STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

INFUSION, INC., a Michigan corporation,

Plaintiff/Counter-Defendant,

vs.

OLIVIA GONZALES, an emancipated minor; DOMINIQUE GONZALES, an individual; DAVID GONZALES, an individual; and CHACHI GONZALES LLC, an unincorporated company,

Defendants,

and

GUADALUPE GONZALES, an individual; and CHACHIMOMMA, INC., an unincorporated company,

Defendants/Counter-Plaintiffs and Cross-Plaintiffs,

vs.

OLIVIA GONZALES, an emancipated minor; and DOMINIQUE GONZALES, an individual,

Cross-Defendants.
_____/

Case No. 12-10712-CKB

HON. CHRISTOPHER P. YATES

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

On December 23, 2014, the Court issued an opinion and order resolving the parties' cross-motions for summary disposition. On January 13, 2015, Plaintiff Infusion, Inc. ("Infusion") filed a motion requesting reconsideration of one aspect of the Court's ruling. Although Infusion has made a strong argument, the Court concludes that its motion for reconsideration must be denied.

As a general rule, MCR 2.119(F) permits relief in the form of reconsideration only when the moving party "demonstrate[s] a palpable error by which the court and the parties have been misled and show[s] that a different disposition of the motion must result from correction of the error." See MCR 2.119(F)(3). To be sure, "courts are permitted to revisit issues they previously decided, even if presented with a motion for reconsideration that offers nothing new to the court." See Hill v City of Warren, 276 Mich App 299, 307 (2007). But MCR 2.119(F)(3) strongly suggests that something in the motion must impel the Court to conclude that its chosen outcome is so erroneous that it must be rectified.

Plaintiff Infusion contends that the Court erred in resolving a counterclaim predicated upon the Michigan Uniform Trade Secrets Act ("MUTSA"), MCL 445.1901, *et seq.* As the Court noted, the patterns and designs for ChachiMomma pants may be protected pursuant to the MUTSA, which identifies a "pattern" as a potential trade secret. See MCL 445.1902(d). But Infusion asserts that the patterns and designs at issue here cannot constitute trade secrets because they are the subject of a patent, and therefore no longer a viable trade secret. In other words, Infusion insists that patent protection and trade-secret protection are mutually exclusive. Our Court of Appeals has observed – albeit in an unpublished decision – that "[w]hen a patent is granted, the patent holder's property right in the trade secret ceases prospectively" because the "'patent is a legal disclosure with the right to a limited, temporary monopoly granted as the reward for disclosure.'" Taylor v Kochanowski, No 289660 (Mich App July 8, 2010) (unpublished decision). This reasoning provides substantial support for Infusion's position that no MUTSA claim is available here. But our Court of Appeals has also cautioned that the viability of a trade-secret claim in the face of a challenge based upon the loss of secrecy ordinarily must be left to the jury, Whitesell Int'l Corp v Whitaker, No 287569, slip

op at 13-15 (Mich App Jan 18, 2011) (unpublished decision), so the Court shall err on the side of caution and allow the MUTSA counterclaim to proceed. In doing so, however, the Court recognizes that the MUTSA counterclaim must be built upon a trade secret other than the contents of the patent issued for the ChachiMomma pants. With that caveat, the Court shall deny Infusion's motion for reconsideration.

IT IS SO ORDERED.

Dated: February 17, 2015

HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge