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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CALCAR, INC., a California corporation, and AMERICAN CALCAR, INC., a Delaware corporation,
Plaintiffs,
v.
THE CALIFORNIA CARS INITIATIVE, INC., an unknown business entity; and FELIX KRAMER, an individual
Defendants.

CASE NO. SACV 07-0723 AG (JWJx)

ORDER GRANTING DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT

Before the Court are cross motions for summary judgment filed by Plaintiffs Calcar, Inc. and American Calcar, Inc. (“Plaintiffs”) and by The California Cars Initiative, Inc. (“Defendant TCCI”) and Felix Kramer (“Defendant Kramer”) (collectively, “Defendants”). After considering all the arguments submitted by the parties, the Court GRANTS Defendants’ Motion for Summary Judgment and DENIES Plaintiffs’ Motion for Summary Judgment.

1 **BACKGROUND**

2
3 Plaintiffs claim that Defendants have infringed Plaintiff's alleged trademark in the term
4 "CALCAR." Plaintiffs' business is the marketing and selling of "innovative products and
5 services that furnish the end consumer with quick and easy access to essential information about
6 the operation of the consumer's vehicle." (Declaration of M. Obradovich ¶ 2.) For example,
7 Plaintiffs sell printed guides to automobile companies for distribution with their automobiles.
8 The guides "distill[] owner's manual information for a particular vehicle model into a brief,
9 easy-to-use reference." (*Id.* ¶ 4.) Plaintiffs have been using the CALCAR® mark for over ten
10 years, and own U.S. Trademark Registration No. 2,419,611 for the work mark CALCAR®
11 relating to "[c]omputer hardware and computer software for use in telecommunications, weather
12 reporting, messaging, global positioning, database access, imaging, and pre-recorded software
13 on CD-Rom related to automobiles, advertising, global computer networks, web sites, and
14 telecommunications."

15 Defendant TCCI is a group of entrepreneurs, engineers, environmentalists, and
16 automobile drivers who work to convince automobile companies to build plug-in hybrid electric
17 vehicles ("PHEVs"). (Declaration of F. Kramer ¶ 2.) PHEV's are automobiles that combine
18 both hybrid technology and electric battery technology to make automobiles more efficient. The
19 group promotes PHEVs through advocacy, public pressure, and positive incentive programs.
20 (*Id.* ¶ 3.) Defendants began publicly using the name "CalCars" as the name of their organization
21 in July 2002. (*Id.* ¶ 4.) Defendant Kramer chose "CalCars" as an abbreviation of the longer
22 name "The California Cars Initiative." (*Id.*)

23
24 **LEGAL STANDARD**

25
26 Summary judgment is appropriate only where the record, read in the light most favorable
27 to the non-moving party, indicates that "there is no genuine issue as to any material fact and . . .
28 the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *see also*

1 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Material facts are those necessary to the
2 proof or defense of a claim, and are determined by reference to substantive law. *Anderson v.*
3 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual issue is genuine “if the evidence is
4 such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* at 248. In
5 deciding a motion for summary judgment, “[t]he evidence of the nonmovant is to be believed,
6 and all justifiable inferences are to be drawn in his favor.” *Id.* at 255.

7 The burden initially is on the moving party to demonstrate an absence of a genuine issue
8 of material fact. *Celotex*, 477 U.S. at 323. Only if the moving party meets its burden, the non-
9 moving party must produce competent evidence to rebut the moving party’s claim and create a
10 genuine issue of material fact. *See id.* at 322-23. If the non-moving party meets this burden,
11 then the motion will be denied. *Nissan Fire & Marine Ins. Co. v. Fritz Co., Inc.*, 210 F.3d 1099,
12 1103 (9th Cir. 2000).

13 In deciding whether summary judgment is warranted, a court must “view the evidence
14 presented through the prism of the substantive evidentiary burden” that would inhere at trial.
15 *Liberty Lobby, Inc.*, 477 U.S. at 245. The purported trademark holder bears the ultimate burden
16 of proof in a trademark infringement action. *Yellow Cab Co. v. Yellow Cab of Elk Grove, Inc.*,
17 419 F.3d 925, 928 (9th Cir. 2005) (citing *Tie Tech, Inc. v. Kinedyne Corp.*, 296 F.3d 778, 783
18 (9th Cir. 2002)).

19
20 **ANALYSIS**

21
22 Plaintiffs claim that Defendants’ actions infringe Plaintiffs’ mark under federal and
23 common law trademark. A successful infringement claim requires a showing that the claimant
24 holds a protectable mark and that the use of a similar mark by an alleged infringer is “likely to
25 cause confusion, or to cause mistake, or to deceive.” *KP Permanent Make-Up, Inc. v. Lasting*
26 *Impression I, Inc.*, 543 U.S. 111, 117 (2004); 15 U.S.C. § 1114(1)(a). A likelihood of confusion
27 exists “when consumers are likely to assume that a product or service is associated with a source
28 other than its actual source because of similarities between the two sources’ marks or marketing

1 techniques.” *Nutri/System, Inc. v. Con-Stain Indus., Inc.*, 809 F.2d 601, 604 (9th Cir. 1987).

2 The Ninth Circuit generally evaluates eight factors in determining whether an alleged
3 infringer has created a likelihood of confusion. *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341,
4 348-49 (9th Cir. 1979). Those factors, known as the *Sleekcraft* factors, are: (1) the similarity of
5 the marks; (2) the strength of the plaintiff’s mark; (3) the relatedness or proximity of the goods;
6 (4) the marketing channels used by each party; (5) the degree of care likely to be exercised by
7 the purchaser; (6) the defendant’s intent in selecting the mark; (7) evidence of actual confusion;
8 and (8) the likelihood of expansion of the parties’ product lines. *Id.*

9 The *Sleekcraft* factors should not be rigidly weighed: “we do not count beans.”
10 *Dreamwerks Prod. Group v. SKG Studio*, 142 F.3d 1127, 1129 (9th Cir. 1998). Instead, “[s]ome
11 factors are much more helpful than others, and the relative importance of each individual factor
12 will be case specific.” For example, in the internet context, “the three most important *Sleekcraft*
13 factors are (1) the similarity of the marks, (2) the relatedness of the goods or services, and (3) the
14 simultaneous use of the Web as a marketing channel.” *GoTo.com v. Walt Disney Co.*, 202 F.3d
15 1199, 1205 (9th Cir. 2000) (citation omitted).

16 17 **1. THE SLEEKCRAFT FACTORS**

18 19 **1.1 Similarity of the Marks**

20
21 To determine the similarity of marks, “first, the marks must be considered in their entirety
22 and as they appear in the marketplace; second, similarity is adjudged in terms of appearance,
23 sound and meaning; and third, similarities are weighed more heavily than differences.”
24 *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1205 (9th Cir. 2000) (citations omitted).
25 When the Court considers merely the words of the marks, they appear very similar. Defendants’
26 mark (CalCars) is merely the plural form of Plaintiffs’ mark (CALCAR), with different
27 capitalization. *See Sleekcraft*, 599 F.2d at 351 (“Standing alone the words Sleekcraft and
28 Slickcraft are the same except for two inconspicuous letters in the middle of the first syllable.”).

1 But the marks appear very different when viewed in their logo format. *See Sleekcraft*, 599 F.2d
2 at 351 (finding that, although the marks themselves were similar, “the names appear dissimilar
3 when viewed in conjunction with the logo.”). The marks in their logo format appear in different
4 fonts, with different color schemes, and with different graphics. The CALCAR mark, as seen on
5 the internet, features a black and white color scheme and a drawing of a horse, while the CalCars
6 mark, as seen on the internet, features a blue and green color scheme and a stylized cartoon of a
7 car.

8 Thus, the question becomes how the marks appear in the marketplace. Plaintiffs contend
9 that the words of the marks often appear in the marketplace unaccompanied by their logos. For
10 instance, the domain names of the parties present only the word marks (www.calcar.net and
11 www.calcars.org). Also, when the marks are referred to orally, the references are necessarily
12 unaccompanied by logos. Plaintiffs also argue that media coverage of CALCAR “typically
13 use[s] the name CALCAR not the Mr. Tips® horse icon logo.” (Opposition Declaration of M.
14 Obradovich, ¶ 17, Exhibit J.) Finally, Plaintiffs argue that the Quick Tips® guides typically use
15 the word CALCAR without the logo.

16 The Court agrees with Plaintiffs that the words of the marks often appear in the
17 marketplace without accompanying logos, and thus that the marks are similar. This factor
18 weighs in favor of Plaintiffs.

19 20 **1.2 The Relatedness of the Goods or Services**

21
22 Plaintiffs argue that their goods and services are related to Defendants’ services.
23 Plaintiffs’ primary business is creating instruction manuals for automobile manufacturers to
24 distribute with the cars they sell. Defendant TCCI, on the other hand, is an advocacy group that
25 focuses its efforts on accelerated development and utilization of plug-in hybrid technology.
26 Defendant TCCI does not sell any products. While both parties operate within the automotive
27 industry, their goods and services are not related.

28 Plaintiffs argue strenuously that the goods and services of the two parties are related

1 because Defendants' website refers to a product manufactured and sold by a different company,
2 and that that product is similar to one of Plaintiffs' products. This argument fails. Defendants
3 do not manufacture or sell any products similar to any of Plaintiffs' products, and Defendants'
4 website's mention of a product manufactured by another company does not render the services
5 of the parties "related."

6 This factor weighs strongly in favor of Defendants.
7

8 **1.3 The Marketing Channels Used by Each Party**

9

10 Plaintiffs argue that both parties use the internet as a marketing channel, and argues that
11 this is a decisive factor in favor of Plaintiffs. The Court disagrees. The fact that both parties
12 have a website does not strongly support Plaintiffs' argument.

13 Plaintiffs cite *GoTo.com*, 202 F.3d 1199, in support of their argument. In that case, the
14 Ninth Circuit found the fact that both parties marketed through the internet to be a very decisive
15 factor in its *Sleekcraft* analysis. But that case is different from the case before this Court. In that
16 case, the services marketed were internet-based services. The disputed trademark referred to an
17 internet search engine. In this case, on the other hand, the products and services are not limited
18 to the internet, and both parties admit that they use other marketing channels. Also, *GoTo.com*
19 was decided in 2000, and the case itself recognized that its analysis was impacted by the state of
20 the internet at the time, stating:

21 Our ever-growing dependence on the Web may force us eventually to evolve
22 into increasingly sophisticated users of the medium, but, for now, we can
23 safely conclude that the use of remarkably similar trademarks on different web
24 sites creates a likelihood of confusion amongst Web users.

25 *GoTo.com*, 202 F.3d at 1206. This Court finds that users of the internet have indeed become
26 more sophisticated, and that the mere fact that two different entities have websites should no
27 longer weigh heavily in favor of a finding of trademark infringement. This is especially so when
28 Plaintiff has introduced no evidence about the frequency of visits to www.calcar.net.

1 Defendants argue that the other marketing channels used by the parties are very different.
2 They state that Defendants communicate foremost with the public through advocacy efforts, and
3 that they communicate with representatives of automobile manufacturers only “through
4 sophisticated high-level media representatives, managers, and engineers who are sensitive to
5 environmental issues – not with those involved in purchasing decisions for what is included in a
6 bundle of materials given to new car buyers.” (Defendant’s Reply 14:22-24 (citing Declaration
7 of Moore, Exhibit 45: Gremban Depo. At 145:3-146:18; Exhibit 54).) Plaintiffs respond with a
8 citation to the Opposition Declaration of M. Obradovich, which states that both parties “market
9 directly to the same automotive industry, including the same automaker companies and the same
10 technology departments within those manufacturers.” (Opposition Declaration of M.
11 Obradovich § 18.) This self-serving declaration by Plaintiffs’ principal, however, is not enough
12 to establish a genuine issue of material fact. *See Rodriguez v. Airborne Express*, 265 F.3d 890,
13 902 (9th Cir. 2001) (Self-serving declarations can only be cognizable to establish a genuine issue
14 of material fact if “they state facts based on personal knowledge and are not too conclusory.”).
15 Plaintiffs have introduced no evidence of what technology groups they market to, and thus have
16 not rebutted Defendants’ arguments that the undisputed nature of the two parties would require
17 them to contact different groups within the automobile manufacturing companies. Plaintiffs’
18 previous declaration that it “attempts to reach and market to its target customer group in a
19 number of ways, among them personal contact, ‘cold calling,’ and mailings,” also does not
20 support its argument. (Declaration of M. Obradovich in Support of Plaintiff’s Motion ¶ 8.)

21 Accordingly, the Court finds that this factor weighs in favor of Defendants.

22 23 **1.4 The Strength of the Plaintiffs’ Mark**

24
25 A trademark’s strength is categorized, in part, by how related the trademark is to the
26 trademark owner’s product or service. There are five categories of trademarks: (1) generic; (2)
27 descriptive; (3) suggestive; (4) arbitrary; and (5) fanciful. *KP Permanent Make-Up, Inc. v.*
28 *Lasting Impression I, Inc.*, 408 F.3d 596, 602 (9th Cir. 2005). Fanciful marks are the strongest,

1 because they are the least related to the product or service. Descriptive or generic marks are the
2 weakest, because they do more to indicate what the product is than to indicate the source of the
3 product. *See Rodeo Collection, Ltd. v. West Seventh*, 812 F.2d 1215, 1218 (9th Cir. 1987) (“A
4 mark’s strength can be measured in terms of its location along a continuum stretching from
5 arbitrary, inherently strong marks, to suggestive marks, to descriptive marks, to generic,
6 inherently weak marks.”)

7 The Court finds that the CALCAR mark is suggestive. It suggests a company dealing
8 with cars in California. This idea is supported by the fact that both Plaintiffs’ and Defendants’
9 products and services relate to cars in California, and by the fact that at least two other
10 companies dealing with cars in California have used the same mark. *See* www.calcar.com;
11 www.calcarcover.com. Plaintiff’s argument that Defendant Kramer has “conceded” that the
12 mark is arbitrary is to no avail. (Plaintiff’s Opposition 16:23-23.) Whether a mark is arbitrary
13 or suggestive is a question of law to be decided by the Court. Thus, Plaintiffs’ mark is
14 suggestive, and this is neither inherently weak nor inherently strong.

15 “A descriptive or suggestive mark may be strengthened by such factors as extensive
16 advertising, length of exclusive use, public recognition and uniqueness.” *Accuride Int’l, Inc. v.*
17 *Accuride Corp.*, 871 F.2d 1531, 1536 (9th Cir. 1989). But Plaintiff, despite months of discovery
18 and a request by the Court for more evidence, has not provided the Court with evidence
19 supporting any of these factors. Turning first to length of exclusive use, the undisputed evidence
20 shows that Plaintiffs and Defendants have both been using the mark for six years, and that at
21 least two other companies use the mark. Turning to the other factors, the only “evidence”
22 Plaintiffs cite in support of the strength of their mark are the declarations of the President of
23 Plaintiff companies and his wife, which state:

24 The CALCAR® mark is well known within the industry, with automakers and
25 others in the industry recognizing CALCAR® as a mark that is associated
26 with the high-quality goods and services that Calcar® provides, and with
27 Calcar® as the source of those goods and services. When I attend industry
28 functions and tell people I have never met that I am from Calcar®, they will

1 often respond by discussing their familiarity and satisfaction with Calcar®
2 products such as Quick Tips®,
3 (Declaration of K. Obradovich ¶ 2), and:

4 I deal directly with many automakers, many of whom are Calcar customers.
5 Based on my dealings with those manufacturers, I know that the CALCAR®
6 mark is well known within the industry, with automakers and others in the
7 industry recognizing CALCAR® as a mark that is associated with the high-
8 quality goods and services that Calcar® provides, and with Calcar® as the
9 source of those goods and services.

10 (Declaration of M. Obradovich ¶ 16.) But these self-serving declarations do not identify with
11 any specificity the industry functions, the people who have recognized the mark, or anything that
12 could help a factfinder determine that Plaintiff's mark is strong. These declarations are not
13 enough to create a genuine issue of material fact. See again *Rodriguez*, 265 F.3d at 902 (Self-
14 serving declarations can only be cognizable to establish a genuine issue of material fact if "they
15 state facts based on personal knowledge and are not too conclusory.").

16 The Court finds Plaintiff has not created a genuine issue of material fact that CALCAR is
17 strongly and uniquely associated with Plaintiff's business. This factor weighs in favor of
18 Defendants.

19 20 **1.5 The Degree of Care Likely to be Exercised by the Purchaser**

21
22 If a consumer is likely to exercise great care in making a purchase, the likelihood of
23 confusion is diminished. See *Official Airline Guides, Inc.*, 6 F.3d 1385, 1393 (9th Cir. 1993). To
24 determine whether a customer is likely to exercise care in making a purchase decision, courts
25 look to "the reasonably prudent purchaser exercising ordinary caution," *id.*, and assume that
26 buyers will exercise greater care in their purchases when the goods are expensive. *E. & J. Gallo*
27 *Winery v. Gallo Cattle Co.*, 967 F.2d 1280, 1293 (9th Cir. 1992).

28 Defendants argue that Plaintiffs' target audience is likely to exercise great care in making

1 its purchase decisions. Defendants point out that Plaintiffs stated that their target audience
2 consisted of only approximately twenty major automobile manufacturers, (Preliminary
3 Injunction Declaration of M. Obradovich ¶¶ 11-12), and that these manufacturers would
4 necessarily buy the guide manuals in large quantities. Defendants also argue that the
5 development of a guide manual would require a working relationship between the purchaser and
6 Plaintiffs, and not just a one-time purchase.

7 Plaintiffs respond by arguing that their definition of their target audience includes
8 companies besides the twenty major automobile manufacturers. They cite the Declaration of
9 Michael Obradovich, which states, “The major automakers to whom Calcar® would market its
10 products are a small and well-known group, numbering about twenty. However, there are far
11 more tier one suppliers, and they are a large enough group that it is hard to pay them all
12 individual attention, or even to know who they all are.” (Declaration of M. Obradovich ¶ 7.)
13 This argument fails for three reasons. First, this declaration does not state that these “tier one
14 suppliers” are part of Plaintiffs’ target audience. Second, even if the declaration *did* say that, it
15 is a self-serving declaration unsupported by any references to Plaintiffs actually marketing to
16 this group. Third, such a declaration would contradict Plaintiffs’ claim, made in support of its
17 motion for a preliminary injunction, that it deals with the major car manufacturers, and that,
18 because there are only “approximately 20 automobile manufacturers in the United States . . .
19 Calcar cannot afford to lose any as a customer.” (Preliminary Injunction Declaration of M.
20 Obradovich ¶ 12).

21 Plaintiffs next argue that, because Defendants are advocates seeking to disseminate a
22 political message, the level of consumer care is low. Plaintiff argues that people not exercising
23 any degree of care could hear Defendants’ message and be affected by it, so that their
24 perceptions of Plaintiffs will be altered long before they exercise care in purchasing Plaintiffs’
25 products. In other words, Plaintiffs fear that their customers will be scared away by Defendants’
26 message before their customers have a chance to make a careful purchasing decision.

27 Plaintiffs’ “political message” argument is a novel one, likely because trademark
28 infringement claims typically arise between two companies selling products, not between a

1 company selling products and an advocacy group. Still, it is convincing. Defendants give
2 presentations, distribute a newsletter, and make many efforts to “get out the word.” And
3 consumers do not need to make any investment to hear Defendants’ message. Thus, the level of
4 “consumer” care in hearing Defendants’ political message is low.

5 But again, this analysis does not seem to fit into the *Sleekcraft* factors, which are
6 primarily directed at whether a junior user of a mark is benefitting from the senior user’s
7 goodwill. Accordingly, the Court will evaluate this argument in its analysis of Plaintiff’s
8 “reverse confusion” theory, and not here.

9 The Court finds that Plaintiff’s customers and Defendants’ supporters exercise a high
10 level of care in purchasing their products or subscribing to their ideas and newsletter. This
11 factor weighs in favor of Defendants.

12 13 **1.6 Defendants’ Intent in Selecting the Mark**

14
15 “[A]n intent to confuse consumers is not required for a finding of infringement.”
16 *Brookfield Communs., Inc. v. West Coast Entertainment Corp.*, 174 F.3d at 1059. However, an
17 intent to deceive is strong evidence of a likelihood of confusion. *Sleekcraft*, 599 F.2d at 354.
18 Here, it is undisputed that Defendants adopted the name CalCars as an abbreviation of “The
19 California Cars Initiative,” and not with any intent to deceive consumers. This factor weighs in
20 Defendants’ favor.

21 22 **1.7 Evidence of Actual Confusion**

23
24 After months of discovery, Plaintiffs have been unable to meaningfully supplement the
25 “evidence of actual confusion” presented in support of their motion for a preliminary injunction.
26 The Court found that evidence to be *de minimis*. This factor weighs in favor of Defendants.
27
28

1.8 Likelihood of Expansion of the Parties' Product Lines

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2
3 "Inasmuch as a trademark owner is afforded greater protection against competing goods,
4 a strong possibility that either party may expand his business to compete with the other will
5 weigh in favor of finding that the present use is infringing." *Sleekcraft*, 599 F.2d at 354 (citation
6 omitted). In its motion for a preliminary injunction, Plaintiffs convinced the Court that they
7 intended to expand their products into the area hybrid technology. For that reason, the Court
8 concluded, at that time, that this factor weighed in favor of Plaintiffs. It has since come to light,
9 however, that "Plaintiffs have no intention of expanding into hybrid technology *per se* but that
10 their products, Quick Tip Guides, could be used in cars with internal combustion engines or,
11 theoretically, in hybrid cars as well." (Joint Stipulation Re Defendants' Motion to Compel
12 Plaintiffs' Responses to First Set of Interrogatories and First and Second Set of Requests for
13 Production of Documents 15:16-19.) The Court finds that Plaintiffs' proposed "expansion" into
14 development of guides about hybrid vehicles is not an expansion that will cause the parties to
15 compete.

16 Because Plaintiffs have not shown that either party's product line is likely to expand to
17 compete with the other party's product line, this factor weighs in favor of Defendants.

18 19 2. APPLICATION OF THE SLEEKCRAFT FACTORS

20
21 The *Sleekcraft* factors are most often applied to the situation where the senior user of a
22 mark is more famous, and the junior user benefits when people purchase the junior user's
23 products because they think they are associated with the senior user. *See, e.g., Sleekcraft*, 599
24 F.2d 341. Viewing the *Sleekcraft* factors, the Court finds that there is no genuine issue of
25 material fact that no such likelihood of confusion exists in this case. Plaintiff argues, however,
26 that likelihood of confusion can arise in many different situations, and that the *Sleekcraft* factors
27 should be weighed differently in each situation.
28

2.1 Initial Interest Confusion

1
2
3 Plaintiff first argues that similarity of marks can create a likelihood of confusion called
4 “initial interest confusion.” That sort of confusion arises when an infringer uses the mark “in a
5 manner calculated to capture initial consumer attention, even though no actual sale is finally
6 completed as a result of the confusion.” *Brookfield Communications. v. W. Coast Entm’t Corp.*,
7 174 F.3d 1036, 1062 (9th Cir. 1999) (internal citation and quotations omitted). For instance, in
8 *Brookfield Communications*, the court enjoined a junior user from using the senior user’s mark
9 as its website URL. The junior user argued that it should be able to continue using the mark in
10 its metatags, so that the junior user’s newly named website would appear if a consumer used a
11 search engine to search for the mark. The court disagreed, reasoning that the products offered on
12 the senior and junior users’ website were similar enough that “a sizeable number” of consumers
13 who mistakenly went to the junior users’ website would, after realizing their mistake, simply
14 decide to stay and purchase from the junior user. *Id.*

15 The Court finds that “initial interest confusion” does not apply to this case. First, there is
16 no evidence that Defendants used the CalCars mark “in a manner calculated to capture initial
17 consumer attention.” *Id.* Second, the “products” are not similar enough that consumers
18 mistakenly sent to Defendants’ website will choose to stay instead of attempting once more to
19 find Plaintiffs’ site.

2.2 Reverse Confusion

20
21
22
23 Plaintiffs next argue that the likelihood of confusion in this case arises from “reverse
24 confusion.” “Reverse confusion” occurs “when a trademark infringer so saturates the market
25 with promotion of his trademark that consumers come to believe that the infringer, rather than
26 the plaintiff, is the source of the trademarked product.” *Murray v. Cable NBC*, 86 F.3d 858, 861
27 (9th Cir. 2000). “To survive a summary judgment motion on a reverse confusion claim, a
28 question of material fact would have to be raised as to whether consumers believed that [the

1 junior user] was either the source of, or was a sponsor of, [the senior user's] wares.” *Survivor*
2 *Media, Inc. v. Survivor Productions*, 406 F.3d 625 (9th Cir. 2005). The Court finds that
3 Plaintiffs have not raised a question of material fact. Again, Plaintiffs raised *de minimus*
4 evidence of actual confusion, the parties’ “goods” are unrelated, and the marketing channels
5 used by the parties are different. Also, it is unlikely that a reasonable consumer would assume
6 that a group espousing a political message is related to a company specializing in car manuals.

7 8 **2.3 Post-Sale Confusion**

9
10 Lastly, Plaintiff argues that the likelihood of confusion in this case arises from “post-sale
11 confusion.” The Court finds that this theory does not apply to this case.

12 13 **2.4 Conclusion**

14
15 Having analyzed the *Sleekcraft* factors under Plaintiffs’ many theories of infringement,
16 the Court finds that Plaintiffs have not raised a genuine issue of material fact that Defendants
17 have infringed their mark. Plaintiffs have also not raised a genuine issue of material fact as to
18 unfair competition. Accordingly, Defendants’ Motion for Summary Judgment is GRANTED.
19 Plaintiffs’ Motion for Summary Judgment is DENIED.

20 21 **3. FINAL MATTERS**

22
23 Defendants argue that Plaintiffs’ CALCAR registration is invalid due to fraud on the
24 Patent Office. Because the Court has found that Defendants have not infringed Plaintiffs’ mark,
25 the Court need not address this question. Also, Defendants have argued that Plaintiffs have no
26 claim for monetary damages. Again, because the Court has granted Defendants’ Motion for
27 Summary Judgment, the Court need not address this question.
28

1 **DISPOSITION**

2
3 Because Defendants' Motion for Summary Judgment goes to the heart of Plaintiffs' case
4 and establishes that Plaintiffs have no viable claims, it is GRANTED as to all claims for relief.
5 Plaintiffs' Motion for Summary Judgment is DENIED.

6
7 **IT IS SO ORDERED.**

8 DATED: October 6, 2008

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12 Andrew J. Guilford
13 United States District Judge
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