

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DAVID SILER; DISTINCTIVE HUMAN)
RESOURCES, INC.,)
)
Plaintiffs,)
)
v.) 1:19CV403
)
ELGA LEJARZA a/k/a ELGA)
LEJARZA-PENN; MICHAEL PENN;)
LEJARZA COMPLIANCE TRAININGS)
LLC, a limited liability)
company; LEJARZA HR CONSULTING)
LLC, a limited liability)
company,)
)
Defendants.)

MEMORANDUM OPINION AND ORDER

THOMAS D. SCHROEDER, Chief District Judge.

Plaintiffs David Siler and Distinctive Human Resources, Inc. ("Distinctive HR") bring this action against Defendants Elga Lejarza a/k/a Elga Lejarza-Penn, Michael Penn, Lejarza Compliance Trainings, LLC ("Compliance Trainings"), and Lejarza HR Consulting, LLC ("HR Consulting") for their allegedly unlawful use of Plaintiffs' copyrighted materials. Before the court is Defendants' motion to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. 11.) The motion is fully briefed (Docs. 17, 18) and is ready for decision. For the reasons set forth below, the motion will be granted in part and denied in part.

I. BACKGROUND

The allegations of the complaint, along with the contents of documents of which the court takes judicial notice,¹ viewed in the light most favorable to Plaintiffs, show the following:

Siler is the controlling shareholder of Distinctive HR. (Doc. 1 ¶ 10.) Together, they produce study courses and materials ("Test Prep Materials") designed to help individuals pass a variety of human resources certification exams: the Professional in Human Resources (PHR) Certification Exam, the Senior Professional in Human Resources (SPHR) Certification Exam, the Associate Professional in Human Resources (aPHR) Certification Exam, and the Global Professional in Human Resources (GPHR) Certification Exam. (Id. ¶ 11.) The Test Prep Materials consist of print, audio, video, visual, and interactive materials, such as study guides, training games, sample tests, and flashcards. (Id. ¶¶ 11, 16-28.) Included with the Test Prep Materials is access to Plaintiffs' Learning Management System ("LMS"), an online platform with test prep content. (Id. ¶¶ 16, 18, 27-28.) Most of the component parts of the Test Prep Materials are registered with the United States

¹ The court may consider documents outside the pleadings without converting a motion to dismiss into one for summary judgment if those documents are "integral to and explicitly relied on in the complaint" and their authenticity is unchallenged. Copeland v. Bieber, 789 F.3d 484, 490 (4th Cir. 2015) (quoting Phillips v. LCI Int'l, Inc., 190 F.3d 609, 618 (4th Cir. 1999)). Plaintiffs have attached five documents to their brief that support their claims and are relied upon in their complaint (Docs. 1-1 through 1-5), and their authenticity is unchallenged.

Copyright Office.² (Id. ¶ 33; Doc. 1-1.)

In April of 2011, Lejarza purchased Plaintiffs' PHR/SPHR audio CD and a one-year self-study online subscription. (Id. ¶ 62.) In March of 2016, she purchased the same two audio CDs and another one-year self-study online subscription. (Id. ¶ 63.) In March of 2017, she purchased the 2017 PHR/SPHR self-study course bundle with a one-year self-study online subscription. (Id. ¶ 64.) And despite passing her human resources Certification exams prior to the start of 2018 (id. ¶ 67), in March of 2018 Lejarza purchased the 2018 PHR/SPHR self-study course with a one-year online subscription. (Id. ¶ 65.)

Lejarza and Penn are business partners and owners of Defendants HR Consulting and Compliance Trainings. (Doc. 1 ¶¶ 81-82, 158-64.) Lejarza, either individually or through Compliance Trainings, "offers training workshops, seminars, webinars, classes, or similar training, educational, or promotional events" to help customers pass their human resources certification exams. (Id. ¶ 91.) These live workshops are taught by Lejarza, but prerecorded materials are also available for purchase. (Id. ¶ 95.)

On or about July 25, 2018, Distinctive HR received notice

² Defendants note that of the thirty-two copyright registrations provided in Doc. 1-1, only two were registered prior to the termination of Defendant Lejarza's service. (Doc. 13 at 6.) However, to bring a copyright infringement claim, the works at issue simply must be registered prior to commencement of the suit, and not at the time of the alleged infringement. 17 U.S.C. § 411(a).

that Defendants were using the Test Prep Materials "word-for-word" in the slideshow presentations as part of Defendants' workshops and were including Plaintiffs' materials in their on-demand materials. (Id. ¶ 108-09.) Distinctive HR's software also recorded Lejarza accessing the self-study site thousands of times between May 18, 2017, and August 28, 2018, often with her actions overlapping in time. (Id. ¶¶ 70-76.)

The purchase page of Plaintiffs' Test Prep Materials provides customers this notice:

[Learning Management System] access is for a single-user and is NOT transferable or to be shared with others. LMS access is valid for 1 year from the date your order is processed. A valid email address and individual's name must be provided for each [name of product ordered] ordered. All materials are copyrighted material and may not, in whole or in part, be copied, shared, or reproduced by any means for any reason without the prior written consent of Distinctive Human Resources, Inc. Any violation of these terms and conditions will result in immediate termination of your access to these materials, with no refund provided.

(Id. ¶ 69.) Plaintiffs allege that Lejarza not only reproduced their copyrighted material in her own workshops and on-demand materials, but that she also provided her login information to staff, volunteers, co-owners, or agents of Compliance Trainings and/or HR Consulting. (Id. ¶ 80.)

On August 27, 2018, Plaintiffs' counsel sent a cease and desist demand to Lejarza and Compliance Trainings, and Lejarza's self-study subscription was terminated on August 28, 2018, for

violations of the user license agreement. (Id. ¶¶ 66, 138.) According to Defendants, Lejarza has continued to infringe on Plaintiffs' copyrights following the cease and desist letter. (Id. ¶ 139.)

On April 15, 2019, Plaintiffs filed this lawsuit pursuant to 18 U.S.C. §§ 1331 and 1338(a), under the Copyright Act. (Doc. 1.) Based on Defendants' alleged misconduct, Plaintiffs bring five causes of action. Against each Defendant, Plaintiffs claim copyright infringement under the Copyright Act, 17 U.S.C. §§ 106, 501; unfair competition under the Lanham Act, 15 U.S.C. § 1125; and common law copyright infringement and unfair and deceptive trade practices under the North Carolina Unfair and Deceptive Trade Practices Act ("UDTPA"), N.C. Gen. Stat. §§ 75-1.1 et seq. (Id. at 22-24, 26-27, 28-32.) Against Lejarza individually, Plaintiffs allege breach of contract. (Id. at 24-25.) In lieu of answering, Defendants filed the present motion to dismiss, which is fully briefed and ready for decision.

II. ANALYSIS

Plaintiffs assert, and the parties do not dispute, that the court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a), under the Copyright Act. (Doc. 1 ¶ 7.) The court also has original jurisdiction over Plaintiffs' claim of unfair competition that is "joined with a substantial and related claim under the copyright . . . laws." 28 U.S.C. § 1338(b). The court

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