

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 09-1867 AHM (JTLx)	Date	September 11, 2009
Title	LEGALJIFFY.COM, INC. v. LEGALCPU.COM, INC.		

Present: The Honorable	A. HOWARD MATZ, U.S. DISTRICT JUDGE
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Stephen Montes

Not Reported

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys **NOT** Present for Plaintiffs:

Attorneys **NOT** Present for Defendants:

Proceedings: IN CHAMBERS (No Proceedings Held)

On March 18, 2009, Plaintiff LegalJiffy.com (“LegalJiffy”) filed this copyright infringement, trade dress infringement, and unfair competition action against Defendant LegalCPU.com (“LegalCPU”). Defendant moves to dismiss Plaintiff’s copyright claim because Plaintiff allegedly failed to comply with the Copyright Act’s registration requirements. Defendant moves to strike Plaintiff’s request for statutory damages and attorney’s fees under the Copyright Act, because Plaintiff failed to register its copyright before the alleged infringement commenced. In addition, Defendant moves to dismiss Plaintiff’s unfair competition claim because Plaintiff has not alleged an “injury in fact” that can be remedied with restitutionary relief. Finally, Defendant moves to strike Plaintiff’s request for exemplary damages, which are not available under California’s Unfair Competition Law (“UCL”). For the reasons discussed below, the Court GRANTS the motion in part and DENIES it in part.¹

I. COPYRIGHT CLAIM²

A. Copyright Registration Requirement

Plaintiff alleges that Defendant’s website infringes copyrighted content on its own

¹ Plaintiff violated Local Rule 11-3.1.1 by filing a brief that was typeset in a font less than 14-point. Future violations of this rule will invite sanctions.

² For the sake of brevity, the Court will not set forth the uncontested standards under Federal Rules of Civil Procedure 12(b)(6) and 12(f).

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website. But Plaintiff does not deny that at the time it filed this action, it had not filed an application for a copyright registration. Plaintiff did file an application on April 7, 2009, but that application is still pending.

District Courts in the Ninth Circuit are split as to whether a plaintiff must obtain a copyright registration before filing an infringement action, and the Ninth Circuit has not yet ruled on the issue. *Compare Loree Rodkin Mgmt. v. Ross-Simons, Inc.*, 315 F. Supp. 2d 1053 (C.D. Cal. 2004) (Rea, J.) (registration required), and *Blackledge v. Cummings*, CV 05-7782 PA (Ex) (C.D. Cal. Jan. 6, 2006) (Anderson, J.) (same) with *Dielsi v. Falk*, 916 F. Supp. 985, 994 n.6 (C.D. Cal. 1996) (Collins, J.) (registration not required) and *Gable-Leigh, Inc. v. North Am. Miss*, CV 07-1019 MMM (SHx), 2001 WL 521695, at *4 (C.D. Cal. April 13, 2001) (Morrow, J.) (relying on out-of-circuit authority and *Dielsi* footnote).

David Nimmer's authoritative treatise canvasses the split in authority between the "narrow" approach and "broad" approach (meaning that cases in the posture that this one is in may proceed), and sets forth persuasive reasons to adopt the "broad" approach. *See* 2-7 Nimmer on Copyright § 7.16[B] (2009). The Court agrees with Nimmer's reasoning, and therefore denies the motion to dismiss Plaintiff's copyright claim.

B. Request for Statutory Damages and Attorney's Fees Under the Copyright Act

Defendant also moves to strike Plaintiff's request for statutory damages and attorney's fees under the Copyright Act. *See* Complaint, Prayer for Relief ¶¶ 4, 6. "By reason of [17 U.S.C. §] 412, in order for a copyright owner to be entitled to recover statutory damages and attorney's fees, the work must have been registered prior to commencement of the infringement for which such remedies are sought." *Nimmer on Copyright*, § 7.16[C][1] (2009). Plaintiff alleges that infringement occurred "[i]n or about June, 2008," Complaint ¶ 10, but it did not file a copyright application until April 2009.

Plaintiff does not contest that it is not entitled to statutory damages and attorney's fees, and the Court strikes the request for those remedies.

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II. UNFAIR COMPETITION CLAIM

Plaintiff claims that Defendant's alleged copyright and trade dress infringement is an unfair business practice under the UCL, Cal. Bus. & Prof. Code §§ 17200, *et seq.* It seeks an injunction, restitution, and exemplary damages under the UCL. Compl. ¶¶ 31-32, Prayer for Relief ¶ 5. Defendant asserts that this claim is barred by Proposition 64's requirement that a UCL claim may be brought only "by a person who has suffered injury in fact and has lost money or property as a result of the unfair competition." Cal. Bus. & Prof. Code § 17204. "Because remedies for individuals under the UCL are restricted to injunctive relief and restitution, the import of the requirement is to limit standing to individuals who suffer losses of money or property that are eligible for restitution." *Buckland v. Threshold Enters., Ltd.*, 155 Cal. App. 4th 798, 817 (Ct. App. 2007). Profits earned by a defendant by providing services to a third party are not recoverable under the UCL. *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134 (2003).

Plaintiff has alleged no injury that could be compensated by the restitutionary relief available under the UCL. Nor does its Opposition brief address whether it may be entitled to injunctive relief under the UCL even if it is not entitled to restitutionary relief. The Court therefore dismisses Plaintiff's UCL claim. The Court also strikes Plaintiff's request for "exemplary damages" under the UCL (Complaint, Prayer for Relief ¶ 5), as that is not an available form of relief.

III. CONCLUSION

For the foregoing reasons, the Court GRANTS Defendant's motion³ in part, and strikes Plaintiff's request for statutory damages and attorney's fees, and dismisses Plaintiff's third claim for unfair business practices. It DENIES the motion as to Plaintiff's claim for copyright infringement.

Initials of Preparer

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³ Docket No. 8.

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