to allege that Teleflora "used" Plaintiffs' MARK sufficient to cognizably allege an unfair competition claim, the Court will grant leave to amend.

C. Claim 3: Trademark Dilution (15 U.S.C. § 1125(c))

1. *Governing Authority*

To state a claim under the Lanham Act for trademark dilution, a plaintiff "must show that (1) the mark is famous and distinctive; (2) the defendant is making use of the mark in commerce; (3) the defendant's use began after the mark became famous; and (4) the defendant's use of the mark is likely to cause dilution." *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 633 F.3d 1158, 1168 (9th Cir. 2011) (quoting *Jada Toys, Inc. v. Mattel, Inc.*, 518 F.3d 628, 634 (9th Cir. 2008). "Neither federal law nor California state law requires a showing of competition or likelihood of confusion to succeed on a dilution claim." *Jada Toys*, 518 F.3d at 634.

2. *Analysis*

Plaintiffs fail to adequately plead that its MARK is famous.[5] "A mark qualifies as famous for the purposes of a dilution claim 'if it is widely recognized by the general consuming public of

[5] In contrast to an exclusive licensee's ability to bring a direct infringement claim, only the "owner" of a trademark may assert a dilution claim. *See Bravado Intl'l Grp. Merchandising Servs., Inc., v. Gearlaunch, Inc.*, No. CV 16-8657-MWF(CWx), 2018 WL 6017035, at *4-5 (C.D. Cal. Feb. 9, 2018) (quoting § 1125(c)). Thus, because Divinely is pleaded to be the exclusive

the United States as a designation of source of the goods or services of the mark's owner.'" *Motul S.A v. USA Wholesale Lubricant, Inc*, 686 F. Supp. 3d, 900, 915 (N.D. Cal. 2023) (citing 15 U.S.C. § 1125(c)(2)). "In determining whether a mark possesses the requisite degree of recognition, the court may consider all relevant factors, including the following: (i) [t]he duration, extent, and geographic reach of advertising and publicity of the mark, whether advertised or publicized by the owner or third parties; (ii) [t]he amount, volume, and geographic extent of sales of goods or services offered under the mark; (iii) [t]he extent of actual recognition of the mark; and (iv) [w]hether the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register." *Id.* "[D]ilution protection [extends] only to those whose mark is a household name." *Id.* (citing *Arcsoft, Inc. v. Cyberlink Corp.*, 153 F. Supp. 3d 1057, 1065 (N.D. Cal. 2015)).

Here, Plaintiffs allege they have promoted the MARK for over five years in both the United States and internationally, which "has become a known symbol of Plaintiffs and Plaintiffs' products" and that the MARK is registered. *See* (Doc. 93 ¶¶ 10, 68-71). Though Plaintiffs concede the MARK may not be a household name (Doc. 115 at 8), they contend it is nonetheless famous in the niche market of the floral industry. However, while niche fame under limited circumstances could be sufficient to satisfy the "fame" element under the original Lanham Act dilution provisions, the Trademark Dilution Revision Act of 2006 "expressly repudiated" the "niche market" theory and requires, instead, a showing that the famous mark is widely recognized by the general consuming public of the United States. *Aegis Software, Inc. v. 22nd Dist. Ag. Assoc.*, 255 F. Supp. 3d 1005, 1011 (S.D. Cal. 2017) (citing *Levi Strauss*, 633 F.3d at 1166-67); *see Dahon N. Am., Inc. v. Hon*, No. 2:11-cv-05835-ODW (JCGx), 2012 WL 1413681, at *9 (C.D. Cal. April 24, 2012) ("[T]rademark dilution claims are restricted to truly famous marks, such as Budweiser beer, Camel cigarettes, and Barbie dolls."). And because Plaintiffs do not offer any nonconclusory allegations about the extent of the MARK's notoriety, the allegations are insufficient to plausibly allege a dilution claim. *See Arcsoft, Inc.*, 153 F. Supp. 3d at 1067 (finding conclusory allegations of a "well-

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licensee, not the owner, of the MARK, Plaintiffs cannot, consistent with Rule 11, now allege that Divinely owns the MARK. Accordingly, Divinely may not assert a dilution claim. *See, e.g., id.*; *Love v. The Mail on Sunday*, No. CV 05-7798-ABC, 2006 WL 4046180, at *14 (C.D. Cal. Aug. 15, 2006).

known brand" that "attained widespread and favorable recognition … through the United States" insufficient to sustain a plausible inference of national recognition); *Parts.com, LLC v. Yahoo! Inc.*, 996 F. Supp. 2d 933, 940-41 (S.D. Cal. 2013) (dismissing federal trademark dilution claim because plaintiff's "allegations …are conclusory and do not provide sufficient specific facts to be plausible."). Further, and as noted above, the FAC as constructed does not articulate that Teleflora directly used the MARK, and instead merely lumps Teleflora with DMS Flowers Defendants in Plaintiffs' allegations of Defendants' purported infringed use. *See Free Kick Master LLC*, 140 F. Supp. 3d at 982. The Court finds Plaintiffs' allegations here fall short of the threshold standard required for a federal trademark dilution claim.

As with Plaintiffs' other deficiently-pleaded Lanham Act claims, the Court will extend leave to amend the dilution claim.

D. State Law Claims 4, 5, and 6: Unfair and Deceptive Trade Practice, Common Law Trademark Infringement and Unfair Competition, and Trademark Dilution and Injury to Business Reputation

1. *Governing Authority*

"[T]rademark claims under California law are substantially congruent with federal claims and thus lend themselves to the same analysis." *Grupo Gigante S.A. de C.V. v. Dallo & Co.*, 391 F.3d 1088, 1100 (9th Cir. 2004) (internal quotation and citation omitted); accord *Cleary v. News Corp.*, 30 F.3d 1255, 1262–63 (9th Cir. 1994). Similarly, a cause of action under California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 ("UCL"), is "substantially congruent" to a trademark infringement claim under the Lanham Act. *Global Apogee v. Sugarfina, Inc.*, CV 18-5162-RSWL-Ex, 2021 WL 4819715, at *6 (C.D. Cal. Oct. 15, 2021) (quoting *Acad. of Motion Picture Arts & Scis. v. Creative House Promotions, Inc.*, 944 F.2d 1446, 1457 (9th Cir. 1991)). Likewise, "[a] California state law dilution claim 'is subject to same analysis as [a] federal [trademark dilution] claim.'" *Films of Distinction, Inc. v. Allegro Film Prods., Inc.*, 12 F. Supp. 2d 1068, 1078 (C.D. Cal. 1998) (citing *Panavision Int'l L.P. v. Toeppen*, 141 F.3d 1316, 1324 (9th Cir. 1998)); *see Arcsoft, Inc.*, 153 F. Supp. 3d at 1064-65 ("[T]he analysis is the same for a

trademark dilution claim whether under federal or California law.") (citing *Jada Toys*, 518 F.3d at 634).

2. *Analysis*

Here, because the standards of the aforementioned state law claims mirror the standards required to state a claim for the analogous federal claims, Plaintiffs' state law claims for trademark infringement, unfair competition, and trademark dilution fail for the same reasons as the federal claims as set forth above.

Separately, the Court finds Plaintiffs' state law claims are barred under the Communications Decency Act ("CDA"). "The CDA provides a limited form of immunity to certain Internet related entities: 'No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.'" *Parts.com, LLC*, 996 F. Supp. 2d at 938 (citing 47 U.S.C. § 230(c)(1)). Thus, an interactive computer service is immune from liability for infringing content created by others so long as it is not also an "information content provider," defined by the CDA as any person or entity that is "'responsible, in whole or in part, for the creation or development of' the offending content." *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1165 (9th Cir. 2008) (quoting § 230(f)(3)). The Ninth Circuit has recognized that the CDA extends a "broad grant of immunity" to providers claims arising from third-party use of their services. *See Perfect 10, Inc.*, 488 F.3d at 1118, 1119 n.5; *see Jurin v. Google Inc.*, 695 F. Supp. 2d 1117, 1122 (E.D. Cal. 2010) ("The CDA provides complete immunity to any provider or user of an interactive computer service from liability premised on information provided by another content provider.").

The FAC alleges that Teleflora's online platform enables third parties to sell their products through "estores" on an affiliate network such that Teleflora qualifies as an "interactive computer service provider" under the CDA. *See* (Doc. 93 ¶ 23); *e.g.*, *Parts.com, LLC*, 996 F. Supp. 2d at 939 ("Like Google, Yahoo 'provides a space and a service and thereafter charges for its service,' which 'allows competitors to post their digital fliers where they might be most readily received in the cyber-marketplace.' … [T]his activity was entitled to CDA immunity. … Thus, Plaintiff's state law claims must fail.").

Plaintiffs assert that "the CDA does not immunize an entity that materially contributes to the unlawful content" and argue that Teleflora is not entitled to immunity here because it "played an active role in controlling, publishing, formatting, and profiting from the infringing content." (Doc. 115 at 9) (citing Doc. 93 ¶¶ 49-52, 98-102). To the extent Plaintiffs ask the Court to find that CDA immunity does not apply because Teleflora is an information content provider, the Court finds that the allegations of the FAC are inadequate. A party is not an information content provider outside the ambit of CDA immunity unless it creates or develops the offending content in whole or in part. Plaintiffs' allegations establish at most that Teleflora controls, supervises, monitors, and profits from the offending content – not that it created or developed that content.

Accordingly, the Court grants Teleflora's motion to dismiss Plaintiffs' state law claims for failure to state a claim and as barred by the CDA. Plaintiffs will be afforded an opportunity to amend their complaint if they are able in good faith to remedy the noted deficiencies.

E. Claim 7: Violation of Anti-Cybersquatting Consumer Protection Act – Cyberpiracy (15 U.S.C. § 1125(d))

1. *Governing Authority*

"The Anti-Cybersquatting Consumer Protection Act establishes civil liability for 'cyberpiracy' where a plaintiff proves that (1) the defendant registered, trafficked in, or used a domain name; (2) the domain name is identical or confusingly similar to a protected mark owned by the plaintiff; and (3) the defendant acted 'with bad faith intent to profit from that mark.'" *DSPT Intern., Inc. v. Nahum*, 624 F.3d 1213, 1218-19 (9th Cir. 2010) (quoting 15 U.S.C. § 1125(d)(1)(A)).

2. *Analysis*

Here, Plaintiffs fail to state a cybersquatting claim. Plaintiffs' allegations do not establish that Teleflora used, registered, or trafficked in the MARK. "Where a defendant does not register, traffic in, or use a domain name to infringe [a plaintiff's] mark, there can be no violation of the [ACPA]." *Multifab, Inc. v. ArlanaGreen.com*, 122 F. Supp. 3d 1055, 1067 (E.D. Wash. 2015). Further, Plaintiffs are unable to state a cybersquatting claim on a theory of secondary liability based on its allegations that Teleflora had control and knowledge of the purported infringed use by DMS

Flower Defendants. *See Petroliam Nasional Berhad v. GoDaddy.com, Inc.*, 737 F.3d 546, 550-52 (9th Cir. 2013) (holding the ACPA does not include a cause of action for contributory cybersquatting and that "the ACPA did not incorporate principles of secondary liability."). On this basis, Plaintiffs fail to state a cybersquatting claim.

Because Plaintiffs may be able to cognizably plead that Teleflora, in fact, registered, trafficked, or used Plaintiff's MARK, the Court will grant leave to amend.

F. Claim 8: Vicarious Trademark Infringement

1. *Governing Authority*

"Vicarious liability occurs where 'the defendant and the infringer have an apparent or actual partnership, have authority to bind one another in transactions with third parties or exercise joint ownership or control over the infringing product.'" *Perfect 10, Inc.*, 494 F.3d at 807. "Although the Ninth Circuit has not expressly defined what constitutes sufficient control, it has found that a financial or contractual relationship, without more, is not enough." *PetConnect Rescue, Inc. v. Salinas*, 656 F. Supp. 3d 1131, 1158 (S.D. Cal. 2023) (citing *Perfect 10, Inc.*, 494 F.3d at 808) ("finding that a 'financial partnership' between defendants and infringing websites, where defendants processed payments to those websites and collected the usual processing fees, did not establish 'symbiotic' relationship or 'joint ownership or control[.]'"); *see Gibson Brands, Inc. v. Viacom Int'l, Inc.*, 640 Fed. Appx. 677, 678 (9th Cir. 2016) ("[T]he [licensing] agreement does not reveal a relationship of control over the actual infringing activity, which would constitute evidence of vicarious liability.").

"[F]or vicarious liability to attach, the defendant must have 'control such as to stop the infringing activity.'" *Mophie, Inc. v. Shah*, No. SACV1301321DMGJEMX, 2014 WL 10988339, at *4 (C.D. Cal. July 24, 2014). The "mere ability to withdraw a financial 'carrot' does not create the 'stick' of 'right and ability to control' that vicarious infringement requires." *Salinas*, 656 F. Supp. 3d at 1159. "Further, 'the shared control must extend in some way to the infringed intellectual property itself.'" *Id.* (citing *Y.Y.G.M. SA v. Redbubble, Inc.*, No. 219CV04618RGKJPR, 2020 WL 3984528, at *9 (C.D. Cal. July 10, 2020)).

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2. *Analysis*

In the FAC, Plaintiffs allege Teleflora provided an "estore" to DMS Flowers Defendants to display, advertise, market, and sell their products on Teleflora's ecommerce platform; that Teleflora had the power to supervise and monitor the content and infringing use of Plaintiffs' MARK on the Teleflora platform; that Teleflora had the power and ability to prevent and/or stop the infringing content and/or use of Plaintiffs' MARK by DMS Flowers Defendants; that Teleflora had a direct financial benefit/interest in the infringing use of the MARK; and Teleflora's conduct in failing to prevent the infringing use led to Teleflora's harm. *See* (Doc. 93 ¶¶ 98-102).

The Court finds Plaintiffs have failed to state a claim for vicarious trademark infringement against Teleflora. Plaintiffs' allegations fall short of alleging that Teleflora has an actual or apparent partnership, authority to bind DMS Flowers Defendants in transactions with third parties, or exercise joint ownership or control over the allegedly infringed MARK. *See Perfect 10, Inc.*, 494 F.3d at 807; *Redbubble, Inc.*, 2020 WL 3984528 at *9 (defendant's "control of the … background processes … is insufficient to impose vicarious liability without some indication that [defendant] exercised control over the appearance and content of the infringing products themselves."). At most, Plaintiffs' allegations demonstrate Teleflora's type of control is only indirect and does not give Teleflora the right or ability to control the actual infringing activity at issue, particularly the alleged infringing use of the MARK. *See Gibson Guitar Corp. v. Viacom Intern. Inc.*, No. CV 12-10870 DDP (AJWx), 2013 WL 2155309, at *6 (C.D. Cal. May 17, 2023) ("Viacom can influence the allegedly infringing product by blocking its sale or by removing its mark from the product, but this does not give Viacom the right or ability to control the actual infringing activity at issue in this case, namely, the production and sale of instruments that infringe. Viacom's type of control is only indirect.") (internal quotation omitted). Other than Plaintiffs' conclusory allegations of control, Plaintiffs have not shown that Teleflora has contracts or agreements with DMS Flowers Defendants such that Teleflora is empowered to stop or limit them infringing on the MARK. *See Perfect 10, Inc.*, 508 F.3d at 1173 ("Perfect 10 has not shown that Google has contracts with third-party websites that empower Google to stop or limit them from

reproducing, displaying, and distributing infringing copies of Perfect 10's images on the Internet."). Thus, Plaintiffs have failed to state a vicarious trademark infringement claim against Teleflora.

Because Plaintiffs may allege additional facts in an amended complaint sufficient to assert a vicarious trademark infringement claim, the Court will extend leave to amend.

G. Claim 9: Contributory Trademark Infringement

1. *Governing Authority*

A defendant may be held liable for contributory trademark infringement if it "(1) intentionally induces another to infringe on a trademark or (2) continues to supply a product knowing that the recipient is using the product to engage in trademark infringement." *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259, 264 (9th Cir. 1996) (citing *Inwood Labs., Inc. v. Ives Labs., Inc.*, 456 U.S. 844, 854–55 (1982)); *see Perfect 10, Inc.*, 508 F.3d at 1171 ("[O]ne who, with knowledge of the infringing activity, induces, causes or materially contributes to the infringing conduct of another, may be held liable as a 'contributory' infringer[.]") (citing *Gershwin Publishing Corp. v. Columbia Artist Mgmt., Inc.*, 443 F.2d 1159, 1162 (2d Cir. 1971)). "Defendant must know of 'specific infringing material' and fail to 'take simple measures to prevent further damage.'" *Redbubble, Inc.*, 515 F. Supp. 3d at 1115 (citing *Perfect 10, Inc.*, 508 F.3d at 1171-72). The "supplies a product" requirement for contributory infringement has been expanded to include "[d]irect control and monitoring of the instrumentality used by a third party to infringe the plaintiff's mark." *Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980, 984 (9th Cir. 1999).

2. *Analysis*

The FAC does not allege Teleflora intentionally induced DMS Flowers Defendants to perpetuate the infringement of Plaintiffs' MARK and, in opposition to dismissal, Plaintiffs do not advance an inducement theory as the basis for their contributory infringement claim. *See* (Doc. 115 at 12). As to a knowing facilitation theory, the FAC fails to show that Teleflora knew of the *specific* infringing material of DMS Flowers Defendants, as Plaintiffs allege only that Teleflora knew or should have known that the DMS Flowers Defendants were generally infringing on the MARK. *See* (Doc. 93 ¶¶ 111-12). Moreover, because the FAC alleges that Plaintiffs' cease and desist letter was communicated only to DMS Flowers Defendants, and not Teleflora, Plaintiffs'

allegations of Teleflora's purported actual or constructive knowledge of the DMS Flower Defendants' alleged infringed use of the MARK, without more, are conclusory. *See YZ Productions, Inc. v. Redbubble, Inc.*, 545 F. Supp. 3d 756, 765 (N.D. Cal. 2021) ("[B]ecause Plaintiff does not allege that Defendant had knowledge of specific acts of infringement, the Court concludes that Plaintiff has not adequately alleged that Defendant 'knew of acts of direct infringement.'"); *e.g., Spy Phone Labs LLC v. Google Inc.*, No. 15-cv-03756-PSG, 2016 WL 1089267, at *3 (N.D. Cal. Mar. 21, 2016) ("Absent specific notice of trademark infringement, Google cannot be liable for contributory infringement merely for failing to remove infringing apps preemptively.").

Thus, the Court finds Plaintiffs fail to state a contributory trademark infringement claim against Teleflora. Because Plaintiffs may allege additional facts in an amended complaint to adequately plead a contributory trademark infringement claim, the Court will grant leave to amend.

V. Conclusion and Order

Based on the foregoing, IT IS HEREBY ORDERED that:

1. Defendant Teleflora, LLC's motion to dismiss (Doc. 111) is GRANTED;
2. Plaintiffs' First Amended Complaint (Doc. 93) is DISMISSED with leave to amend.
3. Plaintiffs SHALL FILE **within 21 days** of entry of this order any second amended complaint ("SAC") consistent with this order.
4. Defendant Teleflora, LLC, SHALL FILE a response to any timely filed SAC **within 14 days** from its filing.

IT IS SO ORDERED.

Dated: **September 11, 2025**

UNITED STATES MAGISTRATE JUDGE