

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MEDIA.NET ADVERTISING FZ-LLC,  
Plaintiff,  
v.  
NETSEER, INC.,  
Defendant.

Case No. [14-cv-03883-EMC](#)

**ORDER DENYING DEFENDANT’S  
MOTION FOR SUMMARY JUDGMENT  
AND GRANTING IN PART  
DEFENDANT’S MOTION TO DISMISS**

Docket No. 36

**I. INTRODUCTION**

Plaintiff Media.net Advertising FZ-LLC initiated this lawsuit against Defendant NetSeer, Inc. The First Amended Complaint (“FAC”) asserts two claims of copyright infringement, as well as claims of intentional interference with business contract, intentional interference with prospective business relationship, and violations of California’s Unfair Competition Law (“UCL”), California Business and Professions Code section 17200 *et seq.* Docket No. 32.

Defendant moves for summary judgment on the copyright infringement claims and to dismiss the state law claims. Docket No. 36. In the alternative, Defendant seeks dismissal of the copyright claims or a more definite statement. *Id.* Having considered the parties’ briefs and oral argument, as well as the relevant legal authority, the Court hereby **DENIES** Defendant’s Motion for Summary Judgment and **GRANTS IN PART** Defendant’s Motion to Dismiss.

**II. BACKGROUND**

Plaintiff is a leading provider of online contextual-advertising services and offers its customers a website-based advertisement creation platform (the “Platform”) which allows its users

1 a Media.net ad unit on their websites so that when a website visitor clicks on the ad unit, the  
2 visitor is taken to a “search-results page” which displays relevant advertisements. *Id.* ¶ 26. For  
3 example, if a website visitor clicked on a keyword relating to travel, the search results page could  
4 show advertisements promoting deals on hotel rooms. *See, e.g.,* Ex. C, FAC. Plaintiff published  
5 the original version of its search results page (“Original Media.net Results Page”) on February 1,  
6 2014. *Id.* ¶ 28. On May 28, 2014, Plaintiff published a revised search results page (“Revised  
7 Media.net Results Page”), which is derivative of the Original. *Id.* ¶¶ 33-34.

8 Plaintiff obtained a copyright registration for its Original Media.net Results Page with  
9 registration number TX 7-896-126 (the “126 Registration”) and for its Revised Media.net Results  
10 Page with registration number TX 7-896-131 (the “131 Registration”). *Id.* ¶¶ 32, 37; Exs. A-B,  
11 FAC. Both registrations became effective on August 16, 2014. ’126 Reg.; ’131 Reg. The  
12 certificates list “Media.Net Software Services (India) Private Limited” as the author, which  
13 created “HTML Code and text,” and list “Media.net Advertising FZ-LLC” as the claimant. *Id.*

14 Defendant is a competing contextual-advertising provider. FAC ¶¶ 38-39. Defendant also  
15 provides advertising units that its customers can place on their websites. *Id.* ¶ 39. Like Plaintiff’s  
16 Platform, when a user clicks on Defendant’s advertising unit, the user is directed to a search-  
17 results page that offers relevant advertisements. *Id.* ¶ 40. Plaintiff alleges Defendant directly  
18 copied Plaintiff’s hypertext markup language (“HTML”) code, including arbitrarily-named  
19 variables and portions of the code that have no function, and used it to create Defendant’s own  
20 search results page. *Id.* ¶¶ 42-46.

21 Plaintiff further alleges Defendant’s unauthorized use of the HTML code allowed it to gain  
22 an unfair competitive advantage. *Id.* ¶ 58. In particular, Plaintiff claims Defendant undermined  
23 Plaintiff’s relationship with Microsoft by representing that Defendant’s products could work just  
24 as well as Plaintiff but at a lower cost. *Id.* ¶¶ 60-61. Defendant’s infringement improved its  
25 position in the contextual-advertising market and allowed it to earn revenue from customers it  
26 obtained as a result of using Plaintiff’s product. *Id.* ¶ 67-69. Consequently, Plaintiff was forced to  
27 lower the rates it charged its customers, causing it to lose millions of dollars in revenue. *Id.* ¶ 65.

28 Plaintiff’s reputation as the leader in contextual advertising services has diminished. *Id.* ¶ 71

1 **III. LEGAL STANDARD**

2 A. Motion for Summary Judgment

3 Under Federal Rule of Civil Procedure 56(a), a party is entitled to summary judgment if  
 4 the “movant shows that there is no genuine dispute as to any material fact.” The movant bears the  
 5 burden of “identifying those portions of the pleadings, depositions, answers to interrogatories, and  
 6 admissions on file, together with the affidavits, if any, which it believes demonstrate the absence  
 7 of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (quotation  
 8 marks omitted). A material fact is one that may affect the outcome of the case. *George v. Morris*,  
 9 736 F.3d 829, 834 (9th Cir. 2013) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248  
 10 (1986)). A genuine dispute as to material fact exists if there is sufficient evidence such that a  
 11 reasonable jury could find for the non-moving party. *Anderson*, 477 U.S. at 248. This requires  
 12 more than a “mere existence of a scintilla of evidence in support of the plaintiff’s position[.]” *Id.*  
 13 at 252.

14 When determining whether there is a genuine issue of material fact, “a court must view the  
 15 evidence ‘in the light most favorable to the opposing party.’” *Tolan v. Cotton*, 134 S. Ct. 1861,  
 16 1866 (2014) (quoting *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970)). Courts should also  
 17 draw reasonable inferences in favor of the non-moving party. *Tolan*, 134 S. Ct. at 1868. “Where  
 18 the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party,  
 19 there is no genuine issue for trial.” *City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1049-  
 20 50 (9th Cir.) *cert. denied sub nom. SQM N. Am. Corp. v. City of Pomona, Cal.*, 135 S. Ct. 870, 190  
 21 L. Ed. 2d 703 (2014) (quoting *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S.  
 22 574, 587 (1986)).

23 If the moving party has “the burden of proof on an issue at trial, the movant must  
 24 affirmatively demonstrate that no reasonable trier of fact could find other than for the moving  
 25 party.” *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). If, on the other  
 26 hand, the burden of proof rests on the non-moving party, “the movant can prevail merely by  
 27 pointing out that there is an absence of evidence to support the nonmoving party’s case.” *Id.* “A  
 28

1 allegation or denials of his pleading, but must set forth specific facts showing there is a genuine  
2 issue for trial.” *Anderson*, 477 U.S. at 256.

3 B. Motion to Dismiss

4 Pursuant to Federal Rule of Civil Procedure 12(b)(6), a party may file a motion to dismiss  
5 on the failure to state a claim upon which relief may be granted. A Rule 12(b)(6) motion tests the  
6 sufficiency of a complaint by failing to allege “enough facts to state a claim to relief that is  
7 plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial  
8 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable  
9 inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662,  
10 678 (2009) (citing *Twombly*, 550 U.S. at 556). Although a complaint need not contain “detailed  
11 factual allegations,” a complaint that contains merely “a formulaic recitation of the elements of a  
12 cause of action will not do.” *Twombly*, 550 U.S. at 555. Rather, “[f]actual allegations must be  
13 enough to raise a right to relief above the speculative level.” *Williams v. Gerber Prod. Co.*, 552  
14 F.3d 934, 938 (9th Cir. 2008) (quoting *Twombly*, 550 U.S. at 555). “A claim has facial  
15 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable  
16 inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678; *see also*  
17 *Twombly*, 550 U.S. at 556. “The plausibility standard is not akin to a ‘probability requirement,’  
18 but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.*

19 In ruling on a Rule 12(b)(6) motion, courts “accept factual allegations in the complaint as  
20 true and construe the pleadings in the light most favorable to the nonmoving party.” *Manzarek v.*  
21 *St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Courts may dismiss a claim  
22 “only if it appears beyond doubt that the plaintiff could prove no set of facts in support of his  
23 claim which would entitle him to relief.” *Cook v. Brewer*, 637 F.3d 1002, 1004 (9th Cir. 2011)  
24 (quotation marks omitted). Courts should grant the plaintiff leave to amend “‘if it appears at all  
25 possible that the plaintiff can correct the defect.’” *Crowley v. Bannister*, 734 F.3d 967, 977 (9th  
26 Cir. 2013) (quoting *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc)).

1 **IV. DISCUSSION**

2 A. The Compendium

3 The United States Copyright Office is “the governmental agency that possesses special  
4 expertise in determining the bounds of copyright protection.” *Garcia v. Google, Inc.*, 786 F.3d  
5 733, 741 n.7 (9th Cir. 2015) (quoting 2 Nimmer on Copyright § 7.16[B][3][b][vi]). In addition to  
6 administering the system of copyright registration, the Copyright Office works closely with  
7 Congress on matters relating to copyright laws. 17 U.S.C. § 701(a); 2 Nimmer on Copyright §  
8 7.26; *see* 17 U.S.C. § 701(b)(2) (“[T]he Register of Copyrights shall . . . [a]dvice Congress on  
9 national and international issues relating to copyright, other matters arising under this title, and  
10 related matters”); *Feist Pub., Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 354-55 (1991) (“When  
11 Congress decided to overhaul the copyright statute and asked the Copyright Office to study  
12 existing problems, . . . the Copyright Office promptly recommended that Congress clear up the  
13 confusion in the lower courts as to the basic standards of copyrightability.” (citation omitted));  
14 *Mills Music v. Snyder*, 469 U.S. 153, 159-61 (1985) (describing Copyright Office and Congress’s  
15 general revision of copyright law in 1955); S. Rep. No. 101-268, at 6 (1990) (“Congress relies  
16 extensively on the Copyright Office to provide its technical expertise in the legislative process.”).

17 The Copyright Office publishes an administrative manual that contains, *inter alia*, legal  
18 interpretations and guidance regarding copyright registrations. *See* U.S. Copyright Office,  
19 Compendium of Copyright Practices (3d ed. 2014) (“Compendium (Third)”). The Compendium  
20 “provides guidance to copyright applicants, practitioners, scholars, the courts, and members of the  
21 general public regarding institutional practices and related principles of law.” *Id.* Intro. at 1. The  
22 Copyright Office first published the Compendium in 1967 and released the second edition  
23 (“Compendium II”) in 1984. *Id.* Intro. at 4. It revised the Compendium II first in 1988 and again  
24 in 1998. *See* U.S. Copyright Office, Compendium of Copyright Practices (2d ed. 1984).

25 The Copyright Office released a draft of third edition of the Compendium on August 19,  
26 2014. U.S. Copyright Office, U.S. Copyright Office Announcement Regarding Release of a Draft  
27 of the Compendium of U.S. Copyright Office Practices, Third Edition (Aug. 19, 2014),  
28 <http://copyright.gov/newsroom/2014/555.html>. This draft was the first major revision of the

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.