IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EPIC TECH, LLC, Plaintiff, v. VGW LUCKYLAND, INC. and VGW HOLDINGS US, INC., Defendants.	Civil Action No. 23-118-RGA

MEMORANDUM ORDER

Before me is Defendants' partial motion to dismiss Plaintiff's first amended complaint. (D.I. 46). I have considered the parties' briefing. (D.I. 47, 48, 49). For the reasons set forth below, the motion is GRANTED in part and DISMISSED AS MOOT in part.

Plaintiff is the assignee of a federally registered image mark consisting of a picture of a duck and the words "LUCKY DUCK." (D.I. 44 ¶¶ 11–12). Plaintiff asserts common law rights in two marks: the word mark "LUCKY DUCK" and an image mark of a yellow duck with the words "LUCKY DUCK" (which Plaintiff says is a "variation" of the federally registered image mark). (*Id.* ¶¶ 21, 25–26). Plaintiff sued Defendants, alleging seven counts: (1) trademark infringement under federal law, (2) false designation of origin under federal law, (3) unfair competition under federal law, (4) statutory and common law trademark infringement under Delaware law, (5) statutory and common law injury to business reputation and dilution under Delaware law, (6) unfair competition under Delaware law, and (7) statutory and common law deceptive acts and practices under Delaware law. (*Id.* ¶¶ 71–106).

Defendants filed a motion to partially dismiss Plaintiff's first amended complaint, arguing for dismissal of (1) the Count IV statutory claim, (2) the Count V common law claim, and (3) Counts II–VII to the extent Plaintiff claims common law rights in an image of a duck. (D.I. 47 at 1).

In its reply, Plaintiff consented to dismissal of the Count IV statutory claim and the Count V common law claim. (D.I. 48 at 1). As to the third part of Defendants' motion, Plaintiff explained its "claims are based upon Defendants' use of images and words which are sufficiently similar to the properly pleaded registered and unregistered marks asserted in the FAC to constitute infringement and unfair competition relating to those registered and unregistered marks." (*Id.*). That is, "Plaintiff has not pleaded any separate rights in an 'image of a duck.'" (*Id.* at 2). Defendants contend Plaintiff's representation "resolves [and moots] Defendants' third basis for dismissal." (D.I. 49 at 2).

In light of the parties' concessions and arguments in the briefing, Defendants' motion to dismiss the Count IV statutory claim is GRANTED; Defendants' motion to dismiss the Count V common law claim is GRANTED; and Defendants' motion to dismiss Counts II–VII with respect to common law trademark rights in images of a duck is DISMISSED AS MOOT.

IT IS SO ORDERED.

Entered this 15th day of May, 2025

United States District Judge