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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

A 1 ELECTRONICS, INC., a California Corporation,

Plaintiff - Appellant,

v.

PANG JEFFERY CHANG, an individual;
et al.,

Defendants - Appellees,

GPB ENTERPRISES, INC., a California Corporation,

Defendant-counter-claimant -
Appellee.

No. 07-56205

D.C. No. CV-02-08579-CW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Carla M. Woehrle, Magistrate Judge, Presiding

Submitted April 28, 2009**
San Francisco, California

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: SKOPIL, LEAVY and T.G. NELSON, Circuit Judges.

A1 Electronics, Inc., appeals the judgment, after a three-day bench trial before a magistrate judge,¹ in A1's action for infringement of A1's packaging design under federal copyright law and related California state law. We have jurisdiction under 28 U.S.C. § 1291. We review conclusions of law de novo and findings of fact for clear error. *See Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, 1067 (9th Cir. 2008). We affirm.

Any revenue from the sale of power supply products sold by GPB Enterprises, Inc., had an attenuated nexus to the infringement, and A1 was thus entitled only to ascertainable indirect profits generated from the infringement. *See Polar Bear Prods., Inc. v. Timex Corp.*, 384 F.3d 700, 712-14 (9th Cir. 2004); *Mackie v. Rieser*, 296 F.3d 909, 914-16 (9th Cir. 2002).

A1 had the initial burden of demonstrating that the “infringement at least partially caused the profits that the infringer generated as the result of the infringement.” *Mackie*, 296 F.3d at 911; *see Polar Bear*, 384 F.3d at 711 (rejecting argument that a copyright plaintiff need only provide the defendant's gross revenue, without regard to the infringement). The magistrate judge's finding

¹ The parties consented to the magistrate judge's jurisdiction to conduct the trial. *See* 28 U.S.C. § 636(c)(1).

that A1 failed to sufficiently establish a causal connection was not clearly erroneous.

Even assuming that A1 raised a “palming off” claim under California’s unfair competition law, such a claim is preempted by federal copyright law. *See Norse v. Henry Holt and Co.*, 991 F.2d 563, 568 (9th Cir. 1993).

A1 failed to establish misappropriation. A1’s package design and forms were disclosed to the public and were not confidential. *See* Cal. Civ. Code § 3426.1(b), (d). A1’s customer list was not entitled to legal protection because A1’s customers and their information were readily ascertainable through public sources. *See Morlife, Inc. v. Perry*, 66 Cal. Rptr. 2d 731, 735 (Cal. Ct. App. 1997).

Based on the magistrate judge’s finding that it was GPB that copied and used the graphic packaging design to package the power supply products, there was no legal basis for finding Great Energy Co. liable to A1 for copyright infringement.

We have considered and reject all other arguments raised on appeal.

AFFIRMED.