

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

HYUNDAI MOTOR AMERICA, INC., a California corporation, HYUNDAI MOTOR COMPANY, a Korean corporation <p style="text-align:right">Plaintiffs,</p> <p style="text-align:center">v.</p> <p>RYDELL CHEVROLET, INC., a Delaware corporation, and DOES 1 through 10, inclusive,</p> <p style="text-align:right">Defendants.</p>	CASE NO. 6:15-cv-02041 EJM (JSS) DEFENDANT RYDELL CHEVROLET, INC.'S MOTION TO DISMISS COMPLAINT PURSUANT TO RULE 12(b)(6)
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Defendant Rydell Chevrolet, Inc. (“Rydell”), by and through its attorneys, moves to dismiss this cause of action pursuant to Federal Rule of Civil Procedure 12(b)(6). As grounds therefore, Rydell states as follows:

1. On February 5, 2015 Plaintiffs Hyundai Motor America, Inc. and Hyundai Motor Company brought this action against Rydell in U.S. District Court in the Central District of California.
2. On May 27, 2015 this action was transferred, upon Rydell’s motion, from the U.S. District Court in the Central District of California to the U.S. District Court Northern District of Iowa.
3. On June 24, 2015 Defendant Rydell filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).
4. On July 8, 2015 in response to Defendant’s motion, Plaintiffs filed an amended complaint (hereinafter “First Amended Complaint” or “FAC”).

5. In response to the current action, Rydell now moves to dismiss the Complaint in its entirety and simultaneously files herewith a brief in support of its Motion to Dismiss.

6. As stated more fully in Rydell's brief, Plaintiffs' Complaint fails to state a claim upon which relief can be granted. In order to be a grey market good, a good must either be illegally imported from overseas, or must be manufactured domestically with the intent to be sold overseas. Here, as set forth in the attached Declaration of Matt Halbur ("Halbur Dec."), the inventory of Hyundai parts acquired by Rydell was acquired *domestically* from a distributor in Michigan, who, on information and belief, obtained them from Hyundai's own parts factory in Alabama. Plaintiffs cannot reasonably allege or establish that the accused goods are "grey market" imports or goods *at all*. The entire pleading basis of Plaintiffs' Complaint is false.

7. Moreover, Plaintiffs' Fourth Cause of Action, namely its federal trademark dilution claim, cannot state a plausible claim for relief since Plaintiffs' own products, no matter where they are headed, cannot be claimed by Plaintiffs to be so shoddy, unwholesome, or unsavory as to harm their own reputation.

8. Finally, the Court should decline to exercise supplemental jurisdiction over Plaintiffs' pendent state law and state common law claims (*i.e.*, Fifth, Sixth, Seventh, and Eighth Causes of Action) pursuant to 28 U.S.C. § 1367(c). Per Section 1367(c), a court may decline to exercise supplemental jurisdiction over a claim if the district court dismissed all claims over which it has original jurisdiction. Upon dismissal of Plaintiffs' Lanham Act claims, Plaintiffs' pendent state law and state common law claims should be dismissed as well, which in any case suffer from the same substantive defects as Plaintiffs' federal claims.

WHEREFORE, Rydell respectfully requests this Court dismiss Plaintiffs' Complaint in its entirety with prejudice

Dated: July 24, 2015

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**Attorneys for Defendant
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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2015 I filed the foregoing with the Clerk of Court using the ECF system which will send notification of such filing to all attorneys and parties of record.

/s/ Stephen J. Holtman