IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FORCE PARTNERS, LLC, Plaintiff, v. KSA LIGHTING & CONTROLS, INC.; ACUITY BRANDS, INC.; JIM WILLIAMS; and ASHLEY WILLIAMS, Defendants.	Case No. 1:19-cv-07776 Hon. Mary M. Rowland

KSA DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFF'S COMPLAINT

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PRELIMINARY STATEMENT

This Court should dismiss Plaintiff's Complaint in its entirety. Plaintiff Force Partners, LLC ("Plaintiff" or "Force Partners") brought this action in response to increased competitive pressure it faces from KSA Lighting & Controls, Inc. ("KSA")—one of its direct competitors in the commercial electrical lighting industry. While both Plaintiff and KSA sell to the same lighting distributors, Plaintiff now seeks to ward off a new incentive program that KSA is offering to those distributors. That program—which is designed to offer KSA's "best prices" and "services" to distributors—has yet to even be implemented. But rather than compete on price or service, Plaintiff—a self-described "new entrant" in the industry—has preemptively condemned KSA's proposed program as part of an alleged "multifaceted conspiracy" designed to "monopolize" the market. While these claims are baseless on their face, "the antitrust laws were passed for the protection of *competition,* not *competitors*" and here, Plaintiff's complaint fails to set forth the legal and factual predicates necessary to allege viable antitrust claims. *Brooke Grp. Ltd. v. Brown & Williamson Tobacco Corp*., 509 U.S. 209, 224 (1993) (internal quotation marks omitted).

Although Plaintiff complains of a so-called "conspiracy" to drive it out of the market, it bases this theory on KSA's unilateral invitation to its distributors to enter into the new incentive program. But *invitations* to enter into an incentive program are not actionable as conspiracies under the Sherman Act. *See, e.g.*, *Roland Mach. Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 393 (7th Cir. 1984) ("The mere announcement" of a dealer policy "would not establish an agreement" under Sherman Act.). And while Plaintiff seeks to label KSA's invitation as a "boycott," none of those allegations plausibly state actionable antitrust violations, and none plausibly explain how competition is foreclosed in a relevant market—an essential element of its antitrust claims. Indeed, no one is forced to enter into the program, and as conceded by Plaintiff's own allegations, there is

no requirement that any distributor stop doing business with Plaintiff. As such, all of Plaintiff's Section 1 claims should be dismissed.

Plaintiff's attempted monopolization and Clayton Act claims are equally flawed. They too are based on the theory that KSA's incentive program may create exclusive relationships with certain distributors, but ignore well-settled law holding that "vertical exclusive distributorships (like in this case) are presumptively legal." *Republic Tobacco Co. v. N. Atl. Trading Co.*, 381 F.3d 717, 736 (7th Cir. 2004); *see also Methodist Health Servs. Corp. v. OSF HealthCare Sys.*, 859 F.3d 408, 410 (7th Cir. 2017) ("[W]hat is more common than exclusive dealing?"). And while Plaintiff also claims that KSA made disparaging statements about Plaintiff's methods of selling lighting in Chicagoland, Plaintiff's theory is "outside the reach of the antitrust laws" as disparaging statements by a competitor represent competition—not "genuine anticompetitive effects." *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 851-52 (7th Cir. 2011). In short, none of Plaintiff's antitrust claims—including its state law claims that are doomed by the same defects that plague its federal claims—are actionable, and all of them should be dismissed.

Plaintiff is no doubt vexed by the prospect of losing business to KSA if, and when, the incentive program is implemented. But Plaintiff also has the option to compete and offer its own incentives, rather than have this Court micromanage the parties' sales strategies. Lower prices and better service do not violate the antitrust laws, and Plaintiff's hazy conspiracy and boycott allegations far from justify subjecting any of the Defendants to years of discovery. This Court should grant Defendants' motion and bring this litigation to a halt now.

FACTS AND ALLEGATIONS

Plaintiff's gripes against its competitor fail to state any plausible antitrust claim. Plaintiff, Force Partners, is a sales representative for a lighting and control manufacturer (Eaton Lighting),

among various others, in the Chicagoland area. (Compl. ¶ 20.) Plaintiff admits it is a "new entrant to the greater Chicagoland market." (*Id.* ¶ 3.) It was formed in 2017 after "Eaton convinced the two principals of Force Partners to form" the company as Eaton's "exclusive representative in the greater Chicagoland market." (*Id.* ¶ 38.)[1] Despite being a new entrant, Plaintiff alleges it is one of the "largest four sales representative suppliers of lighting and control products in the Chicagoland market" and has already captured 23% of the market. (*Id.* ¶ 29).

Plaintiff brought this suit in November 2019 alleging that Defendants KSA, its officers Jim and Ashley Williams (together, the "Individual Defendants" and collectively with KSA, the "KSA Defendants"), and Acuity Brands, Inc. engaged in a "conspiracy" to compete against Plaintiff. Like Plaintiff, KSA serves as a sales representative for approximately 150 lighting manufacturers, including Defendant Acuity. (*Id.* ¶ 21.)

Plaintiff competes with KSA for customers, often distributors. While the complaint claims there are "approximately 24 distributors who purchase lighting and control products both for commercial and industrial projects," (*id.* ¶ 2), in reality, there are dozens more. Nevertheless, the Complaint alleges these 24 distributors "represent as much as 90% of Force Partners' sales," and that KSA was supposedly "attacking" Plaintiff by making sales presentations to these distributors. (*Id.* ¶ 3.)

Specifically, Plaintiff alleges that starting in August 2019, Defendants made a series of "secretive PowerPoint presentations" to certain Chicago lighting distributors that included an offer to participate in a new authorized distributor program. (*Id.* ¶¶ 3, 45-49.) According to the Complaint, distributors that expressed interest in participating in that program would be termed "Partners," and would receive the best prices and services on the products KSA represents. (*Id.* ¶

[1] Eaton has not joined as a plaintiff in this suit.

51.) Plaintiff alleges that such Partners would agree to work primarily with KSA, including, for example, providing KSA the opportunity to match prices offered by other sales representatives. (*Id.* ¶¶ 52-53.) Distributors that chose not to participate as "Partners," according to Plaintiff, would be termed "Associates." (*Id.* ¶ 57.) Such Associates would still have full access to the entire line of products that KSA represents, but would not be eligible for the preferred pricing or ancillary services available to Partners. (*Id.*)

Plaintiff does not, and cannot, allege that any distributor has agreed to participate in the program as a Partner. The Complaint is abundantly clear that there are no agreements or contracts between Defendants and any distributor. (*Id.* ¶¶ 4, 59, 68.) Nor can there be—Plaintiff admits that as of the Complaint, KSA was still following up with "all or virtually all" of the relevant distributors asking if they wanted to participate. (*Id.* ¶ 66.) In short, Plaintiff is concerned it will lose sales if and when Chicago area distributors choose to become Partners under Defendants' program, and so it opted to file a baseless complaint rather than compete on the merits.

Based on KSA's meetings with these distributors and the so-called "secretive PowerPoint presentation," Plaintiff filed the instant Complaint alleging a group boycott in violation in Section 1 of the Sherman Act (Count I), a horizontal conspiracy in violation of Section 1 of the Sherman Act (Count II), attempted monopolization in violation of Section 2 of the Sherman Act (Count III), exclusive dealing in violation of Section 3 of the Clayton Act (Count IV), corresponding violations of the Illinois Antitrust Act (Count V), violations of the Illinois Uniform Deceptive Trade Practices Act ("IUDTPA") (Count VI), and tortious interference with prospective business relations (Count VII). For the reasons set forth below, all of Plaintiff's claims should be dismissed.

LEGAL STANDARD

To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), "a complaint must contain

sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Court does not, however, have to accept "labels and conclusions" or "'naked assertion[s]' devoid of 'further factual enhancement'" as true. *Id.* (quoting *Twombly*, 550 U.S. at 555, 557). In antitrust conspiracy cases, this standard requires that Plaintiff plead "enough factual matter (taken as true) to suggest that an agreement was made." *Twombly*, 550 U.S. at 556. The Seventh Circuit has further instructed that when evaluating complex claims, such as those based on antitrust statutes, "a fuller set of factual allegations may be necessary to show that relief is plausible" under the prevailing pleading standards. *Tamayo v. Blagojevich*, 526 F.3d 1074, 1083 (7th Cir. 2008). Strict adherence to such pleading standards is critical because "[w]hen a district court by misapplying the *Twombly* standard allows a complex case of extremely dubious merit to proceed, it bids fair to immerse the parties in the discovery swamp . . . and by doing so create[s] irrevocable as well as unjustifiable harm to the defendant [absent reversal on immediate appeal]." *In re Text Messaging Antitrust Litig.*, 630 F.3d 622, 625-26 (7th Cir. 2010).

ARGUMENT

I. Counts I and II Should Be Dismissed Because Plaintiff Cannot Plead Essential Elements of a Section 1 Sherman Act Claim

Plaintiff's assault on KSA's proposed authorized distributor program fails to state an actionable claim, much less one under Section 1 of the Sherman Act. To state a federal Section 1 conspiracy claim, a plaintiff must plead sufficient facts showing: "(1) a contract, combination, or conspiracy; (2) a resultant unreasonable restraint of trade in [a] relevant market; and (3) an accompanying injury." *Agnew v. Nat'l Collegiate Athletic Ass'n*, 683 F.3d 328, 335 (7th Cir. 2012). The Complaint fails to allege any of these essential elements.

A. Plaintiff Has Not—and Cannot—Allege an Agreement Under Section 1 of the Sherman Act

1. Count I Should Be Dismissed Because Defendants Are Incapable of Conspiring Under *Copperweld* and its Progeny

As a threshold matter, Count I should be dismissed because the so-called "co-conspirators"—KSA, its owners, and Acuity—are closely related individuals and entities that cannot legally conspire with each other. In the seminal case of *Copperweld Corp. v. Independent Tube Corp.*, the Supreme Court explained that only "separate economic actors pursuing separate economic interests" can be deemed co-conspirators under Section 1, and held that related companies pursuing common goals must be viewed as a single enterprise incapable of conspiring with itself. 467 U.S. 752, 769 (1984) (finding parent and subsidiary incapable of conspiracy under Section 1).

Here, none of the Defendants can be pled as "co-conspirators" under Section 1. The Individual Defendants are officers and owners of KSA, and therefore, constitute a single enterprise under *Copperweld*. *Id.* ("The officers of a single firm are not separate economic actors pursuing separate economic interests, so agreements among them do not suddenly bring together economic power that was previously pursuing divergent goals."); *BookXchange FL, LLC v. Book Runners, LLC*, No. 19 CV 506, 2019 WL 1863656, at *3 (N.D. Ill. Apr. 25, 2019) (dismissing Section 1 claim because company could not conspire with its co-founders and members); *Pudlo v. Adamski*, 789 F. Supp. 247, 251-52 (N.D. Ill. 1992), *aff'd*, 2 F.3d 1153 (7th Cir. 1993) (members of medical staff could not conspire with hospital, or each other). To that end, Jim and Ashley Williams—as officers of KSA—cannot legally conspire with KSA under the Sherman Act. *Copperweld*, 467 U.S. at 769.

Nor can any of the KSA Defendants conspire with Acuity because KSA is Acuity's closely related sales representative. Consistent with *Copperweld's* teachings, federal courts routinely hold

that a principal and its sales representative are incapable of conspiring under the Sherman Act. *See, e.g.*, *F.B. Leopold Co. v. Roberts Filter Mfg. Co.*, 882 F. Supp. 433, 446 (W.D. Pa. 1995), *aff'd*, 119 F.3d 15 (Fed. Cir. 1997) (corporation and independent sales representatives unable to conspire under Sherman Act); *Pink Supply Corp. v. Hiebert*, 788 F.2d 1313, 1316-17 (8th Cir. 1986) (manufacturer and sales representatives lacked conspiratorial capacity because "so closely intertwined in economic interest and purpose . . . as to amount to a unified economic consciousness incapable of conspiring with itself"); *Card v. Nat'l Life Ins. Co.*, 603 F.2d 828, 834 (10th Cir. 1979) (corporation and general agents "could not be regarded as conspirators"). KSA and Acuity uniformly serve the same economic interest—selling as many of Acuity's products as possible. Indeed, KSA and Acuity could no more form a conspiracy than Plaintiff and the brand it represents (Eaton Lighting). Thus, Plaintiff's attempt to concoct a "conspiracy" against its competitor, its owners, and the brand it represents (Acuity) should be rejected, and Count I should be dismissed.

2. Count I Should Also Be Dismissed Because Plaintiff Does Not Allege an Anticompetitive Agreement

Even if Defendants were capable of conspiring with each other under the Sherman Act, Count I should still be dismissed because it fails to allege any actionable agreement. *Twombly*, 550 U.S. at 556-57, 570 ("conclusory" allegations of a conspiracy are insufficient to state a claim; plaintiff must state "enough facts to state a claim to relief that is plausible on its face"). Although less than clear, Count I does not allege a typical horizontal conspiracy between competitors. Instead, Count I is styled as a "Group Boycott" and merely alleges that "Defendants *agreed between themselves* to deny services" to "Chicago-area distributors" if the distributors did business with Force Partners. (Compl. ¶ 75 (emphasis added).) But this allegation—based on the theory that Defendants boycotted the distributors themselves, not Plaintiff—collapses for three reasons.

First, Plaintiff pleads no facts plausibly suggesting that the KSA Defendants and Acuity

entered into any agreement for an unlawful purpose.[2] *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 768 (1984) (conspiracy requires separate actors who "had a conscious commitment to a common scheme designed to achieve an unlawful objective").[3] Far from a "conscious commitment to a common scheme," KSA is accused of simply making presentations and *offering* an opportunity for distributors to enter into an authorized distributor program—not an illegal, *ultra vires* conspiracy involving Acuity (the brand KSA represents). To be sure, Plaintiff alleges that KSA offered distributors the option to become "Partners" with KSA, meaning those distributors would receive KSA's best prices and services in exchange for limiting their business with other sales representatives. (Compl. ¶ 51.) But offering authorized distributor programs to customers is the very opposite of anticompetitive—it demonstrates competition by cutting prices. *Concord Boat Corp. v. Brunswick Corp.*, 207 F.3d 1039, 1061 (8th Cir. 2000) (rejecting exclusive dealing theory based on dealer discount programs, as "cutting prices in order to increase business often is the very essence of competition").[4] None of these allegations plausibly suggest an unlawful agreement to boycott distributors, or any behavior outside the normal relationship between a product manufacturer and sales representatives working together to increase sales with incentives.

Second, the allegation that KSA would "deny access" to its brands to distributors "unless those distributors terminated their relationship" with Force Partners is completely false. (*See* Compl. ¶ 75.) As Plaintiff's Complaint makes clear, KSA's authorized distributor program

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[2] Plaintiff does not—and cannot—allege a *per se* group boycott because those claims are limited to cases "involving horizontal agreements among direct competitors." *NYNEX Corp. v. Discon, Inc.*, 525 U.S. 128, 135 (1998).

[3] Plaintiff admits that Defendants did *not* deny distributors who chose not to participate in the authorized distributor program access to any brands represented by KSA, including Acuity. (*See* Compl. ¶¶ 4, 57.)

[4] Notably absent from the Complaint—and underscoring the manufactured nature of the unlawful "agreement" between Defendants—are any allegations of agreements between the KSA Defendants and the approximately 150 other manufacturers KSA represents, each of whom would benefit from the authorized distributor program in the exact same manner as Acuity. (*See* Compl. ¶¶ 4, 21.)

provides all distributors the option of being "Partners" or "Associates," which gives the distributors the choice of how much commitment they wish to make. (*Id.* ¶¶ 51, 57 (alleging that if distributors wanted to be "Associates," they would simply "not be able to get KSA's brands' 'best prices' or attendant services").) But at no time did—nor is it alleged that—KSA ever refused to deal with a distributor who wished to continue doing business with Plaintiff. Accordingly, Plaintiff's allegation in Paragraph 75 is factually inconsistent with its other allegations, and does not plausibly state a "group boycott" claim.

Finally, KSA has every right to unilaterally offer authorized distributor programs to its customers, just as it has every right to deal with only those distributors that wish to follow its terms. KSA is perfectly within its rights to announce that it will stop dealing with any distributors that do not wish to be partners in its program. *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919) (Sherman Act "does not restrict the long recognized right of trader . . . to exercise his own independent discretion as to parties with whom he will deal"); *Goldwasser v. Ameritech Corp.*, 222 F.3d 390, 397 (7th Cir. 2000) ("Part of competing like everyone else is the ability to make decisions about with whom and on what terms one will deal."). In short, there is no allegation plausibly suggesting that the KSA Defendants and Acuity entered into an unlawful agreement to boycott distributors. Hence, Count I should be dismissed.

3. Count II Should Be Dismissed Because Plaintiff Alleges Only an Invitation to Enter Into an Authorized Distributor Program, Which is Not an Agreement Under the Sherman Act

Count II similarly fails to allege an agreement. That claim alleges that KSA's authorized distributor program "effectively require[d] distributors of electrical lighting equipment to deal exclusively with Defendants" and "Defendants obtained agreements from the distributors." (Compl. ¶¶ 11, 83, 84). Unlike Count I, Count II appears to allege an *actual* conspiracy with distributors to boycott Plaintiff. This Count fails both factually and legally.

Factually, Count II fails to state a claim because Plaintiff repeatedly alleges that no contract has been offered to any distributor, (*id.* ¶¶ 4, 59, 68), and so Defendants could not possibly have "obtained agreements from the distributors." (*See also id.* ¶ 66 ("In recent weeks, Jim Williams has *followed up with all or virtually all of the distributors asking if they are going to participate* in KSA's boycott scheme." (emphasis added)).)

Count II is legally insufficient as well. The crux of that claim is that KSA offered distributors the option to become "Partners" with KSA, meaning those distributors would receive KSA's best prices and services in exchange for limiting their business with other sales representatives. (*Id.* ¶ 51.) But that unilateral *invitation* to each distributor does not constitute an *agreement*, much less an antitrust violation. *See Greater Rockford Energy & Tech. Corp. v. Shell Oil Co.*, 998 F.2d 391, 396 (7th Cir. 1993) ("Plaintiffs have failed to show a [Section] 1 violation because they have not presented evidence tending to show an agreement to restrain trade."). The Seventh Circuit has explained that mere invitations to dealers to follow a supplier's policy or guideline is not actionable as a Section 1 claim. *See Roland Mach.*, 749 F.2d at 393. In *Roland Machinery*, the Seventh Circuit found allegations even stronger than Plaintiff's were insufficient to warrant even a preliminary injunction:

> Assume that [defendant] made clear to [plaintiff] and its other dealers that it wanted only exclusive dealers and would exercise its contract right to terminate, immediately and without cause, any dealer who took on a competing line. The mere announcement of such a policy, and the carrying out of it by canceling [plaintiff] or any other noncomplying dealer, *would not establish an agreement*. It would be a classic example of the conduct permitted by *United States v. Colgate & Co.*, 250 U.S. 300, 305-06 (1919).

Id. (emphasis added) (citation omitted); *see also id.* ("The fact that [the defendant] was hostile to dealers who would not live and die by its product . . . and . . . cancel[ed] a dealer who did the thing to which it was hostile, does not establish an agreement, but if anything the opposite: a failure to agree on a point critical to one of the parties."). Similarly, Plaintiff cannot make the leap that

KSA's *offer* to distributors to join its authorized distributor program constitutes an *agreement* with distributors to boycott.

Here, the offer to provide incentives to distributors—including "best prices" and "services"—represents robust competition, not a conspiracy in violation of Section 1. *Concord Boat*, 207 F.3d at 1061 (rejecting exclusive dealing theory based on dealer discount programs, as "cutting prices in order to increase business often is the very essence of competition"); *Virgin Atl. Airways Ltd. v. British Airways PLC*, 257 F.3d 256, 266 (2d Cir. 2001) ("[E]ven with monopoly power, a business entity is not guilty of predatory conduct through excluding its competitors from the market."); *Broadcom Corp. v. Qualcomm Inc.*, No. 05 CV 3350, 2006 WL 2528545, at *16 (D.N.J. Aug. 31, 2006), *aff'd in part, rev'd in part and remanded*, 501 F.3d 297 (3d Cir. 2007) (dismissing exclusive dealing claim on dealer "discounts, economic incentives, and other rewards"). Accordingly, Plaintiff comes nowhere close to alleging any actionable agreement under Section 1, and thus, Counts I and II should be dismissed.

B. Force Partners Failed to Plead That the Invitation to Enter Into an Alleged Exclusive Deal Caused a Restraint of Trade Within Relevant Product and Geographic Markets

Both Counts I and II suffer from another pleading deficiency—Plaintiff has failed to allege that KSA's invitations to enter into an authorized distributor program *unreasonably* restrained trade in any market. This element should be judged under the rule of reason because Plaintiff does not allege a horizontal agreement between competitors, but rather a vertical restraint between Acuity, KSA, and KSA's owners—*i.e.*, a restraint "between firms at different levels of distribution." *Ohio v. Am. Express Co.*, 138 S. Ct. 2274, 2284 (2018); *see also Phil Tolkan Datsun, Inc. v. Greater Milwaukee Datsun Dealers' Advert. Ass'n, Inc.*, 672 F.2d 1280, 1284 (7th Cir. 1982) ("[T]he rule of reason is the standard traditionally applied to most anticompetitive practices challenged under [Section] 1 of the Sherman Act."). Under this evaluation, "the plaintiff carries

the burden of showing that an agreement or contract has an anticompetitive effect on a given market within a given geographic area." *Agnew*, 683 F.3d at 335; *see also Texaco Inc. v. Dagher*, 547 U.S. 1, 5 (2006) ("[T]his Court presumptively applies rule of reason analysis, under which antitrust plaintiffs must demonstrate that a particular contract or combination is in fact unreasonable and anticompetitive before it will be found unlawful.").

Plaintiff alleges no "unreasonable restraint" under the rule of reason in either Counts I or II. There are no plausible allegations that any so-called "agreement" with Acuity or with any distributor harms competition in a relevant market.[5] Despite Plaintiff's attempt to spin KSA's proposed authorized distributor program into an agreement to induce a boycott, nowhere in the Complaint does Plaintiff allege—nor can it—that any distributor actually entered into an *agreement* with KSA to not do business with or "boycott" Plaintiff. (*See* Compl. ¶ 66 (alleging that Jim Williams was still following up "with all or virtually all of the distributors asking if they are going to participate" in the program).) With no "agreement," there can be no "restraint on trade" and thus, there is no actionable Section 1 claim.

Moreover, even if there is a properly pled agreement with distributors to enter into KSA's authorized distributor program, Plaintiff still has not pled that the program forecloses competition. *Broadcom*, 2006 WL 2528545, at *16 (arrangement to provide licensees discounts or incentives for not using competitor's product not unlawful exclusive dealing arrangement because buyers not foreclosed from purchasing competitor's product). While Plaintiff wishes to describe KSA's

[5] Notably, Plaintiff does not plead a relevant product market, which by definition, precludes Plaintiff from alleging a Section 1 rule of reason claim. *See Concord Assocs., L.P. v. Entm't Properties Tr.*, No. 12 CIV. 1667 ER, 2014 WL 1396524, at *10 (S.D.N.Y. Apr. 9, 2014), *aff'd*, 817 F.3d 46 (2d Cir. 2016) (dismissing Section 1 claim where plaintiff "failed to properly plead a relevant market"). As discussed more fully in Section II.B, while Plaintiff alleges that the relevant geographic market is comprised of sixteen counties in Illinois and three in Indiana, it offers no definition of the requisite distinct product market that is relevant in these counties. (Compl. ¶ 19).

authorized distributor program as an invitation to enter into an exclusive deal, "[e]xclusive dealing arrangements violate antitrust laws only when they foreclose competition in a substantial share of the line of commerce at issue." *Republic Tobacco*, 381 F.3d at 737-38. This requires Plaintiff to show "that [the arrangement] is likely to keep at least one significant competitor of the defendant from doing business in a relevant market," and that "the probable (not certain) effect of the exclusion will be to raise prices above (and therefore reduce output below) the competitive level." *Roland Mach.*, 749 F.2d at 394. But here, the challenged activity is an offer to join an authorized distributor program. It is completely voluntary. And irrespective of whether a distributor chooses to become a "Partner," the distributor would still have access to KSA's manufacturers' products and other competing lines. (Compl. ¶ 57.) Therefore, it is not exclusionary. *See Chicago Studio Rental, Inc. v. Illinois Dep't of Commerce*, 940 F.3d 971, 979 (7th Cir. 2019) (dismissal of Section 1 and 2 claims where plaintiff "does not allege that it was entirely excluded from the market").

As *Broadcom* stated, even if a "deal" provides incentives to purchase one product over competitors, "it does not foreclose the purchase of another company's" product. *Broadcom*, 2006 WL 2528545, at *16. Thus, like any typical rewards or mileage program, Plaintiff cannot claim that KSA's program forecloses distributors from purchasing Plaintiff's products. *See Concord Boat*, 207 F.3d at 1059 (manufacturer's discount program not in any way exclusive when program did not require a commitment for any specified time and free to walk away to competitors); *Stitt Spark Plug Co. v. Champion Spark Plug Co.*, 840 F.2d 1253, 1257-58 (5th Cir. 1988) (dealer incentives for dropping competing lines not exclusive dealing where no evidence the distributor could not still stock competitor products); *Beverage Mgmt., Inc. v. Coca-Cola Bottling Corp.*, 653 F. Supp. 1144, 1154 (S.D. Ohio 1986) (incentive program encouraging exclusivity in supplier's brand not unlawful because retailer free to sell competing brands). Hence, Plaintiff failed to allege

anything to indicate that KSA's conduct impacted or "foreclose[d] competition in a substantial share" of any relevant market, and therefore, all claims based on allegations that KSA invited exclusive agreements should be dismissed. *Republic Tobacco*, 381 F.3d at 738; *see also Methodist Health*, 859 F.3d at 410 ("no evidence that Saint Francis's exclusive contracts have a significant exclusionary effect"); *Dickson v. Microsoft Corp.*, 309 F.3d 193, 209 (5th Cir. 2002) ("[T]here is no basis in [plaintiff]'s complaint for concluding that either of the two licensing agreements . . . are likely to foreclose a significant share of the relevant software markets.").[6] Both Counts I and II should be dismissed.

II. Count III Should Be Dismissed Because Plaintiff Fails to Allege That Defendants Attempted to Monopolize Any Market

Count III for "attempted monopolization" fares no better than its prior two antitrust claims. To state an attempted monopolization claim, a plaintiff must "adequately plead that a defendant (1) engaged in predatory or anticompetitive conduct, (2) specifically intended to acquire monopoly power, and (3) reached a stage based on defendant's actions and market position where there is a dangerous probability defendant will achieve an actual monopoly." *Int'l Equip. Trading, Ltd. v. Illumina, Inc.*, No. 17 C 5010, 2018 WL 3861575, at *3 (N.D. Ill. Aug. 14, 2018) (citing *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 456 (1993)).

Here, Plaintiff alleges that Defendants *attempted* to monopolize a market by (1) inviting

[6] While the challenged authorized distributor program clearly does not foreclose competition, Plaintiff is wrong in suggesting it "knows of no procompetitive effects" of Defendants' program. (Compl. ¶ 71.) To the contrary, Plaintiff alleges that distributors participating in KSA's authorized distributor program would allow KSA to match Plaintiff's prices when quoting "multiple-name specification bids," (*id.* ¶ 53), the precise kind of competition that "[d]istributors prefer . . . because it provides the lower costs," (*id.* ¶ 62). More clearly, Plaintiff alleged that distributors would have to allow KSA to meet any lower prices offered by Plaintiff, meaning the end customer would *benefit* from Defendants' program because it could choose from more products at lower prices. This is the essence of competition, and underscores that Plaintiff's Complaint is nothing more than the grumblings of a disgruntled competitor. *See Brillhart v. Mutual Medical Ins., Inc.*, 768 F.2d 196, 200-01 (7th Cir. 1985) (antitrust laws protect competition, not competitors, rejecting antitrust claims where "plaintiffs' real complaint . . . [is] their failure to make more money").

distributors into its authorized distributor program, and (2) disseminating false information. Nowhere, however, does the Complaint identify any exclusionary conduct, define the market, or properly allege a dangerous probability that Defendants will succeed in monopolizing any relevant market. Count III should be dismissed.

A. Plaintiff Fails to Allege Any Exclusionary or Anticompetitive Conduct Sufficient to State an Attempted Monopolization Claim

1. Plaintiff Fails to Plead That KSA's Invitation to Enter Into Alleged Exclusive Relationships is Exclusionary, and Therefore Fails to Allege the Requisite Anticompetitive Conduct Element

As stated above, KSA's invitations to distributors do not constitute exclusive agreements or "boycotts"—much less exclusionary conduct actionable under Section 2. But even so, "vertical exclusive distributorships (like in this case) are presumptively legal." *Republic Tobacco*, 381 F.3d at 736; *see also Methodist Health Servs.*, 859 F.3d at 410.

As with its Section 1 claims, Plaintiff makes no allegations that any invitations—or even any agreements—related to Defendants' authorized distributor program would foreclose competition in any product market that Plaintiff alleges—an essential element of its Section 2 claims. *Republic Tobacco*, 381 F.3d at 737-38 ("[E]xclusive dealing arrangements violate antitrust laws only when they foreclose competition in a substantial share of the line of commerce at issue."). Nor could they, because as previously explained, there is nothing in the authorized distributor program that prevents distributors from purchasing products from other competitors. And while Plaintiff calls the program exclusionary, it makes no allegations about how many distributors actually participate in the relevant geographic market or how many of them are alleged to have exclusive agreements with KSA. (Compl. ¶ 25 ("In the greater Chicagoland market, over 75% of trade in the relevant market is handled by approximately 24 distributors.").) The Complaint is silent as to how many distributors sell exclusively Acuity or KSA products versus

products of other manufacturers, the percentage of the distributors in the market that are—or would be—allegedly foreclosed from selling Plaintiff's products, or the sizes or market shares of these distributors.

Hence, Plaintiff fails to allege anything to indicate that Defendants' conduct impacted or "foreclose[d] competition in a substantial share" of any relevant market, and therefore, any monopolization claim based on Defendants' invitations to enter into its authorized distributor program or exclusive agreements with distributors should be dismissed. *Republic Tobacco*, 381 F.3d at 737-38. *See also Methodist Health*, 859 F.3d at 410 ("no evidence that Saint Francis's exclusive contracts have a significant exclusionary effect"); *Dickson*, 309 F.3d at 209 ("[T]here is no basis in [plaintiff]'s complaint for concluding that either of the two licensing agreements . . . are likely to foreclose a significant share of the relevant software markets.").

2. Plaintiff's Allegations that KSA Made False or Disparaging Statements to Dealers Fail to Supports its Monopolization Claim

Plaintiff's remaining monopolization allegation—that KSA made a false statement or disparaged Force Partners—is insufficient to state a claim as a matter of law. Plaintiff claims that KSA told distributors that "Force Partners was bypassing distributors to make sales directly to end-users and contractors, thereby denying sales and profits to distributors." (Compl. ¶ 48). But that statement, even if made and somehow viewed as "disparaging," is not actionable. Disparaging statements of a competitor fall "outside the reach of the antitrust laws, however critical they may be of a competitor's product or business model." *Mercatus Grp.*, 641 F.3d at 851.

The Seventh Circuit has explained that "claims based on one competitor's disparagement of another should presumptively be ignored" in evaluating antitrust claims. *Id.* at 851-52 (internal quotation marks omitted); *see also id.* ("[E]ven false statements about a competitor serve to set the stage for competition." (internal quotation marks omitted)). This is because "[f]alse statements

about a rival's goods do not curtail output in either the short or the long run," *Sanderson v. Culligan Int'l Co*., 415 F.3d 620, 623 (7th Cir. 2005), and so they are irrelevant to the kind of anticompetitive conduct that the antitrust laws are intended to curb.

Here, even if made, KSA's alleged statement that Plaintiff "bypass[es] distributors" at times is not only benign, but comes nowhere close to alleging an attempted monopolization claim. KSA's alleged statement may reflect strong competition between Plaintiff and KSA, but such "[c]ommercial speech is not actionable under the antitrust laws." *Id*. at 624; *see also id.* at 623 ("Antitrust law condemns practices that drive up prices by curtailing output. False statements about a rival's goods do not curtail output in either the short or the long run. They just set the stage for competition in a different venue: the advertising market." (citations omitted)). As such, Plaintiff has offered no exclusionary or anticompetitive conduct sufficient to state a Section 2 monopolization claim, and therefore, Count III should be dismissed.

B. Plaintiff Does Not Allege the "Dangerous Probability of Success" Element

Plaintiff also fails to plausibly plead another crucial element of its attempted monopolization claim—that KSA's invitations create a "dangerous probability of success" of achieving a monopoly in a given market. Pleading a "dangerous probability of establishing a monopoly in a particular market requires more than allegations of merely unfair or predatory conduct; instead, the antitrust plaintiff must also prove the defendant has market power in a relevant market and that the market power will tend to approach monopoly power if the alleged unlawful conduct remains unchecked." *Int'l Equip. Trading, Ltd. v. Illumina, Inc.*, 312 F. Supp. 3d 725, 731 (N.D. Ill. 2018) (internal quotation marks omitted). Plaintiff fails on multiple fronts.

First, Plaintiff does not plead a relevant *product* market, which by definition, precludes Plaintiff from alleging there was a dangerous probability of monopoly in that mystery market. *See Rohlfing v. Manor Care, Inc.*, 172 F.R.D. 330, 345-47 (N.D. Ill. 1997) (dismissing Section 2 claim

where plaintiff "failed to [sufficiently] allege a relevant market"); *Reapers Hockey Ass'n, Inc. v. Amateur Hockey Ass'n Illinois, Inc.*, 412 F. Supp. 3d 941, 952 (N.D. Ill. 2019) ("failure to allege the existence of a relevant commercial market is fatal to both [Section 1 and Section 2] claims"); *Queen City Pizza, Inc. v. Domino's Pizza, Inc.*, 124 F.3d 430, 436 (3d Cir. 1997) ("Where the plaintiff fails to define its proposed relevant market with reference to the rule of reasonable interchangeability and cross-elasticity of demand, . . . the relevant market is legally insufficient and a motion to dismiss may be granted."). While Plaintiff alleges that the relevant *geographic* market is comprised of sixteen counties in Illinois and three in Indiana, it offers no definition of the distinct product market that is relevant in these counties. (Compl. ¶ 19.) KSA is merely a sales agent—like Plaintiff—and functions to place orders for electrical lighting made by distributors. (*See id.* ¶¶ 3, 17.) But Plaintiff has not alleged what the product market is. Is it electrical lights in the Chicagoland area? All commercial lights? A market for distributors? The only hint Plaintiff offers is a stray reference to Defendants "cut[ting] off access to . . . the dominant greater Chicagoland market distributors." (*Id.* ¶ 85a.)

Worse yet, none of the market shares referred to in Plaintiff's Complaint appear to consistently relate to a *relevant product market*. Plaintiff vaguely alleges that:

- KSA represents between 40% and 70% *of some distributors' lighting and control business*. (*Id.* ¶¶ 4, 26, 60.)
- KSA accounts for 59.5% "of specified and approved products *of the top four firms in the project/specification market*."[7] (*Id.* ¶ 29 (emphasis added).)
- KSA accounts for 90% of the sales *in three of the nineteen counties at issue*. (*Id.* ¶ 40.)

[7] The Complaint does not identify the combined share of these four firms in the project/specification market, nor does it allege the share of the total lighting market made up of project/specification sales or how either of those are related to access to distributors. (*See* Compl. ¶ 23 (explaining that sales representatives sell to both "[s]tock and flow distributors" and "[p]roject/specification distributors").)

But none of these allegations define a relevant product market, much less describe how there is a "dangerous probability" it will be monopolized. Plaintiff's failure to allege any relevant product market necessarily then precludes it from alleging a dangerous probability of monopolizing that undefined market. *Int'l Equip. Trading, Ltd. v. AB SCIEX LLC*, No. 13 C 1129, 2013 WL 4599903, at *5 (N.D. Ill. Aug. 29, 2013) ("Since the Court holds that IET has failed to sufficiently allege a relevant market, it will not, and cannot, address whether IET has sufficiently alleged market power for purposes of pleading a dangerous probability of monopolization.").

Nor does Plaintiff offer any description on why KSA is a "dangerous" threat to monopolize any relevant product market (whatever that market is). Plaintiff alleges in conclusory fashion that "[t]he large market share represented by Defendants indicates a dangerous probability of success," (Compl. ¶ 91h), but offers no other allegations relating to why there is a dangerous probability that Defendants will successfully monopolize any relevant market.

Accordingly, Plaintiff has failed to state a Section 2 claim, and Count III should be dismissed. *Rohlfing*, 172 F.R.D. at 345-47 (dismissing Section 2 claim for failing to sufficiently plead a relevant market); *Hon Hai Precision Indus. Co. v. Molex, Inc.*, No. 08 C 5582, 2009 WL 310890, at *3 (N.D. Ill. Feb. 9, 2009) (dismissing Section 2 claim "because [plaintiff] did not allege a 'dangerous probability' that [defendant] may obtain monopoly power in the relevant market").

III. Count IV Should Be Dismissed Because Section 3 of the Clayton Act Addresses Only Contracts for Goods

Plaintiff's Clayton Act Section 3 claim should be dismissed for the same reason its Section 1 claims fail—there is no allegation of a contract or agreement that violates the antitrust laws. Section 3 prohibits certain exclusive *contracts* for the sale of *goods*. 15 U.S.C. § 14; *see also Dos Santos v. Columbus-Cuneo-Cabrini Med. Ctr.*, 684 F.2d 1346, 1352 n.11 (7th Cir. 1982) ("Since

section 3 relates only to exclusive dealing contracts for the sale of goods, plaintiffs seeking to challenge exclusive dealing arrangements for the provision of services must premise their claims on section 1 of the Sherman Act."). But as described above, there are no contracts—as Plaintiff repeatedly states—between Defendants and distributors, and so Plaintiff cannot state a claim under Section 3. (Compl. ¶¶ 4, 59, 68.) Accordingly, Plaintiff's Clayton Act claim fails for the independent reason that it has not alleged an exclusive contract for *goods*.[8]

Moreover, "[i]n order to prove a [Section] 3 claim, [a plaintiff] must show that the likely effect of [the defendant's] exclusivity agreements is to substantially decrease competition." *Republic Tobacco*, 254 F. Supp. 2d at 1004. Plaintiff made no such showing here. According to the Complaint, distributors that declined to participate in Defendants' authorized distributor program could still purchase products manufactured by KSA's contracted manufacturers, (Compl. ¶ 57), those that did participate could still quote Force Partners' manufacturers' products, (*id.* ¶ 53), and at worst would have to "curtail"—not cease—business with Force Partners, (*id.* ¶ 4). Without any actual exclusion, there can be no substantial lessening of competition. *Alarm Detection Sys. v. Orland Fire Prot. Dist.*, 129 F. Supp. 3d 614, 635 (N.D. Ill. 2015) (finding plaintiff not actually excluded from market could not state antitrust claims). As Plaintiff has not sufficiently alleged any actual exclusion, its Clayton Act claim (Count IV) should be dismissed.

[8] Even assuming there were contracts between Defendants and distributors that pertained to goods—which are not alleged—Plaintiff's claims would still fail. "A determination of the relevant market is essential under § 3 of the Clayton Act, as it is under the Sherman Act." *Republic Tobacco, L.P. v. N. Atl. Trading Co.*, 254 F. Supp. 2d 985, 1004 (N.D. Ill. 2002) (citing *Tampa Electric Co. v. Nashville Coal Co.*, 365 U.S. 320, 329 (1961)); *see also Dos Santos*, 684 F.2d at 1352 ("In the context of exclusive dealing arrangements, this means that the plaintiff can prevail only by showing that the agreement in question results in a substantial foreclosure of competition in an area of effective competition, that is, in a relevant market."). As described above, Plaintiff did not sufficiently allege a relevant antitrust market, and so its Clayton Act claim must fail.

IV. Count V Should Be Dismissed Because Illinois Antitrust Act Claims Are Evaluated Under the Same Standards as Federal Antitrust Claims

Plaintiff's Illinois Antitrust Act claims (Count V) fail for the same reasons as the federal antitrust claims. The Illinois Antitrust Act expressly requires harmonization with the federal antitrust laws. 740 Ill. Comp. Stat. 10/11 ("When the wording of this Act is identical or similar to that of a federal antitrust law, the courts of this State shall use the construction of the federal law by the federal courts as a guide in construing this Act."). When an Illinois Antitrust Act provision is substantially similar to a federal antitrust law, courts look to the application of the federal counterpart to guide analysis of the state law claims. *State of Ill., ex rel. Burris v. Panhandle E. Pipe Line Co.*, 935 F.2d 1469, 1479-80 (7th Cir. 1991) ("Illinois law provides that its courts should use the construction of federal antitrust law by federal courts to guide their construction of those state antitrust laws that are substantially similar to federal antitrust law."). More simply, if the federal claims are dismissed, the equivalent state claims should be dismissed. *VBR Tours, LLC v. Nat'l R.R. Passenger Corp.*, No. 14-CV-00804, 2015 WL 5693735, at *16 (N.D. Ill. Sept. 28, 2015) ("Illinois Antitrust Act claims will stand or fall with federal . . . claims based on the same underlying facts and legal theories." (internal quotation marks omitted)).

The same holds true here. Plaintiff asserts claims under 740 ILCS 10/3 (2) and (3), (Compl. ¶¶ 105, 107), which are substantially similar to, and construed in the same ways, as Sherman Act Sections 1 and 2, respectively. *Hannah's Boutique, Inc. v. Surdej*, 112 F. Supp. 3d 758, 765 n.7 (N.D. Ill. 2015). Plaintiff also asserts claims under 740 ILCS 10/3 (4), (Compl. ¶ 108), which is substantially similar to, and construed in the same ways as, Clayton Act Section 3. *Ray Dancer, Inc. v. DMC Corp.*, 594 N.E.2d 1344, 1350 (Ill. App. Ct. 1992). Accordingly, for the same reasons

that Plaintiff's federal claims fail, these state law claims should likewise be dismissed.[9]

Finally, Plaintiff asserts claims under 740 ILCS 10/3 (1), again claiming that *per se* analysis is warranted. (Compl. ¶¶ 103-04.) But Plaintiff cannot state a cause of action under this provision, which "is *expressly limited* to agreements between two classes of persons: (a) those who are competitors and (b) those persons who, but for a prior agreement, would be competitors." 740 Ill. Comp. Stat. 10/3 Bar Committee Comments–1967 (emphasis added). "Section 3(1) does not reach vertical agreements." *Id.*; *see also Sportmart, Inc. v. No Fear, Inc.*, No. 94 C 4890, 1996 WL 296643, at *17 (N.D. Ill. June 3, 1996). As Defendants are not alleged to be, and never would be, competitors of one another, they cannot enter any agreement that would be subject to scrutiny under 740 ILCS 10/3 (1). Plaintiff's 740 ILCS 10/3 (1) claim should be dismissed.

V. Count VI Should Be Dismissed Because Defendants Did Not Disparage Plaintiff Within the Meaning of the IUDTPA

This Court should dismiss Plaintiff's baseless claim under the IUDTPA. Plaintiff claims that KSA "disparag[ed] the goods, services, or business of Force Partners," but fails to identify an actionable disparaging statement. (Compl. ¶¶ 111-13.) In fact, its entire claim is based on only two sentences in the Complaint:

> KSA claimed that Force Partners was bypassing distributors to make sales directly to end-users and contractors, thereby denying sales and profits to distributors. This claim was false, and KSA knew or should have known it was false.

(*Id.* ¶ 48.) Neither of these sentences are disparaging, and neither state a claim under the IUDTPA. That statute only prohibits a person engaged in his or her business from "disparag[ing] the goods, services, or business of another by false or misleading representation of fact." 815 Ill. Comp. Stat.

[9] While 740 ILCS 10/3 (4) does differ slightly from Section 3 of the Clayton Act because it allows for claims based on a contract for services, this claim still fails for all of the independent reasons described in Section III.

510/2(a)(8).[10] Despite the statutory language, Illinois courts have repeatedly held that "[b]ecause Section 2(8) codifies common law commercial disparagement, . . . claims require a plaintiff to allege that a defendant published untrue or misleading statements that disparaged the plaintiff's *goods or services*." *Evanger's Cat & Dog Food Co., Inc. v. Thixton*, 412 F. Supp. 3d 889, 903 (N.D. Ill. 2019) (emphasis added) (internal quotation marks omitted); *see also Organ Recovery Sys., Inc. v. Pres. Sols., Inc.*, No. 11 C 4041, 2012 WL 116041, at *6 (N.D. Ill. Jan. 16, 2012) ("The statements, however, must specifically disparage a product or service and not just attack the reputation of the business or the person selling it."). Here, there is no allegation that KSA disparaged Plaintiff's goods or services, and so Plaintiff's IUDTPA claim fails.

Moreover, a statement is "considered commercially disparaging" only if it "accuse[s] a businessman of outright dishonesty or reprehensible business methods in connection with his goods." *Unique Coupons, Inc. v. Northfield Corp.*, No. 99 C 7445, 2000 WL 631324, at *5 (N.D. Ill. May 16, 2000) (internal quotation marks omitted). At worst, KSA's alleged statement suggests that Plaintiff used an alternative sales channel. This in no way suggests "outright dishonest[y] or "reprehensible business methods." *Unique Concepts, Inc. v. Manuel*, 669 F. Supp. 185, 190 (N.D. Ill. 1987) (commercial disparagement claim dismissed where statements could be reasonably construed to mean something other than a charge of reprehensible conduct).

Finally, even if KSA's statement could be construed as disparaging within the meaning of the IUDTPA, Plaintiff did not meet Rule 9(b)'s heightened pleading standard. "[T]rade disparagement claims under [Section 2(a)(8) of] the UDTPA" are subject to Rule 9(b) "because, as is true in the instant case, allegations of false or misleading statements tend to sound in fraud or mistake." *See Nakajima All Co., Ltd. v. SL Ventures Corp.*, No. 00 C 6594, 2001 WL 641415, at

[10] The IUDTPA allows only for injunctive relieve and "does not provide a cause of action for damages." *Greenberg v. United Airlines*, 563 N.E.2d 1031, 1036 (Ill. App. Ct. 1990).

*6 (N.D. Ill. June 4, 2001). "Under Rule 9(b), . . . IUDTPA . . . []claims must allege 'the identity of the person making the misrepresentation, the time, place, and content of the misrepresentation, and the method by which the misrepresentation was communicated.'" *CardioNet, Inc. v. LifeWatch Corp.*, No. 07C 6625, 2008 WL 567031, at *3 (N.D. Ill. Feb. 27, 2008) (quoting *Bankers Trust Co. v. Old Republic Ins. Co.*, 959 F.2d 677, 683 (7th Cir. 1992)). Here, even the most generous reading of Plaintiff's IUDTPA allegations cannot impute a time, place, or method to the alleged misrepresentation, and so Plaintiff's claim fails as a matter of law. *See id.* (dismissing IUDPTA claim because the "absence of essential details renders these [claims] deficient"). As such, Plaintiff's IUDPTA claim should be dismissed.

VI. Count VII Should Be Dismissed Because Defendants' Authorized Distributor Program is Protected by the Privilege of Competition

Lastly, Plaintiff's claim for tortious interference fails as a matter of law. Plaintiff alleges that Defendants tried to persuade its customers to purchase lighting products through KSA instead of Plaintiff. But those communications reflect competition—not a tort. *Speakers of Sport, Inc. v. ProServ, Inc.*, 178 F.3d 862, 865 (7th Cir. 1999) ("There is in general nothing wrong with one [competitor] trying to take a client from another . . . . That is the process known as competition . . . . Competition is not a tort . . . ."). "A plaintiff seeking to plead a cause of action for tortious interference with . . . prospective economic advantage must plead absence of privilege or sufficient facts to constitute actual malice." *Chicago Show Printing Co. v. Sherwood*, No. 92 C 309, 1992 WL 175577, at *2 (N.D. Ill. July 14, 1992). Here, Plaintiff has done neither.

Despite Plaintiff's unsupported assertions, Defendants' conduct is protected by the privilege of competition. (*See* Compl. ¶ 122.) "Under Illinois law, commercial competitors are privileged to interfere with one another's prospective business relationships provided their intent is, at least in part, to further their businesses and is not *solely* motivated by spite or ill will."

Imperial Apparel, Ltd. v. Cosmo's Designer Direct, Inc., 882 N.E.2d 1011, 1019 (Ill. 2008) (emphasis added). The Complaint here repeatedly makes clear that Plaintiff and KSA are competitors, and that the purpose of the authorized distributor program was to promote the sales of the products KSA represents—not out of spite or ill will. (*See, e.g.*, Compl. ¶¶ 17-21 (Force Partners and KSA are competitors); *id.* ¶¶ 4, 52-53 (Partners would allow competitive price matching on KSA's manufacturers' products on spec bids and would only sell KSA's manufacturers' products out of inventory); *id.* ¶ 45 (KSA was offering distributors "monetary inducements" to promote its manufacturers' products); *id.* ¶ 51 (the authorized distributor program would offer distributors Defendants' "'best prices' and services").) Accordingly, all of Defendants' discussions surrounding the authorized distributor program are protected by the privilege of competition, and Plaintiff's tortious interference claim must be dismissed.

CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiff's Complaint in its entirety pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Respectfully submitted,

Dated: February 10, 2020

By: */s/ James F. Herbison*

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on February 10, 2020, the foregoing KSA DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFF'S COMPLAINT was filed electronically with the Clerk of Court using the CM/ECF system. Copies of the document will be served on all counsel of record automatically by operation of the Court's MC/ECF filing system.

Dated: February 10, 2020 By: */s/ James F. Herbison*