

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

PERIMETER BRAND PACKAGING,)
LLC,)
)
Plaintiff,)
)
v.)
)
RECKITT BENCKISER LLC,)
RECKITT BENCKISER PLC,)
RECKITT BENCKISER GROUP PLC)
)
Defendants.)
)

C.A. No. 20-623-CFC

**RECKITT BENCKISER PLC AND RECKITT BECKISER
GROUP PLC’S OPENING BRIEF IN SUPPORT OF
THEIR MOTION TO DISMISS**

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NATURE AND STAGE OF THE PROCEEDINGS

On May 8, 2020, Plaintiff Perimeter Brand Packaging (“Plaintiff”) filed this patent infringement action against Defendant Reckitt Benckiser LLC (“RB LLC”), Defendant Reckitt Benckiser plc (“RB plc”), and Defendant Reckitt Benckiser Group plc (“RBG”). In its Complaint, Plaintiff refers to these three separate and distinct entities as “Reckitt Benckiser” or “Defendants,” collectively, and then Plaintiff vaguely and ambiguously alleges that this collection of entities directly, indirectly, and willfully infringe United States Patent Nos. 7,703,621 (“the ’621 patent”) and 8,297,461 (“the ’461 patent”) (together, the “Patents-in-Suit”) by selling, offering to sell, making, using, importing, and/or providing and causing to be used packaging designs for moistened wipes products under the brand name Lysol (“the Accused Products”). (D.I. 1 at ¶¶ 20-21). The Complaint asserts that the Accused Products include a container and closure with sealing features claimed in the Patents-in-Suit. (*See id.*) Specifically, the Complaint alleges that the Accused Products infringe claims 1-3, 7-8, 10-12, 14-16, 20-21, 23-24, and 26 of the ’621 patent, and Claims 1-7, 10, 12, 15, and 16 of the ’461 patent (collectively, the “Asserted Claims”). (*Id.* at ¶¶ 33, 44.)

SUMMARY OF ARGUMENT

RB plc and RBG move to dismiss Plaintiff's Complaint for two reasons.

First, while Plaintiff alleges that both RB plc and RBG are “corporation[s] organized and existing under the laws of the United Kingdom” (*id.* at ¶¶ 3-4), the Complaint does not set forth any factual allegations that would support a basis for personal jurisdiction over either RB plc or RBG. Consequently, the Complaint against them should be dismissed pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure.

Second, Plaintiff improperly groups RB LLC, RB plc, and RBG together as “Reckitt Benckiser” or “Defendants” throughout the Complaint, and alleges that “Reckitt Benckiser” or “Defendants” have directly, indirectly, and willfully infringed the Patents-in-Suit. In so doing, Plaintiff fails to set forth facts sufficient to make its infringement allegations plausible. That is, the Complaint fails to provide any factual allegations from which the Court could draw even a plausible inference regarding the role played by *any* defendant in the alleged infringement, and certainly not by RB plc or RBG—both of which are United Kingdom entities. Plaintiff has, therefore, failed to state a claim against either RB plc or RBG, and the Complaint against them should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

LEGAL STANDARD

Rule 12(b)(2): Pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, the Court must dismiss a case when it lacks personal jurisdiction over a defendant. *See* Fed. R. Civ. P. 12(b)(2); *Freres v. SPI Pharma, Inc.*, 629 F. Supp. 2d 374, 382 (D. Del. 2009). The plaintiff bears the burden of proving that personal jurisdiction is proper. *See ICT Pharms., Inc. v. Boehringer Ingelheim Pharms., Inc.*, 147 F. Supp. 2d 268, 270-71 (D. Del. 2001).

“Once a jurisdictional defense has been raised, the plaintiff bears the burden of establishing, with reasonable particularity, that sufficient minimum contacts have occurred between the defendant and the forum to support jurisdiction. To meet this burden, the plaintiff must produce ‘sworn affidavits or other competent evidence,’ since a Rule 12(b)(2) motion ‘requires resolution of factual issues outside the pleadings.’” *Univ. of Mass. Med. Sch. v. L’Oreal S.A.*, No. 17-868-CFC-SRF, 2018 WL 5919745, *3 (D. Del. Nov. 13, 2018) (internal citations omitted), *objections overruled*, No. 17-868-CFC-SRF, 2019 WL 2151701 (D. Del. May 17, 2019).

“In the absence of consent, personal jurisdiction exists if two requirements are satisfied.” *Funai Elec. Co. v. Personalized Media Commc’ns, LLC*, No. 15-558-RGA, 2016 WL 370708, at *2 (D. Del. Jan. 29, 2016) (citing *Inamed Corp. v. Kuzmak*, 249 F.3d 1356, 1359 (Fed. Cir. 2001)). First, the Court must determine whether it has jurisdiction over the defendant under the Delaware long-arm statute,

10 Del. C. § 3104. *See id.*; *see also Bell Helicopter Textron, Inc. v. C & C Helicopter Sales, Inc.*, 295 F. Supp. 2d 400, 402-03 (D. Del. 2002). Delaware’s long-arm statute authorizes jurisdiction over a nonresident when, among other things, that party or its agent “(1) [t]ransacts any business or performs any character of work or service in the State; (2) [c]ontracts to supply services or things in this State; [or] (3) [c]auses tortious injury in the State by an act or omission in this State.” 10 Del. C. § 3104(c)(1)-(3).

Second, the exercise of jurisdiction over the defendant must comport with the Due Process Clause of the Fourteenth Amendment. *See Inamed Corp.*, 249 F.3d at 1359. “Delaware’s long-arm statute ‘has been broadly construed to confer jurisdiction to the maximum extent possible under the Due Process Clause.’” *Funai Elec. Co.*, 2016 WL 370708, at *2 (quoting *LaNuova D & B, S.p.A. v. Bowe Co., Inc.*, 513 A.2d 764, 768 (Del. 1986)). Nevertheless, the personal jurisdictional analysis “must not be collapsed into a single constitutional inquiry.” *Id.* (quoting *Power Integrations, Inc. v. BCD Semiconductor Corp.*, 547 F. Supp. 2d 365, 370 n. 3 (D. Del. 2008)).

Rule 12(b)(6): A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). As a result, a complaint may survive a motion to dismiss pursuant to Rule 12(b)(6) only if it “contain[s] sufficient factual matter . . . to ‘state a claim to relief that is plausible

on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); see also *Nalco Co. v. Chem-Mod, LLC*, 883 F.3d 1337, 1347 (Fed. Cir. 2018) (same). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 662.

Thus, while the Court must accept the Complaint’s factual allegations as true, “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions.” *Twombly*, 550 U.S. at 555 (quotations omitted); see also *Davis v. Abington Mem’l Hosp.*, 765 F.3d 236, 241 (3d Cir. 2014) (“[A] complaint must do more than simply provide ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action.’” (quoting *Twombly*, 550 U.S. at 555)).

Moreover, “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions [because] [t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678; see also *Twombly*, 550 U.S. at 555 (holding that, in deciding a Rule 12(b)(6) motion to dismiss, courts “are not bound to accept as true a legal conclusion couched as a factual allegation”).

ARGUMENT

I. Plaintiff Fails To Adequately Allege Personal Jurisdiction Over RB plc or RBG.

Plaintiff has failed to allege sufficient facts in the Complaint to support the Court's exercise of personal jurisdiction over RB plc or RBG. As a result, the Complaint against RB plc and RBG should be dismissed for lack of personal jurisdiction.

In its Complaint, Plaintiff alleges that this Court has personal jurisdiction over "Defendants" collectively. In particular, Plaintiff alleges this Court has jurisdiction over "Defendants":

due at least to their substantial business in Delaware and in this judicial district, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in the State of Delaware.

(Complaint at ¶ 9). Plaintiff does not allege that this Court has personal jurisdiction over RB plc or RBG, specifically.

Based on these allegations, the Complaint does not sufficiently plead personal jurisdiction over RB plc or RBG because it fails to allege sufficient facts or attach any exhibits suggesting that RB plc or RBG performs any of the enumerated actions found in the Delaware long-arm statute. *See, e.g., Nespresso USA, Inc. v. Ethical Coffee Co. SA*, 263 F. Supp. 3d 498, 506 (D. Del. 2017) (granting motion to dismiss,

holding that “[a] finding of personal jurisdiction, if contested under Rule 12(b)(2), requires factual evidence, and cannot rely on the bare pleadings or affidavits which parrot and do no more than restate plaintiff’s allegations without identification of particular defendants and without factual content” (internal quotations omitted)); *M2M Sols. LLC v. Simcom Wireless Sols. Co.*, 935 F. Supp. 2d 740, 744 (D. Del. 2013) (“Although the Amended Complaint does allege that [defendant] infringed the patents-in-suit by making, using, offering for sale, and/or selling within the United States, and/or importing into the United States, [plaintiff’s] products, none of these allegations are aimed at Delaware in particular, and such bare formulaic accusation[s] in any event are insufficient to establish personal jurisdiction” (internal quotations omitted)); *Serverside Grp. Ltd, et al v. CPI Card Grp., Inc.*, No. 11-559-RGA, 2012 WL 528143, at *2 (D. Del. Feb. 17, 2012) (finding plaintiff’s complaint insufficient to create personal jurisdiction over defendants because “[t]he plaintiffs’ complaint makes boilerplate allegations that each of the defendants ‘have made, used, sold, and/or offered for sale infringing technology’ in Delaware . . . however, the plaintiffs need to show sufficient facts to establish that jurisdiction exists”).

In the Complaint, Plaintiff makes one substantive allegation against RB plc: that Plaintiff (which is located in Massachusetts) sent correspondence through its attorney located in Massachusetts to RB plc located in the United Kingdom “detailing the results of [certain scanning tests on the Accused Products] and offering

a license to the '621 and '461 patents” and that RB plc responded that “RB is not interested in a license” and the “claims either are directed to subject matter that is not of interest to RB, and/or are anticipated by the prior art[.]” (Complaint at ¶¶ 2, 23, 25, Exs. 6, 7). These allegations, which involve persons and entities located in Massachusetts and the United Kingdom, are not aimed at Delaware at all, let alone “at Delaware in particular”; such “bare formulaic accusation[s]” are insufficient to establish personal jurisdiction. *M2M Sols. LLC*, 935 F. Supp. 2d at 744 (internal quotations omitted) (alteration in original); *see also Fink v. Wilmington Tr., N.A.*, No. 19-1193-CFC, 2020 WL 4192510, *5 (D. Del. July 21, 2020) (“A minimum contact is some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum thus invoking the benefits and protections of its laws.”) (internal alteration and quotation marks omitted).

Furthermore, the parent-subsidary relationship between RB LLC and RB plc is not sufficient to confer personal jurisdiction over RB plc or RBG under the Delaware long-arm statute. *See L’Oreal*, 2018 WL 5919745, *10 (D. Del. Nov. 13, 2018) (internal citations omitted) (“[C]orporate structure is not sufficient to establish personal jurisdiction under the stream of commerce theory because mere ownership of a subsidiary does not justify the imposition of liability on the parent. Instead, plaintiffs must present evidence showing that the parent company is responsible for introducing the Accused Products into the U.S. or Delaware markets.”) (internal

quotation marks and citation omitted), *objections overruled*, 2019 WL 2151701, at *1 (D. Del. May 17, 2019) (personal jurisdiction through an agency theory requires “substantial evidence, that [the parent] exercised control over [the subsidiary’s] manufacture and/or distribution of the Accused Products in the United States”); *Monsanto Co. v. Syngenta Seeds, Inc.*, 443 F. Supp. 2d 636, 645 (D. Del. 2006) (ownership of a Delaware subsidiary is “not sufficient in itself to justify Delaware’s exercise of personal jurisdiction over the non-Delaware parent” (internal quotations omitted)); *Round Rock Research LLC v. ASUSTeK Comput. Inc.*, 967 F. Supp. 2d 969, 978 (D. Del. 2013) (granting motion to dismiss complaint against parent corporation, noting that the parent-subsidary relationship does not make the foreign parent the agent of the domestic subsidiary for purposes of personal jurisdiction).

Accordingly, Plaintiff has failed to allege facts sufficient to satisfy Delaware’s long-arm statute, and the Complaint should be dismissed against RB plc and RBG for lack of personal jurisdiction.¹

¹ As Plaintiff has failed to satisfy Delaware’s long-arm statute, the Court need not consider whether its complaint meets the constitutional analysis of personal jurisdiction. *See Sony Corp. v. Pace plc*, No. 15-288-SLR, 2016 WL 593455, at *5 (D. Del. Feb. 12, 2016), *adopted by* 2016 WL 1258721 (D. Del. Mar. 28, 2016) (“Because [plaintiff] failed to satisfy the statutory basis for personal jurisdiction under the Delaware long-arm statute, the court need not reach the constitutional due process prong of the personal jurisdiction analysis.”).

II. Plaintiff Has Failed To Allege Involvement By RB plc or RBG In Any Act of Infringement.

Throughout the Complaint, Plaintiff improperly groups Defendants together as “Reckitt Benckiser” or “Defendants,” and alleges that this so-called “Reckitt Benckiser develops, markets, and/or sells in the United States, and/or imports into the United States moistened wipes products under the brand Lysol . . . [using] packaging designs claimed in the ’621 patent and ’461 patent without a license.” (Complaint at ¶¶ 20-21). However, it is well-settled that combining infringement allegations against multiple defendants is improper because such allegations do not provide adequate notice as to each defendant’s role in the alleged infringement. *See, e.g., T-Jat Sys. 2006 Ltd. v. Expedia, Inc. (DE)*, No. 16-581-RGA-MPT, 2017 WL 896988, at *7 (D. Del. Mar. 7, 2017) (“Recent decisions in this court make clear that plaintiffs cannot combine allegations against multiple defendants.”); *M2M Sols., LLC v. Telit Commc’ns plc*, No. 14-1103-RGA, 2015 WL 4640400, at *3 (D. Del. Aug. 5, 2015) (dismissing complaint where plaintiff “does not identify which particular defendant or defendants are responsible for which allegedly infringing products, process or method”).

In particular, the Complaint exclusively alleges that “Reckitt Benckiser” generally “develops, markets, and/or sells in the United States and/or imports into the United States, the [Accused Products],” but provides no allegations that specify

any role whatsoever played by RB plc or RBG with respect to the Accused Products or the alleged infringement. (Complaint at ¶ 20).

As a result, Plaintiff has failed to allege sufficient facts to show either RB plc or RBG's involvement in any act of infringement, and the Complaint fails to state a claim against RB plc or RBG. *See Dynamic Data Techs., LLC v. Amlogic Holdings Ltd.*, No. 19-1239-CFC, 2020 WL 4365809, at * 1 (D. Del. July 30, 2020) (“[t]o provide notice, a plaintiff must generally do more than assert that the product infringes the claim; a plaintiff must show *how* the defendant plausibly infringes by alleging some facts connecting the allegedly infringing product to the claim elements”) (emphasis in original); *see also Bos. Sci. Corp. v. Nevro Corp.*, 415 F. Supp. 3d 482, 489 (D. Del. 2019) (same); *Blackberry Ltd. v. Nokia Corp.*, No. 17-155-RGA, 2018 WL 1401330, at *2-4 (D. Del. Mar. 20, 2018) (granting Rule 12(b)(6) motion to dismiss plaintiff's direct, indirect, and willful infringement allegations against certain foreign defendants because plaintiff failed to provide sufficient factual basis to support plausible infringement claims where “the amended complaint combines infringement allegations against all four Defendants, referring to them collectively as ‘Nokia’”).

Indeed, the only facts specifically alleged against RBG and RB plc in the Complaint are parent-subsidary relationships and that Plaintiff sent correspondence in 2018 to “Reckitt Benckiser plc” concerning the Patents-in-Suit to which “Reckitt

Benckiser plc responded stating that RB is not interested in a license and that the claims either are directed to subject matter that is not of interest to RB, and/or are anticipated by the prior art, including the attached exemplary references.” (Complaint at ¶¶ 4-6, 23, 25 (internal quotation marks omitted).)

As an initial matter, telling a patent owner who, unsolicited, reached out to you that you are not interested in a license or its patent is not an act of patent infringement, and neither is telling that patent owner about prior art of which you are aware. *See* 35 U.S.C. § 271 (“whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.”).

And, “to state a claim based on an alleged parent-subsidary relationship, a plaintiff would have to allege: (1) the existence of a parent-subsidary relationship, and (2) facts that justify piercing the corporate veil.” *M2M Sols., LLC*, 2015 WL 4640400, at *3 (internal quotations omitted). “The second condition may be satisfied by the ‘existence of an agency relationship between the entities where the parent effectively controls the conduct of the subsidiary.’” *Blackberry Ltd.*, 2018 WL 1401330, at *2 (quoting *M2M Sols., LLC*, 2015 WL 4640400, at *3); *see also L’Oreal*, 2019 WL 2151701, at *1 (“To establish jurisdiction under an agency

theory, Plaintiffs ‘must show that [the parent] exercises control over the activities of’ [its subsidiary].”).

Under this standard, Plaintiff has failed to state a claim. In fact, Plaintiff’s allegations are very similar to the infringement allegations against a parent company that were inadequate in *M2M Solutions*. There, the complaint named two defendants: “Telit US,” a U.S. based operating entity, and “Telit UK,” which was Telit US’s UK-based parent. *M2M Sols. LLC*, 2015 WL 4640400, at *1. While the complaint in *M2M* alleged “a parent-subsiary relationship” between Telit UK and Telit US, it otherwise lumped the two entities together, referring to them both “under [the] umbrella term ‘Telit.’” *Id.* at *3. In granting the defendant’s motion to dismiss, the court found that, since the plaintiff offered no evidence that Telit UK itself committed acts of direct infringement in the United States, any possible liability would have to be based on an agency theory. *Id.* But “nowhere in its complaint [did] Plaintiff present facts that demonstrate the parent’s effective control over the subsidiary,” as is necessary to hold a parent liable for the acts of a subsidiary, and the complaint’s allegations of direct infringement against Telit UK were therefore dismissed. *Id.* at *3. The Court likewise dismissed the complaint’s allegations of induced and contributory infringement, noting that “fusing the two Defendants as one is likewise problematic for Plaintiff’s indirect infringement claims against Telit UK.” *Id.* at *4-5 (holding that “[w]hen articulating certain of its inducement

allegations, the plaintiff has to identify which particular Defendant or Defendants are said to have disseminated the training or instructional materials at issue,” and, for similar reasons, “[t]he contributory claim thus also is insufficiently stated and must be dismissed” (internal quotations omitted)).

Here, as in *M2M Solutions*, Plaintiff does not allege any facts to support the existence of an agency relationship between RB plc or RBG and RB LLC where RB plc or RBG effectively controls the conduct of RB LLC. As a result, the Complaint contains no allegations to justify piercing the corporate veil and should be dismissed in its entirety with respect to RB plc and RBG. *See T-Jat Sys.*, 2017 WL 896988, at *2-7 (holding that, while the patentee may have pled sufficient facts to show that the corporations had an agency relationship, factual allegations of nothing more than a close relationship, including operational control of a parent company over subsidiaries, are insufficient under Rule 12(b)(6)).

* * *

CONCLUSION

For the foregoing reasons, RB plc and RBG respectfully request that the Court grant their motion to dismiss the Complaint against them.

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CERTIFICATE OF SERVICE

I, Pilar G. Kraman, hereby certify that on August 26, 2020, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

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I further certify that on August 26, 2020, I caused the foregoing document to be served via electronic mail upon the above-listed counsel.

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