

Mana Wai', Inc. D/B/A Water Rights Images v. Amato Beverly Hills, LLC D/B/A  
Rare El'ements International Hair Collection  
SACV 20-1091 JVS (DFMx)

**TENTATIVE Order Regarding Motion to Dismiss**

Defendant Amato Beverly Hills, LLC, doing business as Rare El'ements International Hair Collection, ("Amato") filed a motion to dismiss the complaint of Plaintiff Mana Wai', Inc. doing business as Water Rights Images ("Mana Wai"). Mot., Dkt. No. 17. Mana Wai opposed the motion. Opp'n, Dkt. No. 21. Amato replied. Reply, Dkt. No. 23.

For the following reasons, the Court **GRANTS** the motion with leave to amend.

**I. BACKGROUND**

The following facts are alleged in Mana Wai's complaint.

Mana Wai is a niche stock photography agency dedicated to photographing "water in all its forms," and it provides "high quality, premier Rights Managed and Royalty Free visual content backed by friendly service." Compl. ¶ 2. Mana Wai is the exclusive distributor of Water Rights Exclusive and Guido Alberto Rossi Collections in the United States. Id.

Amato sells hair care and luxury spa products endorsed by top celebrity stylists, and is the owner of the website located at the URL: <https://rareelementshaircollection.business.site>. Id. ¶ 3.

Mana Wai created the photograph entitled "JH0035281.jpg" ("the photograph"), which is the subject of the present dispute. See id. ¶ 10. Mana Wai registered the photograph with the Register of Copyrights on July 30, 2012 and was assigned the registration number VA0001129227. Id. ¶ 11. At all relevant times Mana Wai was the owner of the copyrighted photograph at issue in this case. Id. ¶ 12.

Amato has never been licensed to use the photograph, but on a date after the photograph was created, Amato copied the photograph without Water Rights'

permission, made further copies, and distributed the photograph on the internet to promote the sale of goods and services as part of its specialty hair care and spa product business. Id. ¶¶ 13–16. Amato copied and distributed the photograph in connection with Amato’s business for purposes of advertising and promoting its business, and in the course and scope of advertising and selling products and services. Id. ¶ 17.

Mana Wai never gave Amato permission or authority to copy, distribute or display the photograph. Id. ¶ 20. Mana Wai notified Amato of the allegations set forth in its complaint on January 16, 2019 and November 19, 2019, but to date, the parties have not been able to resolve this dispute. Id. ¶ 21.

Mana Wai brought a single claim of copyright infringement against Amato, seeking injunctive as well as monetary relief. Id. ¶¶ 22–29. Amato filed the present motion to dismiss on September 18, 2020. See Mot., Dkt. No. 17. Mana Wai opposed. Opp’n, Dkt. No. 21. Amato replied. Reply, Dkt. No. 23.

## II. LEGAL STANDARD

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A plaintiff must state “enough facts to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim has “facial plausibility” if the plaintiff pleads facts that “allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

In resolving a 12(b)(6) motion under Twombly, the Court must follow a two-pronged approach. First, the Court must accept all well-pleaded factual allegations as true, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Iqbal, 556 U.S. at 678. Nor must the Court “accept as true a legal conclusion couched as a factual allegation.” Id. at 678-80 (quoting Twombly, 550 U.S. at 555). Second, assuming the veracity of well-pleaded factual allegations, the Court must “determine whether they plausibly give rise to an entitlement to relief.” Id. at 679. This determination is context-specific, requiring the Court to draw on its experience and common sense, but there is no plausibility “where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct.” Id.

### III. DISCUSSION

Amato argues that Mana Wai's claim for copyright infringement should be dismissed for failure to state a claim upon which relief may be granted. Mot., Dkt. No. 17, at 2.

To prevail on a copyright infringement claim, a plaintiff must show two things: (1) ownership of the copyright, and (2) violation by the alleged infringers of at least one exclusive right granted copyright holders by 17 U.S.C. § 106. See A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1013 (9th Cir. 2001).

The Court finds that Mana Wai has plead sufficient facts to show that it owns the copyright of the photograph. See Compl. ¶ 11; Ex. 1.

However, the Court agrees with Amato that Mana Wai has insufficiently plead facts sufficient to plausibly plead that Amato violated said copyright. Setting aside Mana Wai's conclusory allegations, there is insufficient factual support in the complaint to link Amato to a violation of the copyright. Although Mana Wai's exhibits include images of Tumblr blog posts that appear to use Mana Wai's copyrighted photograph, there are no factual allegations to tie these blog posts to Amato's business or to otherwise demonstrate that Amato infringed upon an exclusive right granted to the copyright holders.

Mana Wai does not specify what exclusive right Amato has infringed. Its factual pleadings are sparse, and its attached exhibit supposedly depicting the violating incident does little to shed additional light on the pleadings. See Compl., Dkt. No. 1, Ex. 2. As Amato notes, "the Complaint does not contain any allegations regarding the content of Exhibit 2, how it was obtained, or what the Exhibit purports to show. Notably, despite identifying [Amato's] commercial website, [Mana Wai] does *not* allege that Exhibit 2 contains images from [Amato's] commercial website. In fact, [Mana Wai] does not make any allegations regarding the connection between [Amato] and the images that appear on Exhibit 2." Mot, Dkt. No. 17, at 5 (emphasis in original). The Court agrees that Exhibit 2 is insufficient to cure the deficiencies in pleading due to a notable lack of information regarding the connection between Exhibit 2 and the allegations.

One particular issue of dispute between the parties appears to be regarding the importance of whether the photograph was used for business purposes. Amato

contends that Mana Wai “fails to allege *a single fact* to support its claim that [Amato] has used the Copyrighted Work for ‘purposes of advertising and promoting [Amato]’s business,” and that Mana Wai “defines [Amato]’s commercial website (Compl., ¶ 3) but then tellingly *never* alleges that Amato posted the Copyrighted Work on the commercial website.” *Id.* at 4 (emphasis in original). In its opposition, Mana Wai asserts that Amato mistakenly asks the Court to dismiss on the grounds that there is no evidence that the copyrighted work was infringed for commercial business purposes where there is no such requirement for a prima facie case for copyright infringement. See Opp’n, Dkt. No. 21, at 4. Amato replies that the argument about whether the work was used for business purposes speaks not to the elements of a copyright infringement claim, but rather to the deficiencies in Mana Wai’s pleading. Amato points out that “having chosen to allege that [Amato] used the copyrighted Work for business purposes to support its claim for copyright infringement, [Mana Wai] voluntarily assumed the obligation to demonstrate factual support for its allegation.” Reply, Dkt. No. 23, at 3. The Court agrees. While it is true that Mana Wai alleged insufficient facts to support this conclusory allegation, because there is no business purpose requirement in a prima facie case for copyright infringement, this is of no consequence to the Court’s ruling.

Accordingly, the Court **GRANTS** Amato’s motion to dismiss, but will allow Mana Wai to amend its complaint. Given that the Court is granting the motion to dismiss, the Court accordingly **DENIES** Mana Wai’s request to join John Amato as a defendant. See Opp’n, Dkt. No. 21, at 7. However, Mana Wai may join John Amato in its amended complaint should it choose to file one.

#### IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** the motion. Mana Wai has 30 days to amend its complaint.

#### **IT IS SO ORDERED.**

**Effective immediately all oral arguments are VACATED. The Court will continue to post tentatives in the afternoon of the Court day prior to the scheduled hearing (e.g., Friday afternoon for Monday hearings). Any party may file a request for hearing of no more than five pages no later than 5:00 p.m. the day following the scheduled hearing (e.g., Tuesday 5:00 p.m. for a**

**Monday hearing) stating why oral argument is necessary. If no request is submitted, the matter will be deemed submitted on the papers and the tentative will become the order of the Court. If the request is granted, the Court will advise the parties when and how the hearing will be conducted. The Court asks for the parties' understanding and patience in these difficult times.**