

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

TANZANIA CLARK-WRIGHT,	)	
d/b/a SALON MOGULZ,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	NO. 17-498-BC
	)	
ANDRE A. SOUTHALL, d/b/a	)	
MOGULS BARBER AND LOUNGE,	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER DENYING MOTION TO DISMISS**  
**COUNT I OF THE COUNTERCLAIM; AND ORDER SETTING**  
**RULE 16 CONFERENCE FOR 9/5/17**

This case came before the Court on the Plaintiff's motion to dismiss Count I of the Defendant's Counterclaim. The Counterclaim consists of three counts: Count I—Declaratory Judgment; Count II—Trademark Infringement of an Unregistered Mark in Violation of Tenn. Code Ann. §§ 47-25-516; and Count III—unfair Competition & Deceptive Trade Practices in Violation of the Tennessee Consumer Protection Act, Tenn. Code Ann. §§ 47-18-101, *et seq.*

The reasons asserted for dismissal are that the Counterclaim:

does not serve a useful purpose and would be rendered moot by an adjudication on the claims asserted in Clark's Complaint. Count I of Southall's Counterclaim is redundant to the claims asserted and denied in Clark's Complaint . . . . [T]here is "complete identity of factual and legal issues between the complaint and [Count I of] the counterclaim" (citing *Emma*,

*Inc. v. Microstrategy, Inc.*, No. 3:11-0926, 2012 WL 90405 (M.D. Tenn. Jan. 11, 2012)).

*Clark's Motion to Dismiss Count I of the Counterclaim Pursuant to Tenn. R. Civ. P. 12.02(6) and Memorandum of Law in Support*, August 10, 2017 at 4.

In opposition the Defendant asserts the following:

- Tennessee's liberal pleading standard (citing *Tigg v. Pirelli Tire Corp.*, 232 S.W.3d 28, 31-32 (Tenn. 2007) (quoting *Trau-Med of Am., Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691, 2002 Tenn. LEXIS 154 (Tenn. Mar. 25, 2002) at 696); see *Leach v. Taylor*, 124 S.W.3d 87, 92-93 (Tenn. 2004); *Stein v. Davidson Hotel*, 945 S.W.2d 714, 716 (Tenn. 1997); *Bellar v. Baptist Hosp., Inc.*, 559 S.W.2d 788, 790 (Tenn. 1978); see also *City of Brentwood v. Metro. Bd. of Zoning Appeals*, 149 S.W.3d 49, 54 (Tenn. Ct. App. 2004) (holding that courts "must construe the complaint liberally in favor of the plaintiff by . . . giving the plaintiff the benefit of all the inferences that can be reasonably drawn from the pleaded facts"). A complaint can survive a motion to dismiss as long as it is not "entirely devoid of factual allegations," and the pleadings provide facts that are above speculation. *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 2011 Tenn. LEXIS 623, \*7-8, 32 I.E.R. Cas. (BNA) 1124 (Tenn. July 21, 2011) at 427;
- The purpose of declaratory judgment actions to afford relief from uncertainty with respect to rights, status and other legal relations (citing *Bd. of Educ. v. Wade*, 178 S.W.3d 725 (Tenn. Ct. App. 2005);
- The feature of declaratory judgment relief that the existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate (citing Tenn. R. Civ. P. 57).

After considering the argument of Counsel, the record and the law, the Court denies the motion. The *Emma* case is instructive on the substance of trademark law as Tennessee courts are to look to federal substantive trademark law for guidance. Yet, procedurally,

pleading standards in federal court, such as the *Twobly* standard, can vary from the Tennessee liberal pleading standards as stated in the cases cited above.

Applying, then, the pleading standard under Tennessee law, the Court concludes that Count I of the Counterclaim is helpful in organizing and focusing the lawsuit for discovery, subsequent dispositive motions and on appeal. If the Defendant were to prevail, the Counterclaim provides a detailed template of the findings the Defendant seeks for the Court to enter with respect to past and future conduct and use. If there is some redundancy, it is not prejudicial to the Plaintiff, and it is helpful to the lawsuit that there be more clarity on these specific findings and positions the Defendant is asserting in the case.

It is therefore ORDERED that the Plaintiff's Motion to Dismiss Count I of the Counterclaim is denied.

It is further ORDERED that after consulting the schedules of Counsel, a Rule 16 Conference shall be conducted on September 5, 2017, at 1:30 p.m. covering the matters described in the August 9, 2017 Memorandum and Order.

/s/ Ellen Hobbs Lyle  
ELLEN HOBBS LYLE  
CHANCELLOR  
DAVIDSON COUNTY BUSINESS COURT  
DOCKET PILOT PROJECT

cc by U.S. Mail, email, or efile as applicable to:  
Stephen Zralek  
Tracey A. Kinslow  
Rhonda Scott Kinslow