

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GENERAL MOTORS LLC., ET AL.,

Plaintiffs,

v.

Case No.: 15-12917
Honorable Victoria A. Roberts

DORMAN PRODUCTS, INC., ET AL.,

Defendants.

**ORDER DENYING DEFENDANTS' PARTIAL MOTION TO DISMISS
PLAINTIFFS' SECOND AMENDED COMPLAINT [DOC. 20]**

I. INTRODUCTION

In August 2015, Plaintiffs General Motors LLC and GM Global Technology Operations LLC (“Plaintiffs” or “GM”) filed suit against Defendants Dorman Products Inc. (“Dorman”) and Electronics Remanufacturing Company LLC (“ERC”; collectively “Defendants”), alleging copyright infringement under the Copyright Act, 17 U.S.C. 101 *et seq.*, and unlawful circumvention under the Digital Millennium Copyright Act, 17 U.S.C. 1201 *et seq.*

In September 2016, this Court granted in part Defendants’ Motion to Dismiss Plaintiffs’ Amended Complaint because the complaint did not meet Rule 12(b)(6)’s plausibility standards. The Court also granted Plaintiffs an opportunity to cure the deficiencies. Plaintiffs submitted a Second Amended Complaint in October, adding two more counts (trade secret misappropriation and unlawful trafficking under the Digital Millennium Copyright Act).

Defendants filed another Motion to Dismiss, currently before this Court, seeking to dismiss Count I (copyright infringement) with respect to four out of Plaintiffs' five copyrighted works, and Count II (illegal circumvention of security measures) in its entirety.

Defendants' Partial Motion to Dismiss Plaintiffs' Second Amended Complaint (ECF No. 20) is **DENIED**.

II. FACTUAL BACKGROUND

For the purposes of a Rule 12(b)(6) motion, "the complaint is viewed in the light most favorable to the plaintiff, the allegations in the complaint are accepted as true, and all reasonable inferences are drawn in favor of the plaintiff." See *Bassett v. Nat'l Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008). Plaintiffs, automobile manufacturers, have registered valid copyrights in the software and computer files which run on the control modules installed in their vehicles, and allege that Defendants are illegally stealing and reselling this software. (Plaintiffs include copies of five of their copyright registrations as an exhibit with their complaint; it may be considered as part of the pleading for purposes of a motion to dismiss. See *Commercial Money Ctr., Inc. v. Illinois Union Ins. Co.*, 508 F.3d 327, 335 (6th Cir. 2007) ("documents attached to the pleadings become part of the pleadings and may be considered on a motion to dismiss."))

GM alleges that Defendants Dorman and ERC worked together to violate copyright law by: (1) illegally stealing GM's copyrighted software; and (2) installing it into blank control modules, and then reselling the modules to the general public, allowing users to avoid paying GM for the software. GM believes that Dorman purchases blank

control modules from an authorized GM distributor and then sends these modules to ERC. Individuals associated with ERC created accounts on websites owned by GM, which allow paid subscribers to access GM software. ERC copies this software from GM's websites in violation of user agreements. GM says ERC then programs Dorman's modules with unauthorized and infringing copies of GM's copyrighted software and sends the programmed modules back to Dorman, which resells them to the general public, advertising them as "pre-programmed."

Dorman also manufactures, advertises, and sells a product called a "Software Transfer Tool." GM alleges this tool allows users to access, copy, and transfer GM's copyrighted software to other modules, circumventing GM's technological protection measure in violation of law.

GM acquired both a pre-programmed module and a Software Transfer Tool from Dorman. By inspecting and testing the module, GM confirmed that it contained an unauthorized copy of GM software, covered by copyright registration number TXu-1-917-502. By testing the Software Transfer Tool, GM confirmed that it allows users to bypass security measures to illegally transfer copyrighted software.

III. Legal Standard

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Defendants seek to dismiss the majority of Count I and the entirety of Count II under Fed. R. Civ. P. 12(b)(6). To survive a 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to state a claim that is plausible on its face." *R.S. Scott Associates, Inc. v. Timm Const. Co. LLC*, 2014 WL 7184448 at *3 (E.D. Mich. 2014). "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 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556, 570). While the court is required to take all factual allegations as true and view the complaint in the light most favorable to the plaintiff, the court does not have to accept legal conclusions as true. *Id.* Legal conclusions must be backed by plausible factual assertions.

To establish a plausible claim of copyright infringement, a plaintiff must allege: 1) ownership of a valid copyright, and 2) copying of constituent elements of the copyrighted work that are original. *Ford Motor Company v. Autel US Inc.*, 2015 WL 5729067 at *3; see also *Ross, Brovins & Oehmke, P.C. v. Lexis Nexis Group*, 463 F.3d 478, 482, 2006 WL 2639749 (6th Cir.2006). While other courts in this district have held that copyright infringement claims require a heightened pleading standard under *National Business Development Services, Inc. v. American Credit Education & Consulting, Inc.*, 299 F. App'x 509 (6th Cir. 2008), this Court has interpreted *National Business* as consistent with the plausibility standard set forth in *Twombly* and *Iqbal*. Accordingly, the “*Twombly*” standard governs; the two elements of a copyright infringement claim must have facial plausibility as described in *Ashcroft, supra*.

With regard to the illegal circumvention claim, 17 U.S.C. 1201(a)(1)(A) provides that “no person shall circumvent a technological measure that effectively controls access to a work protected under [copyright law].” No courts within the Sixth Circuit have analyzed the sufficiency of a pleading under this provision yet.

IV. Analysis

A. Deficiencies In Plaintiffs' Original Pleading

This Court previously found that Plaintiffs' copyright infringement claim was deficient in that it "fail[ed] to forge any sort of connection between [Plaintiffs'] list of six copyrighted works and the control modules installed in Plaintiffs' vehicles." While Plaintiffs alleged generally that Defendants infringed on copyrighted software by installing it into control modules, they failed to identify specifically how the six mentioned copyrights were involved in Defendants' actions. Without further clarification, "a party could plead the first element of a claim of copyright infringement merely by citing to a laundry list of copyright registrations...without any effort to identify which of the party's copyrighted works were involved in the defendant's allegedly infringing activities."

Next, this Court agreed with Defendants that screenshots taken of Defendant Dorman's website, where Dorman describes modules as "pre-programmed" with a "plug-and-play design," were insufficient to support a plausible inference that Defendants had pre-programmed the modules with Plaintiffs' copyrighted software.

The Court found that Plaintiffs' allegation that they purchased a module from Dorman and found that it contained an unauthorized copy of Plaintiffs' copyrighted software was sufficient to support a plausible inference that Defendants copied the protected software.

Finally, this Court found that Plaintiffs' claim of unlawful circumvention of a technological protection measure was deficient because Plaintiffs alleged that their technological protection measure protected access to their vehicle control modules, not to their copyrighted software or any other works protected by copyright.

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