

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Vice Spirits Incorporated v. The Vice Wines, LLC, et al.

No. 25-cv-02080-JST (N.D. Cal. Oct. 28, 2025) · No. 25-cv-02080-JST · Decided October 28, 2025

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
VICE SPIRITS INCORPORATED, Case No. 25-cv-02080-JST 8 Plaintiff, ORDER
REGARDING MOTION FOR 9 v. PRELIMINARY INJUNCTION AND MOTION TO
DISMISS 10 THE VICE WINES, LLC, et al., Re: ECF Nos. 18, 22 Defendants. 11 12 13 Before
the Court is Defendants The Vice Wines, LLC and The Vice Wines CA, LLC’s 14 (collectively
“Vice Wines”) motion to dismiss, ECF No. 18, and Plaintiff Vice Spirits 15 Incorporated’s motion
for preliminary injunction, ECF No. 22.

The Court will grant the motion to 16 dismiss and deny as moot the motion for preliminary
injunction. 17 I. BACKGROUND 18 For the purpose of resolving the present motion to dismiss,
the Court accepts as true the 19 following factual allegations from the complaint, ECF No. 1.
“Vice Spirits holds multiple 20 registrations for the VICE Marks in the United States and Canada,
including U.S. Trademark 21 Registration No. 3,996,154 for ‘VICE,’ covering alcoholic beverages
(e.g., vodka-based cocktails 22 and icewine).” Id. ¶ 12.

Vice Spirits, “[t]ogether with its predecessor in interest,... has for many 23 years used the VICE
Marks in connection with premium alcoholic beverages, including vodka- 24 based ready-to-drink
cocktails and icewine.” Id. ¶ 11. Vice Wines, despite knowing of Vice 25 Spirits’ senior rights in
the VICE Marks, adopted “THE VICE” and “VICES” labeling on wine 26 and/or wine cocktail
products.

Id. ¶ 13. The United States Patent and Trademark Office has 27 refused to give Vice Wines related
trademarks because it found a likelihood of confusion with 1 letter to Vice Wines in April 2024,
but Vice Wines continues to market, sell, and distribute wine 2 and wine cocktails using VICE
marks. Id. 3 Vice Spirits filed the complaint in this action, ECF No. 1, on February 27, 2025,
asserting 4 claims for: (1) federal trademark infringement, 15 U.S.C. § 1114, (2) false designation
of origin 5 and unfair competition, 15 U.S.C. § 1125(a), (3) trademark dilution, 15 U.S.C. §
1125(c), and (4) 6 common law trademark infringement, Cal. Bus. & Prof.

Code § 17200. 7 On April 11, 2025, Vice Wines moved to dismiss the complaint. ECF No. 18.
Vice Spirits 8 opposes the motion, ECF No. 25, and Vice Wines has filed a reply, ECF No. 27. On
April 16, 9 2025, Vice Spirits moved for a preliminary injunction, ECF No. 22. Vice Wines
opposes that 10 motion, ECF No. 26, and Vice Spirits filed a reply, ECF No. 28.

The Court held a hearing on both 11 motions on July 3, 2025. 12 II. JURISDICTION 13 The Court has jurisdiction under 28 U.S.C. § 1331. 14 III. LEGAL STANDARD 15 A complaint must contain a short and plain statement of the claim showing that the pleader 16 is entitled to relief in order to give the defendant fair notice of what the claim is and the grounds 17 upon which it rests.

Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). 18 To survive a Rule 12(b)(6) motion to dismiss, a complaint must contain sufficient factual matter 19 that, when accepted as true, states a claim that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 20 662, 678 (2009). “A claim has facial plausibility when the plaintiff pleads factual content that 21 allows the court to draw the reasonable inference that the defendant is liable for the misconduct 22 alleged.” *Id.* While this standard is not a probability requirement, “[w]here a complaint pleads 23 facts that are merely consistent with a defendant's liability, it stops short of the line between 24 possibility and plausibility of entitlement to relief.” *Id.* (internal quotation marks and citation 25 omitted).

In determining whether a plaintiff has met this plausibility standard, the Court must 26 “accept all factual allegations in the complaint as true and construe the pleadings in the light most 27 favorable” to the plaintiff. *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). 1 IV. DISCUSSION 2 A. Motion to Dismiss 3 1.

The Complaint Adequately Identifies the Conduct of Each Defendant 4 In order to satisfy the notice requirement of Rule 8(a)(2), a plaintiff “must identify what 5 action each Defendant took that caused Plaintiff’s harm, without resort to generalized allegations 6 against Defendants as a whole.” *In re iPhone Application Litig.*, No. 11–MD–02250–LHK, 2011 7 WL 4403963, at *3 (N.D.

Cal. Sept. 20, 2011) (finding that, “by lumping all eight [defendants] 8 together, Plaintiffs have not stated sufficient facts to state a claim for relief that is plausible against 9 one Defendant”). “Put another way, a plaintiff’s allegations must ‘provide sufficient notice to all 10 the Defendants as to the nature of the claims being asserted against them,’ including ‘what conduct 11 is at issue.’” *Adobe Sys.*

Inc. v. Blue Source Grp., Inc., 125 F. Supp. 3d 945, 964 (N.D. Cal. 2015) 12 (quoting *Villalpando v. Exel Direct Inc.*, No. 12-cv-04137 JCS, 2014 WL 1338297, at *5 (N.D. 13 Cal. Mar. 28, 2014)). “[W]hen a pleading fails to allege what role each Defendant played in the 14 alleged harm, this makes it exceedingly difficult, if not impossible, for individual Defendants to 15 respond to [a plaintiff’s] allegations.” *Adobe*, 125 F. Supp. 3d at 964 (internal quotation marks 16 omitted).

17 Vice Wines argues that the Court should dismiss the complaint “because it impermissibly 18 lumps together allegations against Defendants and fails to differentiate which acts are attributable 19 to any particular Defendant.” ECF No. 18 at 4. Vice Wines objects that the complaint does not 20 differentiate between the two named Vice Wines entities or the Doe Defendants.

The Court finds 21 that neither of these concerns rises to the level of denying Vice Wines fair notice of the conduct 22 alleged against it. “While [Vice Spirits] makes claims against ‘Defendants’ generally in certain 23 paragraphs of the Complaint, the term ‘Defendants’ is clearly inclusive of” both Vice Wines 24 entities named, and “the clear gravamen of [the] allegations in the instant lawsuit are that all 25 Defendants infringed” Vice Spirits’ trademark.

See *Niantic, Inc. v. Global++*, No. 19-cv-03425- 26 JST, 2019 WL 8333451, at *4 (N.D. Cal. Sept. 26, 2019).¹ Likewise, the Court finds that the use 27 1 of placeholder Doe Defendants in this case does not create a Rule 8 issue. “While the use of Doe 2 pleading is generally disfavored in federal court, in circumstances where the identity of the 3 defendants is not known prior to the filing of a complaint, ‘the plaintiff should be given an 4 opportunity through discovery to identify the unknown defendants, unless it is clear that discovery 5 would not uncover the identities, or that the complaint would be dismissed on other grounds.’” 6 *Ramirez v. Cnty. of San Diego*, No. 24-CV-366-MMA-BLM, 2024 WL 2219012, at *3 (S.D.

Cal. 7 May 15, 2024) (quoting *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)); see also 8 *Wakefield v. Thompson*, 177 F.3d 1160, 1163 (9th Cir. 1999) (district court erred in dismissing 9 plaintiff’s complaint against Doe defendant “simply because [plaintiff] was not aware of Doe’s 10 identity at the time he filed his complaint”).

Accordingly, the Court finds that Vice Spirits’ 11 allegations provide sufficient notice to Vice Wines as to the nature of the claims being asserted 12 against it. See *Adobe*, 125 F. Supp. 3d 945 at 964. 13 2. Continuous Use 14 “A person claiming senior rights in a trademark must establish not only that he or she used 15 the mark before the mark was registered, but also that such use has continued to the present.” 16 *Watec Co., Ltd. v. Liu*, 403 F.3d 645, 654 (9th Cir.

2005). “To demonstrate priority of use, a party 17 must demonstrate that (1) they actually ‘adopted and used the mark[] in commerce’ in a way that 18 sufficiently associated the mark with the party; and (2) their ‘use of the mark[] was continuous 19 and not interrupted[.]’” *Joshua Tree Brewery, LLC v. Balance Rock Brewing Co., Inc.*, No. 5:20- 20 CV-00361-SHK, 2021 WL 4894270, at *8 (C.D.

Cal. Sept. 15, 2021) (quoting *Dep’t of Parks and 21 Recreation for State of Cal. v. Bazaar Del Mundo Inc.*, 448 F.3d 1118, 1125-26 (9th Cir. 2006)). 22 “Even short periods of nonuse can break the chain of continuous use.” *Spin Master, Ltd. v. 23 Zobmondo Ent., LLC*, 944 F. Supp. 2d 830, 851 (C.D. Cal. 2012). Continuous use must be 24 pleaded as an element of the claim.

See *6th St. Partners, LLC v. Bd.*, No. 21-CV-06595- 25 RSW(LJPRX), 2021 WL 8445826, at *5 (C.D. Cal. Dec. 3, 2021). 26 defendant and fifty doe defendants, including a lender, a loan servicer, and potentially a loan 27 broker. *Id.* at *3 (“Defendants’ general business practice was to steer borrowers toward a risky 1 Vice Spirits alleges that it “has used the VICE Marks” and “has

for many years used the 2 VICE Marks,” but these statements are insufficient to show that it was “the first to actually use the 3 mark.” ECF No. 1 ¶¶ 1, 11; *Sengoku Works Ltd. v. RMC Int’l, Ltd.*, 96 F.3d 1217, 1219 (9th Cir.), 4 as modified, 97 F.3d 1460 (9th Cir.

1996); see *Motul S.A. v. USA Wholesale Lubricant, Inc.*, 686 5 F. Supp. 3d 900, 916 (N.D. Cal. 2023) (plaintiff’s allegation that “it has used its mark 6 continuously for decades through the United States to promote its goods and products” 7 insufficiently supported with detailed facts). And although Vice Spirits does allege that Vice 8 Spirits, “[t]hrough continuous use, substantial marketing, and consistent quality controls,... has 9 built significant goodwill and consumer recognition in the VICE Marks,” it does not allege that its 10 continuous use predates Vice Wines’ use, that its predecessor engaged in continuous use, or even 11 on what date Vice Spirits acquired the rights to the mark from its predecessor (from which one 12 could infer when Vice Spirits’ continuous use began).

ECF No. 1 ¶ 11. For these reasons, the 13 allegations regarding continuous use fall short. 14 The remaining allegation that Vice Spirits and its predecessor “ha[ve] for many years used 15 the VICE Marks” is too vague to meet Vice Spirits’ obligation to plead continuous use, especially 16 in light of the mark’s change of ownership. See *6th Street Partners, LLC v. Board*, No. CV 21- 17 06595-RSWL-JPRx, 2021 WL 8445826, at *4–5 (C.D.

Cal. Dec. 3, 2021) (plaintiff failed to 18 allege continuous use where complaint alleged that COVID-19 pandemic “slowed operations” 19 without further explanation because “Plaintiff has the burden to affirmatively plead its continuous 20 use of the Mark” and “[c]ontinuous usage is not established simply by showing non- 21 abandonment”) (citation modified)).

Since Vice Spirits must adequately allege continuous use to 22 plead claims sounding in federal and common law trademark rights, *Spin Master*, 944 F. Supp. 2d 23 at 851–52, the Court will dismiss all four of Plaintiff’s trademark claims with leave to amend. 24 3. Trademark Dilution Claim 25 To prevail on a dilution claim, “a plaintiff must show that (1) the mark is famous and 26 distinctive; (2) the defendant is making use of the mark in commerce; (3) the defendant’s use 27 began after the mark became famous; and (4) the defendant’s use of the mark is likely to cause 1 1057, 1065 (N.D.

Cal. 2015). The Lanham Act defines “famous” as “widely recognized by the 2 general consuming public of the United States as a designation of source of the goods or services 3 of the mark’s owner.” 15 U.S.C. § 1125(c)(2)(A). 4 Vice Wines argues that Vice Spirits fails to plead that its mark was famous when Vice 5 Wines began selling its wine in 2016. ECF No. 18 at 7.

Vice Spirits responds that “fame is a 6 factual question typically left for summary judgment or trial,” and it is sufficient that the 7 complaint alleges that the “VICE” mark “is distinctive, has been widely marketed, and is 8 recognized in the alcoholic beverage sector.” ECF No. 25 at 6

(citing ECF No. 1 ¶¶ 26–28). 9 Vice Wines has the better argument. A trademark holder enjoys trademark dilution 10 protection only if its mark is a “household name.” *Thane Int’l, Inc. v. Trek Bicycle Corp.*, 305 F.3d 894, 911 (9th Cir.

2002), superseded on other grounds as recognized in *Blumenthal Distrib., Inc. v. Herman Miller, Inc.*, 963 F.3d 859, 870 (9th Cir. 2020). Vice Spirits has not pled facts 13 sufficient to state a “facially plausible” claim for trademark dilution. *Iqbal*, 556 U.S. at 678.

The 14 facts it alleges about “substantial marketing” and “consumer recognition,” ECF No. 1 ¶ 11, fall 15 short of “plausibly plead[ing] that the general public of the United States is familiar with” its 16 mark. *MGA Ent., Inc. v. Dynacraft BSC, Inc.*, No. 2:17-cv-08222-OQW-KS, 2018 WL 2448123, 17 at *6 (C.D. Cal. May 30, 2018) (dismissing trademark dilution claim even where plaintiff alleged 18 “more than 10 million [products] have been sold worldwide to date [and] it has spent millions of 19 dollars to develop, build, and promote the [product]”).

20 The failure to plead fame adequately provides an independent basis to dismiss Vice Spirits’ 21 trademark dilution claim. Although the Court is skeptical that this deficiency can be cured 22 through amendment, the Court nonetheless will grant leave to amend. 23 4. Common Law Trademark Rights 24 Finally, Vice Wines argues that Vice Spirits’ common law trademark claim fails because 25 “Plaintiff does not plead any facts to establish common law trademark rights” and thus Vice 26 Wines is “left to guess at when any such alleged use began, where any products bearing the mark 27 were sold, and what those products were.” ECF No. 18 at 8 (emphasis in original).

Vice Spirits 1 parallel common law claims.” ECF No. 25 at 5-6. Because the Court finds the federal 2 ¶ infringement allegations are insufficient, it also will dismiss this claim. 3 CONCLUSION 4 For the reasons set forth above, the Court grants Vice Wines’ motion to dismiss. Within 5 21 days of this order, Vice Spirits may file an amended complaint solely to correct the deficiencies 6 ¶ outlined above.

Because the Court has dismissed all of Vice Spirits’ claims, the Court denies as 7 ¶ moot Vice Spirits’ motion for preliminary injunction. 8 IT IS SO ORDERED. 9 Dated: October 28, 2025 10 JON S. TIGA 11 United States District Judge a 12 15 16 it 4 18 19 20 21 22 23 24 25 26 27 28