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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

BLISS COLLECTION, LLC dba bella bliss,
Plaintiff-Appellant (21-5723),
Plaintiff-Appellee (22-5361),

v.

LATHAM COMPANIES, LLC dba little english,
Defendant-Appellee (21-5723),
Defendant-Appellant (22-5361).

Nos. 21-5723/22-5361

Appeal from the United States District Court for the Eastern District of Kentucky at Lexington.
No. 5:20-cv-00217—Claria Horn Boom, District Judge.

Argued: January 25, 2023

Decided and Filed: September 21, 2023

Before: BUSH, LARSEN, and MATHIS, Circuit Judges.

COUNSEL

ARGUED: Jaci L. Overmann, DINSMORE & SHOHL LLP, Cincinnati, Ohio, for Bliss Collection, LLC. Laurence J. Zielke, ZIELKE LAW FIRM, PLLC, Louisville, Kentucky, for Latham Companies, LLC. **ON BRIEF:** Jaci L. Overmann, DINSMORE & SHOHL LLP, Cincinnati, Ohio, for Bliss Collection, LLC. Laurence J. Zielke, Janice M. Theriot, ZIELKE LAW FIRM, PLLC, Louisville, Kentucky, for Latham Companies, LLC.

MATHIS, J., delivered the opinion of the court in which BUSH, J., joined. LARSEN, J. (pp. 22–29), delivered a separate opinion concurring in part and dissenting in part.

OPINION

MATHIS, Circuit Judge. In the latest chapter in the saga of two children’s clothing manufacturers, we are asked to determine whether one of the manufacturers has properly brought trademark and trade dress infringement claims against the other. And, if not, whether the defending party is entitled to attorney’s fees. Bliss Collection, LLC and Latham Companies, LLC have had a long and acrimonious relationship after one of Bliss’s founders left the company to start Latham as a direct competitor. The parties have since engaged in sporadic litigation against each other.

The district court dismissed Bliss’s trademark and trade dress infringement claims. After Latham sought attorney’s fees for successfully defending against those claims, the district court declined to award fees to Latham. Both parties appealed. We find that Bliss has stated claims for federal and state trademark infringement but has not stated a claim for trade dress infringement. We also find that the district court did not err in denying attorney’s fees to Latham for defending the trademark and trade dress infringement claims. Therefore, we affirm in part and reverse in part.

I.

In 1999, Shannon Latham, Elizabeth McLean, and Jennifer Vernooy formed Bliss to sell children’s clothing under the name “bella bliss.” According to Bliss, bella bliss products are “heirloom-quality pieces” based on “retro-inspired prints,” “handmade knits,” and “separates.” *About bella bliss*, BELLA BLISS, <https://www.bellabliss.com/pages/about> (last visited Sept. 1, 2023). Because it creates its own distinctive designs and prints, Bliss asserts that such pieces can only be purchased from Bliss. *See id.*

In 2003, Shannon left Bliss following differences of opinion with the other founders and started Latham to sell her own children’s clothing under the name “little english.” According to Latham, little english products are “forever quality garments” that are “[i]nspired by the

exceptional quality of hand-sewn clothing.” *About Us*, LITTLE ENG., <https://www.littleenglish.com/pages/about-us-2021-update> (last visited Sept. 1, 2023).

Bliss’s Relevant Trademarks. Bliss’s logo is a lowercase “b” drawn out as if stitched in thread. Bliss has three registered trademarks for this logo, each of which registers the logo for different applicable uses.¹ These trademarks were all registered in October 2007 and relate only to the logo itself, rather than whatever color the logo may appear in. Bliss has a fourth trademark application pending with the U.S. Patent and Trademark Office (filed on May 5, 2020) to register the logo in its signature light blue color (termed “bliss Blue”) with the words “bella bliss” underneath it.² This fourth trademark covers the uses of the first three trademarks, plus several others.

Bliss’s Relevant Clothing Designs. Bliss has several designs that it claims as signature looks of the bella bliss brand:

- Bliss’s “Mirabelle” swimsuit, which features “an exaggerated C-shaped scoop neckline featuring a heavily pleated highly ruffled swim fabric.” R. 11, PageID 461.
- Bliss’s jungle print design, a “unique combination of jungle animals” that “create[s] a visually appealing Print with yellow, orange, and blue jungle animals and palm trees.” *Id.* at 462.
- Bliss’s color-blocked gingham swim trunks, which feature “a pink gingham waistband, light blue gingham right short leg, and light green gingham left short leg.” *Id.* at 462–63.
- Bliss’s “Shep Bubble” romper, which features “an emphasized ‘Peter Pan’ collar trimmed in white piping, with two white buttons and white stitching with a loose overall fit.” *Id.* at 463.
- Bliss’s “Sailor Bubble” look, which features “contrasting outlining and visible buttons at the top and sides.” *Id.* at 464.
- Bliss’s “Eloise” blouse, which features “a unique small floral pattern.” *Id.* at 465.

¹U.S. Reg. No. 3,321,192 covers “children’s clothing, namely sweaters, dresses, hats, pajamas, rompers and infant sleepers.” U.S. Reg. No. 3,327,352 covers “bed blankets.” U.S. Reg. No. 3,469,536 covers “duffel bags, and tote bags.” R. 11, PageID 431–33.

²The “bliss Blue” color covers “Pantone color 13-4220, Artic Paradise (alternative Pantone colors listed as 291 CP, 112-3 C, 442-U, and 115-4 U).” *Id.* at 433.

- Bliss’s “Eloise” jumper, which features the same floral pattern as the blouse with “distinctive stitching in a contrast color, with straps across the front of the jumper in a contrasting color and drop-down piping connecting to the side straps.” *Id.* at 465.

Bliss contends that these designs have “become famous and widely known and recognized as symbols of unique and high quality garments throughout the state of Kentucky and the whole United States.” *Id.* at 459.

In 2005, not long after Latham began operations, Bliss sued Latham for copyright infringement, false designation of origin, unfair competition, and misappropriation of confidential information and trade secrets. Ultimately, that case settled.

In 2020, Latham sued Bliss in Kentucky state court for breach of contract and tortious interference.

Bliss then filed this action against Latham. Bliss asserts claims for: (1) federal copyright infringement, (2) federal trademark infringement, (3) federal trade dress infringement, (4) federal false designation of origin and misappropriation of source, (5) federal unfair competition, (6) trademark infringement under Kentucky common law, and (7) unfair competition under Kentucky common law. Bliss alleges that Latham copied several designs that Bliss copyrighted; altered its logo to match Bliss’s logo; altered its logo, website, and social media accounts to match Bliss’s signature color; and copied a number of signature designs that Bliss had produced for years. According to Bliss, these actions led consumers to confuse Bliss’s and Latham’s products and diverted customers from Bliss to Latham.

After Latham moved to dismiss Bliss’s amended complaint, the district court dismissed Bliss’s federal copyright and trade dress infringement claims but denied Latham’s motion on Bliss’s other claims. The court dismissed Bliss’s remaining claims after Latham filed a motion for reconsideration.

Latham pursued recovery of its attorney’s fees for defeating Bliss’s federal copyright, trademark, and trade dress infringement claims. The district court granted Latham attorney’s fees for defending the copyright claim but denied the motion with respect to the trademark infringement and trade dress claims. The court found that Latham was not entitled to attorney’s

fees for defending Bliss’s federal trademark and trade dress infringement claims because such awards were warranted only in “exceptional” cases. The court found that Bliss filed its action in good faith and that, despite dismissing Bliss’s trademark and trade dress claims, the claims were not so “*exceptionally* meritless” that Latham “merit[ed] a rare attorney’s fees award under [15 U.S.C.] § 1117.” R. 59, PageID 1642–43.

II.

We review an order dismissing a complaint under Federal Rule of Civil Procedure 12(b)(6) de novo. *See Lindke v. Tomlinson*, 31 F.4th 487, 495 (6th Cir. 2022). A complaint “must contain 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) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “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.” *Id.* In this regard, a pleading that offers only “labels and conclusions” or “a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555.

An award of attorney’s fees is reviewed for an abuse of discretion. *See Max Rack, Inc. v. Core Health & Fitness, LLC*, 40 F.4th 454, 477 (6th Cir. 2022). “A district court abuses its discretion when it relies on clearly erroneous findings of fact, when it improperly applies the law, or uses an erroneous legal standard.” *New London Tobacco Mkt., Inc. v. Ky. Fuel Corp.*, 44 F.4th 393, 403 (6th Cir. 2022) (quoting *Bisig v. Time Warner Cable, Inc.*, 940 F.3d 205, 218 (6th Cir. 2019)).

III.

Bliss argues that the district court erred in dismissing its claims for federal trademark infringement, federal trade dress infringement, and trademark infringement under Kentucky common law. Latham argues that the district court erred in refusing to award Latham attorney’s

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