

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UAB “PLANNER5D” D/B/A PLANNER
5D,

Plaintiff,

v.

META PLATFORMS, INC., et al.,
Defendants.

Case No. [19-cv-03132-WHO](#)

**ORDER GRANTING IN PART
DEFENDANTS’ MOTION FOR
SUMMARY JUDGMENT**

Re: Dkt. No. 217

INTRODUCTION

UAB Planner 5D (“Planner 5D” or “P5D”) operates a home design website that allows users to create virtual interior design scenes. Users gain access to a library of virtual objects (such as tables, chairs, and sofas) to populate their scenes. It claims that it owns copyrights in these three-dimensional objects and scenes, and in a compilation of certain scenes. It also claims that the underlying data files, (including the data files underlying the compilation of objects, for which I found insufficient originality to support a copyright) also qualify for trade secret protection. *UAB “Planner5D” v. Facebook, Inc. (“Planner 5D II”)*, No. 19-CV-03132-WHO, 2020 WL 4260733, at *6 (N.D. Cal. Jul. 24, 2020). P5D filed this suit against defendants Facebook, Inc., Facebook Technologies, LLC, now known as Meta Platforms, Inc. (collectively “Meta”), and the Trustees of Princeton University (“Princeton”) for copyright infringement and trade secret misappropriation.

Before me is defendants’ motion for summary judgment for both the copyrightability and

1 copyright claims: (1) whether P5D satisfied the requirements of Section 411(a) of the Copyright
 2 Act, 17 U.S.C. § 101 *et seq.*, which is a prerequisite for pursuing these claims in court, Motion for
 3 Summary Judgment (“MSJ”) [Dkt. No. 217-3] at 31:13-18; (2) whether P5D’s works “lack human
 4 authorship” and therefore cannot be protected with copyright, MSJ at 32:13-20; and (3) whether
 5 P5D’s works “lack originality” because they model pre-existing furniture and other real-life
 6 objects and therefore cannot be protected with copyright. MSJ at 33:4-6. One primary dispute has
 7 emerged in relation to the trade secret claims: whether the measures P5D took to protect its files
 8 collectively constituted reasonable measures under the circumstances, as required to establish the
 9 existence of a trade secret that can be legally protected. MSJ at 28:2-6.

10 FACTUAL BACKGROUND

11 I detailed Planner 5D’s allegations and much of the relevant background in my previous
 12 orders. *See Planner 5D, 2019 WL 6219223*, at *2–4 (N.D. Cal. Nov. 21, 2019); *Planner 5D II* at
 13 *6. I incorporate those discussions by reference and summarize the salient facts here.

14 I. Planner 5D’s Home Design Website

15 In 2011, Planner 5D began offering users access to a digital library of thousands of digital
 16 household objects, including “structural features,” “furniture,” and “exterior features,” on its home
 17 design website. Compl. ¶ 27. Users can create unique designs by “simply dragging any of these
 18 objects onto or around a chosen floor plan.” *Id.* Once added to a design, these objects can be
 19 “easily moved, rotated, tilted, re-sized, or otherwise manipulated to create the desired
 20 design.” *Id.* Users can also “easily toggle between two- and three-dimensional renderings of the
 21 design” and can rotate and tilt three-dimensional renderings “to any desired perspective.” *Id.*
 22 Planner 5D claims that it currently has over 40 million users worldwide and that it owns “a
 23 collection of over a million hand-crafted, digitized, and realistic three-dimensional objects and
 24 scenes, depicting a wide variety of household and office designs.” *Id.* ¶¶ 5, 28.

25 A. Creation of Planner 5D’s Works

26 1. Objects (3D Models)

27 Planner 5D claims to possess a copyright in 3,719 Objects (the “Asserted Objects”).
 28

1 Declaration of Johanna Schmitt “Schmitt Decl.”) ¶ 15. It asserts that each of its objects was hand-
 2 created by one of four human modelers using an open-source modeling tool called Blender. Oppo.
 3 at 11:7-11. The “modelers” start with a blank screen in the Blender program that contains a grid
 4 and a panel of controls. They use this interface to create the objects in a manner that Planner 5D
 5 analogizes to sculpting. *Id.* at 11:12-15. The underlying code is generated automatically based on
 6 the modeler’s manipulation of the control panel, so the modelers do not write the code directly.
 7 Oppo. 14:18-19.

8 Most of the objects are modeled after existing objects, with only about 10% being designed
 9 “without reference to an inspirational image.” Mot. at 37:9-10.¹ The remaining objects were
 10 “inspired by real objects or images the modelers encountered in life,” including from reference
 11 images on the web. Oppo. at 11-12. Finally, 113 of the objects were commissioned by furniture
 12 retailers and were meant to look like items from the retailers’ catalogs. This category is referred to
 13 as “Business-to-Business, or B2B, objects.” *Id.* 12:3-6. Each of these objects is available to
 14 Planner 5D users for inclusion in the scenes they arrange on Planner 5D’s website.

15 2. Scenes and Scene Compilation

16 In addition to Planner 5D’s claims relating to its individual objects, Planner 5D claims
 17 copyright in the compilation of the 49,479 scenes on its public gallery as of February 17, 2016 (the
 18 “Asserted Scene Compilation”). CR Compl. ¶ 46. Of these, 18 individual scenes were created by
 19 Planner 5D employees (the “Asserted Individual Scenes”). Schmitt Decl. ¶ 31. The remaining
 20 scenes in P5D’s gallery were created by its users, who arrange unique scenes through the web
 21 interface and can elect to submit their creations to be considered for inclusion in Planner 5D’s
 22 “public gallery” for anyone to view. CR Compl. ¶¶ 31, 55.

23 Users could “flag” their work for inclusion in P5D’s public gallery. P5D’s co-founders—
 24 Alexey Sheremetyev and Sergey Nosyrev—reviewed each flagged scene and chose which should
 25 be added to the public gallery. Oppo. 14:13-16. “In choosing scenes, [Sheremetyev and Nosyrev]

26 _____
 27 ¹ Defendants claim that Planner 5D has refused to identify the objects comprising that 10% from
 28 among the 3,719 objects Planner 5D claims are subject to copyright. Mot. at 37:10-11. At the
 29 hearing, I directed Planner 5D to provide a master list of original objects and scenes to defendants

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1 aimed to show off their software’s scope, quality, playfulness, and power to potential users.” *Id.*
2 at 14:16-17. They chose scenes based on artistic value, humor, novelty, diversity, creativity,
3 completeness, fun, family-friendliness, and realism. *Id.* 14:16-19. The selected scenes were then
4 saved in P5D’s proprietary JSON file format as a “scene data file” and uploaded to the public
5 gallery. Schmitt Decl. ¶ 25.

6 **B. User Access to Planner 5D’s Works**

7 Planner 5D’s web-based product uses “client-side rendering.” Mot. at 16:14-16; Schmitt
8 Decl. ¶¶ 172, 183, Ex. 16 at 20–21; Declaration of Ryan McKamie (“McKamie Decl.”) ¶ 38. This
9 means that when a user views a Scene using P5D’s web interface, Planner 5D transmits data files
10 to the user’s web browser and relies on the user’s computer to perform the operation of rendering
11 the Scene onto the screen. Schmitt Decl. ¶ 184, Ex. 16 at 20–21; McKamie Decl. ¶ 38.

12 There is some dispute over what exactly is transmitted to a user’s computer during this
13 process. Defendants claim that Planner 5D “actively transmits” the following materials to the
14 user’s web browser: [REDACTED], Ex. 12 (RFA
15 No. 54); Schmitt Decl. ¶ 166; McKamie Decl. ¶¶ 49–50; [REDACTED]
16 [REDACTED], Ex. 12 (RFA No. 61); Schmitt Decl. ¶ 167; McKamie
17 Decl. ¶¶ 70–71; and [REDACTED]
18 [REDACTED]
19 [REDACTED], Ex. 12 (RFA Nos. 56 & 63); Song Decl. ¶¶ 7–10, 14–
20 16; McKamie Decl. ¶¶ 34–46, 60–71.

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED] Oppo. at 38-39. [REDACTED]
27 [REDACTED]
28 [REDACTED]

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1 Planner 5D disputes this, [REDACTED]
 2 [REDACTED]
 3 [REDACTED]. Compare Mot 6:18-24 with Supplemental Expert Report of Bruce F.
 4 Webster (“Web Rep1”), Dkt. No. 255-1, Ex. 1 at 26-30. [REDACTED]
 5 [REDACTED]
 6 [REDACTED]. Web Rep1 at 26-30, 60. [REDACTED]
 7 [REDACTED]
 8 [REDACTED] *Id.* at 59-60.

9 [REDACTED]
 10 [REDACTED]. Ex. 12 (RFA Nos. 66 &
 11 67); McKamie Decl. ¶¶ 43–46, 64–68. [REDACTED]
 12 [REDACTED]
 13 [REDACTED]. Schmitt Decl. ¶¶ 185–
 14 86, 188; McKamie Decl. ¶¶ 47–51, 69–71; Song Decl. ¶¶ 6–8. Defendants chose the latter route.
 15 The use of developer tools for this purpose was prohibited by Planner 5D’s Terms of Service.
 16 FAC ¶ 40.

II. Princeton Downloads Planner 5D’s Works to Create the SUNCG Dataset

17
 18 Planner 5D claims that, in 2016, Princeton circumvented P5D’s protections in order to
 19 download a complete set of P5D’s works. P5D contends that prior to executing the download,
 20 Princeton spent months or years preparing to download the works without being detected. For
 21 example, though Dr. Song claimed that she first saw the Planner 5D website in 2016, she
 22 described a version of the website phased out in 2014. *See* Declaration of Christian Andreu von-
 23 Euw (“AvE Decl.”) § D. P5D’s internal logs also show a ten-fold increase in traffic from
 24 Princeton in April 2015, when Song gave a talk about “large on-line 3D model repositories.” Web
 25 Rep1 at 37.

26 Planner 5D alleges that once Dr. Song determined how to evade P5D’s protections, she
 27 [REDACTED]
 28 [REDACTED]

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