

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

LARRY FORD BANISTER II,	)	
	)	
Plaintiff,	)	
	)	No. 17 C 8940
v.	)	
	)	Chief Judge Rubén Castillo
JEFFREY STEWART FIRESTONE,	)	
et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM OPINION AND ORDER**

In this case, Larry Ford Banister II (“Plaintiff”) sues Jeffrey Stewart Firestone (“Firestone”), Hongmei Chen a/k/a Lily Liu (“Chen”), and Chengze Liu a/k/a Eric Liu (“Liu”) (collectively “Defendants”) asserting violations of the Copyright Act, 17 U.S.C. § 101 *et seq.*, and related state law claims. (R. 18, Am. Compl.) Firestone moves to dismiss on various grounds and to vacate the preliminary injunction entered by this Court. (R. 28, Mot. to Dismiss; R. 29, Mot. to Vacate.) Plaintiff, in turn, moves to compel Firestone’s responses to discovery. (R. 45, Mot. to Compel.) For the reasons stated below, Firestone’s motions are denied, and Plaintiff’s motion is granted in part and denied in part.

**BACKGROUND**

Plaintiff is an attorney licensed to practice law by the State of New York. (R. 18, Am. Compl. ¶ 3.) He is also admitted to the general bar of this District. (*Id.*) Plaintiff focuses his practice on the defense of trademark claims brought under the Lanham Act, 15 U.S.C. § 1114 *et seq.*, and he regularly represents Chinese defendants in cases brought in this District by the Chicago-based intellectual property firm Greer, Burns, and Crain (“GBC”). (*Id.* ¶ 4.) In order to make the public aware of his legal services, he maintains a website at

[www.trademarkviolation.us](http://www.trademarkviolation.us). (*Id.*) The website, available in both English and Mandarin, includes a blog comprised of content created exclusively by Plaintiff. (*Id.*)

Firestone is an attorney licensed in the State of Illinois and a member of the trial bar in this District. (*Id.* ¶ 5.) He, like Plaintiff, regularly represents Chinese defendants in trademark infringement cases brought by GBC in this District. (*Id.*) Plaintiff alleges that on or about August 31, 2017, Chen and Liu<sup>1</sup> registered the domain [www.gbclgalaid.us](http://www.gbclgalaid.us). (*Id.* ¶ 6.) He claims that the website was for a fictitious law firm called “J & L Intellectual Property Law Office,” (*id.* ¶ 13), and contained content taken from Plaintiff’s website “in a cut and paste fashion,” (*id.* ¶¶ 8-9, 15). This included the “FAQ” section of Plaintiff’s homepage and his blog spots entitled: “Did I Infringe a Trademark”; “U.S. Trademark Litigation Process”; “The Consequences of Not Answering a U.S. Trademark Violation Suit”; “Jurisdiction for U.S. Trademark Violations”; and “Don’t Blame PayPal.” (*Id.* ¶¶ 9, 15.) He claims that the copied material even contained his logo and stated that the content had been produced by him for purposes of attorney advertising. (*Id.* ¶ 25.)

According to Plaintiff, Defendants “own, operate and/or share interest in the Infringing Website for the purpose of soliciting fees for the purported provision of legal services from defendants in suits filed in this judicial district” by GBC alleging trademark infringement by online retailers. (*Id.* ¶ 8.) He claims that Firestone entered into an agreement with Chen and Liu

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<sup>1</sup> At the time the complaint was filed, Plaintiff did not know the identity of the individual or individuals who had created the website, and instead he identified the Defendants simply as “Does No. 1-10.” (R. 1, Compl. at 1.) He suspected, although was unsure, that Firestone might be involved, given that the website included some of Firestone’s biographical information and listed his post office box in New York (the same address he lists on his filings in this case) as the contact for the website. (R. 5, Pl.’s Decl.; R. 5-1, Website at 4-16; *see also* R. 40, Am. Mem. in Supp. of Mot. to Vacate at 14.) Through investigation, Plaintiff gained additional information suggesting that the website had been created by Chen and Liu with the involvement of Firestone. (*See* R. 22, Pl.’s Second Decl. ¶¶ 2-12.) Thereafter, he filed an amended complaint naming each of them as Defendants. (R. 18, Am. Compl.)

in which Chen and Liu would solicit clients through the website using the name of the fictitious law firm, and would then refer clients to Firestone, for which Firestone would pay Chen and Liu a portion of the fees he collected. (*Id.* ¶ 14.) He further claims that Defendants posted the materials from his website on their own website “for the purpose of making themselves appear knowledgeable in American intellectual property law[.]” (*Id.* ¶ 20.)

Based on these events, Plaintiff filed this action in December 2017 asserting claims under the Copyright Act, as well as the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”), 815 ILL. COMP. STAT. 510/1 *et seq.*, and the Illinois Attorney Act (“IAA”), 705 ILL. COMP. STAT. 205/1 *et seq.* (R. 1, Compl. ¶¶ 12-27.) A few days after the complaint was filed, Plaintiff moved for a temporary restraining order (“TRO”). (R. 6, Mot. for TRO.) At a hearing held on December 20, 2017, the Court granted Plaintiff’s motion and entered a TRO. (R. 11, TRO.) Among other things, the TRO required Defendants to cease using Plaintiff’s copyrighted works and to disable the disputed website. (*Id.* ¶¶ 1-2.) The TRO also authorized Plaintiff to notify Defendants of these proceedings via email. (*Id.* ¶ 8.) The Court set a further status hearing on January 3, 2018. (R. 10, Order.) At the hearing on January 3, 2018, the Court granted Plaintiff’s request to extend the TRO and set a further status on January 18, 2018. (R. 15, Min. Entry.)

On January 12, 2018, Plaintiff filed an amended complaint alleging copyright infringement by all Defendants, and violations of the ICFA and IAA by Chen and Liu. (R. 18, Am. Compl.) Plaintiff seeks monetary damages, injunctive relief, attorneys’ fees, and other relief. (*Id.*) On that same date, Plaintiff separately moved for entry of a preliminary injunction, which he noticed for January 18, 2018. (R. 19, Mot. for Prelim. Injunction; R. 20, Notice of Motion.) On January 16, 2018, Defendants were served with the summons and complaint. (R. 26,

Summons Returned Executed.) On January 18, 2018, the Court held a hearing and converted the TRO into a preliminary injunction. (R. 25, Prelim. Inj. Order.) None of the Defendants appeared. (R. 24, Order.)

On February 7, 2018, Firestone filed an appearance through counsel. (R. 27, Appearance.) He moved to dismiss the amended complaint on various grounds and separately moved to vacate the preliminary injunction.<sup>2</sup> (R. 27, Appearance; R. 28, Mot. to Dismiss; R. 29, Mot. to Vacate.) In his motion to dismiss, he argues that Plaintiff has failed to state a claim and that the Court lacks personal jurisdiction over him. (R. 39, Am. Mem. in Support of Mot. to Dismiss.) In support of the motion to vacate, he argues that Plaintiff has failed to demonstrate an entitlement to preliminary injunctive relief and that the injunction was entered “without due process of notice.” (R. 40, Am. Mem. in Supp. of Mot. to Vacate.) Plaintiff responds that he has adequately stated a claim for relief under federal pleading standards and that the Court can properly exercise personal jurisdiction over Firestone given his contacts with this forum. (R. 41, Resp. to Mot. to Dismiss.) Plaintiff further argues that the preliminary injunction was properly entered and that such relief was necessary given Defendants’ ongoing use of his copyrighted material. (R. 42, Resp. to Mot. to Vacate.) Both motions are now fully briefed. (R. 43, Reply in Supp. of Mot. to Dismiss; R. 44, Reply in Supp. of Mot. to Vacate.)

In March 2018, Plaintiff moved to compel discovery responses from Firestone, arguing that he had failed to answer Plaintiff’s request for the production of documents and interrogatories served on him in January 2018. (R. 45, Mot. to Compel.) Firestone filed an opposition to the motion and also filed discovery responses, (R. 49, Resp. to Mot. to Compel;

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<sup>2</sup> Firestone’s supporting memoranda filed on that date were stricken by the Court for technical reasons, (R. 38, Min. Entry), but with the Court’s permission, he filed amended memoranda on February 25, 2018. (R. 39, Am. Mem. in Supp. of Mot. to Dismiss; R. 40, Am. Mem. in Supp. of Mot. to Vacate.)

R. 51-1, Disc. Resps.), but Plaintiff deems his responses inadequate in many respects. (R. 51, Reply in Supp. of Mot. to Compel.) This motion is also ripe for adjudication.

## ANALYSIS

### I. Firestone's Motion to Dismiss

#### A. Failure to State a Claim

Firestone first requests that Plaintiff's copyright claim be dismissed under Federal Rule of Civil Procedure 12(b)(6). (R. 39, Am. Mem. in Supp. of Mot. to Dismiss at 6-9.) To survive a motion to dismiss under Rule 12(b)(6), a complaint must "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A complaint does not need detailed factual allegations, but "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citation, internal quotation marks, and alteration omitted). Determining whether a complaint states a plausible claim for relief is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Ashcroft*, 556 U.S. at 679. In evaluating a motion to dismiss, the Court must accept the factual allegations in the complaint as true and draw all reasonable inferences in Plaintiff's favor. *Tobey v. Chibucos*, 890 F.3d 634, 645 (7th Cir. 2018).

In support of his motion to dismiss, Firestone argues that "the claims leveled against the Defendant, Firestone, have no factual basis as no relevant and concrete evidence has been tendered" showing that he was involved in the creation or operation of the website. (R. 39, Am.

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