

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:21CV633-GCM

JACQUELINE S. MCFEE, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CAROLINA PAD, LLC, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

ORDER

This matter is before the Court upon Defendant’s Motion to Dismiss. The motion is fully briefed and ripe for disposition.

**I. FACTUAL BACKGROUND**

This is an action for copyright infringement. From 2001 through 2015, Jacqueline McFee was the lead designer at CPP International, LLC (“CPP”). (Compl. ¶ 8). Prior to that time, CPP had no creative department, and manufactured basic notepads, stationery, and office supplies. *Id.* at ¶¶ 8-9. After McFee arrived, she established a creative department and began designing unique notebooks and other items that dramatically increased CPP’s financial success, and caused CPP to become well known in the stationery and office supply field. *Id.* at ¶¶ 11-12.

Ms. McFee had an employment agreement (the “Agreement”) with CPP whereby McFee retained her intellectual property rights in the designs and work product she created for CPP. *Id.* at ¶ 13. As part of the Agreement, CPP was required to affirmatively transfer the intellectual property rights in all designs created by McFee once they were no longer used by CPP for a prescribed period of time. *Id.* at ¶ 16.

When McFee departed from the CPP, she sought to obtain copyright ownership of her designs based on this Agreement. *Id.* at ¶¶ 15-16. A dispute arose between McFee and CPP and CPP refused to assign the copyrights to her. *Id.*

McFee filed a lawsuit against CPP in this court in 2016 raising federal law claims of: (i) false advertising in violation of 15 U.S.C. § 1125(a) and (ii) copyright infringement in violation of 17 U.S.C. § 501; as well as state law claims of: (iii) unfair competition, (iv) unfair and deceptive trade practices in violation of North Carolina General Statutes § 75-1.1, and (v) breach of contract. *McFee v. CPP Int'l*, No. 3:16-CV-165-RJC-DCK, 2016 WL 8257667, at \*2 (W.D.N.C. Nov. 17, 2016), *report and recommendation adopted*, *Mcfee v. CPP Int'l*, No. 3:16CV00165-RJC-DCK, 2017 WL 628306 (W.D.N.C. Feb. 15, 2017) (*McFee I*). In that case, McFee alleged that all rights in her designs reverted to her upon the occurrence of what the Agreement referred to as End of Sale status, which McFee further alleged had been reached. CPP moved to dismiss and the court dismissed Plaintiff's federal law claims with prejudice, holding that Plaintiff failed to state a claim because she did not have ownership of the disputed designs—including the related copyright and trademark rights.<sup>1</sup> The court found that the plain language of the Agreement required CPP to affirmatively assign ownership to McFee when End of Sale status was reached, and until this was done, McFee did not possess copyright or trademark ownership.<sup>2</sup> The Court determined that it lacked jurisdiction to hear the dispute, and suggested that the state claims be raised in state court.

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<sup>1</sup> Having dismissed Ms. McFee's federal claims, the court declined to exercise jurisdiction over her state law claims and dismissed them without prejudice to be refiled in state court.

<sup>2</sup> The court explained:

Although [CPP International] may be in breach of the Employment Agreement by failing to assign intellectual property ownership to Plaintiff, Defendant nonetheless

Thereafter, McFee filed a state court action in Mecklenburg County Superior Court entitled *Jacqueline S. McFee v. CPP International*, Mecklenburg County Case No. 17-CVS-1981 (“*McFee I*”), asserting claims for breach of contract, fraud, constructive fraud, unfair competition, unfair and deceptive trade practices, and breach of fiduciary duty. (Compl., Ex. A at p. 2). On March 14, 2019, while *McFee I* was pending, CPP sold assets to a company called Bay Sales. (Compl. ¶ 18). On February 12, 2020, the state court entered a default judgment against CPP on Plaintiff’s state law claims and assigned all McFee’s intellectual property—including copyright rights—back to her from CPP. *Id.* The relevant excerpts of the final judgments state:

## II. DEFINITIONS

As used in this Final Judgment:

....

B. “McFee Intellectual Property” means all names and designs identified in Appendix A, and includes all trademarks, copyrights, and trade names, all patterns and schemes underlying, all models, samples and pre-production mock-ups, and all other intellectual [sic] property otherwise incorporated, including all variants thereof.

....

## V. ASSIGNMENT

All right, title, and interest, in and to the McFee Intellectual Property, together with the goodwill associated with the McFee Intellectual Property, to the extent it was used or owned by Defendant [CPP], is hereby assigned and transferred to Plaintiff Jacqueline McFee, for Plaintiff Jacqueline McFee’s own use and enjoyment, and for the use of Plaintiff Jacqueline McFee’s successors, assigns, or other legal representatives, together with all income, royalties or payments due or payable as of the date of this Final Judgment, including without limitation all claims for damages by reason of future infringement or other unauthorized use of the McFee Intellectual Property, with the right to sue for and collect the same for Plaintiff Jacqueline McFee’s own use and enjoyment and for the use and enjoyment of her successors, assigns, or other legal representatives.

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needed to affirmatively assign any such ownership. Absent that assignment, Plaintiff does not have ownership of the intellectual property rights and fails to state a claim for false advertising or copyright infringement.

*McFee I*, 2017 WL 628306, at \*3.

(Compl. Ex. A at pp. 2, 4).

After re-acquiring the rights to her designs, McFee alleges that she discovered that a company calling itself Carolina Pad, LLC (“Carolina Pad”) is selling notebooks and office supplies in violation of McFee’s intellectual property rights. (Compl. ¶¶ 23-29). The new products featured on the Carolina Pad website use designs that are substantially similar to those of McFee’s, thus infringing on McFee’s copyrights. *Id.* McFee specifically identified Carolina Pad’s Panache, Day Trip, One Hip Chick, and Summer Breeze lines as those that McFee contends infringe her copyrights, and specifically identifies her Black and White floral, In The Navy stripe, Kaleidoscope floral, Hot Chocolate stripe, Pattern Play polka dot, Pattern Play stripe, Malibu polka dot, Malibu stripe, and Malibu paisley designs as those that have been infringed. (Compl. ¶¶ 30, 37). Furthermore, the address listed for Carolina Pad on the website is the same address as Bay Sales, while the Carolina Pad website also features a chronology that claims that it is the successor to CPP, was “founded in Charlotte, NC,” that “Carolina Pad was back.” *Id.* at 27. The website describes how McFee’s “Studio C became the new brand for CP’s fashion line in 2009.” *Id.*

Plaintiff filed the instant Complaint in November of 2021 alleging one claim of copyright infringement against Carolina Pad. In her Complaint, Plaintiff now alleges that Carolina Pad infringed Plaintiff’s copyrights by re-selling various products it purchased in the sale of CPP’s inventory. Defendant Carolina Pad moves to dismiss pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure.

## II. DISCUSSION

### A. Legal Standards

Defendant challenges Plaintiff's standing to bring this claim. "As standing 'is a fundamental component of a court's subject-matter jurisdiction,' a defendant may properly challenge a plaintiff's standing by way of a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure." *Tingley v. Beazer Homes Corp.*, 3:07-cv-176, 2008 WL 1902108, \*2 (W.D.N.C. April 25, 2008) (citation omitted). A plaintiff who is not the owner of a copyright does not have standing to bring an infringement claim. 17 U.S.C. § 501(b); *see also Kevin Chelko Photography, Inc. v. JF Restaurants, LLC*, 3:13-cv-00060-GCM, 2017 WL 240087, \*1 (W.D.N.C. Jan. 19, 2017) (Mullen, J.) (dismissing a copyright infringement claim where the plaintiff did not own the copyrights at issue and lacked standing to sue).

A motion to dismiss for lack of subject matter jurisdiction may be presented in two ways: (1) "the defendant may contend that the 'complaint simply fails to allege facts upon which subject matter jurisdiction can be based'" or (2) "the defendant may assert that the jurisdictional allegations in the complaint are not true." *Tingley*, 2008 WL 1902108 at \*2 (citing *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982)).

To survive a Rule 12(b)(6) motion to dismiss, a complaint must include factual allegations which are "enough to raise a right to relief above the speculative level." *Bell Atlantic Corp v. Twombly*, 550 U.S. 544, 555 (2007). A claim must contain "sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009) (quoting *Twombly*, 550 U.S. at 570).

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