

United States District Court  
District of Massachusetts

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IVYMEDIA CORPORATION,		)	
		)	
Plaintiff,		)	
		)	
v.		)	Civil Action No.
		)	15-11918-NMG
ILIKEBUS, INC., ALAN ZOU, TONG		)	
WEI AND JOHN DOE,		)	
		)	
Defendants.		)	
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MEMORANDUM & ORDER

GORTON, J.

This case involves a copyright infringement dispute between two competing businesses that provide online ticketing and reservation services for bus companies. Plaintiff IvyMedia Corporation ("IvyMedia" or "plaintiff") alleges that defendants iLIKEBUS, Inc. ("iLIKEBUS"), Tong Wei and Alan Zou (collectively, "defendants") unlawfully copied its website's characteristics. Defendants' motion for summary judgment is pending before the Court. For the reasons that follow, that motion will be allowed, in part, and denied, in part.

**I. Background:**

**A. The Parties and Their Websites**

IvyMedia, a Massachusetts corporation, offers a web-based platform for customers to make reservations and purchase bus tickets. Its original website, [www.IvyMedia.com](http://www.IvyMedia.com), has been

operating since March, 2002. It also owns and operates the website [www.GotoBus.com](http://www.GotoBus.com) which was launched in 2006. IvyMedia acts as an independent contractor for bus companies and receives a commission based on each ticket sale made through its website.

Defendant iLIKEBUS is a Delaware corporation with its principal place of business in Virginia. Wei, the Chief Executive Officer of iLIKEBUS, resides in Virginia. Zou is an information technology consultant at iLIKEBUS and resides in Maryland. Collectively, defendants operate the website [www.iLIKEBUS.com](http://www.iLIKEBUS.com) which was launched in March, 2015 and redesigned in June, 2015.

#### **B. Plaintiff's Copyrights**

IvyMedia holds two copyrights that protect its websites. Its first copyright ("the 2005 copyright"), Registration Number TX 6-211-055, became effective on December 13, 2005. The 2005 copyright states that the title of the work is "IvyMedia Website" and that the nature of the authorship is a

Portion of the text; revision of pre-existing text; selection, coordination and arrangement of text, graphic art [and] photograph[s.]

Attached to the copyright registration are 70 pages reproduced from IvyMedia's website in 2005.

IvyMedia's second copyright ("the 2015 copyright"), Registration Number TXu 1-954-672, became effective on July 24, 2015. That copyright is titled "GotoBus.com" and protects the

"text and original artwork" on the GotoBus website. Although IvyMedia asserts that the copyright extends to GotoBus webpages that were submitted along with the application for copyright registration, it did not submit those specific pages as an exhibit. Therefore, the Court has referred to the pages of the GotoBus website that were submitted along with the original complaint to evaluate the purported copyright infringement.

### **C. Procedural Background**

After iLIKEBUS launched its website in March, 2015 IvyMedia filed suit against defendants in May, 2015 claiming, inter alia, infringement of its 2005 copyright under 17 U.S.C. § 501, unfair competition in violation of the Lanham Act, 15 U.S.C. § 1125(a), and unjust enrichment. Defendants moved to dismiss IvyMedia's claims in June, 2015 and plaintiff opposed that motion. This Court dismissed plaintiff's claims, with the exception of the copyright infringement claim, in July, 2015.

That same month, defendants filed an answer addressing the remaining claim. The Court held a scheduling conference in September, 2015 and issued a scheduling order. In January, 2016, IvyMedia filed a motion to amend the complaint which the Court denied. In April, 2016, the parties filed a joint motion to extend the discovery deadlines which the Court allowed.

In September, 2016, the parties attempted to arbitrate their dispute. After arbitration failed, plaintiff moved to

amend its complaint to add a claim that defendants infringed its 2015 copyright. Later that same month, defendants filed a motion for summary judgment. In January, 2017, this Court allowed the motion to amend the complaint to add allegations concerning the 2015 copyright. Plaintiff's amended complaint alleges that defendants have infringed both the 2005 and the 2015 copyrights under the federal Copyright Act, 17 U.S.C. § 501, and seeks a permanent injunction, actual monetary damages and attorneys' fees and any other relief that this Court deems fit.

Both parties submitted supplemental briefing with respect to defendants' motion for summary judgment to reflect the amended complaint. This memorandum and order addresses the motion for summary judgment.

## **II. Motion for Summary Judgment**

### **A. Legal Standard**

The role of summary judgment is "to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." Mesnick v. Gen. Elec. Co., 950 F.2d 816, 822 (1st Cir. 1991). The burden is on the moving party to show, through the pleadings, discovery and affidavits, "that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is material if it "might affect the outcome of

the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A genuine issue of material fact exists where the evidence with respect to the material fact in dispute "is such that a reasonable jury could return a verdict for the nonmoving party." Id.

If the moving party has satisfied its burden, the burden shifts to the non-moving party to set forth specific facts showing that there is a genuine, triable issue. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). The Court must view the entire record in the light most favorable to the non-moving party and indulge all reasonable inferences in that party's favor. O'Connor v. Steeves, 994 F.2d 905, 907 (1st Cir. 1993). Summary judgment is appropriate if, after viewing the record in the non-moving party's favor, the Court determines that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law.

#### **B. Analysis**

Defendants move for summary judgment on the grounds that 1) the GotoBus website is not protectable as a derivative work of the 2005 copyright, 2) a lack of substantial similarity between the 2015 copyright and the iLIKEBUS website precludes a finding of copyright infringement based upon that copyright, 3) plaintiff is not entitled to damages or injunctive relief and

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