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January 6, 2026

VIA ECF

The Honorable Evelyn Padin
United States Courthouse
50 Walnut Street
Newark, NJ 07102

Re: *Happy Products, Inc. v. Ontel Products Corp.*, No. 2:24-cv-09819-EP-JRA (D.N.J.)

Dear Judge Padin:

On behalf of our client Happy Products, Inc. (“Happy”) in the foregoing lawsuit, we submit this request for a pre-motion conference regarding Ontel’s Tortious Interference Counterclaim.

Under New Jersey law, tortious interference with prospective economic benefit requires proving four elements: (1) a protected interest; (2) malice—that is, defendant’s intentional interference without justification; (3) a reasonable likelihood that the interference caused the loss of the prospective gain; and (4) resulting damages. *DiMaria Const., Inc. v. Interarch*, 351 N.J. Super. 558, 567 (2001); *see also Novartis Pharms. Corp. v. Bausch & Lomb, Inc.*, No. 07-5945, 2008 WL 4911868, at *7 (D.N.J. Nov. 13, 2008) (identifying the protected interest as a continuing or prospective economic relationship or reasonable expectation of such, of which the defendant knew). Although “the right protected is plaintiff’s right to ‘pursue business,’” *Printing Mart-Morristown v. Sharp Elecs. Corp.*, 116 N.J. 739, 752 (1989) (internal quotations omitted), merely alleging lost business will not suffice. *Advanced Oral Techs., L.L.C. v. Nutrex Rsch., Inc.*, No. 10-5303, 2011 WL 1080204, at *4 (D.N.J. Mar. 21, 2011). Nor is it enough to complain of the claimed loss of unknown customers, *id.*; a plaintiff must, at a minimum, allege “specific prospective contracts that were interfered with.” *Novartis Pharms.*, 2008 WL 4911868, at *7.

Happy intends to file a Motion to Dismiss Ontel’s Tortious Interference Counterclaim pursuant to Fed. R. Civ. P. 12(b)(6) because the factual allegations set forth in Ontel’s responsive pleading fail to state a cognizable legal claim for tortious interference, at least as to elements (2) and (3).

Malice is Not Sufficiently Pleaded

In this context, malice “is defined to mean that the harm was inflicted intentionally and without justification or excuse.” *Printing Mart-Morristown*, 116 N.J. at 751. The Federal Circuit has held that “[w]hen a plaintiff brings a state-law tort claim that arises out of a patentholder’s good faith conduct in communications asserting infringement of its patent and warning about potential litigation, . . . federal patent law preempts state-law tort liability.” *SSI Techs., LLC v. Dongguan Zhengyang Elec. Mech. LTD.*, 59 F.4th 1328, 1337 (Fed. Cir. 2023) (internal quotation omitted). Put simply, sending notice of infringement cannot be the basis for a tortious interference claim.

Moreover, “merely labeling the alleged notice as ‘improper’ amounts to a conclusory allegation that is not entitled to the assumption of the truth.” *Ragner Tech., Corp. v. Telebrands Corp.*, No. 15-8185 (ES), 2016 U.S. Dist. LEXIS 84132, at *11 (D.N.J. June 29, 2016) (citing *Iqbal*, 556 U.S. at 678.) And that is all that Ontel has done here with its repeated labeling of HPI’s communications as “bad faith” and conclusory description of Ms. Fassett’s conduct as “tortious.” *See* Dkt. 108 at ¶¶ 19, 22. Other than HPI’s warranted communications providing notice of

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infringement, Ontel's factual allegations focus primarily on Ms. Fassett's constitutionally protected efforts to petition a government body for redress of grievances (¶¶17–19) and her communications to Ontel's outside counsel (¶¶20–21)—not any communications to Ontel's actual or potential customers. And paragraph 22 avers—only “upon information and belief”—generic boilerplate with conclusory labels that fails to provide notice of the basis of its claim:

Upon information and belief, HPI sent other tortious communications and undertook other tortious actions against the Retail Customers in order to interfere with Ontel's relationships with certain Retail Customers. Likewise, HPI's public and private statements regarding Ontel were intended to tortiously interfere with Ontel's relationships with prospective customers

Dkt. 108 at Counterclaims ¶ 22. Indeed, there is no basis, either here or elsewhere in the Counterclaims supporting Ontel's “information and belief” that such “other” communications and/or actions beyond those already identified even occurred. *See Columbia Trading Corp. v. Green Elecs., LLC*, No. 17-1309 (JMV) (MF), 2018 U.S. Dist. LEXIS 129048, at *10-11 (D.N.J. July 27, 2018) (dismissing tortious interference counterclaim where the “on information and belief” “allegation is critical to [the] counterclaim” but “Defendants provide no other facts about the alleged contact” containing the allegedly false statement). It is nothing but pure speculation.

Here, Ontel's pleading of the “malice” element of its tortious interference counterclaims relies upon “purposely disseminating false statements to Ontel's existing and prospective customers regarding Ontel and its Pillow Pad products.” Dkt. 108 ¶ 35; *see also id.* at ¶¶ 34, 36.¹ But the only thing that Ontel alleges to be “false” is that Happy made statements suggesting an affiliation between Ontel and Telebrands. Dkt. 108 at ¶¶ 15–16.²

So Ontel not only fails to identify *any* “false” communication sent to *any* customer, but also fails to explain what was allegedly “tortious” about any such “other” communications and actions. This is precisely the sort of conclusory pleading that fails the *Iqbal/Twombly* standard.

Reasonable Likelihood of Causation is Not Sufficiently Pleaded

Ontel's counterclaim is defective because Ontel has failed to sufficiently plead facts to support a reasonable likelihood that Happy's alleged interference cause the loss of Ontel's prospective gain. *See DiMaria Const.*, 351 N.J. Super. at 56. Ontel cannot claim that it is unaware of this requirement, or that it presents no real issue. Indeed, Ontel previously complained to Your Honor about this exact same defect—which Happy promptly corrected in its Amended Complaint—in its letter seeking a pre-motion conference thirteen months ago, complaining (despite the clear allegations to the contrary) that “Ontel is not informed which customers HPI alleges to have lost because of Ontel's “tortious conduct.” Dkt. 16 at 3 (citations omitted); *see Advanced Oral Techs., L.L.C. v. Nutrex Research, Inc.*, No. 10-5303, 2011 U.S. Dist. LEXIS 28625, at *10 (D.N.J. Mar. 21, 2011) (“Plaintiff must allege an injury that is more concrete than lost business of unknown, unsolicited, or hypothetical customers.”).

¹ While Ontel also characterizes Happy's statements as “misleading” in ¶¶ 34 & 36 in charging its tortious interference counterclaim, no such “misleading” statements are identified elsewhere.

² But even if Happy's description were not technically correct, Ontel does not explain how Happy's characterization of its fellow “As Seen On TV” company Telebrands as a “sister company”—the only statement that Ontel has alleged to be “false”—was “malicious,” let alone how it somehow caused harm to Ontel. *See* <https://www.asseenontvlive.com/brands/ontel> and <https://www.asseenontvlive.com/brands/telebrands/> (last accessed Jan. 5, 2026).

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Your Honor made very clear what allegations sufficed to state a valid claim for the tort claims that the parties allege here: “A plaintiff must, at a minimum, allege prospective contracts that were interfered with.” Dkt. 100 at 12 (citing *Novartis Pharms.*, 2008 WL 4911868, at *7). That is why, at “the pleading stage, a plaintiff may not rest a claim . . . on a mere hope that additional contracts or customers would have been forthcoming . . . The complaint must allege facts that . . . would give rise to a reasonable probability that *particular anticipated contracts* would have been entered into.” (*Id.* at 12–13 (citing *Advanced Power Sys.*, 801 F. Supp. at 1459)).

That is what Happy did to support its own tortious interference claim. The Amended Complaint—which was sufficiently pleaded—*did not* merely allege in general terms that Happy lost some unspecified prospective business due to Ontel’s actions. Instead, “Happy provides examples.” (Dkt. 100 at 14 (Citing FAC at, e.g., ¶¶ 226, 230–32, 245–47, & 389–93).) Among others, Happy identified lost business opportunities with QVC (*id.* at 13), Ollie’s (*id.* at 14), and the specific purchasers whom Ontel siphoned off from Happy (*id.* at 13).

And that is precisely where Ontel’s Counterclaim is lacking, because that is what Ontel failed to do here. In the counterclaims, Ontel “has yet to identify a single existing or prospective customer whose business was actually lost or diminished as a result of [Happy’s] alleged interference.” *Fora Fin. Holdings, LLC v. Dream Data Servs., LLC*, No. 23-00780 (GC) (JBD), 2023 U.S. Dist. LEXIS 164504, at *17 (D.N.J. Sep. 14, 2023).

As discussed above, Ontel’s entire counterclaim rests upon “false” statements suggesting an affiliation between Ontel and its fellow “As Seen On TV” company Telebrands. *See* n.2, *supra*. That is the only “malice” alleged in the charging paragraphs, which focus on those statements. But again, Ontel does not explain how a “false and/or misleading” suggestion of an affiliation between these two “As Seen On TV” companies somehow caused it to lose business. In particular, Ontel fails to identify *any* particular communications to *any* particular parties resulting in *any* diminution or loss of business or even *any* business opportunities allegedly lost.

Again, Ontel offers nothing but generic and conclusory statements “on information and belief”:

37. On information and belief, as a result of HPI’s actions, customers (including consumers, direct-to-consumer sellers, and in-store and online retailers) have diminished their business with Ontel or elected not to do any business with Ontel, including not placing orders with Ontel for the Pillow Pad products.

38. As a direct and proximate result of HPI’s acts, Ontel has lost opportunities to enter into prospective agreements and business relationships.

And again, there is nothing in the factual allegations to support that *any* party has declined not to do business with Ontel or even diminished its then-existing business as a result of Happy’s statements suggesting an affiliation between two companies both operating under the “As Seen On TV” label. Thus, Ontel “has not pled with requisite specificity the loss and causation element of its tortious interference with prospective economic advantage claim.” *Fora Fin. Holdings*, 2023 U.S. Dist. LEXIS 164504, at *17–18. Like in *Fora Financial*, “no lost customer is identified. . . . Accordingly, the loss and causation element of [Ontel]’s tortious interference claim has not been plausibly pled.” *Id.* at *18.

For the reasons set forth above, Happy respectfully requests that Your Honor schedule a pre-motion conference on its intended motion to dismiss the tortious interference counterclaim.

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Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Lowell D. Jacobson", with a stylized flourish at the end.

Lowell D. Jacobson
Attorney for Plaintiff Happy Products, Inc.

cc: All Counsel of Record (via ECF)