

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
BRIAN K. WHITE,

Plaintiff,

-against-

DISTOKID, et al.,

Defendants.
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OPINION & ORDER

22 Civ. 2205 (VEC) (GWG)

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GABRIEL W. GORENSTEIN, United States Magistrate Judge

Plaintiff Brian White has brought suit against defendants DistroKid, LLC, Kid Distro Holdings, LLC, d/b/a Distrokid, (collectively, “DistroKid”) and Eunice Rivers for violations of the Copyright Act and breach of contract. See First-Amended Complaint, filed Dec. 12, 2023 (Docket # 69) (“Am. Compl.”). DistroKid has moved to dismiss the claims against it.¹ For the following reasons, the motion is granted in part and denied in part.

I. BACKGROUND**A. Factual Background**

Plaintiff White is a professional musician who “writes music and beats; does live performances; mixes, produces, sound engineers recorded tracks; and also writes and directs his own music videos.” Am. Compl. ¶ 10. Defendant Rivers is also a musician and “known in the New Jersey area as an accomplished music and club promoter.” Id. ¶¶ 15, 17. White and Rivers met in 2017, id. ¶ 14, and Rivers “took an interest in Mr. White, in part, because of his musical

¹ See Defendants Distrokid, LLC’s and Kid Distro Holdings, LLC’s Notice of Motion and Motion to Dismiss, filed Jan. 24, 2024 (Docket # 76) (“Mot.”); Memorandum of Law in Support, filed Jan. 24, 2024 (Docket # 77) (“Mem.”); Plaintiff Brian White’s Opposition, filed Feb. 28, 2024 (Docket # 84) (“Opp.”); Reply Memorandum of Law, filed Mar. 27, 2024 (Docket # 85) (“Reply”); Letter, filed May 24, 2024 (Docket # 88) (“Pl. Supp. Letter”); Letter, filed June 7, 2024 (Docket # 89) (“Def. Supp. Letter”).

talents, including his ability to write beats . . .,” id. ¶ 16.

White “primarily creates beats for his own music” but also “creates beats and licenses them to other artists.” Id. ¶ 20. In November 2020, White created a “series of beats for a number of songs to present for possible licensing to two artists in the New Jersey area.” Id. ¶ 21. White worked “[a]lone and in his own recording studio” and registered a set of beats (hereinafter, “Original Beats”), “along with other songs,” with the United States Copyright Office. Id. ¶¶ 22, 25 (providing Copyright Registration number of PAu004070068). At some point, Rivers and White “discussed the possibility of Ms. Rivers licensing the Original Beats from Mr. White.” Id. ¶ 27.

Sometime between December 2020 and January 2021, White and Rivers “entered into an oral agreement.” Id. ¶ 28. The agreement provided that Rivers “could use the Original Beats as music for her singing (recorded and live), so long as she continued to book live performances for Mr. White to perform at and so long as she provided Mr. White with 50% of the proceeds of the exploitation of the Original Beats or any music that included the Original Beats.” Id. ¶ 29. The agreement also provided that if “Rivers failed to continue to perform her payment and live-performance obligations, the license rights would automatically revert back to Mr. White and Ms. Rivers would no longer have the right to use the Original Beats.” Id. White alleges that he has “entered into similar licensing agreements with other artists.” Id. ¶ 31.

At some point between December 2020 and April 2021, White emailed electronic copies of the Original Beats to Rivers. Id. ¶ 32. After deciding on which beats she wanted to use, Rivers “without any contribution from Mr. White, wrote lyrics and melodies, or reused lyrics and melodies already written by Ms. Rivers years before, to perform with the Original Beats.” Id. ¶ 33. Rivers thereby created an album entitled “Here I Am” (“Album”), which is comprised of

several songs. Id. ¶ 35.

After she created the Album, Rivers “would reach out to Mr. White to get permission and authorization from him to share the Album.” Id. ¶ 39. This included two instances where Rivers sought “permission” to share the Album “with a radio station” and “to use and/or display the Album in a video.” Id. ¶¶ 40-41. On an unspecified date after Rivers created the Album, White “posted the Album to DistroKid for Ms. Rivers.” Id. ¶ 47.

DistroKid is “a music distributor, i.e., a company that, for a fee, populates a musician’s music to a variety of streaming services, online music stores, and other platforms,” such as Spotify, iTunes, Amazon, TikTok, and YouTube Music (collectively, the “Digital Stores”). Id. ¶ 69; see id. ¶¶ 70, 73. DistroKid “charges an annual fee in exchange for use of its distribution platform” and “offers users upcharges upon each upload of music to [the] Digital Stores.” Id. ¶ 71. After a DistroKid user creates an account and uploads their work to DistroKid, DistroKid will “modify the copy to conform with each Digital Store’s uploading requirements,” upload the content onto the Digital Stores’ platforms, and collect royalties from the Digital Stores, which it distributes to the user’s DistroKid account. Id. ¶ 73. DistroKid retains the right to remove any content from the Digital Stores “for reasons including failure to pay its annual fee, its receipt of takedown notices submitted to Digital Stores, or any reason in its business judgment.” Id. ¶ 74.

After Rivers created the Album, Rivers and White performed in a show together, which included performance of music from the Album. Id. ¶ 48. However, after that show “Rivers did not continue to meet her obligations under the Agreement to schedule live performances for Mr. White.” Id. ¶ 49. While Rivers “performed songs from the Album at numerous live events,” she “did not ask Mr. White to perform at these live performances,” “did not pay Mr. White his 50% of the proceeds from any of these live performances,” and “did not pay Mr. White 50%” of the

proceeds generated by the Album. Id. ¶¶ 50-54. On September 9, 2021, Rivers registered the Album with the United States Copyright Office. Id. ¶ 57 (providing registration number of PA0002326762). In the registration, she “did not reference Mr. White’s copyright registration of the Original Beats.” Id.

On December 7, 2021, White “reiterated” to Rivers that she “no longer had his authorization under the license Agreement to use his Original Beats” and indicated that she “must cease any uses of his Original Beats, including any use in the Album.” Id. ¶¶ 58-60. On the same day, White removed the Album from DistroKid. Id. ¶ 59. Nonetheless, Rivers continued to make copies, distribute, and perform the Album. Id. ¶¶ 61-65. Sometime between December 7, 2021, and March 10, 2022, Rivers uploaded the Album to DistroKid herself. Id. ¶¶ 66, 75. DistroKid then “changed the format of at least one copy” of the Album and “distributed the Album to various Digital Stores.” Id. ¶¶ 78-79. On March 10, 2022, White learned that Rivers had re-uploaded the Album to Distrokid and sent an email to Rivers requesting that it be taken down from DistroKid and the Digital Stores. Id. ¶¶ 67-68.

B. Procedural Background

On March 17, 2022, White filed the instant action. See Complaint for Copyright Infringement, filed Mar. 17, 2022 (Docket # 2). Plaintiff filed the amended complaint on December 12, 2023. See Am. Compl. On January 24, 2024, DistroKid filed the instant motion to dismiss. The parties consented to adjudication of the motion by the undersigned.

II. LEGAL STANDARD

A party may move to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) when the opposing party’s complaint “fail[s] to state a claim upon which relief can be granted.” While a court must accept as true all of the factual allegations contained in a complaint, that principle does not apply

to legal conclusions. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (“[A] plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”) (punctuation and alterations omitted). In other words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice,” Iqbal, 556 U.S. at 678, and a court’s first task is to disregard any conclusory statements in a complaint, id. at 679.

Next, a court must determine if the complaint contains “sufficient factual matter” which, if accepted as true, states a claim that is “plausible on its face.” Id. at 678 (citation and punctuation omitted). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. 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. (internal citation and punctuation omitted). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct,” a complaint is insufficient under Fed. R. Civ. P. 8(a) because it has merely “alleged” but not “‘show[n]’ . . . ‘that the pleader is entitled to relief.’” Id. at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

III. DISCUSSION

White brings two causes of action against DistroKid: one for direct copyright infringement and another for indirect copyright infringement. See Am. Compl. ¶¶ 97-104. DistroKid argues that White fails to state a claim against it, see Mem. at 4-10, and in the event the Court finds otherwise, that it is immune from liability under section 512(c) of the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 512, see Mem. at 10-12. We address each of

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