

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

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BIG DADDY GAMES, LLC,

Plaintiff,

v.

REEL SPIN STUDIOS, LLC;  
GAME MANAGEMENT CORP.;  
JAMES L. DONKER; DAVID E. GROND;  
PATRICK YOUNG; WILLIAM STIMAC;  
MICHAEL LINDEMAN; RHODY R. MALLICK;  
DALE CEBULA; KATHLEEN MALONEY;  
MATTHEW BARRETT; ROBERT L. DIENER;  
THE LYONS DEN DL, LLC; NIGL'S, INC.;  
GAMEDAY SPORTS BAR, INC.;  
ANTLERS SPORTS BAR & GRILL, LLC;  
OSHKOSH LANES LLC; BACK AGAIN  
STADIUM BAR, INC.; MR. D'S TWO, LLC;  
SUSIE'S TRACKSIDE LLC; LAST HURRAH LLC;  
HOTEL PUB, L.L.P.; WOOD SHED, INC.;  
GEORGE SIMONIS; Q GAME TECHNOLOGIES  
PTY LTD; and NICK MCLEOD,

Defendants.  
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OPINION AND ORDER

12-cv-449-bbc

Plaintiff Big Daddy Games, LLC has filed a motion under Fed. R. Civ. P. 12(b)(6) to dismiss the counterclaims filed by defendant George Simonis in this copyright infringement case. Dkt. #109. In his amended answer and counterclaims, defendant Simonis asserts three separate counterclaims for “tortious interference with business relationship” against plaintiff. Plaintiff contends that Simonis’s counterclaims violate Fed. R. Civ. P. 8 because he fails to support his counterclaims with anything more than vague and conclusory statements.

I agree with plaintiff and will dismiss the counterclaims. Rule 8(a)(2) requires a complaint to include a “short and plain statement of the claim showing that the pleader is entitled to relief.” The primary purpose of these rules is rooted in fair notice. A complaint “must be presented with intelligibility sufficient for a court or opposing party to understand whether a valid claim is alleged and if so what it is.” Vicom, Inc. v. Harbridge Merchant Services, Inc., 20 F.3d 771, 775 (7th Cir. 1994). Rule 8 also requires that the complaint contain enough allegations of fact to make a claim for relief plausible on its face. Aschcroft v. Iqbal, 556 U.S. 662, 678-79 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (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.

Defendant Simonis states that he is suing plaintiff under Wisconsin law for tortious interference with his business relationships. To state a claim for tortious interference with business relations under Wisconsin law, Simonis must plead facts suggesting that an actual or prospective contract existed between himself and a third party, plaintiff interfered with that contract or prospective contract, the interference was intentional, it caused plaintiff to sustain damages and plaintiff was not justified or privileged to interfere. Briesemeister v. Lehner, 2006 WI App 140, ¶ 48, 295 Wis. 2d 429, 452, 720 N.W.2d 531, 542; Shank v. William R. Hague, Inc., 192 F.3d 675, 681 (7th Cir. 1999). Simonis’s counterclaims do not meet this standard. Instead, Simonis’s counterclaims consist of only a few sentences, in which he alleges that plaintiff committed tortious interference with his business relationships by (1) “causing the breakup” of Simonis’s partnership with John Paul Jones by acquiring and using “information and trade secrets without” Simonis’s knowledge; (2) causing “loss of sales and income” from Simonis’s business; and (3) “taking down” Simonis’s website pokies4fun.com.

Defendant Simonis does not set forth any facts to support his counterclaims, such as how plaintiff “acquir[ed] information and trade secrets” from Simonis; what the information and trade secrets were; how plaintiff used the information to “caus[e] the breakup” of Simonis’s partnership; how plaintiff caused Simonis to “lo[se] sales and income; and how plaintiff “t[ook] down” Simonis’s website. Without this information, plaintiff does not have fair notice regarding the basis for Simonis’s claims that plaintiff interfered with his business relationships.

In his brief in opposition, defendant Simonis does not argue that his counterclaims satisfy the requirements of Rule 8 or that he sufficiently pleaded the elements for tortious interference with a business relationship under Wisconsin law. Instead, Simonis attempts to bolster his counterclaims by adding additional allegations in his brief. This is improper. If Simonis wished to amend his pleadings he should have sought leave to file an amended counterclaim; he may not amend his pleadings through an opposition brief.

Moreover, even if I consider the additional allegations Simonis includes in his opposition brief, they are not sufficient to state a claim for tortious interference with a business relationship. With respect to his first counterclaim, Simonis still fails to identify the “information and trade secrets” plaintiff allegedly acquired, when or how plaintiff acquired them and how plaintiff used the information and trade secrets to “break up” Simonis’s partnership or business. As for Simonis’s second counterclaim that plaintiff caused him to “lo[se] sales and income,” Simonis attempts to replead the counterclaim in his brief by contending that plaintiff interfered with Simonis’s potential relationship with Reel Spin Studios, LLC by obtaining copyrights to certain games. Not only is this allegation completely different from that included in Simonis’s counterclaim, Simonis does not explain how plaintiff’s registered trademarks interfered with Simonis’s business relationship with Reel Spin Studios. Finally, although Simonis adds several

new facts to support his third counterclaim that plaintiff “took down” his website, he still fails to identify any actual or prospective contractual relationship with which plaintiff interfered.

In sum, defendant Simonis has failed to plead the relevant elements of a claim for tortious interference with economic relationships under Wisconsin law and nothing in Simonis’s counterclaims nor brief in opposition suggests that he could do so. Accordingly, I am granting plaintiff’s motion to dismiss the counterclaims.

ORDER

IT IS ORDERED that plaintiff Big Daddy Games LLC’s motion to dismiss defendant George Simonis’s counterclaims, dkt. #109, is GRANTED.

Entered this 4th day of February, 2013.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge