

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

COOPER LIGHTING, LLC,

Plaintiff,

v.

**CORDELIA LIGHTING, INC. and
JIMWAY, INC.,**

Defendants.

CIVIL ACTION FILE

NO. 1:16-CV-2669-MHC

ORDER

This case comes before the Court on Defendants Cordelia Lighting, Inc. (“Cordelia”) and Jimway, Inc.’s Motion to Dismiss Plaintiff’s Willful Infringement Claims in the First Amended Complaint [Doc. 23].

I. BACKGROUND

On July 22, 2016, Cooper Lighting, LLC (“Cooper”) filed suit against Cordelia alleging infringement of four patents. Compl. [Doc. 1]. In its Complaint, Cooper did not allege that it had marked its products with the numbers of the asserted patents or otherwise notified Defendants of any alleged infringement. Cooper did not include a claim for enhanced damages or contend that Defendants’

alleged infringement was willful. On September 16, 2016, Defendants filed their answer. Defs.’ Answer & Countercls. [Doc. 17.]

On October 7, 2016, Cooper filed an Amended Complaint, alleging that “Defendants’ (sic) were aware and had actual knowledge of these four patents since at least the service of the original Complaint on July 27, 2016, and Defendants have disregarded, and continue to disregard, an objectively high likelihood that their actions infringe these patents.” Compl. [Doc. 18] ¶ 15. Cooper made similar amendments attempting to support willful infringement for each claim of infringement. Id. ¶¶ 26, 27, 37, 38, 48, 49, 57, 58. It seeks enhanced damages based on the willful infringement claims. Id., Prayer for Relief.

Defendants have filed a motion to dismiss Cooper’s willful infringement claim, contending that such a claim may not be based on knowledge gained from a complaint and that, even if it could, Cooper has failed to plead sufficient details to demonstrate willfulness. Defs.’ Br. in Supp. of Mot. to Dismiss [Doc. 23-1] (“Defs.’ Br.”).

II. LEGAL STANDARD

Federal Rule of Civil Procedure 8(a)(2) requires that a pleading contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Under Federal Rule of Civil Procedure 12(b)(6), a claim will be dismissed

for failure to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 547 (2007). The Supreme Court has explained this standard as follows:

A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a “probability requirement,” but it asks for more than a sheer possibility that a defendant has acted unlawfully.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal citation omitted). Thus, a claim will survive a motion to dismiss only if the factual allegations in the pleading are “enough to raise a right to relief above the speculative level.” Twombly, 550 U.S. at 555.

At the motion to dismiss stage, the court accepts all the well-pleaded facts in the plaintiff’s complaint as true, as well as all reasonable inferences drawn from those facts. McGinley v. Houston, 361 F.3d 1328, 1330 (11th Cir. 2004); Lotierzo v. Woman’s World Med. Ctr., Inc., 278 F.3d 1180, 1182 (11th Cir. 2002). Not only must the court accept the well-pleaded allegations as true, they must be construed in the light most favorable to the pleader. Powell v. Thomas, 643 F.3d 1300, 1302 (11th Cir. 2011). But the court need not accept legal conclusions, nor must it accept as true legal conclusions couched as factual allegations. Iqbal, 556

U.S. at 678. Thus, evaluation of a motion to dismiss requires the court to assume the veracity of well-pleaded factual allegations and “determine whether they plausibly give rise to an entitlement to relief.” Id. at 679.

III. DISCUSSION

Section 284 of the Patent Act provides that, in a case of infringement, the court “may increase the damages up to three times the amount found or assessed.” 35 U.S.C. § 284. A two-part test for determining when a district court may increase damages in accordance with § 284 was adopted in In re Seagate Tech, LLC, 497 F.3d 1360 (Fed. Cir. 2007) (en banc). According to the Federal Circuit in Seagate, the patentee must show by clear and convincing evidence (1) “that the infringer acted despite an objectively high likelihood that its actions constituted infringement of a valid patent,” and (2) “that this objectively-defined risk (determined by the record developed in the infringement proceeding) was either known or so obvious that it should have been known to the accused infringer.” Id. at 1371.

However, the Supreme Court vacated that decision in Halo Elecs., Inc. v. Pulse Elecs., Inc., 136 S. Ct. 1923 (2016), holding that the Federal Circuit’s two-part test was inconsistent with § 284. Id. at 1928. The Supreme Court stated that, while there is “no precise rule or formula” for awarding damages under § 284, such

damages “are generally deserved for egregious cases of culpable behavior.” Id. at 1932.

Section 284 allows district courts to punish the full range of culpable behavior. Yet none of this is to say that enhanced damages must follow a finding of egregious misconduct. As with any exercise of discretion, courts should continue to take into account the particular circumstances of each case in deciding whether to award damages, and in what amount. Section 284 permits district courts to exercise their discretion in a manner free from the inelastic constraints of the Seagate test. Consistent with nearly two centuries of enhanced damages under patent law, however, such punishment should generally be reserved for egregious cases typified by willful misconduct.

Id. at 1933-34.

Cooper relies on Halo in urging the Court not to dismiss its willful infringement claim. Although Halo rejected the Seagate test of what constitutes a reckless state of mind to support an award of § 284 damages as too rigid, it did not discuss whether such damages are limited to the alleged infringer’s pre-filing conduct, other than to state that culpability for willful infringement purposes is “measured against the knowledge of the actor at the time of the challenged conduct.” Id. at 1933. The Federal Circuit in Seagate stated that “in ordinary circumstances, willfulness will depend on an infringer’s prelitigation conduct.” Seagate, 497 F.3d at 1374. Other cases, post-Halo, have concluded that Seagate’s conclusion with respect to the unavailability of a claim for willful infringement

based upon post-filing conduct is still good law. See CG Tech. Dev., LLC v. FanDuel, Inc., No. 2:16-CV-00801-RCJ-VCF, 2017 WL 58572, at *6 (D. Nev. Jan. 4, 2017) (“In re Seagate Tech. has been vacated based on a rejection of the rule that willful infringement necessarily requires objective recklessness. But the above analysis as to the timing of allegations of willfulness (whatever the standard of willfulness) is a remedies issue, not an issue concerning the substantive standards of willfulness, and it presumably remains valid based on the independent authorities directly cited in In re Seagate.”) (citations omitted); Radware, Ltd. v. F5 Networks, Inc., No. 5:13-CV-02024-RMW, 2016 WL 4427490, at *6 (N.D. Cal. Aug. 22, 2016) (“Halo did not disturb this ruling [from Seagate that willful infringement requires pre-filing, not post-filing, conduct], as post-filing conduct was not at issue in Halo”); see also Princeton Dig. Image Corp. v. Ubisoft Entm’t SA, No. 13-cv-335, 2016 WL 6594076, at *11 (D. Del. Nov. 4, 2016) (granting motion to dismiss post-suit willful infringement claim where the plaintiff “does not sufficiently explain how the allegations in that Complaint as to [the defendant] are said to have put [the defendant] on notice of its own willful infringement” and “even if one were to assume that the original Complaint *did* sufficiently put [the defendant] on notice of its indirect infringement, the [plaintiff] does not sufficiently articulate how [the defendant]’s actions during a short, three-month

period of time amount to an ‘egregious’ case of infringement of the patent.”)

(footnote omitted).

Further, a court in this district has held that a claim for enhanced damages based on willful infringement “must necessarily be grounded exclusively in the accused infringer’s *pre-filing conduct* . . . when an accused infringer’s post-filing conduct is reckless, a patentee can move for a preliminary injunction.” Swipe Innovations, LLC v. NCR Corp., No. 1:13-CV-2210-TWT, 2013 WL 6080439, at * 2 (N.D. Ga. Nov. 18, 2013) (emphasis in original). In Swipe Innovations, the court granted a motion to dismiss plaintiff’s claims for enhanced damages and willful infringement. The plaintiff filed an amended complaint and alleged that the defendant’s “infringement has been willful from the time it was notified of the ’296 patent through service of the Complaint.” Id. at *2. The court determined that to permit such pleading of willfulness “could result in enhanced damages in every patent infringement suit.” Id. (emphasis in original); see also Dorman Prods., Inc. v. PACCAR, Inc., 201 F. Supp. 3d 663, 681 (E.D. Pa. 2016) (“Absent evidence of pre-filing willful infringement, a patentee who does not seek a preliminary injunction may not base a claim for willful infringement solely on the infringer’s post-filing conduct.”).

Accordingly, the Court finds that Plaintiff's willful infringement claim, which is based solely on Defendants' post-filing conduct, fails as a matter of law.¹

IV. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED** that Defendants Cordelia Lighting, Inc. and Jimway, Inc.'s Motion to Dismiss Plaintiff's Willful Infringement Claims in the First Amended Complaint [Doc. 23] is **GRANTED**. Plaintiff's willful infringement claims are **DISMISSED**.²

IT IS SO ORDERED this 6th day of April, 2017.



MARK H. COHEN
United States District Judge

¹ Therefore, the Court need not reach Defendants' arguments regarding the factual sufficiency of Cooper's willful-infringement allegations or whether the allegations should have been made in the context of a supplemental, rather than an amended, complaint.

² To the extent Cooper seeks to assert claims of willfulness preceding the filing of the original Complaint, it must file a motion for leave to amend.