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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

RIMINI STREET, INC. a Nevada Corporation,

Plaintiff,

v.

ORACLE INTERNATIONAL
CORPORATION, a California Corporation,

Defendant.

Case No. 2:14-cv-1699-LRH-(CWH)

ORDER

ORACLE AMERICA, INC., a Delaware
Corporation; and ORACLE
INTERNATIONAL CORPORATION,

Plaintiff,

v.

RIMINI STREET, INC.; and SETH RAVIN, an
individual,

Counter-defendants.

Before the court is counter-claimants Oracle International Corporation and Oracle America, Inc.’s (collectively “Oracle”) motion to strike plaintiff/counter-defendants Rimini Street, Inc. (“Rimini Street”) and Seth Ravin’s (“Ravin”) affirmative defense of copyright misuse. ECF No. 439. Counter-defendants filed an opposition (ECF No. 461) to which Oracle replied (ECF No. 462).

I. Facts and Procedural Background

Defendant/counter-claimant Oracle develops, manufactures, and licenses computer software. Rather than sell its software to consumers outright, Oracle licenses its software to customers through software licensing agreements which govern the customers' rights to use the software. Along with its software licensing business, Oracle also provides software maintenance and support services to its software licensees through separate software support service contracts. Oracle holds a number of federal copyrights for its various software applications, including the particular software applications at issue in this action.

Plaintiff Rimini Street provides third-party maintenance and support services to consumers who license software applications from other software companies and competes directly with Oracle to provide these after-license services. Rimini Street does not develop or manufacture its own competing software applications and holds no federal copyrights. Rather, Rimini Street contracts with software licensees to provide software maintenance and support services for certain software applications including the particular Oracle copyrighted software application at issue in this action. Counter-defendant Seth Ravin ("Ravin") is the owner and CEO of Rimini Street.

This is the second action between the parties. In the first action, *Oracle USA, Inc. v. Rimini Street, Inc.*, case no. 2:10-cv-0106-LRH-(VCF) ("*Oracle I*"), Oracle brought several claims against Rimini Street and Ravin for copyright infringement and other business-related torts based on (1) the process Rimini Street used to provide software maintenance and support services to customers who had licensed Oracle software, and (2) the manner in which Rimini Street accessed and preserved copies of Oracle's copyrighted software source code. *See Oracle I*, case no. 2:10-cv-0106-LRH-(VCF), ECF No. 1. While litigation in *Oracle I* was proceeding, Rimini Street allegedly changed the manner by which it accessed and preserved its customer's licensed software and the process by which it provided software maintenance and support services to its clients in response to the court's summary judgment orders (*Oracle I*, case no. 2:10-cv-0106-LRH-VCF, ECF Nos. 474, 476). Subsequently, on October 15, 2014, Rimini Street initiated the present action against Oracle seeking a declaration from the court that

1 its new software maintenance and support processes do not infringe Oracle's software
2 copyrights. *See* ECF No. 1.

3 After Rimini Street initiated the present action Oracle filed counterclaims against
4 Rimini Street and Ravin for copyright infringement and other business related torts. ECF No. 21.
5 Oracle then twice amended its counterclaims to add new allegations and claims against counter-
6 defendants. ECF Nos. 173, 306.

7 On January 17, 2017, Oracle sent Rimini Street a letter providing 60 days' notice of
8 Oracle's intent to revoke Rimini Street's access to Oracle's various support websites.¹ After the
9 sixty-day period ran, Oracle allegedly revoked and terminated all of Rimini Street's access to
10 Oracle's support websites, thereby allegedly preventing Rimini Street from carrying out certain
11 support services for Rimini Street's clients. Also on January 17, 2017, Oracle filed its third and
12 final amended counterclaims against Rimini Street and Ravin. ECF No. 397. In response,
13 Rimini Street and Ravin filed an answer to Oracle's third amended counterclaims. ECF No. 410.
14 As part of their answer, counter-defendants raised an affirmative defense alleging that Oracle's
15 revocation of Rimini Street's authorization to access Oracle's support websites constitutes
16 copyright misuse. *Id.* Thereafter, Oracle filed the present motion to strike Rimini Street and
17 Ravin's copyright misuse affirmative defense. ECF No. 439.

18 **II. Legal Standard**

19 A motion to strike an affirmative defense is brought pursuant to Federal Rule of Civil
20 Procedure 12(f), under which a court may strike "from any pleading any insufficient defense or
21 any redundant, immaterial, impertinent or scandalous material." FED. R. CIV. P. 12(f). A "motion
22 to strike is proper when a defense is insufficient as a matter of law." *Oracle Am., Inc. v. Micron*
23 *Tech., Inc.*, 817 F. Supp. 2d 1128, 1131-31 (N.D. Cal. 2011).

24 Affirmative defenses are governed by the same pleading standard as complaints. *Wyshak*
25 *v. City Nat'l Bank*, 607 F.2d 824, 827 (9th Cir. 1979) ("The key to determining the sufficiency of
26 pleading an affirmative defense is whether it gives plaintiff fair notice of the defense."). To

27 ¹ Oracle hosts several different websites on which Oracle offers various software updates, patches, and other
28 software support materials and documentation for licensees of Oracle's software. These support websites are made
available to licensees through client logins which allow the licensees to access the websites and download particular
fixes and support materials for the licensee's particular licensed Oracle software application.

1 sufficiently allege an affirmative defense under Rule 8(a)(2), viewed within the context of a
2 Rule 12(f) motion to strike, the affirmative defense must “contain sufficient factual matter,
3 accepted as true, to ‘state a [defense] that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S.
4 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). A defense has facial plausibility when the
5 pleaded factual content allows the court to draw the reasonable inference, based on the court’s
6 judicial experience and common sense, that the defense has merit. *See Id.* at 678-679. Further, in
7 reviewing a motion to strike an affirmative defense, the court accepts the factual allegations in
8 the affirmative defense as true. *Id.* However, bare assertions in a defense amounting “to nothing
9 more than a formulaic recitation of the elements of a [defense] are not entitled to an assumption
10 of truth.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quoting *Iqbal*, 556 U.S. at
11 698) (internal quotation marks omitted).

12 **III. Discussion**

13 “Copyright misuse is a judicially created affirmative defense to copyright infringement.”
14 *Apple Inc. v. Psystar Corp.*, 658 F.3d 1150, 1157 (9th Cir. 2011). The equitable defense of
15 copyright misuse “forbids a copyright holder from securing an exclusive right or limited
16 monopoly not granted by the Copyright Office” by preventing “copyright holders from
17 leveraging their limited monopoly to allow them control of areas outside the monopoly.” *A&M*
18 *Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1026 (9th Cir. 2001) (internal quotations omitted).
19 The defense precludes a copyright owner from enforcing the copyright during periods of misuse.
20 *See Practice Mgmt. Info. Corp. v. Am. Med. Ass’n*, 121 F.3d 516, 520 (9th Cir. 1997).

21 In their answer to Oracle’s third amended counterclaims, Rimini Street and Ravin have
22 raised an affirmative defense that Oracle has engaged in copyright misuse by revoking
23 Rimini Street’s authorization to access Oracle’s support websites. *See* ECF No. 410. Specifically,
24 counter-defendants allege that Oracle is attempting to unlawfully leverage a monopoly in the
25 support services market by revoking Rimini Street’s authorization to access Oracle’s support
26 service websites on behalf of its clients. Counter-defendants contend that these support websites
27 are the only way for Rimini Street’s clients, who have licensed Oracle’s copyrighted software, to
28 access and use certain copyrighted documents and support materials that are hosted on those

1 websites. Further, counter-defendants allege that the technical design of Oracle's support
2 websites makes it near impossible for the individual licensees to identify all of the documents
3 and materials that the licensees are entitled to under the software licenses, thereby forcing the
4 licensees to employ Oracle's uncopyrightable support services. Therefore, counter-defendants
5 argue that Oracle is misusing its software copyright by effectively requiring its customers to
6 either purchase Oracle's non-copyrightable software maintenance and support services or forego
7 the support materials for which the licensees are entitled.

8 The court has reviewed the documents and pleadings on file in this matter and finds that
9 Oracle's conduct in revoking Rimini Street's access to its support websites does not constitute
10 copyright misuse as a matter of law. First, the court notes that Rimini Street's allegations center
11 on Oracle's use of its property rights as owner of its websites to restrict Rimini Street's access to
12 those websites rather than any of the exclusive rights granted to Oracle under the Copyright Act
13 like licensing the work or determining how the work can be reproduced. Conduct, which does
14 not rely on the party's rights under the Copyright Act, cannot constitute copyright misuse. *See*
15 *Napster, Inc.*, 239 F.3d at 1027 (stating that to constitute copyright misuse, the challenged
16 conduct must attempt to extend a copyright beyond the Copyright Act's limitations). Nowhere in
17 their affirmative defense do counter-defendants allege that Oracle relied on any of its copyrights
18 in revoking Rimini Street's access to Oracle's support websites. A party's failure to allege or
19 point to any copyright employed "to prohibit directly the independent development or use of a
20 competing product" precludes a finding of copyright misuse. *Microsoft Corp. v. Computer*
21 *Support Servs. Of Carolina, Inc.*, 123 F. Supp. 2d 945, 956 (W.D. N.C. 2000).

22 Second, counter-defendants' argument that Oracle's exercise of its property rights as
23 owner of a website constitutes copyright misuse because Oracle's copyrighted support materials
24 are made available only on those support websites is without legal support and merit. Counter-
25 defendants' argument would lead to the nonsensical legal result that a website owner could
26 exclude another party from accessing a website that does not contain any copyrighted materials,
27 but then could not exclude that party from accessing the website if it contained any copyrighted
28 materials. Counter-defendants' argument is not supported by any logical or legal authority and

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