

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

BLUEWATER MUSIC SERVICES)	
CORPORATION,)	
)	
Plaintiff,)	
)	Case No. 3:17-cv-01051-JPM
v.)	
)	
SPOTIFY USA INC,)	
)	
Defendant.)	

**ORDER DENYING MOTION TO DISMISS FOR LACK OF STANDING AND
FAILURE TO STATE A CLAIM**

Before the Court is Defendant Spotify USA Inc. (“Spotify”)’s Motion to Dismiss under Rules 12(b)(1) and 12(b)(6) for lack of standing and failure to state a claim filed on January 15, 2018. (ECF No. 55.) The Motion is DENIED. Plaintiff Bluewater Music Services Corp. (“Bluewater”) has standing for all asserted works based on ownership or an exclusive license of the works.

I. BACKGROUND

Factual background

This is an action for willful copyright infringement pursuant to the Copyright Act and the Copyright Revision Act of 1976 (17 U.S.C. § 101 et seq.) (ECF No. 41 at ¶¶ 1, 12.) Plaintiff Bluewater asserts that Defendant Spotify does not have a license to display, reproduce, and/or distribute 2,142 music compositions published by Bluewater. (ECF No. 41 at ¶¶ 5, 22-25.)

Bluewater asserts that Spotify either never licensed Bluewater's compositions or else continued to use them after the licenses was terminated which would be copyright infringement. (Id. at ¶ 75.) Plaintiff seeks the maximum \$150,000 statutory damage award for each infringed work. (Id. at ¶ 7.)

Bluewater is an independent music publisher and copyright administration company that claims to own or administer the 2,142 allegedly infringed works that are the subject matter of this case. (Id. at ¶¶ 22-24.) Spotify is an interactive music streaming service that Bluewater asserts must obtain either a direct or compulsory license allowing the reproduction or distribution of each musical composition on its streaming service. (Id. at ¶ 26.) To obtain a compulsory license under the Copyright Act, a licensee is required to send a notice of intent to use a musical composition to each copyright owner before distributing the work. 17 U.S.C.A. § 115. Bluewater asserts that Spotify makes recordings for streaming without knowing the identity of songwriters and publishers who should be getting royalties or knowing if the compositions have been licensed in all cases. (ECF No. 41 at ¶ 46.) Plaintiff further asserts that Spotify contracts with a third-party company called the Harry Fox Agency ("HFA") for information about licensing for compositions, but only has a portion of Spotify's songs in their database. (Id. at ¶¶ 47-48.)

Bluewater says they made sure to notify HFA about which compositions Bluewater controlled and represented as early as 2011. (Id. at ¶ 57.) After Bluewater discovered that Spotify was not accurately paying royalties on many compositions they assert they demanded proof of any licensing from Spotify, as required under 37 C.F.R. § 201.18, and gave notice to terminate any rights Spotify may have claimed to have. (Id. at ¶ 62.) Once Bluewater thought Spotify had breached copyright laws, they notified Spotify of the breach. (Id. at ¶ 63-66.)

Procedural Background

Bluewater's initial Complaint (ECF No. 1) was filed on July 18, 2017. Plaintiff filed the Amended Complaint (ECF No. 41) on November 1, 2017. Spotify filed their answer to the Amended Complaint (ECF No. 48) on December 13, 2017. That same day Spotify filed this present Motion to Dismiss (ECF No. 46.) Bluewater's response in opposition (ECF No. 55) was filed on January 15, 2018. Spotify filed a Reply (ECF No. 57) on January 29, 2018.

On May 4, 2018 this Court ordered Plaintiffs to supplement the record with the administration agreements for all copyrighted works they asserted to be non-owner administrators of. (ECF No. 63.) Bluewater filed their administration agreements on May 18, 2018 (ECF No. 77.) Spotify then submitted a supplemental brief to the newly produced administration agreements (ECF No. 80) on May 29, 2018. Bluewater's response (ECF No. 85) was filed on June 1, 2018. The Court has considered the above filings to rule on Defendant's motion.

II. LEGAL STANDARD

A. Motions to Dismiss

Fed. R. Civ. P. 12(b)(6) allows dismissal of a complaint that "fail[s] to state a claim upon which relief can be granted." As such, a Rule 12(b)(6) motion permits the "defendant to test whether, as a matter of law, the plaintiff is entitled to legal relief even if everything alleged in the complaint is true." Mayer v. Mylod, 988 F.2d 635, 638 (6th Cir. 1993) (citing Nishiyama v. Dickson Cnty., 814 F.2d 277, 279 (6th Cir. 1987)). A motion to dismiss only tests whether the plaintiff has pleaded a cognizable claim and allows the court to dismiss

meritless cases which would waste judicial resources and result in unnecessary discovery. Brown v. City of Memphis, 440 F.Supp.2d 868, 872 (W.D. Tenn. 2006).

When evaluating a motion to dismiss for failure to state a claim, the Court must determine whether the complaint alleges “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). If a court decides in light of its judicial experience and common sense, that the claim is not plausible, the case may be dismissed at the pleading stage. Iqbal, 556 U.S. at 679. “[A] formulaic recitation of the elements of a cause of action will not do.” Twombly, 550 U.S. at 555. The “[f]actual allegations must be enough to raise a right to relief above [a] speculative level.” Ass’n of Cleveland Fire Fighters v. City of Cleveland, 502 F.3d 545, 548 (6th Cir. 2007) (quoting Twombly, 550 U.S. at 555). A claim is plausible on its face if “the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 556). A complaint need not contain detailed factual allegations. However, a plaintiff without facts who is “armed with nothing more than conclusions” cannot “unlock the doors of discovery.” Iqbal, 556 U.S. at 678-79; Green v. Mut. of Omaha Ins. Co., No. 10-2487, 2011 WL 112735, at *3 (W.D. Tenn. Jan. 13, 2011), aff’d 481 F. App’x 252 (6th Cir. 2012).

B. Standing under the Copyright Act

“[S]tanding is a threshold question in every federal case,” Freeman v. Sullivan, 954 F. Supp. 2d 730, 746 (W.D. Tenn. 2013), aff’d (Dec. 27, 2013) (citation omitted), and standing is an issue on which plaintiff bears the burden of proof. Feist Publ’ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361 (1991). Where a plaintiff cannot show the requirements for standing,

the Court must dismiss the claim. Patel v. Hughes, No. 3:13- 0701, 2014 WL 4655285, at *4 (M.D. Tenn. Sept. 16, 2014). “It is the responsibility of the complainant clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute and the exercise of the court’s remedial powers.” Warth v. Seldin, 422 U.S. 490, 518 (1975).

Section 501(b) of the Copyright Act establishes that the “legal or beneficial” owner of an exclusive right is entitled to “institute an action for any infringement of that particular right committed while he or she is the owner of it.” 17 U.S.C. § 501(b). “To have standing to bring suit, a party must have some ownership rights over at least part of the exclusive right for which he wishes to sue.” Warner/Chappell Music, Inc. v. Blue Moon Ventures, No. 3:10-1160, 2011 WL 662691, at *3 (M.D. Tenn. Feb. 14, 2011). “To find that a licensee of an exclusive license lacks copyright standing because the copyright owner also granted the exclusive license to one or more other licensees would, indeed, fly in the face of case law affirming the Copyright Act’s recognition of joint ownership of exclusive rights.” Nafal v. Carter, 540 F.Supp.2d 1128 (C.D.Cal.2007).

III. ANALYSIS

Defendant argues that Plaintiff’s complaint should be dismissed for lack of standing or failure to state a claim with respect to some of the musical compositions. (ECF No. 46 at PageID 1046.) Each argument will be analyzed in turn.

A. Defendant’s Argument for Lack of Standing

Defendant argues that Plaintiffs “merely administer” 1,372 musical compositions at issue with “no ownership interest” and no standing with respect to those works. (ECF No. 46 at PageID 1047.) Spotify also argues that Plaintiff Bluewater Music Services Corporation must be dismissed because they allege no ownership interest in any works. (Id. at PageID

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