

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Thomson Reuters Enterprise Centre
GmbH and West Publishing Corp.,

Plaintiffs,

v.

ROSS Intelligence Inc.,

Defendant.

C.A. No. 20-613-LPS

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MEMORANDUM OPINION

March 29, 2021
Wilmington, Delaware



STARK, U.S. District Judge:

Plaintiffs Thomson Reuters Enterprise Centre GmbH (“Thomson Reuters”) and West Publishing Corp. (“West”) (collectively, “Plaintiffs”) have sued Defendant ROSS Intelligence Inc. (“ROSS” or “Defendant”) for copyright infringement and tortious interference with contract. (D.I. 1) In general, this dispute concerns whether Defendant improperly accessed and infringed Plaintiffs’ purported copyrights to certain Westlaw material through a third party to develop Defendant’s own artificial intelligence-based legal search product. Pending before the Court is Defendant’s Rule 12(b)(6) motion to dismiss. (D.I. 11) For the reasons that follow, the Court will deny the motion.

I. BACKGROUND¹

A. Westlaw

Thomson Reuters is a Swiss limited liability company having its principal place of business in Switzerland. (D.I. 1 ¶ 6) West is an entity incorporated and headquartered in Minnesota. (*Id.* ¶ 7)

Plaintiffs own and operate Westlaw, a widely-known search platform used throughout the legal industry, including by judges, law clerks, practicing lawyers, and law students. The platform started in books and is now available online. Subscribers to Westlaw have access to a comprehensive collection of legal information that is searchable through keywords, natural language, and/or Boolean inquiries. (*Id.* ¶ 11) According to Plaintiffs, “Westlaw includes access to volumes of proprietary material (such as West Headnotes, case summaries, and other Westlaw-created content), databases, and compilations of case law, state and federal statutes,

¹ The following facts are taken from Plaintiffs’ complaint and the parties’ papers. (D.I. 1; *see also* D.I. 12, 15, 17) At this stage of the case, the Court takes as true all well-pled factual allegations in the complaint.

state and federal regulations, law journals, treatises, and other resources – all organized and curated by West’s editorial team.” (*Id.* ¶ 15)

Particularly relevant to this dispute are Westlaw’s Headnotes and the Westlaw Key Number System (“WKNS”) (collectively referred to by Plaintiffs as “Westlaw Content”), both of which are developed through a “rigorous editorial process” by attorney-editors. (*Id.* ¶¶ 1, 11) The WKNS is a “complex hierarchy” that organizes the law into numerous topics, and then subclassifies them into key numbers for legal issues and points of law. (*Id.* ¶ 13) (providing exemplary discussion of “Abandoned and Lost Property” topic) Plaintiffs allege that the development of the WKNS “has been and continues to be the result of Plaintiffs’ numerous creative choices about how to organize cases and which cases to place in that classification, requiring substantial investments of time, technological and human resources, and money over the course of decades.” (*Id.* ¶ 12) In addition to the WKNS, Headnotes summarize concepts discussed in cases and are created by attorney-editors as judges issue their opinions. (*Id.* ¶ 14) Attorney-editors integrate Headnotes into the WKNS – which are regularly edited and revised – “so subscribers can easily find the latest decisions on any given topic or issue.” (*Id.*)

Plaintiffs contend that they own valuable copyrights in Westlaw. (*See id.* ¶¶ 20-23) Plaintiffs allege that the attorney-editors’ “sole responsibility is to review decisions, create original and creative West Headnotes summarizing key points of law, and organizing those cases and West Headnotes in the WKNS.” (*Id.* ¶ 20) Plaintiffs further allege that “[c]ases, areas of law, legal topics, legal issues, subtopics, and subissues can all be summarized and organized in a variety of different ways – the structure, sequence, and organization of WKNS is not something that has been achieved by accident or necessity; rather, it is the result of decades of human creativity and choices.” (*Id.* ¶ 21)

“To protect Westlaw, Thomson Reuters registers the database with the United States Copyright Office every three months.” (*Id.* ¶ 22 & Ex. A) (“[C]ertificates of registration issued by the Copyright Office and other documents reflecting Westlaw’s registrations”) Thomson Reuters owns the alleged copyrights in the Westlaw Content, while West allegedly “creates and authors” Westlaw Content. (*Id.* ¶¶ 6-7)

To access and use Westlaw, subscribers agree to West’s Subscriber Agreements laying out, among other things, what they are and are not allowed to do with Westlaw’s content. (*Id.* ¶ 18 (identifying specific provisions); *see also* D.I. 16) One provision states that a subscriber “may not sell, sublicense, distribute, display, store or transfer [West’s] products or any data in [its] products in bulk or in any way that could be used to replace or substitute for [its] products in whole or in part or as a component of any material offered for sale, license or distribution to third parties.” (D.I. 1 at ¶ 18) (alterations in original) Thus, according to Plaintiffs, subscribers are “expressly prohibited from using Westlaw Content to create a competitive product or to sell the Plaintiffs’ proprietary content to others.” (*Id.* ¶ 19) West “constantly monitor[s] user activity for behavior that would breach the terms of its subscriber agreement.” (*Id.*)

B. ROSS

ROSS is an entity incorporated in Delaware and headquartered in San Francisco, California. (*Id.* ¶ 8)

Defendant was founded in 2015 and is engaged in the business of offering and providing legal research services through its ROSS platform. (*See id.* ¶ 24) Rather than searching with Boolean terms or keywords, ROSS users are able to search for relevant law by posing a question in natural language. (*Id.* ¶ 26) The ROSS platform provides users with cases summaries and treatments, and it allows a user to “use the initial search results as a jumping-off point to find additional cases with similar facts and/or procedural postures.” (*Id.* ¶ 27) ROSS states that it

leverages a natural search engine based on artificial intelligence to generate results from public information, such as “case law, statutes, and regulations across various practice areas.” (D.I. 12 at 2, 4)

C. ROSS And LegalEase

LegalEase Solutions, LLC (“LegalEase”) is a legal research and writing support services company; it is not a legal research platform like West or ROSS. (D.I. 1 ¶ 29) Starting in 2008, LegalEase obtained a limited license to use Westlaw to conduct legal research for customers. (*Id.*) According to Plaintiffs, the “Service Agreement between LegalEase and West prohibited LegalEase from running or installing any computer software on West’s products or network, as well as selling, sublicensing, distributing, displaying, storing, or transferring Westlaw information in bulk to third parties.” (*Id.*) Plaintiffs allege that LegalEase started to breach these terms by July 2017. (*Id.* ¶ 30)

In July 2017, LegalEase stated in an interview that it was working with a machine learning research firm (later revealed to be ROSS) to help create a legal research platform, and that LegalEase was feeding that firm with “tons and tons of legal research.” (*Id.* ¶ 33) Around this time, Plaintiffs observed a nearly 40-fold increase over LegalEase’s historical usage pattern, i.e., from approximately 6,000 Westlaw transactions per month to a maximum of about 236,000 transactions per month (a usage rate nearly five times greater than the average monthly usage rate of the top 100 law firms, as ranked by “The American Lawyer”). (*Id.* ¶ 31) According to Plaintiffs, their investigation revealed that the users of certain Westlaw credentials assigned to LegalEase were exhibiting bot-like behavior and that content from Westlaw was being downloaded and stored in bulk by computer software. (*Id.* ¶ 32)

Plaintiffs allege, on information and belief, that “ROSS paid LegalEase to copy Westlaw Content from Westlaw to build ROSS’s competing platform, thereby knowingly and deliberately

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