IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Greenbelt Division)

SPORT SQUAD, INC.,

Plaintiff,

v.

USA PICKLEBALL ASSOCIATION,

Defendant.

Case No. 8:24-cv-01712-PX

DEFENDANT USA PICKLEBALL ASSOCIATION'S
REPLY IN SUPPORT OF MOTION TO DISMISS

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INTRODUCTION

Imagine a car prototype that passes a safety organization's crash testing. Afterward, the car maker submits a final, "market" version of the car, complete with a model name, for separate approval. The car maker certifies to the safety organization that the market version is identical to the prototype, except for some minor, agreed-upon aesthetic tweaks. The "market" version is thus approved. Later, the car maker admits that it failed to disclose there was an illegal engine under the hood, that the car maker is now selling a different car to the public under the same model name, and that the publicly available car was *never* submitted for testing and approval, as required. Afterward, the car maker proceeds to chastise the testing agency for refusing to ignore the car maker's recently exposed errors and misstatements, refusing to excuse the car maker from obtaining approval for the publicly available car like every other car from every other car maker, and refusing to look the other way so that the car maker can display the testing agency's own stamp of approval on a car the agency never approved. Whether cars or pickleball paddles, this is not business responsibly transacted.

The Complaint is clear: Sport Squad submitted two "prototype" paddles to USAP for approval in September 2023, which USAP approved (the "Base Models"). Compl. ¶¶ 2, 23-26. In November and December 2023, Sport Squad submitted nine *incorrect* paddles to USAP for approval (the "Incorrect Paddles"). *Id.* ¶¶ 28-30, 60-62. Those paddles were erroneously approved in light of on Sport Squad's false affirmations that they were "identical" to the previously approved Base Models, except for shape and graphic design. *Id.* ¶¶ 32, 60-62; *see also* Doc. 17-6 (letter and submission with various affirmations). The paddles were not, however, identical. Instead, as Sport Squad admits, the paddles "contained an *impermissibly high* manufacturing variance for the thickness of the foam insert," which is hidden from view inside the paddle. Doc. 20 at 8 (emphasis added).

Approved or not, the Incorrect Paddles *were never sold to the public*. Compl. ¶¶ 6, 60-62. Rather, in December 2023, Sport Squad began manufacturing nine *different* versions of paddles that *had never been submitted* to USAP, affixing the "USA Pickleball Approved" logo on those paddles (the "Market Paddles"). *Id.* ¶ 40. Sport Squad began selling those unapproved Market Paddles to the public in April 2024. *Id.* ¶ 58.

In May 2024, Sport Squad realized that it had submitted the Incorrect Paddles to USAP, not the Market Paddles that it was selling to the public under the same model names. *Id.* ¶¶ 29, 32, 60-62; Opp. at 3. USAP therefore removed those paddle names from its "approved list." *Id.* ¶¶ 32, 65. After Sport Squad confessed its mistake, Sport Squad submitted the previously untested Market Paddles to USAP for testing. *Id.* ¶¶ 60-66. USAP found that the Market Paddles did not meet then-current surface roughness standards in numerous respects, among other issues, and denied approval. *Id.* ¶ 71; *see* Doc. 17-8 at 2.

Throughout the Opposition, Sport Squad seeks to draw attention away from the overarching problem by trying to create disputes over secondary issues that do not change the result of the motion to dismiss. Sport Squad also seeks to rewrite the allegations of its Complaint and draw the Court into a fallacy.[1] Throughout its brief, Sport Squad frames its arguments to suggest that the paddles it *sold* to the public were the paddles *approved* by USAP. Unwinding that fallacy is simple: just because Sport Squad manufactures two different paddles and calls them by the same name, *they do not become the same paddle*. The simple truth is that Sport Squad manufactured unapproved paddles with the "USA Pickleball Approved" logo due to its own error, and after it realized this error, Sport Squad sued USAP for Sport Squad's own error instead of removing the logo to sell them without stating "USA Pickleball Approved".

[1] Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in USAP's Motion.

There can be no dispute that Sport Squad fails to state a claim. *First*, Count 1 fails because the Complaint disproves Sport Squad's theory that USAP breached any implied contract term by "withdrawing" approval of the Incorrect Paddles in May 2024. The Market Paddles were not approved; only Incorrect Paddles (submitted under the same name) were approved. In short, USAP did not engage in actionable behavior by "revoking" approval of never-sold paddles, much less never-approved paddles.

Second, Sport Squad's promissory estoppel, negligent misrepresentation, and fraud claims all fail based because the allegations in the Complaint directly refute any allegation of reasonable reliance. Sport Squad received USAP approval for nine paddles but produced nine different ones. Sport Squad cannot plausibly allege reasonable reliance and impose civil liability on USAP when Sport Squad "accidentally" sent the "wrong" paddles to USAP for approval and then manufactured *different*, unapproved paddles as "USA Pickleball Approved."

Third, Sport Squad's negligent misrepresentation claim also fails because USAP does not owe a tort duty to Sport Squad based on the parties' commercial, quasi-contractual relationship, and Sport Squad has not alleged any independent basis for any duty owed to it by USAP.

Fourth, Sport Squad fails to identify any fraudulent misrepresentation made by USAP. The only alleged false statement identified by Sport Squad about "rigorous testing" was an after-the-fact press statement with no causal connection to Sport's Squad's actions. These allegations do not support the inference that USAP induced Sport Squad to mass-produce the wrong type of unapproved paddles based on Sport Squad's *own* mistake.

Finally, Sport Squad's tortious interference claims fails for multiple reasons. For one, the Complaint fails to allege a "wrongful" or "unlawful" act by USAP. USAP's actions do not rise to the level of fraud or criminality; they reflect a business decision focused on fairness of competition

in pickleball. Another reason the tortious interference claim fails is that Sport Squad fails to identify any specific contractual or business relationships with which USAP alleged interfered.

For the reasons set forth below and in its Motion, the Court should dismiss the Complaint with prejudice.

ARGUMENT

I. Sport Squad Fails to State a Claim for Breach of Implied Contract (Count 1).

As USAP has explained, Sport Squad fails to identify a definite contract and USAP's breach of that contract. In response, Sport Squad alleges that the Complaint supports an implied-in-fact contract based on two allegations: (i) USAP could not revoke approval of previously-approved paddles without providing 18-months' notice; and (ii) USAP must follow applicable rules when evaluating paddles submitted by Sport Squad for "similarity testing." Opp. at 10 (citing Compl. ¶¶ 141, 143, 144). But the Complaint conclusively demonstrates that neither of these theories states a claim.[2]

Sport Squad's first theory of breach—that USAP failed to give the allegedly required 18-month notice before revoking approval of its paddles—is easily disproven by the allegations in the Complaint. Sport Squad cites a rule (Rule 2.F.1) that allows USAP's board of directors to revoke approval of equipment on 18 months' notice "if the specified equipment is found to have been materially changed by the manufacturer or if the equipment materially degrades or changes under ordinary use so as to significantly alter the nature of the sport." *See* Opp. at 11; Compl. ¶¶ 53, 57, 70, 93-94, 112, 115, 117, 123, 143, 182; *see also* Doc. 17-3. Neither circumstance applies here.

[2] Sport Squad does not dispute that an implied-in-fact contract requires mutual assent. *Mohiuddin v. Doctors Billing & Mgmt. Sols., Inc.*, 196 Md. App. 439, 447-48, 9 A.3d 859, 864 (2010); *see also McCulley v. Banner Health*, 2024 U.S. Dist. LEXIS 85232, at *23-24 (D. Ariz. May 10, 2024). Yet, Sport Squad fails to respond to USAP's argument that the Complaint fails to allege mutual assent. Accordingly, Sport Squad has conceded this point. *See Fanucchi v. Enviva, Inc.*, 2024 WL 3302564, at *8 (D. Md. Jul. 3, 2024) (holding that failing to respond to an argument in opposition concedes the point). Without mutual assent, the Complaint cannot support an implied-in-fact contract.

The issue is not a "material change" by the manufacturer, or degradation under ordinary use. The issue is Sport Squad sent the *wrong* paddles, did not sell those paddles to the public, and instead sold a different paddle under the same model name.[3] This is outside the scope of Rule 2.F.1.

Furthermore, Sport Squad's entire theory of breach and damages rests on the assertion that USAP "revoked" its approval with respect to the nine paddles *actually sold* to the public (*i.e.*, the Market Paddles). That is not what happened. Sport Squad did not sell the Incorrect Paddles. Sport Squad tries to muddy the waters by arguing that it submitted "nine specific paddle ***types*** for similarity testing in November 2023" and that "those nine specific paddle ***types*** were approved by USAP[] in December 2023." Opp. at 11 (emphasis added). Sport Squad further argues that it "began selling those nine specific paddle ***types*** to the public starting in April 2024." *Id.* (emphasis added). Notably, the phrase "paddle type" appears nowhere in the Complaint. But more importantly, while Sport Squad tries to squeeze two different paddles into a single category, that is not what the Complaint alleges. The Complaint plainly sets forth ***three*** groups of paddles: the Base Models, the Incorrect Paddles, and the Market Paddles, and Sport Squad admits the Incorrect Paddles are different from the others. *Id.* ¶¶ 60-63; Opp. at 5.

Whittling down Sport Squad's Complaint to only the relevant allegations, the only question before the Court in evaluating the sufficiency of the Complaint is whether the nine *Market* Paddles, as manufactured and sold to the public, were ever approved by USAP.[4] The answer, based on the

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[3] Sport Squad attempts to argue that the first portion of this rule—that the "specified equipment is found to have been materially changed by the manufacturer"—applies here because it alleged that USAP claimed the market versions of the paddles contained more foam that the approved base models. However, the Market Paddles were never approved by USAP because they were not submitted to USAP for similarity testing until May 2024—after they were already being sold to the public—at which time, USAP found these versions did not comply with their standards. As explained *infra*, because the Market Paddles were never approved by USAP, Rule 2.F.1 was never triggered with respect to these specific paddles.

[4] While the *names* of the Market Paddles did appear on USAP's list of approved paddles, because USAP later discovered that Sport Squad was selling a *different* product than those it had approved (the Incorrect Paddles), USAP removed those paddle model names from the approved list. Compl. ¶¶ 11, 32, 63. For example, Sport Squad received approval for a paddle that it called the "Ben Johns Perseus 3 16mm," but any consumer who bought the paddle with

plain facts in the Complaint, is unequivocally no. Compl. ¶¶ 60-62. Thus, USAP could never have "revoked" its approval of the Market Paddles—whether on an 18-month basis or otherwise.

Sport Squad also contends that there was not a two-step approval process for the nine Market Paddles. Opp. at 2. Sport Squad's contention does not hold up to common sense. Only two Base Models were submitted and approved. Compl. ¶ 2. This immediately begs the question of how approving two paddles somehow equates to approving nine additional paddles. It also begs the question of why Sport Squad *submitted* nine additional paddles (twice) for approval if Sport Squad did not believe there was a two-step process to get those nine paddles approved. In short, Sport Squad cannot simultaneously invoke and dismiss the necessary approval procedures.

Sport Squad's second theory of breach—that USAP breached its obligations to conduct "similarity testing" according to its own rules—is equally unsupported. While Sport Squad quibbles over what it means to be "structurally and functionally identical,"[5] these arguments are irrelevant. The only relevant question is whether the Market Paddles—*at the time they were first submitted* to USAP for approval in May 2024—met USAP standards. They did not. As pleaded, in May 2024, six of the nine of Sport Squad's Market Paddles failed "average" surface roughness testing, while all nine of the paddles failed the updated "maximum" roughness test that came into effect on April 1, 2024. *Id.* ¶¶ 75-77, 79; *see* Doc. 17-8. Plaintiff's allegation that USAP "made up" the new "maximum" roughness specification is refuted by the documentary record,[6] which shows that USAP modified the Rule 2.E.2.a.1 long before Sport Squad submitted the new paddles.

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that name five months later was not buying an approved paddle (which was never mass-produced), but rather an unapproved paddle also called the "Ben Johns Perseus 16mm." *See id.* ¶¶ 30, 75.

[5] Sport Squad's arguments concerning variances—and the allegations in the Complaint detailing these variances (for example, allegations that these variances resulted in more compressible foam in the outer perimeter of the Market Paddles, *see* Compl. ¶ 87)—simply proves that these Market Paddles were *not* structurally and functionally identical to the Base Models, as required. *See, e.g.*, Compl. ¶¶ 3, 7, 19, 28, 64, 87, 140-41.

[6] Sport Squad contends that the "new surface roughness standard … was not mentioned in Joola's Complaint." Opp. at 8 n.4. On the contrary, Sport Squad expressly alleged that USAP "made up a new surface roughness rule," and even described the rule's requirements down to the micrometer. Compl. ¶¶ 76-78.

See Doc. 17-4. These Sports Squad allegations easily refute the second theory of breach.

Noticeably, Sport Squad has retreated from any suggestion that it lacked notice of modified Rule 2.E.2.a.1.[7] Instead, Sport Squad carefully asserts that USAP had not yet "published" the new rule in its official rulebook. Opp. at 8 & n.4. Publication in the rulebook is not a contractual term, express or implied. *See* Doc. 17-3 at 14 ("USA Pickleball reviews equipment testing standards periodically and, with proper notification to manufacturers, reserves the right to modify equipment specifications as needed to maintain the integrity of the game."). As a result, Sport Squad fails to plausibly allege that USAP did not follow its own rules.

The allegations of the Complaint also refute Sport Squad's dispute over USAP's equipment for testing surface roughness. While Sport Squad may dislike that equipment, the rulebook states in clear terms that USAP will be "[u]sing a Starrett SR160 or SR300 Surface Roughness Tester (or equivalent)" to "determine" surface roughness. Doc. 17-3 at Rule 2.E.2.a.1. In fact, Sport Squad concedes this is the tested used by USAP: USAP "measures surface roughness with a Starrett SR160 or SR300 Surface Roughness Tester." Compl. ¶ 81. In short, USAP complied with any alleged "understanding" regarding the method of testing for surface roughness.

In sum, Sport Squad failed to plead *any* breach of an implied in fact contract, or any damages resulting from these alleged breaches. Therefore, the Court should dismiss Count 1.

II. Sport Squad Fails to State a Claim for Promissory Estoppel (Count 4).

Sport Squad concedes that a promissory estoppel requires (1) a clear and definite promise; (2) where the promisor has a reasonable expectation that the offer will induce an action or forbearance on the part of the promisee; (3) which does induce actual or reasonable action or

[7] In footnote 3 of USAP's motion, USAP stated that "[i]f Sports Squad plans to suggest otherwise, USAP will provide the email to the Court," and maintains that position. The industry-wide communication was sent to Sport Squad on February 8, 2024.

forbearance by the promisee; and (4) causes a detriment which can only be avoided by enforcement of the promise. *Pavel Enters., Inc. v. A.S. Johnson Co.*, 342 Md. 143, 166, 674 A.2d 521, 532 (1996); *Malnar v. Embry-Riddle Aero. Univ. Inc.*, 2022 WL 3923525, at *2 (D. Ariz. Aug. 31, 2022).

Count 4 fails for the same reasons set forth in the prior section, which demonstrate the absence of a clear and definite promise broken by USAP. In Opposition, Sport Squad rewrites two elements of its promissory estoppel claim. Sport Squad now argues that it alleged USAP "promised that it would further approve paddles . . . that were *functionally and structurally identical* to already-approved base model paddles," *see* Opp. at 15 (emphasis added), which is not what the Complaint alleges. Its promissory estoppel claim alleges USAP would "approve additional paddles submitted by Plaintiff that were *substantially the same*" as the base models. Compl. ¶¶ 166, 169. Sport Squad's evolving understanding of the alleged "promise" demonstrates its unenforceability as "clear and definite." In fact, Sport Squad makes a point of arguing that the parties have a different understanding of what it means to be "functionally and structurally identical."

Furthermore, Sport Squad now writes that USAP "promised that [Sport Squad] could manufacture paddles in reliance on USAP[]'s approval of the September 2023 Paddles *and the November 2023 Paddles*," Opp. at 15, which is not what the Complaint alleges. *See* Comp. ¶ 168 ("Defendant approved Plaintiff's paddle designs in September 2023."); *see also id.* ¶¶ 27 (Plaintiff began "setting up manufacturing facilities to mass produce" paddles following September 2023 approval of the Base Models); *id.* ¶ 169 ("Plaintiff reasonably relied on Defendant's [September 2023] approval of its paddle designs by manufacturing nearly one hundred thousand paddles[.]"). Thus, although Sport Squad now tries to hinge its reliance on the approval of the Incorrect Paddles, the Complaint clearly disproves this theory, clearly demonstrating that Sport Squad began

preparation for and production of its nine Market Paddles immediately after it received approval in September 2023 for the two Base Models. *See id.*

But even if Sport Squad relied on the December 2023 approval of the Incorrect Paddles, the allegations demonstrate that such reliance was *unreasonable*. The Complaint sets forth that Sport Squad committed an "error" by submitting the wrong version of the paddles for certification and then manufactured a different, unapproved version of the paddles. *Id.* ¶¶ 6-7, 60-62; *see also id.* ¶¶ 62, 66 ("mistake"); *id.* ¶¶ 6, 61-62 ("accident[]"); *id.* ¶¶ 61, 63 ("mix up"); *see also* Opp. at 4, 5, 7, 13 ("error"); *id.* at 5 ("incorrect"); *id.* at 5 ("mix-up"); *id.* at 4, 16 ("impermissibly high [or large] manufacturing variance"). It is manifestly *unreasonable* to submit the "wrong" paddle to USAP for approval and then manufacture nearly 100,000 *different* paddles. *See, e.g.*, *Pavel*, 342 Md. at 168; *Queiroz v. Harvey*, 220 Ariz. 273, 275, 205 P.3d 1120, 1122 (2009*)* (stating the "cardinal rule" that a plaintiff "seeking equitable relief must come with clean hands").

Furthermore, Sport Squad has no response whatsoever to its multiple misstatements in its submissions to USAP, including: (a) "The submitted paddle will be identical to the paddle offered and sold to customers"; (b) "The submitted paddle will continue to meet Pickleball/IFP rule specifications as it continues to be produced and sold to customers"; (c) "After approval, if the submitted paddle is modified, I understand it will need to be resubmitted to USA Pickleball for testing"; and (d) "The only modifications we have made are the shape of the paddle and the surface artwork." Doc. 17-6. That silence confirms the unreasonableness of any alleged reliance on USAP.

Sport Squad's arguments about improved manufacturing variances between the Incorrect and Market Paddles is irrelevant. Manufacturing the wrong product is not reliance at all. Nevertheless, Sport Squad relied on its *own* mistake in manufacturing the Market Paddles—a mistake Sport Squad itself says it did not realize for six months, and for which Sport Squad cannot

fault USAP. Compl. ¶¶ 60-62. Any detrimental reliance thus resulted from *Sport Squad's* mistake, as well as the incorrect representations made in its submission to USAP, and not any conduct by USAP. *See id.* ¶¶ 60-62; Doc. 17-6.

For these reasons, the Court should dismiss Count 4.

III. Sport Squad Fails to State a Claim for Negligent Misrepresentation (Count 5) or Fraud (Count 6).

Like the promissory estoppel claim in Count 4, Sport Squad does not dispute that negligent misrepresentation and fraud require justifiable reliance. Opp. at 17. Sport Squad relies on the same defective allegations as its promissory estoppel claim to allege justifiable reliance for Counts 5 and 6. *Id.* at 17-18; *see also* Compl. ¶¶ 174-178, 180-87. Sport Squad's allegations thus fail for the exact same reasons as set forth in Part II above.

Sport Squad's negligent misrepresentation claim fails for the additional reason that USAP owes no duty of care to Sport Squad. Any alleged duty by USAP arises only from purported contractual obligations, which is insufficient. Although Sport Squad may allege a tort claim in the alternative to its quasi-contract claims, the "reasonable care" in Sport Squad's negligent misrepresentation claim is based on the same alleged obligations as its implied-in-fact contract and promissory estoppel claims in Counts 1 and 4: that USAP had a duty "to conduct any such testing using reasonable care and to communicate those test results to [Sport Squad] using reasonable care." Compl. ¶ 174. In other words, the only duty allegedly existing between USAP and Sport Squad is based on the assumption that there *is* a contract between their parties. But these facts alone do not, by themselves, create a tort duty. *See TECx Glob. Educ. Found. v. W. Nottingham Acad.*, 2023 WL 4764596, at *6 (D. Md. July 26, 2023) ("A contractual obligation, by itself, does not create a tort duty. Instead, the duty giving rise to a tort action must have some independent

basis.").[8] Other than the duties allegedly owed to Sport Squad via contract, Sport Squad has alleged *no other facts* to support any type of nexus required to impose a duty on USAP. *See Martin Marietta Corp. v. Int'l Telecomms. Satellite Org.*, 991 F.2d 94, 98-99 (4th Cir. 1992) (dismissing negligent misrepresentation claim where no duty exists because no special relationship of trust—such as physician, attorney, accountant—exists); *Baltimore Cnty. v. Cigna Healthcare*, 238 F. App'x 914, 922 (4th Cir. 2007) (requiring an "intimate nexus" between the parties in order to impose a duty on defendant); *State Farm Fire & Cas. Co. v. Amazon.com Inc.*, 2018 WL 1536390, at *3 (D. Ariz. Mar. 29, 2018) (dismissing negligent misrepresentation claim where plaintiff "fail[ed] to provide any facts that establish the existence of a duty"). The allegation that USAP is a "self-professed governing body," *see* Opp. at 18 (citing Compl. ¶ 174), does not establish the type of duty between USAP and Sport Squad that is recognized under tort law, as the caselaw above demonstrates. Without a duty owed to Sport Squad, its negligent misrepresentation claim fails for this reason as well.

Sport Squad's fraud claim fails for the additional reason that Sport Squad has not pled with particularity any alleged false statement made by USAP. *Nordstrom, Inc. v. Schwartz*, 2019 WL 4221475, at *4 (D. Md. Sept. 5, 2019). The *only* allegedly false statement identified by Sport Squad is that "USAP[] told [Sport Squad] that it would conduct 'rigorous testing' of its paddles and informed Sport Squad that it could mark the September 2023 Paddles and the November 2023 Paddles as 'USA Pickleball Approved.'" Opp. at 19. Sport Squad noticeably does not identify the date of this statement in the Complaint or the Opposition, which is already dispositive under Fed. R. Civ. P. 9(b). *See Nordstrom*, 2019 WL 4221475, at *4 (dismissing fraud claim for failing to identify the "time, place, and contents of the false representations," or "the identity of the person

[8] Moreover, even if a contractual relationship did, by itself, give rise to a duty, Sport Squad's breach of implied contract and promissory estoppel claims fail to state a claim; thus any duty based on those obligations fails as well.

making the misrepresentation and what [it] obtained thereby"). As USAP previously pointed out, Sport Squad apparently drew this quotation from an after-the-fact press release summarizing the parties' dispute. *See* Doc. 17-1 at 24. Sport Squad concedes that allegations related to statements made by USAP in or after May 2024 did not form the basis of its reliance in producing the Market Paddles. Opp. at 19-20. Thus, those statements must be ignored for purposes of determining whether Sport Squad reasonably relied on an alleged statement by USAP. Sports Squad identifies no other allegedly false statement.

Unable to allege any purportedly false statement by USAP from before the manufacturing process began in late December 2023—much less that any such statement was made "*for the purpose of defrauding*" Sport Squad—Sport Squad's fraud claim must be dismissed for failure to state a claim.[9] *Topline Sols., Inc. v. Sandler Sys., Inc.*, 2017 WL 1862445, at *33 (D Md. May 8, 2017); *see Megawatt Corp. v. Tucson Elec. Power Co.*, 1989 WL 95602, at *11 (D. Ariz. May 26, 1989).

For these reasons, the Court should dismiss Counts 5 and 6.

IV. Sport Squad Fails to State a Claim for Tortious Interference with Contractual Relations (Count 2) or Tortious Interference with Business Relations (Count 3).

Sport Squad does not dispute that its tortious interference claims require allegations of "independently wrongful" conduct. Opp. at 21; *see also Gabaldoni v. Washington Cnty. Hosp. Ass'n*, 250 F.3d 255, 263 (4th Cir. 2001); *see Neonatology Assocs., Ltd. v. Phoenix Perinatal Assocs. Inc.*, 216 Ariz. 185, 187, 164 P.3d 691, 693 (Ct. App. 2007); *Dube v. Likins*, 216 Ariz. 406, 413, 167 P.3d 93, 100 (Ct. App. 2007). Instead, Sport Squad attempts to shoehorn a number of allegations into the bucket of "wrongful conduct," and proposes new allegations that appear

[9] Sport Squad's allegations that USAP's "fraudulent purpose" was to allow Sport Squad's competitors to catch up to Sport Squad is unsupported by a single factual allegation. Opp. at 20. Once again, the law requires that each element of a fraud claim be pled with particularity. Wild speculation and conjecture are insufficient.

nowhere in the Complaint. Regardless, none of the allegations in the Complaint support the type of "independently wrongful" conduct required for a tortious interference claim.

To begin, Sport Squad has not pleaded any actionable wrongful conduct. The "wrongful" conduct to support a tortious interference claim must be independent of the effect it has on the parties' business relationship, and may include "violence or intimidation, defamation, injurious falsehood or other fraud, violation of the criminal law, and the institution or threat of groundless civil suits or criminal prosecutions in bad faith." *Gabaldoni*, 250 F.3d at 263; *see also Baltimore Sports & Social Club, Inc. v. Sport & Social, LLC*, 228 F. Supp. 3d 544, 552 (D. Md. 2017). None of the allegations in the Complaint satisfy this standard.

Sport Squad's argument that its allegations that USAP breached its duty fails to qualify for two reasons. First, as explained above, no such duty existed because any such duty was based on a purported contractual relationship between the parties. *See* Part III. Second, a breach of a contract with the plaintiff is insufficient to support the "wrongful conduct" requirement unless the defendant "committed such breach so that the defendant could obtain the benefit of the relationship with the plaintiff's customers." *Id.* (quoting *Volcjak v. Washington Cmty. Hosp. Ass'n*, 124 Md. App. 481, 723 A.2d 463, 479 (1999)). But the Complaint contains no such allegations, which is unsurprising because USAP is not a paddle manufacturer that could step into that relationship. Third, Sport Squad's allegations of fraud fail to state a claim and therefore cannot support "wrongful conduct" either. *See* Part III. Fourth, Sport Squad's allegation that USAP's actions were "based in part on its intention to protect other paddle manufacturers from having to compete with [Sport Squad's] new paddles," Compl. ¶¶ 152, 161, also does not meet the standard for "wrongful conduct." *See also Hobart-Mayfield, Inc. v. Nat'l Operating Comm. on Standards for Athletic Equip.*, 48 F.4th 656, 669 (6th Cir. 2022) ("protect[ing] brand credibility" is not a basis for a

tortious interference claim).

Sport Squad's final argument—that USAP's conduct was wrongful because it was "disparaging [to Sport Squad's] paddles" because USAP publicly advertised that Sport Squad's paddles were not "USAPA Pickleball Approved"—also fails to qualify as wrongful conduct. As explained more fully above, USAP has not made any false statements about Sport Squad's paddles. *See* Part III. The Market Paddles were *never* approved by USAP; rather, the "approval" concerned the submission of the Incorrect Paddles under the same name. Compl. ¶¶ 60-62, 66, 71. This is exactly the reason why Sport Squad had to submit the Market Paddles for approval in May 2024. Thus, USAP's statements were truthful. Moreover, Sport Squad has not alleged a claim for defamation. *Baltimore Sports & Social Club*, 228 F. Supp. 3d at 552. There is no other type of wrongful conduct pleaded. Therefore, Counts 2 and 3 fail on this element alone.

Sport Squad's tortious interference claims fail for the additional reason that Sport Squad has not identified the specific contracts or business relationship with which USAP allegedly interfered. To state a claim for tortious interference based on inducing a breach of contract, it is insufficient to allege in general terms that some contract somewhere existed. *Total Recon. Auto Ctr., LLC v. Allstate Ins. Co.*, 705 F. Supp. 3d 510, 518 (D. Md. 2023); *Cains v. Grassi*, 2017 U.S. Dist. LEXIS 10395, at *4-8 (D. Ariz. Jan. 24, 2017). With respect to the claim for tortious interference with prospective business relations, Sport Squad likewise must identify "a possible future relationship which is likely to occur, absent the interference, with specificity" or "specific transactions with bona fide purchasers that did not occur due to Defendant's conduct." *Aarow Elec. Sols. v. Tricore Sys., LLC*, 2024 WL 1443743, at *5 (D. Md. Apr. 3, 2024) (quoting *Baron Fin. Corp. v. Natanzon*, 471 F. Supp. 2d 535, 546 (D. Md. 2006)); *see also Nordstrom*, 2019 WL 4221475, at *3. Sport Squad has not identified a single contractual partner or possible future

relationship with specificity. Sport Squad attempts to excuse this pleading failure by pointing to vague allegations referencing "fitness clubs" and "existing customers," including "suppliers, distributors, vendors, and sponsored professions players," but it concedes that it "left the specific identities of these third parties" out of the Complaint.[10] Opp. at 22. Since the law requires identification of a contractual partner or possible future relationship with specificity, Sport's Squad's failure and refusal to so plead mandates dismissal of Counts 2 and 3 on this basis alone.

Finally, Sport Squad argues that USAP offered no justification for why the Market Paddles were not approved. But the Complaint alleges otherwise, clearly alleging that the Market Paddles failed for a variety of reasons, including the surface roughness test, when they were finally submitted to USAP in May 2024. *Id.* ¶¶ 72-90. USAP also attached the letter, attached by Sports Squad's own Complaint, communicating those reasons. Doc. 17-8. Further, Sport Squad admits that it was selling unapproved paddles to the public with a logo stating those paddles were "USA Pickleball Approved" when Sport Squad had never submitted the Market Paddles for approval. Compl. ¶¶ 40, 63. This representation misled the public. USAP was thus justified in correcting the representation to the public: that, in fact, the Market Paddles had never been approved.

CONCLUSION

The Court should dismiss the Complaint with prejudice.

Dated: September 10, 2024

By: */s/ Philip D. Bartz*

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[10] Because Sport Squad admits it did not identify the specific identities of its business relationships, USAP necessarily could not have been aware of those contracts or relationships, much less act with the specific intent to *induce* those parties to breach their contract or relationship with Sport Squad, further warranting dismissal.

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of September 2024, a copy of the foregoing was served via the Court's electronic filing system on all counsel of record.

/s/Philip D. Bartz
Philip D. Bartz