

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

FURNITUREDEALER.NET, INC.

Civ. No. 18-232 (JRT/HB)

Plaintiff,

v.

**MEMORANDUM OPINION &
ORDER**

AMAZON.COM, INC., and COA, INC.
d/b/a COASTER COMPANY OF
AMERICA

Defendants.

Michael Lefeber, **BRIGGS & MORGAN, PA**, 80 South Eighth Street, Suite 2200, Minneapolis, MN 55402, for plaintiff.

Daniel M. Cislo, **CISLO & THOMAS, LLP**, 12100 Wilshire Boulevard, Suite 1700, Los Angeles, CA 90025, and Robert J. Gilbertson, **GREENE ESPEL, PLLP**, 222 South Ninth Street, Suite 2200, Minneapolis, MN 55402, for defendant COA, Inc.

This case arises out of a contract between Plaintiff FurnitureDealer.Net (“FDN”) and Defendant Coaster Company of America (“Coaster”) in which FDN agreed to create a website to market Coaster’s products. FDN, a furniture marketing company, noticed that copyrighted material it created for Coaster began appearing on Defendant Amazon.com’s (“Amazon”) URLs. FDN brought this action against Coaster after learning that it provided the allegedly infringed material to Amazon. Against Coaster, FDN alleges direct copyright infringement, contributory infringement, vicarious infringement, unjust enrichment,

breach of contract, breach of the covenant of good faith and fair dealing, and violations of the Digital Millennium Copyright Act (“DMCA”).

Coaster now moves to dismiss FDN’s claims under Fed. R. Civ. P. 12(b)(6) and, in the alternative, requests a more definite statement under Rule 12(e). Because FDN has alleged facts sufficient to support its claims, the Court will deny Coaster’s motion to dismiss as to every claim save FDN’s unjust enrichment claim. The Court will grant Coaster’s motion to dismiss the unjust enrichment claim because that claim is preempted by the Copyright Act. Finally, because it is possible for Coaster to reply to FDN’s allegations, the Court will deny Coaster’s motion for a more definite statement.

BACKGROUND

I. FurnitureDealer.Net’s Copyright

FDN is a Minnesota corporation specializing in the creation, production, and management of marketing solutions for home furniture companies. (Am. Compl. ¶¶ 1, 8, May 14, 2018, Docket No. 6.) As part of its services, FDN creates and manages websites for furniture retailers. (*Id.* ¶ 8.) In creating websites, FDN also creates content that appears on the sites, including written descriptions of its clients’ products. (*Id.*) These descriptions include search-engine-optimized (“SEO”) text. (*Id.*) SEO text is, in essence, text that is tailored to maximize its prominence on the internet, particularly in response to online searches. (*Id.* ¶ 36.) As the effectiveness of SEO text increases, so do the rankings of the websites associated with the text. (*Id.*) Likewise, when SEO text is compromised, website rankings and traffic decrease. (*Id.*) For that reason, FDN tightly controls and regulates the

use and distribution of the furniture descriptions it writes to service its clients' websites.
(*Id.*)

One tool FDN employs to protect and track its assets is a library of original product content (the "Content Library"), which includes content created for all clients FDN serves. (*Id.* ¶ 8.) The Content Library is stored in a database (the "Automated Database"), which was copyrighted in September 2015. (*Id.* ¶¶ 8-9 & Ex. A, Docket No. 6-1.) The Certificate of Registration from the U.S. Copyright Office identifies the title of the work as "Automated database of furniture catalogs and collections (photographs and text)." (*Id.* ¶ 9, Ex. A.) The "new material" listed on the certificate includes "Compilation, arrangement, original text, original photographs and revisions to certain prior photographs."¹ (*Id.*)

II. Alleged Infringement by Coaster and Amazon

Coaster is a California furniture company and a long-time customer of FDN. (*Id.* ¶¶ 3, 10.) In February 2010, Coaster and FDN entered into an agreement (the "Agreement") establishing that FDN would create and maintain a customized website for Coaster at www.coasterfurniture.com (the "Website"). (*Id.* ¶¶ 11-12, 31.)

In relevant part, the Agreement contains the following terms:² (1) FDN owns the

¹ In preparation for litigation on the present motion, the parties learned that the U.S. Copyright Office has been unable to locate the deposit materials submitted in connection with FDN's 2015 copyright. (Decl. of Daniel Cislo ¶¶ 7-8, July 6, 2018, Docket No. 42.) While not material in evaluating Coaster's motion to dismiss, the Court notes that this may present an evidentiary issue in the case.

² While the Court is normally limited to the pleadings when considering a 12(b)(6) motion, it may consider "documents whose contents are alleged in a complaint and whose authenticity no party questions." *Kushner v. Beverly Enters., Inc.*, 317 F.3d 820, 831 (8th Cir. 2003) (quoting *In re Syntex Corp. Sec. Litig.*, 95 F.3d 922, 926 (9th Cir. 1996)).

Website but licensed it to Coaster;³ (2) FDN owns all rights, title and interest to all original content created by FDN for the Website; (*id.* ¶ 11; Decl. of Larry Furiani ¶ 3, July 6, 2018, Docket No. 39, Ex. 1 (“Agreement”) at 3, Docket No. 40); (3) use of FDN’s original content is limited to the Website and websites of Coaster-authorized dealers who enter into separate licensing agreements with FDN; (Am. Compl. ¶ 12; Agreement at 6, 10); (4) Coaster retains all rights and title to domain names and design elements that it provides for the Website; (Agreement at 3); and (5) in exchange for creating and maintaining the Website, Coaster would provide FDN with referrals of authorized dealers with whom FDN could share its original content; (*id.* at 2).

Pursuant to the Agreement, FDN created the Website and wrote SEO text (the “Descriptive Text”) to market Coaster’s products, using Coaster’s catalog as a starting point. (Am. Compl. ¶¶ 10-11.) With other content used on the Website, FDN added the Descriptive Text to its Content Library. (*Id.*) FDN alleges that the Descriptive Text is therefore protected not only by the Agreement, but also by the copyright of FDN’s Automated Database. (*Id.* ¶ 11.) To alert third parties against using copyrighted material, FDN placed a graphic on each page of the Website. (*Id.* ¶ 34.) The graphic includes FDN’s logo and states, “All rights reserved. Nothing on this page may be copied or reproduced without explicit permission.” (*Id.*)

Because the Agreement’s contents are alleged in the Amended Complaint and neither party questions its authenticity, it is properly considered here.

³ The Court notes that despite this provision, in 2013, Coaster’s counsel registered a copyright of the Website in Coaster’s name. While the Website itself is not the subject of this dispute, its ownership is relevant to the Court’s analysis of FDN’s copyright and DMCA claims.

After the Website was up and running and before February 2016, FDN noticed that the Descriptive Text it created for Coaster began appearing on Amazon URLs used to promote and sell Coaster furniture. (*Id.* ¶ 14.) By February 2016, FDN had identified and collected at least 394 Amazon URLs where its Descriptive Text appeared. (*Id.* ¶ 19.) Because the text appearing on the Amazon URLs was identical or nearly identical to the Descriptive Text in its Content Library, FDN believed it was copied directly from the Content Library. (*Id.* ¶ 14.)

On February 25, 2016, FDN submitted a takedown request to Amazon via email pursuant to the Digital Millennium Copyright Act (“DMCA”). (*Id.* ¶ 17.) In the email, FDN explained in detail its concerns about copyright infringement. (*Id.* ¶ 19.) It also attached a spreadsheet containing a comparison of the text on Coaster’s and Amazon’s websites for each instance of alleged infringement along with the corresponding URLs. (*Id.*) Amazon repeatedly asserted that it could not identify the alleged infringements and requested more detail from FDN. (*Id.* ¶¶ 20-29.) Although FDN complied with Amazon’s requests, Amazon did not take any steps to remove the identified material in response to this exchange. (*Id.* ¶ 29.)

In one email dated April 6, 2016, an Amazon employee explained to FDN that Amazon had received the item descriptions from the product manufacturer (i.e., Coaster). (*Id.* ¶ 30.) Although Coaster’s Vice President repeatedly denied granting Amazon permission to use the Descriptive Text, Amazon insisted that FDN work with Coaster to resolve the issue. (*Id.* ¶¶ 32, 35, 37, 44.)

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