

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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KIDS OF AMERICA CORP.,

Plaintiff,

v.

MENARD, INC.,

Defendant.

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OPINION AND ORDER

04-C-0082-C

Plaintiff Kids of America Corp. has filed a complaint setting forth 15 counts of alleged violations of copyright law, the Lanham Act, state unfair competition under Wisconsin's unfair competition statute, Wis. Stat. § 100.20(1), and common law unfair competition. Defendant has moved to dismiss, arguing that plaintiff has not alleged sufficient facts to state a claim upon which relief may be granted. Given the liberal pleading standards for complaints and the ease with which courts grant motions to amend complaints, motions to dismiss based on pleading inadequacies are usually a waste of time for the litigants and the court. This one is no exception.

Plaintiff concedes that defendant has identified some typographic errors and a blunder in Paragraph M of the prayer for relief in which plaintiff refers to New Jersey law.

Other than these mistakes, which are cured in plaintiff's proposed amended complaint, defendant's motion to dismiss fails. Plaintiff's complaint provides defendant enough information about its allegations to allow defendant to prepare its defense. If defendant believes it needs information, it can obtain it through discovery.

For example, in the copyright counts, plaintiff has alleged ownership of a valid copyright and copying by defendant of constituent elements of the work that are original. Under Feist Publications v. Rural Telephone Service Co., 499 U.S. 340, 361 (1991), this is sufficient to state a cause of action. At a later stage of the proceedings, plaintiff will have to prove access and copying; it does not have to do so in its complaint, particularly when it has attached photographs of the originals of allegedly copied Halloween figures and the copies. The striking similarities between the figures, coupled with the allegation that the originals were sold in large numbers in the marketplace, suggest a high probability of both access and copying.

As for the Lanham Act and state copyright claims, defendant is correct that such claims are preempted by federal copyright claims, but only if the non-federal copyright claims are confined to the same elements as the federal copyright claims. Plaintiff has alleged additional elements. Whether it can prove that the claims are distinguishable and therefore not preempted is a question better left for summary judgment or trial after the parties have conducted discovery.

ORDER

IT IS ORDERED that defendant Menard, Inc.'s motion to dismiss plaintiff Kids of America's complaint is DENIED; FURTHER, IT IS ORDERED that plaintiff may file and serve its proposed amended complaint. The amended complaint is considered filed and served as of the date of this order.

Entered this 15th day of June, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge