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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BRIAN LICHTENBERG, LLC, a ) Case No. CV 13-06837 DDP (PJWx)  
California limited liability )  
company; BRIAN LICHTENBERG, )  
an individual, )

Plaintiffs, )

v. )

ALEX & CHLOE, INC., a )  
California corporation; )  
CHRISTOPHER WALTER )  
LICHTENBERG, an individual; )  
MARKED SHOWROOM, LLC, a )  
California limited liability )  
company; JACQUELINE YI, an )  
individual; TU TRAN, an )  
individual KYLE MOCKETT, an )  
individual; KAYTEE ENRIGHT, )  
an individual, )

Defendants. )

**ORDER GRANTING PLAINTIFFS' MOTION  
FOR PRELIMINARY INJUNCTION IN  
PART AND DENYING IN PART**

[Dkt. No. 73]

Presently before the court is Plaintiffs' Motion for Preliminary Injunction. Having considered the parties' submissions and heard oral argument, the court grants the motion in part, denies the motion in part, and adopts the following order.

///

1 **I. Background**

2 A. Factual Background

3  
4 As described more extensively in this court's prior orders,  
5 Plaintiff Brian Lichtenberg ("Brian") designs clothing and  
6 accessories and distributes his products through Brian Lichtenberg,  
7 LLC.<sup>1</sup> (Second Amended Complaint ("SAC") ¶¶ 16-17.) Brian's  
8 designs include a series of parodies of designer brands, such as  
9 "Homiès" as a play on "Hermès" and "Bucci," a parody of "Gucci."  
10 (SAC ¶ 18.) Brian's spoof or parody logos mimic the style, font,  
11 and other elements of the luxury brand designs. (Id.) Brian sells  
12 shirts, sweatshirts, pants, beanies, and hats bearing the various  
13 spoof designs. (SAC ¶¶ 16-18.) Brian alleges that his designs are  
14 very successful, and are frequently worn by celebrities and  
15 featured in the media. (SAC ¶¶ 19-22.)

16 Brian's younger brother, Defendant Christopher Walter  
17 Lichtenberg ("Chris"), is the sole shareholder or principal of  
18 Defendant Alex and Chloe, Inc. ("A&C"). (SAC ¶¶ 3-4.)

19  
20 The SAC alleges that in January 2012, Brian developed one  
21 particular parody design, "Ballin," as a play on the luxury brand  
22 "Balmain." (SAC ¶ 43.) By November 2012, Chris was working as a  
23 "part-time contractor" for Brian. (SAC ¶ 46.) Chris' duties  
24 included graphic design and promotional work related to Brian's  
25 "Ballin with My Homies" project. (Id.) In connection with those

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26 <sup>1</sup> Plaintiff Brian Lichtenberg and Defendant Christopher  
27 Lichtenberg are brothers. For clarity's sake, this Order refers to  
28 these parties by their first names. Hereinafter, this Order  
frequently refers to Plaintiffs Brian Lichtenberg and Brian  
Lichtenberg, LLC, collectively, as "Brian."

1 duties, Chris allegedly had access to confidential lists of Brian's  
2 customers and industry contacts. (SAC ¶ 47.)

3  
4 The SAC alleges that Chris copied and claimed ownership of the  
5 "Ballin" design, contacted Brian's manufacturer and requested that  
6 products identical to Brian's be made under the A&C label, and used  
7 Brian's confidential customer lists to sell the A&C version of the  
8 "Ballin" items. (SAC ¶¶ 51-56.) Chris listed his products for  
9 sale on the A&C website in late January or early February 2013,  
10 before Brian's "Ballin" products came to market. (Id.)

11 Chris repeatedly claimed to own the "Ballin" design via the  
12 internet and social media. (SAC ¶¶ 66-68.) Chris also contacted  
13 several of Brian's buyers, stated that Brian's "Ballin" products  
14 were counterfeits, and asked that retailers stop selling Brian's  
15 "Ballin" products. (SAC ¶¶ 58-60; 63-65.) Chris then made further  
16 public statements claiming that Brian had stolen not only the  
17 "Ballin" design, but other parody designs as well. (SAC ¶¶ 67-68.)  
18 At Chris's request, social media sites removed images of Brian's  
19 "Ballin" apparel posted to Brian's pages. (SAC ¶ 73.)

20 Chris and A&C then expanded their offerings to include other  
21 products similar to Brian's, featuring other parody designs beyond  
22 "Ballin." (SAC ¶ 86.) Chris also appropriated photographs of  
23 celebrities wearing Brian's products, then claimed on the A&C  
24 website and elsewhere that those celebrities endorsed A&C. (SAC ¶¶  
25 80-82, 84-85.)

26  
27 B. Procedural History

28 Plaintiffs filed an initial complaint in this court on

1 September 17, 2013. Plaintiffs filed an ex parte application for a  
2 temporary restraining order on October 17, 2013. After full  
3 briefing, this court denied Plaintiffs' application on October 25,  
4 based largely on Plaintiffs' failure to show any continuing  
5 wrongful acts or threat of irreparable harm. (Order Denying  
6 Plaintiffs' Ex Parte Application for a TRO, Dkt. 44 at 8-9.)

7  
8 After subsequent motion practice, Plaintiffs filed the Second  
9 Amended Complaint on February 28, 2014. Plaintiffs' SAC alleges  
10 nine causes of action against Defendants, including trade dress  
11 infringement, unfair competition and false designation of origin,  
12 and trademark dilution under Section 43 of the Lanham Act, 15  
13 U.S.C. § 1125, as well as state law causes of action, including  
14 unfair business practices in violation of California Business &  
15 Professions Code Section 17200. This court denied Defendants'  
16 Motion to Dismiss the SAC on April 15, 2014. (Dkt. 72.)  
17 Plaintiffs now seek a preliminary injunction enjoining Defendants  
18 from utilizing Plaintiffs' alleged trade dress and customer and  
19 manufacturer information, suggesting that pictures of Plaintiffs'  
20 products are in fact Defendants' products, interfering with  
21 Plaintiffs' business relationships, and publishing statements  
22 challenging Plaintiffs' creation and ownership of the allegedly  
23 protected trade dress.

24 **II. Legal Standard**

25 A private party seeking a preliminary injunction must show  
26 that: (i) it is likely to succeed on the merits; (ii) it will  
27 suffer irreparable harm in the absence of preliminary relief; (iii)  
28

1 the balancing of the hardships and equities between the parties  
2 that would result from the issuance or denial of the injunction  
3 tips in its favor; and (iv) an injunction will be in the public  
4 interest. Winter v. Natural Res. Defense Counsel, 555 U.S. 7, 20  
5 (2008). Preliminary relief may be warranted where a party: (i)  
6 shows a combination of probable success on the merits and the  
7 possibility of irreparable harm; or (ii) raises serious questions  
8 on such matters and shows that the balance of hardships tips in  
9 favor of an injunction. See Arcamuzi v. Continental Air Lines,  
10 Inc., 819 F.2d 935, 937 (9th Cir. 1987). "These two formulations  
11 represent two points on a sliding scale in which the required  
12 degree of irreparable harm increases as the probability of success  
13 decreases." Id. Under both formulations, the party must  
14 demonstrate a "fair chance of success on the merits" and a  
15 "significant threat of irreparable injury" absent the issuance of  
16 the requested injunctive relief.<sup>2</sup> Id.

### 17 **III. Discussion**

#### 18 A. Likelihood of Success on the Merits

##### 19 1. Trade Dress Infringement

20 Trade dress, or the "total image of a product," is protectable  
21 under Section 43(a) of the Lanham Act. Int'l Jensen, Inc. v.  
22 Metrosound U.S.A., Inc., 4 F.3d 819, 822 (9th Cir. 1993). To  
23 succeed on a trade dress infringement claim, which is analytically  
24 similar to an unregistered trademark claim, plaintiffs must show  
25 that a trade dress is nonfunctional, is distinctive or has acquired

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26 <sup>2</sup> Even under the "serious interests" sliding scale test, a  
27 plaintiff must satisfy the four Winter factors and demonstrate  
28 "that there is a likelihood of irreparable injury and that the  
injunction is in the public interest." Alliance for the Wild  
Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011).

1 secondary meaning, and that a defendant's use of a similar mark or  
2 trade dress is likely to confuse consumers. Id. at 823.

3  
4 The SAC lays claim to trade dress comprised of (1) humorous  
5 logos parodying famous designer names; (2) large block lettering  
6 mimicking the font used by the designer; (3) gold, gold foil, pink,  
7 pink foil, white, and black lettering on a red, hot pink, orange,  
8 black, bright blue, neon yellow, or lavender fabric; (4) 40-weight  
9 cotton "with a certain . . . cut, and dying and (enzyme) washing  
10 process;" (5) screen printing (with respect to shirts); (6) a  
11 "bulky and shapeless look;" (7) labels of a certain material,  
12 construction, and size; (8) woven stitching; (9) hangtags with a  
13 Century Gothic font; and (10) embroidery (with respect to hats).  
14 (SAC ¶ 18.)

15 a. Secondary Meaning

16 Plaintiffs contend that their trade dress has acquired  
17 secondary meaning. (Motion at 11.) "To show secondary meaning, a  
18 plaintiff must demonstrate a mental recognition in buyers' and  
19 potential buyers' minds that products connected with the [trade  
20 dress] are associated with the same source." Art Attacks Ink, LLC  
21 v. MGA Entm't Inc., 581 F.3d 1138, 1145 (9th Cir. 2009) (quoting  
22 Japan Telecom v. Japaen Telecom Am., 287 F.3d 866, 866-67 (9th Cir.  
23 2002) (internal quotation omitted); see also Clicks Billiards, Inc.  
24 v. Sixshooters, Inc., 251 F.3d 1252, 1260 (9th Cir. 2001).

25 Here, Plaintiffs confine their argument with respect to  
26 secondary meaning to a single sentence. Plaintiffs assert that "as  
27 a result of large amounts of resources expended by Plaintiffs on  
28 publicity and [] marketing . . . , consumers identify the trade

1 dress of Platintiffs' BLTEE Products as being directly associated  
2 with Plaintiffs." (Mot. at 11:10-13.) Plaintiffs support their  
3 position with citations to declarations provided by Brian and his  
4 Head of Sales, Reda Bouissa. Both Declarants state that Brian has  
5 spent millions of dollars in marketing through various channels.  
6 (Declaration of Reda Bouissa ¶ 11; Declaration of Brian Lichtenberg  
7 ¶ 15.)

8           Advertising expenditures alone, however, cannot establish  
9 secondary meaning. Rather, "the true test of secondary meaning is  
10 the effectiveness of the advertising effort." Art Attacks, 581  
11 F.3d at 1146 (citing Int'l Jensen, 4 F.3d at 824) (internal  
12 quotation omitted). Though both Brian and Bouaissa state that  
13 advertising has led consumers and celebrities to "instantly  
14 recognize the BLTEE Line" by "feel and appearance," neither  
15 declarant provides any support for such claims. (Bouiassa Decl. ¶  
16 13; B. Lichtenberg Decl. ¶ 16.) Similarly, declarant Jennifer  
17 Green, a fashion producer who knows Brian personally and counts him  
18 among her clients, states that (1) Brian's advertising has made him  
19 well known to consumers and (2) Brian's products, particularly  
20 "Ballin Paris" products, are identifiable as Brian's. (Declaration  
21 of Jennifer Green ¶¶ 14-15.)  
22

23           Even putting aside the apparent lack of foundation for these  
24 statements, declarations from Plaintiff and his personal associates  
25 are of little probative value. Self-Realization Fellowship Church  
26 v. Ananda Church of Self-Realization, 59 F.3d 902, 910 (9th Cir.  
27 1995). "Attestations from person[s] in close association and  
28 intimate contact with [a plaintiff's] business do not reflect the

1 views of the purchasing public." Id. (internal quotations and  
2 citations omitted).

3  
4 In their Reply, Plaintiffs cite, for the first time, to five  
5 additional declarations. Claude Benoualid, an investor who has  
6 considered investing in Brian's company and has been tracking  
7 Brian's increase in popularity "for years," states that he finds  
8 Brian's products to be unique. (Declaration of Claude Benoualid ¶¶  
9 3, 5-7.) Two boutique owners, who have had ongoing business  
10 relationships with Brian for years, state that Brian's products are  
11 popular. (Declaration of Fraser Ross ¶¶ 3, 6; Declaration of  
12 Gabriele Bohlen ¶¶ 2-3.) A fashion stylist who has been a  
13 professional client of Brian's "for many years," and was  
14 "immediately impressed with his talents," states that celebrities  
15 often request Brian's products. (Declaration of Brittany Bardo ¶¶  
16 2-3, 7.) Lastly, a fashion model who has personally known Brian  
17 for years and is a "fan" of his products states that Brian is well  
18 known for his spoof clothing line. (Declaration of Jasmine Tookes  
19 ¶¶ 4, 7.)

20 As with the declarations cited initially, these statements  
21 shed little light on the perceptions of the consuming public. Even  
22 if these statements were sufficient to demonstrate that consumers  
23 generally like Brian's products, that preference does not  
24 necessarily establish that the public associates the trade dress at  
25 issue here with Brian. Furthermore, as explained above and by the  
26 Ninth Circuit, "[t]rademark law is skeptical of the ability of an  
27 associate of a trademark holder to transcend personal biases to  
28



1 give an impartial account of the value of the holder's mark."<sup>3</sup>  
2 Self-Realization Fellowship, 59 F.3d at 910.

3  
4 Plaintiffs have not adequately shown, at this stage, that the  
5 alleged trade dress has acquired secondary meaning. Plaintiffs  
6 have not, therefore, shown a likelihood of success on their trade  
7 dress infringement claim.<sup>4</sup>

8 2. Trade Dress Dilution

9 As provided in 15 U.S.C. § 25(c):

10 Subject to the principles of equity, the owner of a famous  
11 mark that is distinctive, inherently or through acquired  
12 distinctiveness, shall be entitled to an injunction against  
13 another person who, at any time after the owner's mark has  
14 become famous, commences use of a mark or trade name in  
15 commerce that is likely to cause dilution by blurring or  
16 dilution by tarnishment of the famous mark, regardless of  
17 the presence or absence of actual or likely confusion, of  
18 competition, or of actual economic injury.<sup>5</sup>

15 U.S.C. § 25(c)(1). To prevail, Plaintiffs must show that  
16 (1) they own a famous, distinctive mark or dress; (2) Defendants  
17 have used a nearly identical mark in commerce after Plaintiffs'  
18 mark became famous, and (3) Defendants' use is likely to dilute or  
19 blur Plaintiffs' mark. Levi Strauss & Co. v. Abercrombie & Fitch  
20 Trading Co., 633 F.3d 1158, 1161 (9th Cir. 2011). "[A] trade dress  
21 cannot be diluted unless it is famous such that is truly prominent  
22 and renowned among the general public." Apple, Inc. v. Samsung  
23 Elec. Co., Ltd., 920 F.Supp.2d 1079, 1097 (N.D. Cal. 2013)  
24 (citation and quotation omitted). For the reasons discussed above,

25 <sup>3</sup> "[T]he analysis for trade dress and an unregistered  
26 trademark under section 43(a) of the Lanham Act is very similar."  
Int'l Jensen, 4 F.3d at 822.

27 <sup>4</sup> In light of Plaintiffs' failure to demonstrate secondary  
28 meaning, the court need not address functionality or likelihood of  
confusion.

<sup>5</sup> Other remedies beyond injunctive relief may also be  
available. 15 U.S.C. § 1125(c)(5).

1 Plaintiffs have not demonstrated that their trade dress is  
2 sufficiently known to the general public. Plaintiffs therefore  
3 have not shown a likelihood of success on the merits of their trade  
4 dress dilution claim.

5 3. Unfair Competition and False Designation of Origin

6  
7 The Lanham Acts prohibits uses in commerce of:

8 any word, term, name, symbol, or device, or any combination  
9 thereof, or any false designation of origin, false or  
misleading description of fact, or false or misleading  
representation of fact, which --

10 (A) is likely to cause confusion, or to cause mistake, or  
11 to deceive as to the affiliation, connection, or  
association of such person with another person, or as to  
12 the origin, sponsorship, or approval of his or her goods,  
services, or commercial activities by another person, or

13 (B) in commercial advertising or promotion, misrepresents  
14 the nature, characteristics, qualities, or geographic  
origin of his or her or another person's goods, services,  
15 or commercial activities[.]

16 15 U.S.C. § 1125(a)(1). In other words, "the Lanham Act . . .  
17 prohibits the use of false designations of origin, false  
18 descriptions, and false representations in the advertizing [sic]  
19 and sale of goods and services." Jack Russell Terrier Network v.  
20 Am. Kennel Club, Inc., 407 F.3d 1027, 1036 (9th Cir. 2005). These  
21 prohibitions include false endorsements. See Cairns v. Franling  
22 Mint Co., 292 F.3d 1139, 1149 (9th Cir. 2002); see also Brown v.  
23 Elec. Arts, Inc., 724 F.3d 1235, 1239 n.1 (9th Cir. 2013).

24 Plaintiffs' SAC alleges that "Defendants . . . stole press and  
25 publicity photos from [Brian] regarding [celebrities] Nina Garcia  
26 and Justin Bieber, who were wearing [Brian's] products. Defendants  
27 . . . copied and pasted the photos to the A&C website, making it  
28 appear such celebrities were wearing the [Defendants'] imitation

1 products." (SAC ¶ 80.) The SAC includes other, similar  
2 allegations that Defendants misappropriated photographs of  
3 celebrities wearing Brian's products, and specifically names over a  
4 dozen celebrities. (SAC ¶¶ 81-82, 84-85.) Defendants have  
5 submitted numerous examples of such uses. (e.g. Green Decl. ¶ 24,  
6 Ex. C; Tookes Decl. ¶ 14.)

7 False advertising claims under the Lanham Act require five  
8 elements:

9  
10 (1) a false statement of fact by the defendant in a  
11 commercial advertisement about its own or another's  
product;

12 (2) the statement actually deceived or has the tendency to  
deceive a substantial segment of its audience;

13 (3) the deception is material, in that it is likely to  
14 influence the purchasing decision;

15 (4) the defendant caused its false statement to enter  
interstate commerce; and

16 (5) the plaintiff has been or is likely to be injured as a  
17 result of the false statement, either by direct diversion  
of sales from itself to defendant or by a lessening of the  
18 goodwill associated with its products

19 Skydive Arizona, Inc. v. Quattrochi; 673 F.3d 1105, 1110 (9th Cir.  
20 2012). Defendants appear to argue that Plaintiffs cannot succeed  
21 because Defendants have only referred to the "Ballin Paris" design,  
as opposed to "Ballin Paris" products. (Opposition at 17.) Thus,  
22 Defendants appear to assert, Plaintiffs cannot show that Defendants  
23 made any false statements of fact.  
24

25 Defendants are mistaken. First, Plaintiffs need not show that  
26 a particular statement was literally false. "To demonstrate  
27 falsity within the meaning of the Lanham Act, a plaintiff may show  
28 that the statement was literally false, either on its face or by

1 implication, or that the statement was literally true but likely to  
2 mislead or confuse consumers." Southland Sod Farms v. Sover Seed  
3 Co., 108 F.3d 1134, 1139 (9th Cir. 1997).

4 Plaintiffs provide several examples of Defendants' false  
5 statements. One image from an A&C website, for example, depicts a  
6 celebrity wearing one of Brian's t-shirts in a music video. (Green  
7 Decl., Ex. C.) The accompanying text, however, identifies the  
8 celebrity as "wearing an ALEX & CHLOE original Ballin Paris  
9 design." (Id.) Such a statement is false by implication or, at  
10 best, likely to mislead consumers. Furthermore, Defendants'  
11 contention that all of their communications refer to the "Ballin  
12 Paris" design is not borne out by the record. In one instance, for  
13 example, a fashion model posed for photos in one of Brian's  
14 sweatshirts outside Brian's press showroom. (Tookes Decl. ¶ 11.)  
15 The model granted Brian permission to use the photos and posted  
16 them to her own social media site as well. (Id. ¶¶ 12-13.) Later,  
17 the image appeared on A&C's product sales page, with no limiting  
18 reference to a "design," but rather to a "'Ballin Paris' Printed  
19 Fleece Sweatshirt by Alex & Chloe." (Id. ¶¶ 14.)  
20

21 Consumers' confusion and displeasure, and harm to Plaintiffs,  
22 is evident from numerous internet posts, as well as from  
23 declarations from retailers whose customers demanded refunds.  
24 (e.g. Bohlen Decl. ¶¶ 16-17.) Plaintiffs have demonstrated a high  
25 likelihood of success on the merits of their unfair competition  
26 claim.

#### 27 4. Interference with Economic Relations 28

1           The SAC alleges claims for intentional interference with  
2 existing contracts and prospective economic relations. An  
3 intentional interference with prospective economic relations claim  
4 requires (1) an economic relationship between plaintiff and a third  
5 party with the probability of future economic benefit to the  
6 plaintiff, (2) defendant's knowledge of that relationship, (3)  
7 defendant's intentional, independently wrongful act to disrupt the  
8 relationship, (4) actual disruption, and (5) economic harm to the  
9 plaintiff. Marsh v. Anesthesia Serv. Med. Group. Inc., 200  
10 Cal.App.4th 480, 504 (2011) (citing Korea Supply v. Lockheed Martin  
11 Corp., 29 Cal.4th 1134, 1153 (2003)). The elements of an  
12 intentional interference with contract claim are similar. See  
13 Quelimane Co. v. Stewart Title Guar. Co., 19 Cal.4th 26, 55 (1998).

14           Plaintiffs have offered extensive evidence that Chris  
15 contacted Brian's customers and urged them to buy A&C products  
16 instead of Brian's products. (Bouaissa Decl. ¶ 23.) Chris also  
17 sent cease and desist letters to sellers of Brian's products,  
18 stating that Chris, and not Brian, created the "Ballin Paris" line  
19 of products. (Ross Decl. ¶ 7.)

20           Defendants' position regarding the intentional interference  
21 claims is difficult to discern. Defendants argue that these claims  
22 cannot succeed because Plaintiffs do not have protectable trade  
23 dress and because A&C released its allegedly infringing products  
24 first. (Opp. at 20). The relevance of these arguments, which are  
25 not supported by any authority or evidence, beyond Chris'  
26 declaration that he released his products first, is unclear.  
27 Plaintiffs' intentional interference claims appear likely to  
28

1 succeed.

2 5. California Uniform Trade Secrets Act

3  
4 To prevail on a claim under California's Uniform Trade  
5 Secrets Act ("CUTSA"), California Civil Code § 3426, a plaintiff  
6 must show that (1) he owned a trade secret, (2) the defendant  
7 acquired, used, or disclosed that secret through improper means,  
8 and (3) the plaintiff was damaged. Cytodyn, Inc. V. Amerimmune  
9 Pharms., Inc., 160 Cal. App. 4th 288, 297 (2008). The California  
10 Civil Code defines "trade secret" as information that "(1)  
11 [d]erives independent economic value . . . from not being generally  
12 known to the public . . .; and (2) [i]s the subject of efforts that  
13 are reasonable under the circumstances to maintain its secrecy."  
14 Cal. Civ. Code § 3426.1(d). Plaintiffs assert that their customer  
15 and manufacturer lists, and the parody names "Ballin" and "Ballin  
16 Paris," were trade secrets. (SAC ¶¶ 104-106.)

17 "It is well-established that a customer list may constitute a  
18 protectable trade secret." Gable Leigh, Inc. v. North Am. Miss;  
19 No. CV 01-01019 MMM(SHX); 2001 WL 521695 at \*15 (C.D. Cal. Apr. 13,  
20 2001). "[W]here the employer has expended time and effort  
21 identifying customers with particular needs or characteristics,  
22 courts will prohibit former employees from using this information  
23 to capture a share of the market." Mor-Life, Inc. v. Perry, 56  
24 Cal. App. 4th 1514, 1521 (1997).

25  
26 The evidence regarding Plaintiffs' CUTSA claim is less  
27 extensive than that regarding other claims. Brian states that the  
28 customer lists are a compilation of company names, contact people,

1 notes, and contact information, some of which is non-public. (B.  
2 Lichtenberg Decl. ¶ 26.) Brian further states that the lists took  
3 years to compile. (Id.) Both Brian and his Head of Sales told  
4 Chris that the contact lists were confidential. (Id. ¶ 28;  
5 Bouiassa Decl. ¶ 19.)

6  
7 Defendants' contention that "Defendants contacted vendors  
8 already carrying the parody line" appears to suggest that Chris  
9 could not have appropriated trade secrets because he only contacted  
10 stores that were already and publicly carrying Brian's products.  
11 (Opp. at 21.) That fact, however, has no bearing on whether Chris  
12 improperly used confidential information, such as private e-mail  
13 addresses and phone numbers, or Brian's customer notes, in reaching  
14 out to those stores. Plaintiffs have shown some evidence that the  
15 lists were the product of Brian's time and effort, and that Brian  
16 and his staff took steps to preserve the secrecy of the lists.  
17 Plaintiffs have shown a likelihood of success on the CUTSA claim.

18 6. Defamation

19 Plaintiffs have submitted evidence that Brian developed the  
20 "Ballin" design in January 2012. (B. Lichtenberg Decl. ¶ 30, Ex.  
21 2.) Chris left Brian's employ and began selling his own "Ballin"  
22 products in January 2013. Plaintiffs provide numerous examples of  
23 Defendants' statements that Brian did not develop the "Ballin"  
24 design. (B. Lichtenberg Decl., Ex. 7.) Defendants also  
25 disseminated claims that Brian stole the "Ballin" design and was  
26 selling counterfeit merchandise. (Bohlen Decl. ¶ 13.)

27  
28 ///

1 Defendants conclusorily argue that Plaintiffs' Defamation  
2 claim must fail because Defendants' statements "are in fact true."  
3 (Opp. at 22.) Defendants cite to no evidence to support this  
4 assertion. Plaintiffs are likely to succeed on their defamation  
5 claim.

6 B. Remaining Factors  
7

8 Defendants' opposition briefly contends that Plaintiffs have  
9 failed to demonstrate a likelihood of irreparable harm or that the  
10 balance of equities tips in Plaintiffs' favor. Those arguments,  
11 however, focus on Plaintiffs' trade dress claims. As discussed  
12 above, Plaintiffs have not adequately demonstrated a likelihood of  
13 success on the merits with respect to the trade dress claims.

14 With respect to those claims on which Plaintiffs have shown a  
15 likelihood of success, the court is satisfied that the remaining  
16 factors have been met. "Evidence of loss of control over business  
17 reputation and damage to goodwill" is sufficient to establish  
18 irreparable harm. Herb Reed Enters., LLC. v. Florida Entm't Mgmt.,  
19 Inc., 736 F.3d 1239, 1250 (9th Cir. 2013). Defendants' misleading  
20 posts about the origins of certain products and suggestions that  
21 Brian is a thief, discussed above, certainly have a negative impact  
22 on Brian's reputation and goodwill, and are continuing. Enjoining  
23 such acts would serve the public interest, and would not impose any  
24 undue hardship upon Defendants.<sup>6</sup>

25  
26 \_\_\_\_\_  
27 <sup>6</sup> Defendants' opposition does not explicitly identify any  
28 particular hardship, but appears to refer to hardships Defendant  
might suffer if their sales of Ballin' merchandise were to be  
enjoined, presumably on the basis of Plaintiffs' trade dress  
claims.



1 **IV. Conclusion**

2 For the reasons stated above, Plaintiffs' Motion for  
3 Preliminary Injunction is GRANTED in part and DENIED in part.  
4 Plaintiffs have not demonstrated a likelihood of success on the  
5 merits of their trade dress infringement and dilution claims.  
6 Plaintiffs have satisfied their burden with respect to their unfair  
7 competition, intentional interference, trade secrets, and  
8 defamation claims.

9  
10 Accordingly, Defendants, and all persons acting in concert  
11 with them, are restrained from:

12 1) the use of pictures of celebrities or others wearing Plaintiffs'  
13 products in any manner that would lead others to believe that such  
14 persons are wearing Defendants' products;

15  
16 2) using in any way Plaintiffs' customer, distributor, or  
17 manufacturer lists;

18 3) contacting persons or entities with contracts for the purchase  
19 or sale of Plaintiffs's products, or who are in the business of  
20 purchasing or selling products similar to Plaintiffs' products for  
21 the purpose of encouraging such persons or entities not to do  
22 business with Plaintiffs and/or not to purchase or sell Plaintiffs'  
23 products; and

24 (4) assisting, aiding, or abetting any other person or business  
25 entity in engaging in or performing any of the activities referred  
26 to in the above paragraphs (1) through (3), or effecting any  
27 assignments or transfers, forming new entities or associations, or  
28

1 utilizing any other device for the purpose of circumventing or  
2 otherwise avoiding the prohibitions set forth in paragraphs (1)  
3 through (3).

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IT IS SO ORDERED.

Dated: July 25, 2014



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DEAN D. PREGERSON  
United States District Judge