

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

THE PAPER MILL STORE, INC.,
a Wisconsin corporation,

OPINION & ORDER

Plaintiff,

10-cv-680-slc

v.

PAPER MANIAC LLC,
a Minnesota limited liability company, and
PATRICIA OLSON, an individual,

Defendant.

In this civil case, plaintiff The Paper Mill Store, Inc. alleges that defendants Paper Maniac, LLC and Patricia Olson copied from its website several photographs that are protected by four copyright registrations. Defendants have moved to dismiss the complaint under Fed. R. Civ. P. 12(b)(6), asserting that Paper Mill has failed to identify with sufficient particularity the infringing photographs or which copyright each photograph allegedly infringed. Dkt. 9. In the alternative, defendants move for a more definite statement pursuant to Rule 12(e).

I find that the complaint fairly alleges the following facts:

ALLEGATIONS OF FACT

The Paper Mill Store is a Wisconsin corporation based in Sun Prairie, Wisconsin that sells premium paper products through its internet website, located at the domain name www.thepapermillstore.com. Defendant Paper Maniac LLC is a Minnesota limited liability company based in Bloomington, Minnesota that competes with Paper Mill in selling paper products through its own website located at www.papermaniac.com. Defendant Patricia Olson

is the sole owner, principal and managing agent of Paper Maniac. She manages the design, display and maintenance of the Paper Maniac website.

Paper Mill has used a creative photography method to create images of its various paper products for its website, allowing users to evaluate the look, feel and quality of its paper products as if they were viewing the actual products. Specifically, Paper Mill takes a high-resolution “macrophotographic” photograph of three sheets of a particular paper stock to show the color, surface structure, fibers and other subtle attributes of the paper stock.

Paper Mill has obtained several copyright registrations protecting its website and the photographs appearing on it, including Copyright Registration Nos. TX0006948681 (‘681 registration), TX0006989133 (‘133 registration), TX0006976051 (‘051 registration) and TX0007130548 (‘548 registration). All four registrations confer copyright protection on the website as a compilation and the individual text, photographs and artwork comprising the website. On each page of its website, Paper Mill provides notice that the website is subject to copyright protection and a hyperlink to its “Terms of Use,” which a user must agree to before using the website. The Terms of Use requires users to agree not to misappropriate the website’s content, graphics or images.

Paper Maniac also displays various artwork and photographs on its website for consumers to view before purchasing products. Without any license or permission, defendants copied “several photographs” from Paper Mill’s website, altered them and displayed them on their own website, knowing that Paper Mill owned copyrights to all of the photographs.

OPINION

In deciding a motion to dismiss, the court must accept as true well-pleaded factual allegations, drawing all reasonable inferences in favor of the pleading party. *Moranski v. General Motors Corp.*, 433 F.3d 537, 539 (7th Cir. 2005). Dismissal is warranted when a complaint fails to allege “enough facts to raise a reasonable expectation that discovery will reveal evidence’ supporting the plaintiff’s allegations.” *Brooks v. Ross*, 578 F.3d 574, 581 (7th Cir. 2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007)).

Defendants assert that Paper Mill has failed to meet the minimum pleading requirements under Fed. R. Civ. P. 8 and *Twombly*. Rule 8 requires a party to include in its complaint a short, plain statement of the claim showing that the plaintiff is entitled to relief, as well as a demand for appropriate relief. In *Twombly*, the Supreme Court held that a plaintiff’s request for relief must be “plausible on its face.” *Id.* at 570; *see also Limestone Development Corporation v. Village of Lemont*, 520 F.3d 797, 803 (7th Cir. 2008) (under *Twombly*, plaintiff must plead a “a fuller set of factual allegations” to show his claim is not “largely groundless”). Although a plaintiff does not need to include detailed factual allegations, it must allege enough facts to raise its right to relief above the speculative level. *Twombly*, 550 U.S. at 555. A claim should be dismissed “when the allegations in a complaint, however true, could not raise a claim of entitlement to relief.” *Id.* at 558.

The Court of Appeals for the Seventh Circuit has held that complaints for copyright infringement are sufficient when they allege the plaintiff currently owns a copyright registered in compliance with the applicable statute and infringement by the defendant. *Mid-America Title*

Co. v. Kirk, 991 F.2d 417, 421 (7th Cir. 1993) (citing 5 Charles A. Wright & Arthur A. Miller, *Federal Practice and Procedure*, § 1237, at 283 (1990)); see also *Sony BMG Music Entertainment v. Marose*, Case No. 05-C-679-C, 2006 WL 6021145, *1 (W.D. Wis. Jan. 20, 2006) (citing same).

In its complaint, Paper Mill alleges that its website and the photographs appearing on it are protected by four registered copyrights and that without its permission, Paper Maniac copied, altered and displayed “several photographs” from Paper Mill’s website on its own website. Paper Mill fails to identify the specific photographs at issue or which of the four copyrights each photograph infringes. Although the complaint does not contain a lot of detail about the photographs at issue, it sufficiently notifies defendants of its alleged wrongdoing and states a plausible claim for relief. Therefore, dismissal under Rule 12(b)(6) is not appropriate.

However, I agree with defendants that additional specificity would be helpful in order to allow them to answer the complaint. See *Fidelity Nat’l Title Ins. Co. of New York v. Intercounty Nat’l Title*, 412 F.3d 745, 749 (7th Cir. 2005) (so long as the complaint is intelligible, Rule 12(e) can be used to allow plaintiff to clear up confusion or to provide more detail). Although Paper Mill may believe that without the benefit of discovery it cannot know the full extent of the alleged copyright infringement, before filing its complaint it must have identified at least *some* photographs that it believed originated from its website. A description or copy of these photographs as they exist on either Paper Mill’s or Paper Maniac’s website would allow this case to move forward. Therefore, I am granting defendants’ motion for a more definite statement.

ORDER

IT IS ORDERED that the motion filed by defendants Paper Maniac, LLC and Patricia Olson (dkt. 9) is GRANTED in part and DENIED in part. Defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) is DENIED. Defendants' alternative motion for a more definite statement pursuant to Rule 12(e) is GRANTED. Plaintiff The Paper Mill Store, Inc. shall have until March 14, 2011 to identify the allegedly infringing photographs that are known to it at this time.

Entered this 28th day of February, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge