

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

TIZE W. CLARK, *author*, and
BAU PUBLISHING GROUP,

Plaintiffs,

vs.

Civ. No. 14-00965 KG-KK

JAMES DASHNER, RANDOM
HOUSE LLC, TWENTIETH CENTURY
FOX, T.S. NOWLIN, NOAH OPPENHEIM,
and GRANT PIERCE MYERS,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon Defendants' Motion to Dismiss Complaint (DKT. #1) by Defendants Dashner and Random House (Incorporating Authorities) (collectively, Motion to Dismiss), filed January 20, 2015. (Doc. 22). Plaintiffs filed a response on February 20, 2015, and Defendants replied on March 13, 2015. (Docs. 36 and 44). Having reviewed Defendants' Motion to Dismiss, the accompanying briefs, and the Complaint (Doc. 1), the Court grants Defendants' Motion to Dismiss.

*I. The Complaint (Doc. 1)*¹

On October 24, 2014, Plaintiffs initiated this action against Defendants, alleging infringement on Plaintiff Tize W. Clark's (Plaintiff Clark) copyright of *The Maze*, a novel. In 2002, Plaintiff Clark obtained a copyright in his 2002 manuscript titled, *The Maze*, Registration

¹ For purposes of resolving a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the Court must accept all well-pled facts as true. Accordingly, the Court has relied upon Plaintiffs' Complaint in outlining the facts pertinent to this motion. The Court, however, need not accept Plaintiffs' legal conclusions and conclusory statements in paragraphs 18, 19, 20, and 21 of the Complaint. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”).

Number TXu 1-069-309 (*The Maze*). (Doc. 1) at ¶¶ 12–13; *see also* (Doc. 22-1) at 2–3.²

Plaintiffs allege that the concept of *The Maze*—including the idea of a giant maze with moving walls and robotic creatures—is Plaintiff Clark’s original work. *Id.* at ¶ 16. In 2004, Plaintiff Clark published an original version of *The Maze*; and in June 2005, Plaintiff Bau Publishing Group published *The Maze* with the International Standard Book Number (ISBN) 0-9766770-0-8. *Id.* at ¶¶ 14, 25. Also in June 2005, Plaintiff entered into a book distribution and sale agreement with Barnes & Noble, Inc. and various other booksellers. *Id.* at ¶ 15.

In 2006, Defendant James Dashner (Defendant Dashner) started writing *The Maze Runner*. *Id.* at ¶ 17. In 2009, Defendant Dashner copyrighted *The Maze Runner*. *Id.* That same year, Defendant Random House, L.L.C. (Defendant Random House) published *The Maze Runner*. *Id.*

In Count I, Plaintiffs state a copyright infringement claim pursuant to 17 U.S.C. §§ 101–1332 against Defendants Dashner and Random House. *Id.* at ¶¶ 22–35. Plaintiffs claim Defendants infringed on the protectable copyright expressions within chapter two and chapters eight through fourteen of *The Maze*. *Id.* at ¶ 26. More particularly, Defendants allegedly infringed on Plaintiffs’ original copyrighted work of “giant movable walls, robotic half human half machine terrifying creatures chasing teenage boys trying to escape from the death trap environment that is constantly changing shape.” *Id.* at ¶ 23.

In Count II, Plaintiffs seek injunctive relief for the alleged copyright infringement. *Id.* at ¶¶ 36–42. In Count III, Plaintiffs bring a claim for unfair trade practices and unfair competition based on Defendants’ publication, selling, and marketing of *The Maze Runner* without credit or royalties to Plaintiff Clark. *Id.* at ¶¶ 43–47. Finally, in Count IV, Plaintiffs allege a copyright

² Paragraphs twelve and thirteen of Plaintiffs’ Complaint are identical.

infringement claim pursuant to 17 U.S.C. §§ 101–1332 against Defendant Twentieth Century Fox for the screenplay of *The Maze Runner*. *Id.* at ¶¶ 48–56.

Defendants now move to dismiss Counts I–III under Fed. R. Civ. P. 12(b)(6), with prejudice, for failure to state a claim upon which relief can be granted. Of course, Plaintiffs oppose Defendants’ Motion to Dismiss in its entirety.

II. Legal Standard

In ruling on a Rule 12(b)(6) motion to dismiss, the Court must accept all well-pleaded allegations as true and must view them in the light most favorable to the plaintiff. *See Zinermon v. Burch*, 494 U.S. 113, 118 (1990); *Swanson v. Bixler*, 750 F.2d 810, 813 (10th Cir. 1984). Rule 12(b)(6) requires that a complaint set forth the grounds of a plaintiff’s entitlement to relief through more than labels, conclusions and a formulaic recitation of the elements of a cause of action. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

To survive a Rule 12(b)(6) motion to dismiss, a plaintiff must allege facts sufficient to state a plausible claim of relief.³ *Id.* at 570. A claim is facially plausible if the plaintiff pleads facts sufficient for the Court to reasonably infer that the defendant is liable for the alleged misconduct. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* Granting a Rule 12(b)(6), however, “is a harsh remedy which must be cautiously studied, not only to effectuate the spirit of the liberal rules of pleading but also to protect the interests of justice.” *Cayman Exploration Corp. v. United Gas Pipe Line Co.*, 873 F.2d 1357, 1359 (10th Cir. 1989) (quotation omitted).

³ Notably, Plaintiffs contend the proper standard for a Rule 12(b)(6) motion is that the motion must be denied “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” (Doc. 36) at 2 (citing *Sutton v. Utah State Sch. for the Deaf & Blind*, 173 F.3d 1226, 1236 (10th Cir. 1999)). In light of *Twombly* and its progeny, the Court will not entertain Plaintiffs’ proffered legal standard.

In evaluating a Rule 12(b)(6) motion, courts may also consider any attached exhibits, documents incorporated by reference, and “documents referred to in the complaint if the documents are central to the plaintiff’s claim and the parties do not dispute the documents’ authenticity.” *Smith v. United States*, 561 F.3d 1090, 1098 (10th Cir. 2009) (internal quotations and citations omitted). And, “factual allegations that contradict . . . a properly considered document are not well-pleaded facts that the court must accept as true.” *GFF Corp. v. Assocd. Wholesale Grocers*, 130 F.3d 1381, 1385 (10th Cir. 1997).

III. Discussion

Defendants contend Plaintiffs’ copyright infringement claim (Count I) is subject to dismissal because a review of the parties’ works demonstrates insufficient similarity of protectable expressions, and therefore, Plaintiffs’ injunctive relief demand (Count II) also must be dismissed. Defendants further contend Plaintiffs’ state law unfair trade practices and unfair competition claims (Count III) are preempted by federal copyright law. Defendants also contend that *Dastar Corporation v. Twentieth Century Fox Film Corporation*, 539 U.S. 23 (2003), bars Plaintiffs’ federal unfair competition claim (Count III). Each contention will be discussed in turn.

A. Comparison of the 2002 Manuscript of The Maze (Docs. 22-1 and 22-2) and the 2009 Publication of The Maze Runner (Ex. 2)

Plaintiffs argue preliminarily that in evaluating a Rule 12(b)(6) motion, the Court may not review and compare the copyrighted and infringed work. Plaintiffs’ assertion is contrary to well-established case law. First, the Court may consider any documents incorporated by reference, and “documents referred to in the complaint if the documents are central to the plaintiff’s claim and the parties do not dispute the documents’ authenticity.” *Smith*, 561 F.3d at 1098. Here, Plaintiffs attached excerpts of the two books to the Complaint. *See* (Doc. 1-1);

(Doc. 6). Indeed, the Complaint references both works, which are paramount to Plaintiffs' copyright infringement claim. Moreover, Plaintiffs do not dispute the authenticity of the 2002 manuscript, *The Maze* (Docs. 22-1 and 22-2), nor the 2009 publication of *The Maze Runner* (Ex. 2).⁴

Second, there is a dearth of jurisprudence in the context of a motion to dismiss where courts have examined the copyrighted and infringed work to determine whether the works are substantially similar. See *Effie Film, LLC v. Murphy*, 564 Fed. Appx. 631 (2d Cir. 2014); *Wild v. NBC Universal*, 513 Fed. Appx. 640 (9th Cir. 2013) (citing *Christianson v. West Pub. Co.*, 149 F.2d 202 (9th Cir. 1945)); *Jacobsen v. Deseret Book Co.*, 287 F.3d 936 (10th Cir. 2002); *Tanikumi v. Walt Disney Co.*, 2015 WL 716429 (D.N.J. Feb. 19, 2015); *Boston Copyright Assocs., Lts. v. U-Haul Int'l, Inc.*, 2015 WL 666952 (D. Mass. Feb. 17, 2015) (citing *Winstead v. Jackson*, 509 Fed. Appx. 139 (3d Cir. 2013) (“[W]here the works in question have been submitted by the parties and are authentic, it is proper for the District Court to consider the similarity between those works in connection with a motion to dismiss.”); *Peter F. Gaito Architecture, LLC v. Simone Dev. Corp.*, 602 F.3d 57 (2d Cir. 2010); *Nelson v. PRN Prods., Inc.*, 873 F.2d 1141 (8th Cir. 1989)); *Acker v. King*, 46 F. Supp. 3d 168 (D. Conn. 2014); *Dean v. Cameron*, 53 F. Supp. 3d 641 (S.D. N.Y. 2014); *Harris v. Mattel Inc.*, 2013 WL 3154124 (E.D. Okla. June 21, 2013). In light of this precedent, the Court will review and compare the copyrighted 2002 manuscript of *The Maze* and the 2009 publication of *The Maze Runner*.

⁴ Notably, Plaintiffs attached the alleged 2005 edition of *The Maze* to the response. See (Doc. 36-1). A review of (Doc. 36-1) does not indicate whether the proffered document is the actual 2005 edition. For instance, Plaintiffs did not attach the front matter section of the book, which includes the book's title, the author's name, and the copyright and publication information. Despite this issue, the Court has carefully read and compared the 2002 manuscript and the alleged 2005 edition. The Court finds that any discrepancies between the two editions are inconsequential to the disposition of the instant motion. The Court, thus, relies upon the undisputed authenticated copyrighted 2002 manuscript for purposes of this motion.

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