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United States District Court,
 D. New Jersey.
 Margaret BELEKIS, Helen M. Belekis, and Cheap
 Maggie, Inc., Plaintiffs,
 v.
 BURBERRY LTD., Polo Ralph Lauren Corp., et al.,
 Defendants.
No. Civ.A. 99-2964.

Dec. 14, 2001.

[John P. Bostany](#), The **Bostany** Law Firm, Newark,
 NJ, for plaintiffs.

OPINION

[CAVANAUGH, J.](#)

*1 This matter comes before the Court upon a motion by Plaintiffs to file a second amended complaint to include a claim for tortious interference, pursuant to [Federal Rule of Civil Procedure 15\(a\)](#). In accordance with [Federal Rule of Civil Procedure 78](#), no oral argument was heard. For the reasons set forth in this opinion, Plaintiffs' motion to amend is granted.

BACKGROUND

The facts in this matter are extensive, therefore only those facts relevant to the instant motion are included. This case arises out of a search for allegedly stolen merchandise conducted on June 24, 1997 at Cheap Maggie's, a retail discount clothing store in Hoboken, New Jersey. The Hudson County Prosecutor's office entered Plaintiffs' retail store with a warrant in search of stolen merchandise. *See* Plaintiffs' Amended Complaint and Demand for Jury Trial at 2. Plaintiffs allege that the search caused a serious disruption in their ability to conduct business on the day the search occurred and for a period of time thereafter. On the day in question, Plaintiffs assert that police officers prevented customers from entering the store and business neighbors were standing in the street staring. *See* Memorandum of Law in Support of Plaintiffs' Cross-Motion to Add a Tortious Interference Claim, ("Plaintiffs' Memorandum in Support"), at 3. Sometime after the search, Plaintiffs attempted to order new merchandise from selected Polo suppliers but the suppliers had

been instructed to not provide Cheap Maggie with Polo goods.

On or about June 24, 1999 Plaintiffs Margaret M. Belekis ("Maggie"), Helen M. Belekis ("Mrs.Belekis") and Cheap Maggie, Inc. ("Cheap Maggie's" or "store") filed a complaint against eleven defendants. Polo Ralph Lauren Corporation ("Polo") and Jose Panchi ("Panchi") are the only Defendants that are still parties to the litigation. On September 16, 1999, plaintiffs filed an amended complaint, seeking monetary and punitive damages for constitutional violations including the Fourth Amendment (unreasonable search and seizure) and conspiracy to violate the Fourth Amendment pursuant to the Civil Rights Act of 1964, [42 U.S.C. sections 1983](#) and [1988](#), violations of the New Jersey State Constitutional provisions on search and seizure, common law claims of intentional and negligent infliction of emotional distress, conversion, trespass and commercial disparagement, and for a declaratory judgment. *See* Plaintiffs' Amended Complaint and Demand for Jury Trial at 2.

Plaintiff now seeks to file a second amended complaint to include a tortious interference claim. It should be noted however, that Plaintiff's motion was originally submitted to Judge Lechner on November 9, 2000. At that time, the motion was not filed and entered on the court's docket. Discovery was completed on February 29, 2000. This chamber was unaware of the parties outstanding motion until recently. Therefore Plaintiff's motion to amend should be treated as if it was submitted in November, 2000.

DISCUSSION

*2 [Federal Rule of Civil Procedure 15\(a\)](#) gives a court discretion to allow amendment of a pleading once as a matter of course, and provides that leave to amend "shall be freely given when justice so requires." [Fed.R.Civ.P. 15\(a\)](#). After the first amendment of a pleading, a party may only amend thereafter "by leave of court or by written consent of the adverse party...." *Id.* Interpreting [Rule 15\(a\)](#), the Supreme Court stated:

[T]his mandate is to be heeded. If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared

reason--such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.--the leave sought should, as the rules require, be 'freely given.'

[Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 \(1962\).](#)

In [Heyl & Patterson International, Inc. v. F.D. Rich Housing of the Virgin Islands, Inc., 663 F.2d 419, 425 \(3d Cir.1981\)](#), cert . den. sub nom. [F.D. Rich Housing of the Virgin Islands, Inc. v. Gov't of the Virgin Islands, 455 U.S. 1018, 102 S.Ct. 1714, 72 L.Ed.2d 136 \(1982\)](#), the Third Circuit stated that undue prejudice is the "touchstone" for denial of leave to amend. Undue prejudice occurs when the non-moving party is "unfairly disadvantaged or deprived of the opportunity to present facts or evidence which it would have offered had the [moving party] been timely." *Id.* at 426 (citations omitted). Incidental prejudice is not a sufficient reason to deny leave to amend; rather, any resulting prejudice must be truly "undue." *Id.*

Absent a showing of undue prejudice to the non-moving party, "denial must be grounded in [the moving party's] bad faith or dilatory motives, truly undue or unexplained delay, repeated failure to cure a deficiency by amendments previously allowed or futility of amendment." *Heyl*, at 425; see also [Hewlett-Packard Co. v. Arch Assoc. Corp., 172 F.R.D. 151, 153 \(E.D.Pa.1997\)](#).

Based upon the applicable law, it is the finding of this Court that Defendants will suffer no undue prejudice if Plaintiffs' motion to file a second amended complaint is granted. There is no evidence that Plaintiffs' have dilatory motives or acted in bad faith. No additional discovery is necessary to present this claim at trial since Plaintiffs' amended complaint already asserts several similar causes of action in tort, such as: intentional infliction of emotional distress, negligent infliction of emotional distress, trespass and disparagement. Further, the damages sought in the complaint will not change with the addition of the claim of tortious interference. *See* Plaintiffs' Memorandum in Support at 2.

Plaintiffs were motivated to file the instant application because depositions completed at the end of discovery indicated that Polo Ralph Lauren Corporation was interfering with Plaintiffs' business relations. *See* Plaintiffs' Memorandum in Support at

1. The basis for this allegation is included in sworn affidavits and depositions available to both parties. [\[FN1\]](#) The Polo Defendants object to Plaintiffs' motion on the grounds that during the first status conference, Plaintiffs were informed by the Court to include all causes of action in the first proposed amendment of the complaint. Since Plaintiffs subsequently amended the complaint but neglected to include tortious interference, Defendants seek to preclude them from adding the claim after discovery in this matter was completed. *See* Defendants' Letter Brief Opposing the Plaintiffs' Cross-Motion at 13. Defendants' objections do not demonstrate the elements of undue prejudice which includes a showing that Defendants would be unfairly disadvantaged or deprived of an opportunity to properly respond to the claim.

[\[FN1\]](#) Plaintiffs reference the Affidavit of Michael Rosenberg, annexed as Exhibit B to the Nishimura Certification in Opposition to the Polo Motion for Summary Judgment and Margaret Belekis Transcript 2T:98-100; 2T:462:7-16.

CONCLUSION

*3 Based upon the foregoing, it is the finding of this Court that Plaintiffs' motion to file a second amended complaint to include tortious interference is granted.

Not Reported in F.Supp.2d, 2001 WL 34047386 (D.N.J.)

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