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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

14 craigslist, Inc., a Delaware corporation,

15 Plaintiff,

16 v.

17 Autoposterpro, Inc., PostingExperts, Inc.,
18 Roman Hossain, John Doe d/b/a
craigslistadsstore.com and
19 craigslistpromoting.com, and Does 2
through 25, inclusive,

20 Defendants.

Case No. CV 08 05069 SBA

**ORDER DENYING DEFENDANT
HOSSAIN'S MOTION TO DISMISS FIRST
AMENDED COMPLAINT, AND
ALTERNATIVE MOTION FOR A MORE
DEFINITE STATEMENT**

Hearing Date: March 31, 2009

Hearing Time: 1:00 p.m.

Crtm: Courtroom 3, 3rd Floor

Hon.: Hon. Sandra Brown Armstrong

22 Having considered Defendant Roman Hossain's Motion to Dismiss the First Amended
23 Complaint or, in the alternative, Motion for a More Definite Statement pursuant to Fed. R. Civ. P.
24 12(b)(6) and 12(e), respectively, the briefs in support and opposition thereto, the pleadings in this
25 matter, and the argument of counsel, if any:

26 IT IS HEREBY ORDERED that Defendant Hossain's Motion to Dismiss is DENIED.
27 Further, Defendant Hossain's Motion for a More Definite Statement is also DENIED.
28

1 **RATIONALE OF DECISION**

2 **I. LEGAL STANDARDS**

3 Pursuant to the Federal Rules of Civil Procedure, a complaint must contain "a short and
4 plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).
5 The rules require only that this "statement" constitute a "'showing,' rather than a blanket
6 assertion, of entitlement to relief." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct.
7 1955, 1965 (2007). "Specific facts are not necessary; the statement need only 'give the defendant
8 fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*,
9 551 U.S. 89, 127 S. Ct. 2197, 2200 (2007)(quoting *Twombly*, 127 S. Ct. at 1964). Plaintiff's
10 factual allegations need only "be enough to raise a right to relief above the speculative level."
11 *Twombly*, 127 S. Ct. at 1965.

12 In order to survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the plaintiff's
13 obligation to provide the grounds for his entitlement to relief necessitates that the complaint
14 contain "more than labels and conclusions, and a formulaic recitation of the elements of a cause
15 of action will not do." *Id.* Yet when ruling on a defendant's motion to dismiss, the Court must
16 rule "on the assumption that all the allegations in the complaint are true." *Id.* Thus, the Court
17 must find "enough facts to raise a reasonable expectation that discovery will reveal evidence" to
18 substantiate the necessary elements of the plaintiff's claim. *Id.* "The Rule 8 standard contains a
19 powerful presumption against rejecting pleadings for failure to state a claim." *Gilligan v. Jamco*
20 *Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997)(quotation omitted).

21 In evaluating a motion to dismiss, the Court must accept as true all material allegations in
22 the complaint, as well as reasonable inferences to be drawn from them. *Pareto v. F.D.I.C.*, 139
23 F.3d 696, 699 (9th Cir. 1998). Further, the complaint must be read in the light most favorable to
24 plaintiff. *Id.*

II. MOTION TO DISMISS

A. The First Amended Complaint States Claims Against Defendant Roman Hossain as an Individual Defendant

Plaintiff's First Amended Complaint ("FAC") includes allegations that Hossain individually was the contact person for all functions of the domain names craigsliststore.com, craigslistpromoting.com, and posting experts.com. It nowhere alleges that Hossain is an employee, officer, director, or agent of any corporate defendant. The FAC clearly states that "Defendants Autoposterpro Inc., Posting Experts, Inc., *Roman Hossain*, John Doe d/b/a craigsliststore.com and craigslistpromoting.com, and the Doe Defendants are referred to collectively in this Complaint as 'Defendants.'" (FAC ¶ 27 (emphasis added).) Hence, every reference to "Defendants" in the FAC includes Hossain. Under the notice pleading requirements of Rule 8, the FAC alleges sufficient facts to state its claims against Roman Hossain as an individual defendant.

B. Plaintiff's State Law Claims are Not Preempted by Federal Copyright or Trademark Law.

Plaintiff's state law claims are not preempted under the Copyright Act because they fail to satisfy the two requirements for preemption established by the Ninth Circuit. "First, the content of the protected right must fall within the subject matter of copyright as described in 17 U.S.C. §§ 102 and 103." *Downing v. Abercrombie & Fitch*, 265 F.3d 994, 1003 (9th Cir. 2001). "Second, the right asserted under state law must be equivalent to the exclusive rights contained in section 106 of the Copyright Act." *Id.* The second condition is not met if the state law claim includes an "extra element" that is qualitatively different from rights protected by copyright *Altera Corp. v. Clear Logic, Inc.*, 424 F.3d 1079, 1089 (9th Cir. 2005). Hossain's reliance on *Kodadek v. MTV Networks, Inc.*, 152 F.3d 1209, 1212 (9th Cir. 1998), to circumvent this standard is misplaced. *Kodadek* does not stand for the broad proposition that general incorporation of copyright allegations (along with all other general allegations) into a state law claim establishes preemption. As explained in *Kodadek*, courts must "examine the nature of the [plaintiff's state law] claim to discern what rights [plaintiff] seeks to enforce with state law." *Id.*

1 Here, Plaintiff's state law claims are not within the subject matter of the Copyright Act
2 and do not assert rights that are equivalent to the rights protected under the Act because each has
3 an extra element. Plaintiff's claims for breach of contract, inducing breach of contract,
4 intentional interference with contractual relations and fraud are all predicated on Hossain's breach
5 of the craigslist Terms of Use ("TOUs") or his representation that he would comply with the
6 TOUs. (FAC ¶¶ 194, 201-202, 217-218, 220.) These claims are not predicated on a work of
7 authorship, and each requires the existence of a contract between the parties or a
8 misrepresentation regarding the TOUs by Hossain, which provide qualitatively different elements
9 from copyright. The TOUs contain extra obligations beyond those imposed by the Copyright
10 Act, for example, that craigslist users, including Defendants, are not to post listings on behalf of
11 third parties, post outside of their designated geographic areas or in more than one category, use
12 automated posting devices, or send unsolicited email advertisements to craigslist users. These
13 state claims are therefore not preempted by the Copyright Act. *See Sharp v. Patterson*, No. 03-
14 Cv-8772, 2004 WL 2480426, at *7 (S.D.N.Y. 2004) (holding the breach of contract claim that
15 seeks to vindicate rights, allegedly created by an agreement between the parties, is distinct from
16 copyright law); *see Jonathan Browning, Inc. v. Venetian Casino Resort, LLC*, No. 07-Cv-3983,
17 2007 WL 4532214, *10 (N.D. Cal. Dec. 19, 2007) ("[k]nowledge and intent are essential
18 elements of an intentional interference [with contractual relations] claim," and therefore a "claim
19 for intentional interference with contractual relations provides the extra element that is not
20 preempted by federal law") (quotation omitted); *Valente-Kritzer Video v. Pinckney*, 881 F.2d 772,
21 776 (9th Cir. 1989) (holding element of misrepresentation renders fraud claim not substantially
22 equivalent to claim for copyright infringement).

23 Plaintiff's claim for violation of California Penal Code § 502 is predicated on Hossain's
24 involvement in the unauthorized access of craigslist data, computers, computer systems and/or
25 computer networks. Access to private computers, computer systems or computer networks is not
26 an element or a right under the Copyright Act and therefore Plaintiff's claim for violation of
27 California Penal Code § 502 is not preempted.
28

1 Plaintiff's claim for trademark infringement, based as it is on use of the CRAIGSLIST
2 mark in domain names and email addresses, does not implicate a copyright. The rights protected
3 under trademark law are not the same rights protected under the Copyright Act. *See Polar Bear*
4 *Productions, Inc. v. Timex Corp.*, 384 F.3d 700, 721 (9th Cir. 2004) (holding state law trademark
5 claim was not preempted by Copyright Act because “[c]opyright and trademark are related but
6 distinct property rights, evidenced by different federal statutes governing their protection”).
7 Plaintiff’s claim for trademark infringement under California law is not preempted by the
8 Copyright Act.

9 The motion to dismiss provides no valid authority or grounds for preemptions of
10 Plaintiff's state law claims under the Lanham Act. The statement from *Mr. Donut of America,*
11 *Inc. v. Mr. Donut, Inc.*, 418 F.2d 838, 844 (9th Cir. 1969) (“[t]he Lanham Act has pre-empted the
12 field of trademark law and controls”), relied on by Hossain was rejected by the Ninth Circuit in
13 *Golden Door, Inc. v. Odisho*, 646 F.2d 347, 352 (9th Cir. 1980). Moreover, the Ninth Circuit has
14 held that California state trademark infringement is not preempted by the Lanham Act because it
15 affords more protection to trademark owners than afforded under federal trademark law. *Id.*

16 **C. Plaintiff’s Claims for Violation of the Computer Fraud and Abuse Act and Fraud**
17 **Satisfy the Requirements of Fed. R. Civ. P. 9(b) and State Claims upon Which Relief**
18 **Can Be Granted**

19 Defendants are alleged to have engaged in multiple and repeated wrongs giving rise to
20 various claims. Plaintiff provided 124 paragraphs of common allegations setting forth with great
21 detail Defendants’ alleged wrongs. At most, only two of Plaintiff’s claims are subject to the
22 heightened requirements of Rule 9(b). These are Plaintiff’s claim for violation of the Computer
23 Fraud and Abuse Act (“CFAA”) and claim for Fraud. Both claims were pled with sufficient
24 particularity to meet the heightened pleading requirement. Assuming that the 9(b) requirements
25 apply to CFAA claims, which the Court need not decide on this motion, Plaintiff has adequately
26 pled the elements of a CFAA claim with the information in its possession. *See Reid-Ashman Mfg,*
27 *Inc. v. Swanson Semiconductor Service, LLC*, No. C-06-4693, 2007 WL 1394427, at *10 (N.D.
28 Cal. 2007)(stating that particularity requirements are relaxed “as to matters within the opposing

1 party's knowledge"). Plaintiff has alleged that Defendants "have repeatedly and systematically
2 posted thousands of ads on craigslist for third parties" and "in multiple categories and multiple
3 geographic areas" and that they "accessed craigslist's computers without authorization and
4 executed or caused to be executed a computer program that obtained the craigslist users' email
5 addresses from craigslist's computers," both of which required accessing the website in a manner
6 that violates the TOUs.

7 Plaintiff has also pled its claim for Fraud with sufficient particularity to satisfy Rule 9(b).
8 Plaintiff pled all the elements of a fraud claim with the information available to it. Plaintiff
9 alleged the content of the misrepresentation as Defendants' statements that they intended to
10 comply with the TOUs when in fact they did not. Plaintiff alleged the time of the
11 misrepresentation as each time Defendants manifested assent to the TOUs either by clicking the
12 "ACCEPT terms of use" option or using the website. Plaintiff alleged the location of the
13 misrepresentation as occurring on the craigslist website. Finally, Plaintiff alleged that Plaintiff
14 and the Defendants are parties to the representations. Based on the information available to it,
15 Plaintiff met the requirements of Rule 9(b) by providing Defendants adequate information to
16 formulate an answer to the FAC. *See Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir.1993) (a
17 "pleading is sufficient under Rule 9(b) if it identifies the circumstances constituting fraud so that
18 the defendant can prepare an adequate answer from the allegations") (quotation omitted).

19 **D. Plaintiff's Remaining Claims Satisfy the Requirements of Fed. R. Civ. P. 8 and State**
20 **Claims upon Which Relief Can Be Granted**

21 The Court rejects Defendant's attempt to create a heightened pleading requirement for
22 Plaintiff's remaining claims by requiring additional details beyond the scope of what Rule 8
23 requires. *See Cinebase Software, Inc. v Media Guaranty Trust, Inc.*, No. 98-Cv-1100, 1998 WL
24 661465, at *5 (N.D. Cal. 1998) ("the Court does not agree with defendant that there is a
25 heightened pleading standard in infringement cases"). As noted by the Supreme Court in
26 *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 513 (2002), "Rule 8(a)'s simplified pleading standard
27 applies to all civil actions, with limited exceptions" such as Rule 9(b) for averments of fraud or
28 mistake, but that the Supreme Court has "declined to extend such exceptions to other contexts."

1 Through the detailed allegations stated in its FAC, Plaintiff has adequately pled its claims
2 for copyright infringement, violation of the Digital Millennium Copyright Act, violation of
3 California Penal Code section 502, trademark infringement under the Lanham Act, trademark
4 Infringement under California law, breach of contract, inducing breach of contract, and
5 intentional interference with contractual relations. All of these claims were specific enough to
6 “give the defendant fair notice of what . . . the claim is and the grounds upon which it rests.”
7 *Erickson v. Pardus*, 551 U.S. 89, 127 S. Ct. 2197, 2200 (2007) (quoting *Twombly*, 127 S. Ct. at
8 1965, 1964 (2007)).

9 II. MOTION FOR A MORE DEFINITE STATEMENT

10 A Rule 12(e) motion for more definite statement is disfavored and is proper only if the
11 complaint is so indefinite that the defendant cannot ascertain the nature of the claim being
12 asserted, meaning the complaint is so vague that the defendant cannot begin to frame a response.
13 *Bureerong v. Uvawas*, 922 F. Supp. 1450, 1461 (C.D. Cal.1996); *Boxall v. Sequoia Union High*
14 *Sch. Dist.*, 464 F. Supp. 1104, 1114 (N.D. Cal. 1979). The motion must be denied if the
15 complaint is specific enough to notify defendant of the substance of the claim being asserted. *San*
16 *Bernardino Pub. Employees Ass'n v. Stout*, 946 F. Supp. 790, 804 (C.D. Cal. 1996) (“A motion
17 for a more definite statement is used to attack unintelligibility, not mere lack of detail, and a
18 complaint is sufficient if it is specific enough to apprise the defendant of the substance of the
19 claim asserted against him or her.”). Further, a motion for more definite statement should be
20 denied if the detail sought by a motion for more definite statement is obtainable through
21 discovery. *Davison v. Santa Barbara High Sch. Dist.*, 48 F. Supp. 2d 1225, 1228 (C.D. Cal.
22 1998).

23 Plaintiff’s FAC provides sufficient detail to notify defendants of the substance of the
24 claims asserted and to allow it to frame a response. Any further details are either in Defendants’
25 possession or are obtainable through discovery. Defendant Hossain’s motion for a more definite
26 statement is denied.

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Dated this 27th day of March 2009.



Honorable Sandra Brown Armstrong

Presented by:
PERKINS COIE LLP

By: /s/ Elizabeth L. McDougall
Elizabeth L. McDougall, (WA Bar No.27026)

Attorneys for Plaintiff craigslist, Inc.