
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 16-226-JLS (JCGx)

Date: May 25, 2016

Title: Divine Dharma Meditation Int'l Inc. et al. v. Institute of Latent Energy Studies

Present: **Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Terry Guerrero
Deputy Clerk

N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:
Not Present

ATTORNEYS PRESENT FOR DEFENDANT:
Not Present

**PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS PLAINTIFFS' COMPLAINT (Doc. 12)**

Before the Court is Defendant Institute of Latent Energy's Motion to Dismiss Plaintiffs' Complaint. (Mot., Doc. 12.) Plaintiffs Divine Dharma Meditation International Inc., Beverly Ngoc Hai Nguyen, and Thuan Duc Nguyen opposed, and Defendant replied. (Opp., Doc. 16; Reply, Doc. 17.) The Court finds this matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. R. 7-15. Accordingly, the hearing set for May 27, 2016, at 2:30 p.m., is VACATED. Having read and considered the parties' briefs, the Court GRANTS the Motion to Dismiss.

I. BACKGROUND

The Complaint alleges the following facts:

Plaintiff Divine Dharma Meditation International Inc. provides training courses to cultivate and practice meditation according to the teachings of the Founder Grandmaster Dasira Narada of the Divine Dharma. (Compl. ¶ 11, Doc. 1.) Plaintiff Thuan Duc Nguyen has established more than eighty such meditation centers worldwide. (*Id.* ¶ 11.) The Complaint identifies six copyrighted works that include text with artwork, two-dimensional graphic works, a hand-embroidered picture, and paintings of the

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Grandmaster Dasira Narada. (*Id.* ¶ 8.) These copyrights are individually owned by Thuan Duc Nguyen or are jointly owned by Thuan Duc Nguyen and Plaintiff Beverly Ngoc Hai Nguyen. (*Id.*) The Complaint attaches copies of the registration certifications for the copyrighted works, (Compl. Exs. 1-6, Doc. 1), and all six copyrights are nonexclusively licensed to Divine Dharma, (Compl. ¶¶ 9, 10).

Defendant Institute of Latent Energy Studies similarly provides training courses to cultivate and practice meditation according to the teachings of Grandmaster Dasira Narada. (*Id.* ¶ 12.) Plaintiffs are informed and believe that in providing its training courses, ILES has copied substantial portions or made derivative reproductions of a two-dimensional graphic work, identified in Exhibit 1 to the Complaint, without license or permission. (*Id.* ¶ 13.) The Complaint attaches a copy of the U.S. Copyright Office's Public Catalog entry for the allegedly infringing work, "Tien Si Dasira Narada," as Exhibit 7. (*Id.* ¶ 14; Compl. Ex. 7, Doc. 1.) The Complaint also alleges that the infringing work incorporates protected elements of Plaintiffs' other copyrighted materials. (Compl. ¶¶ 17, 24.) ILES has publicly displayed "Tien Si Dasira Narada" in various YouTube videos and at its place of business, (*id.* ¶ 15), and Divine Dharma's attempts to have these videos taken offline have been prevented by ILES. (*Id.* ¶ 16.) Divine Dharma believes that ILES has received a direct financial benefit and has damaged Plaintiffs by marketing and selling the infringing work. (*Id.* ¶¶ 17, 18.)

On February 9, 2016, Plaintiffs filed a Complaint that alleges the following claims against ILES: (1) copyright infringement, 17 U.S.C. § 101 *et seq.*, and (2) unfair business practices, Cal. Bus. & Prof. Code § 17200 *et seq.* (Compl. ¶¶ 21-36.) ILES now moves to dismiss the Complaint in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(6).

II. LEGAL STANDARD

In deciding a motion to dismiss under Rule 12(b)(6), courts must accept as true all "well-pleaded factual allegations" in a complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Furthermore, courts must draw all reasonable inferences in the light most

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favorable to the non-moving party. See *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010). However, “courts ‘are not bound to accept as true a legal conclusion couched as a factual allegation.’” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). And while judicial review is generally limited to the face of a complaint, courts may properly consider “documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.” *Harris v. Amgen, Inc.*, 738 F.3d 1026, 1035 (9th Cir. 2013) (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)).

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). Although a complaint “does not need detailed factual allegations,” the “[f]actual allegations must be enough to raise a right to relief above the speculative level” *Twombly*, 550 U.S. at 555. Thus, a complaint must (1) “contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively[,]” and (2) “plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

III. DISCUSSION

A. Local Rule 7-9

As a threshold issue, we first address Plaintiffs’ untimely opposition. In its reply brief, ILES observes that Plaintiffs filed an untimely opposition to its Motion. (Reply at 5.) Because the hearing on this Motion was set for May 27, 2016, Plaintiffs’ opposition was due no later than May 6, 2016. See C.D. Cal. R. 7-9. However, Plaintiffs filed their opposition on May 9, 2016. (Opp.) Pursuant to Local Rule 7-12, the Court “may decline

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to consider any . . . document not filed within the deadline set by order or local rule,” and “[t]he failure to file any required document . . . within the deadline[] *may* be deemed consent to the granting or denial of the motion.” C.D. Cal. R. 7-12 (emphasis added). ILES argues that due to the untimely filing, this Court should decline to consider Plaintiffs’ opposition. (Reply at 5.) We note that despite this untimely filing, ILES had adequate time to prepare and file a reply brief addressing Plaintiffs’ arguments. Accordingly, the Court shall consider the opposition brief.

B. Copyright Infringement

The Court first addresses Plaintiffs’ sole federal-law claim. The Copyright Act bestows certain exclusive rights on the owner of a copyright, including the rights to reproduce, distribute, and display the work. 17 U.S.C. § 106 (2012). To state a claim for copyright infringement, a plaintiff must plausibly allege two elements: “(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original.” *L.A. Printex Indus. v. Aeropostale, Inc.*, 676 F.3d 841, 846 (9th Cir. 2012), *as am. on denial of reh'g and reh'g en banc* (June 13, 2012) (quoting *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 362 (1991)).

1. Ownership of a Valid Copyright

ILES argues that Plaintiffs fail to adequately allege ownership of a valid copyright because (1) Plaintiffs failed to register their work within five years after the publication date, (2) ILES’ first date of publication is prior to Plaintiffs’ registration date, (3) ILES owns a valid copyright registration of the allegedly infringing work, and (4) Grandmaster Dasira Narada is not protectable by copyright. (Mem. at 6-10.) For the following reasons, we find these arguments unavailing.

Plaintiffs allege that they own the copyrights or are nonexclusive licensees of the copyrights, and they attach copies of the certificates of registration. (Compl. ¶¶ 8-10, Exs. 1-6.) Such allegations are sufficient to satisfy the pleading requirement of

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ownership of a valid copyright. *See Mintel Learning Tech., Inc. v. Beijing Kaidi Educ.*, No. C 06-7541 PJH, 2007 WL 2288329, at *9 (N.D. Cal. Aug. 9, 2007) (finding that a Plaintiff's allegations that "it owns the copyright for [the product], and has obtained or has applied for copyright registration certificates for the [product]" are sufficient to "satisf[y] the pleading requirements" of copyright infringement). Some of the attached certificates of registration identify a publication date more than five years earlier than the registration date, (*see* Compl. Exs. 2, 5, 6), and others do not identify a publication date, (*id.* Exs. 1, 3, 4).¹ The Copyright Act provides that the "evidentiary weight to be accorded to [a] certificate of a registration made [five years or more after the publication of a work] shall be within the discretion of the court," whereas certificates of registration made before or within five years "shall constitute prima facie evidence of the validity of the copyright." 17 U.S.C. § 410(c). However, this provision speaks to the certificate's *evidentiary weight*, which is not considered at the pleading stage. Thus, at this stage in the litigation, Plaintiffs' failure to register certain works within five years after the work's initial publication date does not warrant dismissal of this claim.

ILES also argues that dismissal is proper because the first date of publication of its allegedly infringing work, October 4, 2013,² is earlier than the registration dates of Plaintiffs' copyrighted works. (Mem. at 8-9.) Section 412 of the Copyright Act bars an award of statutory damages or of attorneys' fees for (1) "any infringement of copyright in an unpublished work commenced before the effective date of its registration," or (2) "any

¹ We observe that the Fan Declaration incorrectly suggests that Exhibit 1 to the Complaint identifies a publication date, (Fan Decl. ¶ 2, Doc. 12-2), and ILES' response to Plaintiffs' evidentiary objections incorrectly asserts that Exhibit 1 identifies a first publication date of 1978, (Def. Evidentiary Response, Doc. 17-1). Rather, the Fan Declaration and ILES's evidentiary response refer to the *year of completion* identified in this document. (Compl. Ex. 1.)

² The parties challenge the admissibility of Exhibit B to the Fan Declaration: a copy of ILES' certificate of registration as to the allegedly infringing work. (*See* Pls. Evidentiary Objection ¶ 1b, Doc. 16-1; Def. Evidentiary Response.) ILES does not request judicial notice of this document. However, we need not address or consider Exhibit B because Exhibit 7 to the Complaint identifies a first publication date of October 4, 2013. (Compl. Ex. 7.)

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