

2014 WL 2142216

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This case was not selected for publication in the Federal Reporter. Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Ninth Circuit Rule 36-3. (Find CTA9 Rule 36-3) United States Court of Appeals, Ninth Circuit.

TRENCHES, INC., a California corporation; et al., Plaintiffs–Appellants,
v.

HANOVER INSURANCE COMPANY, a New Hampshire corporation, Defendant–Appellee.

No. 12–56642. | Argued and Submitted
May 16, 2014. | Filed May 23, 2014.

Attorneys and Law Firms

Michael Dylan Henshaw, Anthony L. Lanza, Esquire, Lanza & Smith, Irvine, CA, for Plaintiffs–Appellants.

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Appeal from the United States District Court for the Central District of California, Andrew J. Guilford, District Judge, Presiding. D.C. No. 8:12–cv–00627–AG–RNB.

Before: PREGERSON and NGUYEN, Circuit Judges, and TIGAR, District Judge.*

Opinion

MEMORANDUM**

*1 Trenches appeals the district court's judgment dismissing its suit against Hanover Insurance Company (“Hanover”), Trenches's liability insurer. Trenches claims that Hanover wrongfully refused to defend it against a third-party lawsuit. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The policy's breach of contract exclusion precluded coverage of any potentially covered claim “arising out of” Trenches's alleged breach of the Franchise Agreements and Settlement Agreement. In California, the phrase “arising out of” is construed broadly, even if in an exclusion, to mean “originating from,” “flowing from,” “incident to,” or “having a connection with.” *Davis v. Farmers Ins. Group*, 134 Cal.App.4th 100, 106–07, 35 Cal.Rptr.3d 738 (2005) (quoting *Fibreboard Corp. v. Hartford Accident & Indem. Co.*, 16 Cal.App.4th 492, 503–04, 20 Cal.Rptr.2d 376 (1993)). Here, the underlying complaint filed against Trenches specifically alleged that Trenches violated its contractual obligations by continuing to use the third party's mark and trade dress. Thus, the claims against Trenches fall within the exclusion for claims “arising out of” a breach of contract.

Finally, the district court did not err in denying Trenches's request for judicial notice. *See* Fed.R.Evid. 201.

AFFIRMED.

Footnotes

* The Honorable Jon S. Tigar, District Judge for the U.S. District Court for the Northern District of California, sitting by designation.

** This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36–3.