UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

LINES+ANGLES, INC., **Plaintiff,** **v.** **ADAGIO TEAS, INC.,** **Defendant.**	Civ. No. 20-00831-KM-MAH **OPINION**

MCNULTY, U.S.D.J.:

The plaintiff, Lines+Angles, Inc. (formerly Stockfood America, Inc.), alleges that the defendant, Adagio Teas, Inc. ("Adagio"), infringed its copyright in a photographic image of a pumpkin pie by displaying that image on its website. Lines+Angles seeks summary judgment as to the two essential elements of a copyright infringement claim (ownership of a valid copyright and infringement by defendant), and also as to whether Adagio's alleged infringement was willful. Adagio opposes each aspect of the motion. For the reasons stated herein, the motion of Lines+Angles will be granted as to ownership and infringement, but denied as to willfulness, which poses issues of fact.

I. Background[1]

[1] For purposes of this motion, I consider the parties' statements of material facts, as well as the deposition testimony and documentary evidence. Facts not contested are assumed to be true.

Certain record items will be cited as follows:

PSMF = Plaintiff Lines+Angles's statement of material facts (DE 48-2)

DRSMF = Defendant Adagio's responsive statement of material facts (DE 51-11)

Pl. Br. = Plaintiff Lines+Angles's brief in support of summary judgment (DE 48-1)

Opp. = Defendant Adagio's brief in opposition to summary judgment (DE 51).

Defendant Adagio is an online retailer of tea and tea accessories. (PSMF ¶ 6). Plaintiff Lines+Angles is a photographic agency which maintains a database of stock food images, videos, and other features that it licenses to third parties. (*Id.* ¶ 1). At the time that the infringement occurred, Lines+Angles was known as Stockfood America, Inc., which was then a wholly owned subsidiary of StockFood GmbH, a Germany corporation.[2] (*Id.*)

Stockfood America acts as a licensing agent for photographers. The image at issue in this case, a photograph of a pumpkin pie, was taken by Paul Poplis Photography and registered with the United States Copyright Office, Registration Number VA 1-652-306, on March 13, 2008. (*Id.* ¶ 5.) It is undisputed that Poplis granted an exclusive license to Stockfood America on July 31, 2009, though Adagio disputes the degree to which Stockfood America was an *exclusive* licensee at the time of the alleged infringement. (DE 50-2, Ex. B; DSMF ¶ 1–3.) In the Spring of 2020, plaintiff discovered that the copyrighted work at issue was being used without permission on Adagio's website. (PSMF ¶ 9, 11–12.) It appears that the photograph was uploaded to Adagio's website by a non-party to this case, who used the picture to illustrate their custom "Perfect Pumpkin Pie Chai" tea blend. (PSMF ¶ 10, DE 49-1 at 5.) Although anyone can create their own tea blend and upload related information to defendant's website, the blender is required to affirm that that they have the necessary rights to upload the image. (DE 51-1, ¶ 12, 14.)

In a prior opinion between these two parties, I held that Stockfood America, as an exclusive licensee, had standing to sue for infringement even if the photographer retained copyright to the photographs. *See Stockfood Am., Inc. v. Adagio Teas, Inc.*, 475 F. Supp. 3d 394, 411 (D.N.J. 2020). Here, however, there is an additional complication. In 2010, Stockfood GmbH signed an agreement with Getty Images that granted Getty a "world-wide exclusive

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[2] GmbH is an acronym of Gesellschaft mit beschränkter Haftung, a type of German corporate form similar to an LLC. Throughout this opinion, I refer to the plaintiff as Stockfood America when discussing the infringement, because that was the company's name when the infringement occurred.

license to distribute" Stockfood GmbH's images (the "Getty Agreement"). (DE 51-10, Ex. D., § 2.1.) It was Stockfood America, rather than Stockfood GmbH, that executed the agreement with Poplis to become the exclusive licensee of the image at issue in this case. Nevertheless, plaintiff has produced evidence showing that Getty licensed the image dozens of times. (DE 51-9, Ex. C.) The Getty Agreement includes a section related to unauthorized use of the images, which gives Getty the authority the first right to sue with respect to the unauthorized use, but states "Should Getty Images or its delegates decline to pursue such unauthorized use in the first instance, [Stockfood GmbH] shall be entitled to pursue such claims on its own behalf.... Nothing in this Section 2.7 shall prevent [Stockfood GmbH] from pursuing any unauthorized use claims where Getty Images discontinues the pursuit of any unauthorized use prior to reaching a settlement with an infringer." (DE 51-10, § 2.7.)

Stockfood America filed the complaint in this case on January 24, 2020, asserting copyright infringement pursuant to 17 U.S.C. §§ 106(1), and 501. (DE 1.) The parties failed to reach a settlement. (DE 33, 34.) In November 2020, Shannon Day purchased Stockfood America, changing its name to Lines+Angles, Inc. and a motion to substitute parties was granted in January 2022. (DE 47.) On January 14, 2022, Lines+Angles filed a motion for summary judgment on liability. (DE 48). Adagio filed a brief in opposition (DE 51) and Lines+Angles filed a reply (DE 53). Oral argument was held on June 28, 2022. (DE 56.)

II. Legal Standard

Federal Rule of Civil Procedure 56(a) provides that summary judgment should be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Kreschollek v. S. Stevedoring Co.*, 223 F.3d 202, 204 (3d Cir. 2000). In deciding a motion for summary judgment, a court must construe all facts and inferences in the light most favorable to the nonmoving party. *See Boyle v. Cty. of Allegheny Pa.*, 139 F.3d 386, 393 (3d Cir. 1998). The moving party bears

the burden of establishing that no genuine issue of material fact remains. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). "[W]ith respect to an issue on which the nonmoving party bears the burden of proof . . . the burden on the moving party may be discharged by 'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case." *Celotex*, 477 U.S. at 325.

Once the moving party has met the threshold burden, the non-moving party "must do more than simply show that there is some metaphysical doubt as to material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party must present actual evidence that creates a genuine issue as to a material fact for trial. *Anderson*, 477 U.S. at 248; *see also* Fed. R. Civ. P. 56(c) (setting forth types of evidence on which the nonmoving party must rely to support its assertion that genuine issues of material fact exist). In deciding a motion for summary judgment, the court's role is not to evaluate and decide the truth of the matter, but to determine whether there is a genuine issue for trial. *Anderson*, 477 U.S. at 249. Credibility determinations are the province of the fact finder. *Big Apple BMW, Inc. v. BMW of N. Am., Inc.*, 974 F.2d 1358, 1363 (3d Cir. 1992).

III. Discussion

Plaintiff's motion for partial summary judgment requires a decision on three issues. First, I must determine if Stockfood America owned the copyright in the image and thus had standing to sue. Second, I must decide if Adagio infringed Stockfood America's copyright. And third, I must determine if that infringement was willful. I may grant summary judgment on any of these elements only if I find that there is no dispute of material fact as to that particular element. I find that Stockfood America is an exclusive licensee with standing to sue and that Adagio infringed the copyright, and therefore GRANT summary judgement on those first two elements. I find, however, that disputed issues of material fact require me to DENY summary judgment as to willfulness.

a. Ownership and Standing

The Copyright Act of 1976 provides that "[t]he legal or beneficial owner of an exclusive right under a copyright is entitled, . . . to institute an action for any infringement of that particular right committed while he or she is the owner of it." 17 U.S.C. § 501. The Act enumerates six activities, including reproduction, transfer, and public display of the copyrighted work, that the copyright owner has the exclusive right "to do" and "to authorize." 17 U.S.C. § 106.[3] "Anyone who violates any of the exclusive rights of the copyright owner, that is, anyone who trespasses into [the owner's] exclusive domain by using or authorizing the use of the copyrighted work . . . is an infringer of the copyright." *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 433, (1984) (quotation and citation omitted).

A claim for copyright infringement involves two "essential elements: ownership of copyright, and copying by the defendant." *Dam Things from Denmark, a/k/a Troll Company ApS v. Russ Berrie & Company, Inc.*, 290 F.3d

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[3] Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

(6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

17 U.S.C. § 106.

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