

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

INCOME ALLOCATION, LLC *an Indiana
Limited Liability Company,*

Case No. 22-CV-343 (JWB/JFD)

Plaintiff,

v.

ORDER

TRUCHOICE FINANCIAL GROUP, LLC
a Minnesota Limited Liability Company,

Defendant.

This case is before the Court on Plaintiff Income Allocation, LLC's ("Income Allocation") Renewed Motion for Leave to File a First Amended Complaint. (Dkt. No. 35.) The Court heard oral argument on December 15, 2022. (Hr'g Mins., Dkt. No. 47.) Paul Godfread, Esq. represented Income Allocation and Katherine Razavi, Esq. represented Defendant Truchoice Financial Group ("TruChoice"). (*Id.*)

The Court stayed discovery in this case on December 9, 2022 (Order, Dkt. No. 46; Order, Dkt. No. 54) because the sole member of Income Allocation, Mr. Gaylor, was hospitalized following a major medical event (Joint Mot. Stay Disc. 1, Dkt. No. 44). Mr. Gaylor's condition made it impossible for him to participate in discovery. (*Id.*) The stay expired on June 6, 2023. (Order, Dkt. No. 54.) In light of the stay's expiration, the Court issues this ruling on the pending motion. The Court grants in part and denies in part the Motion to Amend, as set forth below.

I. BACKGROUND¹

TruChoice provides training and other services to financial professionals. (Pl.’s Renewed Mot. Amend Compl., Ex. 2 (“Proposed Am. Compl.”) ¶ 11, Dkt. No. 35-2) Mr. Gaylor is a financial advisor and the creator of several wealth management products and services. (*Id.* ¶¶ 12–13.) Mr. Gaylor is also a published author, and he released a “web-based software and application” based on the principles in his book, which contained calculators that customers could use to estimate their retirement income or compare investment portfolios. (*Id.* ¶¶ 15–16.) He also produced a “whiteboard video” based on his book and an unspecified number of his other products. (*Id.* ¶ 21.) Mr. Gaylor registered a copyright for the book (the ‘427 copyright) in January 2016 but his company, Income Allocation, did not register the copyright for the software and app until September 2022 (the ‘532 copyright). (*Id.* ¶¶ 15, 17.) *Income Allocation*, U.S. Copyright Office, https://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?Search_Arg=TX0008211427&Search_Code=REGS&PID=etDrIjJKiu_ctkH5wI3OJ9BALs8q&SEQ=20230608164957&CNT=25&HIST=1 (Jan. 14, 2016); *Computer Program for Income Allocation and Equivalent Portfolio Value*, U.S. Copyright Office, <https://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?v1=1&ti=1,1&Search%5FArg=TX0009173532&Search%5FCode=RE>

¹ Because the Court applies the standard for a motion to dismiss in evaluating whether the proposed amendment is futile, this background recites the facts as alleged by Income Allocation. *See Hager v. Ark. Dep’t of Health*, 735 F.3d 1009, 1013 (8th Cir. 2013) (stating legal standard for evaluating a motion to dismiss).

GS&CNT=25&PID=GW2TNIBNCnzP2VImW_3CedLeyo8I&SEQ=20230601111014&SID=4 (Sept. 26, 2022, supplemented Nov. 28, 2022).

A. The Mutual Termination Agreement

Mr. Gaylor founded Income Allocation, Tradewinds Financial Group, Inc. (“Tradewinds”), and 3-Mentors, Inc. (*Id.* ¶ 12.) The book, software, and app were the subject of several license agreements between Mr. Gaylor, these entities, and GamePlan Financial Marketing, LLC. (*Id.* ¶¶ 22–23.) Those agreements were assigned to TruChoice and subsequently terminated in a “mutual termination agreement” (“MTA”) executed in 2021 by Mr. Gaylor, Tradewinds, and Truchoice. (*Id.* ¶¶ 24, 26–27.) The MTA stated that Tradewinds owned the trademarks “Income Allocation,” “Equivalent Portfolio Value” and “EPV.” (*Id.* ¶ 28.) Mr. Gaylor owned all the rights in his book, the whiteboard video—a derivative work of the book—and intellectual property he created outside the scope of the agreements which the MTA was replacing (called “Background IP”). (*Id.* ¶ 27, 29–31. *But see id.* ¶ 29 (claiming that the MTA stated that Tradewinds and Mr. Gaylor together owned the “Background IP”).) The MTA stated that TruChoice would stop using the “Background IP” the day that the MTA was effective and would stop using the book and whiteboard video by March 14, 2021. (*Id.* 33–34.) The MTA went into effect on January 13, 2021. (*Id.* ¶ 27.) Later, Mr. Gaylor and Tradewinds assigned their rights under the MTA to Income Allocation. (*Id.* ¶ 32.)

B. The Infringement and Subsequent Litigation

After the licenses granted under the MTA expired, Income Allocation learned that TruChoice was still using Mr. Gaylor’s work. (*Id.* ¶¶ 34–39.) For example, it produced a

digital copy of the book and made it available to TruChoice customers. (*Id.* ¶ 36.) TruChoice also continued to use the “Background IP” and the whiteboard video. (*Id.* ¶ 34, 37.) In February 2022, Income Allocation sued TruChoice for breach of contract, copyright infringement, contributory copyright infringement, false designation of origin, trademark infringement, conversion, and violation of the Minnesota Deceptive Trade Practices Act (Minn. Stat. § 325D.44 (2022)). (*Id.* at ¶¶ 44–201.) The undersigned held a settlement conference in September 2022, but the parties were unable to reach a resolution, and discovery started in earnest. (Hr’g Mins., Dkt. No. 29; Decl. Katherine S. Razavi ¶ 4, Dkt. No. 41.)

On the afternoon of November 1, 2022—the last day for the parties to amend their pleadings—counsel for Income Allocation left a voicemail for counsel for TruChoice, notifying her that Income Allocation intended to file an amended complaint and asking if her client would object to amendments. (Razavi Decl. ¶ 5.) Counsel for TruChoice replied by email at 6:26 that evening, saying that without any notice of what the proposed amendments were, her client could not respond. (*Id.* ¶ 6.)² At 9:09 pm, Income Allocation then filed a motion to amend the complaint to include additional copyright infringement claims, federal and state trade secret misappropriation claims, and an unjust enrichment claim. (Pl.’s Mot. to Am. Compl., Dkt. No. 32; *Id.*, Ex. A ¶¶ 44–201.)

² Counsel for Income Allocation later explained that he did not provide a summary or copy of these proposed amendments because they were still being finalized when he called counsel for TruChoice. (*Id.* at 7.)

Income Allocation's filings did not comply with the District of Minnesota Local Rules or the Electronic Case Filing Procedure Guidelines, which are incorporated by reference into the Local Rules. D. Minn. LR 5.1; (Dkt. No. 34). Income Allocation did not file a memorandum of law, meet and confer statement, or proposed order.³ See LR 7.1(b)(1)(A) (requiring the moving party to file and serve such documents simultaneously with their motion); (Pl.'s Mot. Amend Compl., Dkt. No. 32 (including only a motion)). Income Allocation's notice of hearing was attached as an exhibit to the motion, and not as an independent filing, in violation of the Electronic Case Filing Guidelines ("ECF Guidelines"). United States District Court District of Minnesota, *Electronic Case Filing Procedures Guide: Civil Cases* 10 (May 16, 2023), <https://www.mnd.uscourts.gov/sites/mnd/files/Civil-ECF-Procedures-Guide.pdf> ("[A]ttorneys should file their motions in the following order as separate docket entries"); LR 5.1 ("Electronic filing and service are governed by the civil and criminal Electronic Case Filing Procedures Guides.).

The Court ordered Income Allocation to correct its errors, including its failure to meet and confer with opposing counsel and its failure to submit a separate memorandum of

³ The Local Rules require counsel to file proposed orders on CM/ECF and email an editable copy of their orders to chambers. LR 7.1(b)(1)("[T]he moving party must file and serve the following documents simultaneously . . . proposed order (an editable copy of which must be emailed to chambers).") Counsel for Income Allocation emailed a proposed order to chambers, as required by LR 7.1(b)(1)(F) but did not file the order on CM/ECF. Counsel argues that the rule "does not expressly require . . . duplicative submission of a proposed order via both mail and ECF filing." (Pl.'s Reply Mem. 9.) In fact, that is exactly what the rules and the CM/ECF guidelines require.

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