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8   UNITED STATES DISTRICT COURT

9   CENTRAL DISTRICT OF CALIFORNIA

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12   FASHION NOVA, LLC,   CV 22-6127-RSWL-RAOx

13   Plaintiff,   **ORDER re: MOTION TO DISMISS** [17]

14   v.

15   BLUSH MARK, INC., ET AL.,

16   Defendants.

17

18

19   Plaintiff Fashion Nova, LLC, ("Plaintiff") brought

20   the instant Action against Defendants Blush Mark, Inc.

21   ("Defendant Blush Mark") and Blush Mark Outfitters, Inc.

22   (collectively, "Defendants") alleging that Defendants

23   infringed on Fashion Nova's copyrights and violated

24   17 U.S.C. §§ 1202(a) and (b) of the Digital Millennium

25   Copyright Act by intentionally removing copyright

26   management information ("CMI") from Plaintiff's works.

27   Currently before the Court is Defendants' Motion to

28

1 Dismiss [17].

2 　　Having reviewed all papers submitted pertaining to

3 this Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:**

4 the Court **GRANTS** Defendant's Motion to Dismiss **with**

5 **leave to amend.**

6 　　　　　　　　　　I.　　BACKGROUND

7 **A.　Factual Background**

8 　　Plaintiff and Defendants are fashion brands that

9 compete with one another.　First Am. Compl. ("FAC")

10 at ¶ 25, ECF No. 9.　Both parties market themselves and

11 sell their products through their respective e-commerce

12 websites.　Id. at ¶ 27.

13 　　Plaintiff alleges that Defendants willfully

14 infringed on Plaintiff's copyrights in various product

15 images displayed on Plaintiff's website and

16 removed/altered the CMI identifying those images in

17 violation of 17 U.S.C. §§ 1202(a) & (b).　Id. at ¶¶ 30,

18 35-37; see generally FAC, Ex. A, ECF No. 9-1.

19 Specifically, Plaintiff alleges that Defendants

20 intentionally and wrongfully stole Plaintiff's product

21 images from Plaintiff's website and then used those

22 images on Defendants' website to market and sell their

23 competing products.　FAC ¶ 3.　Plaintiff asserts that

24 its product images are accompanied by Plaintiff's name

25 and logo that identify Plaintiff as the owner of the

26 copyrights in those images.　Id. at ¶ 18.　Moreover,

27 Plaintiff states that it assigns identifying file names

28 to these product images.　Id. at ¶ 20.

1   Plaintiff contends that after Defendants downloaded
2   digital copies of the product images, they removed the
3   file names assigned to the images and proceeded to
4   distribute the product images with Defendants' company
5   name and/or logo so as to falsely identify themselves as
6   the copyright owner. Id. ¶¶ 43-45. Plaintiff sent a
7   cease-and-desist letter to Defendant Blush Mark
8   demanding it stop the unauthorized use of Plaintiff's
9   product images. Id. ¶ 48. Defendants, however,
10 allegedly continued to infringe on Plaintiff's product
11 images. Id. ¶¶ 36-38.
12   Plaintiff thus seeks (1) injunctive relief; (2) a
13 damages award to compensate Plaintiff for the diversion
14 of sales and damage to its business by Defendants'
15 illicit activities; and (3) an award of Defendants' ill-
16 gotten profits and benefits. Id. ¶ 3.
17 **B.   Procedural Background**
18   Plaintiff filed its Complaint [1] on August 29, 2022,
19 and later filed an FAC [9] on September 7, 2022.
20 Defendants filed the instant Motion to Dismiss [17] on
21 December 12, 2022. Plaintiff opposed [24] the Motion on
22 January 5, 2023, and Defendants replied [25] on
23 January 17, 2023.
24   **II.   DISCUSSION**
25 **A.   Legal Standard**
26   Federal Rule of Civil Procedure ("Rule") 12(b)(6)
27 allows a party to move for dismissal of one or more
28 claims if the pleading fails to state a claim upon which

1   relief can be granted. A complaint must "contain
2   sufficient factual matter, accepted as true, to state a
3   claim to relief that is plausible on its face."
4   Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quotation
5   omitted). Dismissal is warranted for a "lack of a
6   cognizable legal theory or the absence of sufficient
7   facts alleged under a cognizable legal theory."
8   Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699
9   (9th Cir. 1988) (citation omitted).
10   In ruling on a 12(b)(6) motion, a court may
11 generally consider only allegations contained in the
12 pleadings, exhibits attached to the complaint, and
13 matters properly subject to judicial notice. Swartz v.
14 KPMG LLP, 476 F.3d 756, 763 (9th Cir. 2007); see also
15 White v. Mayflower Transit, LLC, 481 F. Supp. 2d 1105,
16 1107 (C.D. Cal 2007), aff'd sub nom. White v. Mayflower
17 Transit, L.L.C., 543 F.3d 581 (9th Cir. 2008). ("unless
18 a court converts a Rule 12(b)(6) motion into a motion
19 for summary judgment, a court cannot consider material
20 outside of the complaint (e.g., facts presented in
21 briefs, affidavits, or discovery materials")). A court
22 must presume all factual allegations of the complaint to
23 be true and draw all reasonable inferences in favor of
24 the non-moving party. Klarfeld v. United States, 944
25 F.2d 583, 585 (9th Cir. 1991). "[T]he issue is not
26 whether a plaintiff will ultimately prevail but whether
27 the claimant is entitled to offer evidence to support
28 the claims." Jackson v. Birmingham Bd. of Educ.,

1   544 U.S. 167, 184 (2005) (quoting Scheuer v. Rhodes,

2   416 U.S. 232, 236 (1974)). While a complaint need not

3   contain detailed factual allegations, a plaintiff must

4   provide more than "labels and conclusions" or "a

5   formulaic recitation of the elements of a cause of

6   action." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555

7   (2007). However, "a well-pleaded complaint may proceed

8   even if it strikes a savvy judge that actual proof of

9   those facts is improbable, and 'that a recovery is very

10 remote and unlikely.'" Id. at 556 (quoting Scheuer v.

11 Rhodes, 416 U.S. 232, 236 (1974)).

12 **B.   Discussion**

13   1.   Motion to Dismiss[1]

14   Section 1202(a) of the DMCA provides that "no

15 person shall knowingly and with the intent to induce,

16 enable, facilitate, or conceal infringement (1) to

17 provide [CMI] that is false; or (2) distribute or import

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18   [1] Plaintiff requests the Court take judicial notice of four
19 documents: (1) the complaint filed in Kirk Kara Corp. v. Western
    Stone & Metal Corp., 2:20-cv-01931-DMG-E(C.D. Cal.); (2) the
20 first amended complaint filed in O'Neal v. Sideshows, Inc., 2:21-
    cv-07735-DSF-PLA (C.D. Cal.); (3) the second amended complaint
21 filed in Crowley v. Jones, 1:21-cv-05483-PKC (S.D.N.Y.); and
    (4) Plaintiff's copyright registrations in the images at issue in
22 this Action. Opp'n at 4:19-24, see also Opp'n, Exs. 1-4, ECF
    Nos. 24-2, 24-3, 24-4, 24-5. Since the Court does not rely on
23 the proffered case filings to resolve the instant Motion, the
    Court deems Plaintiff's request for judicial notice of those
24 court filings moot and thus **DENIED**. Since copyright
25 registrations are properly subject to judicial notice, the Court
    GRANTS Plaintiff's request and judicially notices the proffered
26 registrations. See Idema v. Dreamworks, Inc., 90 F. App'x 496,
    498 (9th Cir. 2003), as amended on denial of reh'g (Mar. 9, 2004)
27 (holding that copyright registrations are the sort of document as
    to which judicial notice is appropriate).
28

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