IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SYNGENTA CROP PROTECTION, LLC,	)	
Plaintiff,	)	
v.	)	1:15-CV-274
WILLOWOOD, LLC, WILLOWOOD USA, LLC, WILLOWOOD AZOXYSTROBIN, LLC, and WILLOWOOD LIMITED,	)	
Defendants.	)	

ORDER

This matter is before the Court on the defendants' motion to dismiss count VII of the complaint or, in the alternative, a motion to stay adjudication of Count VII pending disposition of administrative proceedings before the EPA. Because Count VII is impliedly pre-empted by FIFRA, the motion to dismiss will be granted.

In Count VII, Syngenta attempts to assert a cause of action against the Willowood defendants for violation of the North Carolina Unfair and Deceptive Trade Practices Act, often colloquially called a Chapter 75 claim. N.C. Gen. Stat. § 75.1.1. The Court concludes that Syngenta's Chapter 75 claim, as pled, is little more than a fraud-on-the-EPA claim and is impliedly pre-empted by FIFRA. *See Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 347-48 (2001); *Nathan Kimmel, Inc. v. DowElanco*, 275 F.3d 1199, 1206-1207 (9th Cir. 2002). Therefore, the motion will be granted.

Syngenta relies on *Bates v. Dow Agrosciences LLC*, 544 U.S. 431 (2005). That case concerned a specific statutory pre-emption provision regarding labels and packaging which is not at issue here. While the case certainly provides helpful background, it is not on point.

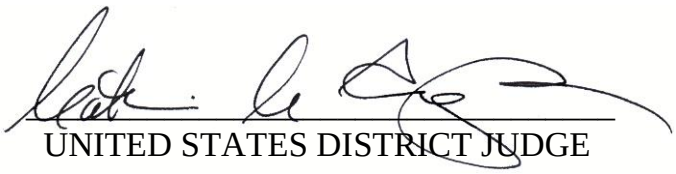
Syngenta next contends that its claim for relief under Chapter 75 "is not limited to damages arising out of the EPA's premature approval of Willowood's registration," (Doc. 70 at 1), and is based on "false public statements about Syngenta", (*id.* at 12), which "harmed Syngenta's reputation." *Id.* at 11. Syngenta's current arguments are belied by a reading of the complaint, which only mentions misrepresentations to the EPA and which makes no allegations of any statements made to the public or of any harm to Syngenta's reputation. While the complaint should be read liberally, that does not mean one should make unwarranted inferences. Moreover, Syngenta cannot amend the complaint with arguments in a brief. *See S. Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 184 (4th Cir. 2013) ("It is well-established that parties cannot amend their complaints through briefing . . .")

Because the complaint does not contain allegations supporting an inference that Willowood made false public claims or that Syngenta was harmed in ways other than by the premature EPA approval of Willowood's application, the Court need not reach the question of whether such allegations would give rise to a non-pre-empted claim.

It is **ORDERED** that the defendants' motion to dismiss count VII of the complaint, (Doc. 59), is **GRANTED**.

It is further **ORDERED** that the alternative motion to stay adjudication of count VII is **DENIED** as moot.

This the 12th day of August, 2016.



UNITED STATES DISTRICT JUDGE