UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RED APPLE MEDIA, INC., Plaintiff, -v- JOHN BATCHELOR, UNION RIVER PRESS, INC., AUDIOBLOOM LTD., THE WEISS AGENCY INC., and HEATHER COHEN, Defendants.	22-cv-07547 (JSR) OPINION AND ORDER

JED S. RAKOFF, U.S.D.J.:

Plaintiff Red Apple Media, Inc. ("Red Apple") alleges it owns exclusive rights to the John Batchelor Show -- a news podcast hosted by defendant John Batchelor -- and that, notwithstanding Red Apple's exclusive ownership, Batchelor and the other defendants copied and broadcast the show's content after the podcast was discontinued for a new radio show. Verified Complaint ("Compl.") ¶¶ 1-55, Dkt. 1-1. For this, Red Apple sued Batchelor and the other defendants here named in New York State court, alleging breach of contract, unjust enrichment, conversion, and other claims purportedly arising under New York state law. Compl. ¶¶ 56-138.

Defendant Audiobloom Limited ("Audiobloom"), with the consent of the other defendants, removed the case from state to federal court under 28 U.S.C. §§ 1441(c) and 1454 on the basis that many or all of Batchelor's claims actually arise under, and are preempted by, Section 301(a) of the Copyright Act. See Notice of Removal ¶¶ 8-15, Dkt. 1.

Red Apple now moves to remand the case to state court pursuant to 28 U.S.C. § 1447(c). For the reasons explained below, the Court denies plaintiff's motion to remand.

I. Legal Standard

Defendants may remove to federal court "any civil action brought in a State court of which the district courts of the United States have original jurisdiction. . . ." 28 U.S.C. § 1441(a). Congress has also provided more specifically that any "civil action in which any party asserts a claim for relief arising under" federal copyright law may be removed to the United States district court "embracing the place where the action is pending." Id. § 1454(a).

Here, as noted, Red Apple's claims purport to arise under state law, not the federal Copyright Act or any other federal statute. Although defendants might intend to raise a federal preemption defense to these state-law claims, that expectation alone would not ordinarily suffice to establish federal question jurisdiction where no federal issue appears on the face of plaintiff's complaint. See Louisville & Nashville R.R. Co. v. Mottley, 211 U.S. 149, 154 (1908).

However, copyright is one of a handful of areas where -- at least in the Second Circuit -- Congress is considered to have "completely preempted" analogous state-law claims, meaning that "the preemptive force of federal law [in this area] is so extraordinary that it converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule." Briarpatch Ltd., L.P. v. Phoenix Pictures, Inc., 373 F.3d 296, 305 (2d

Cir 2004). Because the Copyright Act "both preempts state law and substitutes a federal remedy for that law, thereby creating an exclusive federal cause of action . . . [i]t therefore follows that the district courts have jurisdiction over state law claims preempted by the Copyright Act." Id. The Court therefore has federal question jurisdiction over any of Red Apple's nominally state-law claims that are in fact completely preempted by federal copyright law.

Although Red Apple argues that the case as a whole should be remanded, its legal memorandum appears at times to contemplate that specific claims as to which this Court may not have federal question jurisdiction should be remanded to state court. See Pls. Mem. Supp. Mot. Remand ("Pls. Mem.") at 7-19. But both of the removal statutes relied on by defendants, as well as the remand provision relied on by Red Apple, authorize the removal (or remand) of entire cases, not claims. See 28 U.S.C. §§ 1441(a), 1454(a), 1447(c). As a result, so long as federal question exists over a "single claim," removal of the entire case is proper. Broder v. Cablevision Sys. Corp., 418 F.3d 187, 194 (2d Cir. 2005).

Although Red Apple does not cite it, there is a statutory mechanism that authorizes a federal court to sever and remand to state court individual claims even where removal of the case was proper. See 28 U.S.C. § 1441(c). However, that statute applies by its terms only where certain claims fall outside both the Court's "original or supplemental jurisdiction." Id. Supplemental jurisdiction exists "over all other claims that are so related to claims in the action within

such original jurisdiction that they form part of the same case or controversy. . . .” 28 U.S.C. § 1367(a). As such, while 28 U.S.C. § 1441(c) might authorize the severance and remand of state-law claims that are totally unrelated to federal-law claims brought in the same suit, here all of Red Apple’s complaints against the various defendants involve the same common core of facts, relating to Batchelor’s and other defendants’ alleged use of intellectual property belonging to Red Apple. See generally Compl. As such, to the extent federal question jurisdiction exists over any of Red Apple’s claims, supplemental jurisdiction attaches to any remaining claims, and 28 U.S.C. § 1441(c) does not apply.

It is true that in the event the Court has federal question jurisdiction over some but not all of Red Apple’s claims and those claims are promptly dismissed because they are preempted, the Court would have no obligation to exercise supplemental jurisdiction over any remaining state law claims. See 28 U.S.C. § 1367(c) (laying out considerations for courts to consider in determining whether to exercise supplemental jurisdiction); Marcus v. AT&T Corp., 138 F.3d 46, 57 (2d Cir. 1998). In that event, the Court would have discretion to choose whether to exercise jurisdiction over any remaining state law claims, dismiss them, or remand them to the state court in which they were originally brought. See Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 356-57 (1988) (reasoning that when district courts decline to exercise jurisdiction over pendant state-law claims in a removed case, they may choose whether to dismiss or remand those claims).

However, in determining whether or not this Court has jurisdiction or must remand the case at this time, it is sufficient that federal question jurisdiction attach to just one claim.

II. Analysis

Against this background, the key question is whether any of plaintiff's ostensibly state-law claims is preempted by federal copyright law. Under Second Circuit precedent, "[t]he Copyright Act exclusively governs a claim when: (1) the particular work to which the claim is being applied falls within the type of works protected by the Copyright Act under 17 U.S.C. § 102," which grants copyright protections to "original works of authorship fixed in any tangible medium of expression . . . from which they can be perceived, reproduced, or otherwise communicated,"; and "(2) the claim seeks to vindicate legal or equitable rights that are equivalent to one of the bundle of exclusive rights already protected by copyright law under 17 U.S.C. § 106," which gives copyright owners the exclusive rights to reproduce, copy, and prepare derivative works of the copyrighted work. Briarpatch, 373 F.3d at 305. The first "requirement is satisfied if the claim applies to a work of authorship fixed in a tangible medium of expression and falling within the ambit of one of the categories of copyrightable works." Id. The podcast content taped by Batchelor and allegedly owned by Red Apple plainly meets this requirement. See 17 U.S.C. § 102(a)(7) (including "sound recordings" in the categories of "works of authorship" to which copyright protection attaches).

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