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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SWARM, LLC,)	Case No. CV 10-03188 DDP (FFMx)
)	
Plaintiff,)	ORDER GRANTING DEFENDANTS' MOTION
)	TO CONFIRM FINAL ARBITRATION
v.)	AWARD
)	
MICAH A. COHEN et al.,)	[Dkt. No. 11]
)	
Defendants.)	
)	
_____)	

Presently before the court is Defendants' Motion to Confirm Final Arbitration Award.¹

I. BACKGROUND

Plaintiff Swarm, LLC ("Swarm") filed a complaint against Defendants Micah A. Cohen and his mother Nancy Sidonie Cohen for trademark infringement, false designation of origin, federal and state unfair competition, intentional interference with economic

¹Plaintiff's responsive papers are entitled "Plaintiff's Opposition to Motion to Confirm Final Arbitration Award and Motion to Vacate or Modify Final Arbitration Award." Because Plaintiff's arguments in support of a Motion to Vacate or Modify appear to be identical to Plaintiff's arguments against confirmation of the final arbitration award, the court's findings with respect to the Defendants' Motion to Confirm Final Arbitration Award shall equally apply to Plaintiff's Motion to Vacate or Modify Final Arbitration Award.

1 relations, breach of duty of loyalty, and declaratory judgment.
2 Swarm had hired Mr. Cohen to design a line of men's apparel under
3 the mark SHADES OF GREIGE. After more than two years, Mr. Cohen
4 resigned from Swarm and began to design clothing under the mark
5 SHADES OF GREY.

6 Plaintiff filed a complaint on April 28, 2010. The parties
7 later stipulated to hold a mediation followed by binding
8 arbitration before a JAMS arbitrator. On June 9, 2010, this court
9 ordered the matter to be resolved through binding arbitration if
10 mediation was not successful. The parties submitted to arbitration
11 before the Honorable George P. Schiavelli, U.S.D.J. (Ret.).
12 (Norris Decl. ¶ 4.)

13 After the matter had been referred to arbitration, Swarm moved
14 to add All Shades United, LLC ("All Shades") as an additional
15 defendant-respondent. All Shades is a company formed by Mr.
16 Cohen's parents and for which he now works. (Norris. Decl. ¶ 16.)
17 Additionally, Micah and Nancy Cohen filed an Answer and Cross-
18 Complaint for breach of contract, conversion, and an accounting,
19 naming Swarm and its principal, Jeff Port, as cross-defendants.
20 After prehearing discovery, prehearing motions, and an eleven-day
21 arbitration hearing, the Arbitrator issued an Interim Award on
22 March 27, 2012, followed by a Final Award on October 5, 2012.
23 (Norris Decl. ¶¶ 5,7.)

24 **II. LEGAL STANDARD**

25 "The Federal Arbitration Act, 9 U.S.C. §§ 1-16, enumerates
26 limited grounds on which a federal court may vacate, modify, or
27 correct an arbitral award. Neither erroneous legal conclusions nor
28 unsubstantiated factual findings justify federal court review of an

1 arbitral award under the statute, which is unambiguous in this
2 regard." Kyocera Corp. v. Prudential-Bache Trade Services, Inc.,
3 341 F.3d 987, 994 (9th Cir. 2003). The Act permits vacatur only
4 "(1) where the award was procured by corruption, fraud, or undue
5 means; (2) where there was evident partiality or corruption in the
6 arbitrators, or either of them; (3) where the arbitrators were
7 guilty of misconduct in refusing to postpone the hearing, upon
8 sufficient cause shown, or in refusing to hear evidence pertinent
9 and material to the controversy; or of any other misbehavior by
10 which the rights of any party have been prejudiced; or (4) where
11 the arbitrators exceeded their powers, or so imperfectly executed
12 them that a mutual, final, and definite award upon the subject
13 matter submitted was not made." 9 U.S.C. § 10(a). "[A]rbitrators
14 'exceed their powers' in this regard not when they merely interpret
15 or apply the governing law incorrectly, but when the award is
16 'completely irrational,' or exhibits a 'manifest disregard of
17 law.'" Kyocera Corp. V. Prudential-Bache Trade Services, Inc., 341
18 F.3d 987, 997, quoting French v. Merrill Lynch, Pierce, Fenner &
19 Smith, Inc., 784 F.2d 902, 906 (9th Cir. 1986) and Todd Shipyards
20 Corp. V. Cunard Line, Ltd., 943 F.2d 1056, 1059-60 (9th Cir. 1991).

21 **III. DISCUSSION**

22 Plaintiff opposes the Final Arbitration Award on the grounds
23 that the award was "based on a manifest disregard of the law."
24 (Opp. at 1.) In particular, Plaintiff asserts that the Arbitrator
25 disregarded the law with respect to the alter ego doctrine, the
26 finding that there was a written agreement, and the treatment of
27 the issue of fiduciary duty. (Opp. at 6.)

28

1 Plaintiff maintains that the alter ego doctrine is an "extreme
2 remedy" and that therefore "the court should err on the side of not
3 applying it. (Opp. at 4.) Plaintiff distinguishes this case from
4 Sonora Diamond Corp. V. Superior Court, 83 Cal. App. 4th 523, 538
5 (2000), cited by the Arbitrator in support of his application of
6 the alter ego doctrine, and argues that the case compels the
7 opposite finding. (Opp. At 4-5.) The court finds that Plaintiff
8 falls short of showing that the Arbitrator demonstrated a "manifest
9 disregard for the law." Even if Plaintiff were correct in its
10 interpretation of the alter ego doctrine, the Final Award would at
11 most be an incorrect application of law to facts.

12 Plaintiff asserts that "ruling that there was a written
13 agreement is a manifest disregard of the law of estoppel." (Opp.
14 at 6.) The court disagrees. It is clear from the Final Award that
15 the Arbitrator made findings of fact based on witness testimony and
16 legal analysis. (Decl. Norris, Exh. 1, pp. 4-613-14.)² Again, the
17 court finds that there was no manifest disregard of the law in this
18 aspect of the Final Award.

19 Finally, Plaintiff asserts that the Award "sets forth the
20 parties' positions on the issue of fiduciary duty but does not
21 decide it. Instead, the Award states that plaintiff Swarm relies
22 on the same evidence as the intentional interference claim. It
23 does not. The elements of the duty of loyalty are: Duty, breach,
24 and damages." (Opp. at 6.) Although Plaintiff is correct that the
25

26 ²For instance, the Arbitrator states, "I find particularly
27 probative the occasions that Port referred to the employment
28 agreement in other writings, and the manner in which Port conducted
himself in accordance with the terms of that Agreement until after
Cohen resigned." (Decl. Norris, Exh. 1, p.13.)

1 Award states that Plaintiff relies upon the same evidence in the
2 two claims, there is no reason to think that this indicates any
3 kind of legal error, much less "manifest disregard of the law."
4 The Arbitrator clearly set forth the elements of the breach of duty
5 of loyalty and determined that the evidence Plaintiff provided to
6 support its fiduciary duty claim - evidence that Mr. Cohen
7 allegedly misappropriated Plaintiff's designs and started a
8 competing clothing line with a confusingly similar name - was the
9 same evidence that it had provided for the intentional interference
10 claim. In both cases, the Arbitrator found that evidence to be
11 unconvincing. ("As discussed above, Cohen did not steal any of
12 Swarm's designs, and did not use a confusingly similar mark.")
13 (Decl. Norris, Exh. 1 at 31.)

14 IV. CONCLUSION

15 The court finds that Plaintiff has not established any grounds
16 upon which the court could vacate, modify, or correct the arbitral
17 award. Defendants' motion is GRANTED. The Final Award is hereby
18 confirmed.

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20 IT IS SO ORDERED.

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23 Dated: December 7, 2012


24 DEAN D. PREGERSON
25 United States District Judge
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