UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANTSY LABS, LLC; ZURU INC.,	)	
	)	
Plaintiffs,	)	
	)	No. 22 C 1801
v.	)	
	)	Judge Sara L. Ellis
THE INDIVIDUALS, CORPORATIONS, LIMITED LIABILITY COMPANIES, PARTNERSHIPS, and UNINCORPORATED ASSOCIATIONS IDENTIFIED ON SCHEDULE A THERETO,	)	
	)	
Defendants.	)	

OPINION AND ORDER

Plaintiffs Antsy Labs, LLC ("Antsy Labs") and Zuru Inc. ("Zuru") filed this lawsuit against the Individuals, Corporations, Limited Liability Companies, Partnerships, and Unincorporated Associations identified on Schedule A, including Defendants Kakaixi, Dragonflydreams, and Fidget Dice (the "Moving Defendants"). Plaintiffs allege copyright infringement in violation of 17 U.S.C. § 101 *et seq.*, false designation of origin in violation of 15 U.S.C. § 1125(a), and violation of the Illinois Uniform Deceptive Trade Practices Act ("IUDTPA"), 815 Ill. Comp. Stat. 510/1 *et seq.* While Plaintiffs have settled with or obtained a default judgment against many of the defendants named on Schedule A, the Moving Defendants have appeared in this case and filed a motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). The Court allows Plaintiffs to proceed on their copyright infringement claim. But the Court dismisses the false designation of origin and IUDTPA claims because Plaintiffs have failed to sufficiently allege the existence of a valid mark.

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BACKGROUND[1]

Antsy Labs created the original Fidget Cube product in 2016, publishing it on the KickStarter platform in August 2016. In early 2017, Antsy Labs granted Zuru a license for the intellectual property rights associated with the Fidget Cube product. Antsy Labs then applied for a copyright for its Fidget Cube product in June 2017. The United States Copyright Office issued a certificate of registration for the Fidget Cube product with an effective date of June 30, 2017. Antsy Labs deposited an exemplary unit of the Fidget Cube with the United States Copyright Office, which is available for inspection, and appears as such:

Doc. 1 ¶ 10. Antsy Labs registered the trademark "Fidget Cube by Antsy Labs" on September 18, 2018, with a first use date of August 30, 2016. Doc. 53-1 at 38.

Since April 2017, Plaintiffs have been the official sources for the genuine Fidget Cube product line in the United States. Plaintiffs have spent substantial time, money, and resources developing, advertising, and promoting Fidget Cube products. As a result, products with the Fidget Cube name and mark are widely recognized and associated with products sourced from Plaintiffs.

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[1] The Court takes the facts in the background section from Plaintiffs' complaint and exhibits attached thereto and presumes them to be true for the purpose of resolving the Moving Defendants' motion to dismiss. *See Phillips v. Prudential Ins. Co. of Am.*, 714 F.3d 1017, 1019–20 (7th Cir. 2013). Although the Court normally cannot consider extrinsic evidence without converting a motion to dismiss into one for summary judgment, *Jackson v. Curry*, 888 F.3d 259, 263 (7th Cir. 2018), the Court may consider "documents that are central to the complaint and are referred to in it" in ruling on a motion to dismiss, *Williamson v. Curran*, 714 F.3d 432, 436 (7th Cir. 2013). The Court "may also take judicial notice of matters of public record." *Orgone Cap. III, LLC v. Daubenspeck*, 912 F.3d 1039, 1043–44 (7th Cir. 2019).

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The Moving Defendants sell products on Amazon, including fidget toys that are at least substantially similar to Plaintiffs' Fidget Cube products. Plaintiffs allege that the following products sold by the Moving Defendants infringe Antsy Lab's copyright:

Doc. 53-1 at 5, 15, 21. Plaintiffs also allege that the Moving Defendants use the Fidget Cube mark in connection with the sale of these products, creating a false and misleading representation as to the origin and sponsorship of the products.

LEGAL STANDARD

A motion to dismiss under Rule 12(b)(6) challenges the sufficiency of the complaint, not its merits. Fed. R. Civ. P. 12(b)(6); *Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7th Cir. 1990). In considering a Rule 12(b)(6) motion, the Court accepts as true all well-pleaded facts in the plaintiff's complaint and draws all reasonable inferences from those facts in the plaintiff's favor. *Kubiak v. City of Chicago*, 810 F.3d 476, 480–81 (7th Cir. 2016). To survive a Rule 12(b)(6) motion, the complaint must assert a facially plausible claim and provide fair notice to the defendant of the claim's basis. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Adams v. City of Indianapolis*, 742 F.3d 720, 728–29 (7th Cir. 2014). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

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ANALYSIS

I. Copyright Infringement Claim (Count I)

To state a claim for copyright infringement under 17 U.S.C. § 106, Plaintiffs must plausibly allege that (1) they own a valid copyright, and (2) the Moving Defendants copied "constituent elements of the work that are original." *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991). The Moving Defendants make three arguments for dismissal of this claim.

First, the Moving Defendants argue that Plaintiffs have not provided them with fair notice of Plaintiffs' copyrighted work. But the Moving Defendants ask too much of Plaintiffs at this stage, particularly given that a copyright infringement claim need not meet Rule 9(b)'s particularity requirements. *Mid Am. Title Co. v. Kirk*, 991 F.2d 417, 421–22 (7th Cir. 1993). Plaintiffs have not only provided the copyright registration but also included a photograph of the Fidget Cube product, comparing it to an example of an allegedly counterfeit product. *See* Doc. 1 ¶ 30. The complaint also includes an image from Plaintiffs' website, which describes the Fidget Cube product as having "six sides," with "[e]ach side featur[ing] something to fidget with: Click. Glide. Flip. Breathe. Roll. Spin." *Id.* ¶ 11. This further explains the contours of the copyrighted work. *Cf. Art of Design, Inc. v. Pontoon Boat, LLC*, No. 3:16-CV-595, 2017 WL 3608219, at *4 (N.D. Ind. Aug. 22, 2017) (plaintiff did not sufficiently identify the copyrighted designs at issue where, although it did provide the copyright registration numbers, it did not include "any descriptions or explanations as to what the designs are or look like"). Further, the Moving Defendants' briefing belies their argument that they have to "guess" at what Plaintiffs claim constitutes the copyrighted work, Doc. 53 at 4, as they instead make specific arguments as to how their products differ from the Fidget Cube product, *id.* at 7–8; *see Uniface B.V. v. Sysmex*

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Am., Inc., No. 20 C 6478, 2021 WL 2291075, at *9 (N.D. Ill. June 4, 2021) (rejecting argument that the complaint did not place the defendant on fair notice of the alleged copyright infringement where the defendant "acknowledge[d] that its defense will include a 'comparison of the Uniface Software Program to Sysmex's WAM Software,' thereby suggesting Sysmex is aware of what it is accused of copying" (citation omitted)). Thus, the Court finds that Plaintiffs' complaint provides the Moving Defendants with sufficient notice of the grounds upon which the copyright infringement claim rests.

The Moving Defendants next challenge the validity of the copyright, arguing that the Fidget Cube product involves an uncopyrightable functional industrial design. *See Am. Dental Ass'n v. Delta Dental Plans Ass'n*, 126 F.3d 977, 980 (7th Cir. 1997) ("Congress permits works of art, including sculptures, to be copyrighted, but does not extend the copyright to industrial design, which in the main falls into the province of patent, trademark, or trade dress law. When the maker of a lamp—or any other three-dimensional article that serves some utilitarian office—seeks to obtain a copyright for the item as a sculpture, it becomes necessary to determine whether its artistic and utilitarian aspects are separable. If yes, the artistic elements of the design may be copyrighted; if no, the designer must look outside copyright law for protection from imitation." (citations omitted)). But here, Plaintiffs have attached the copyright registration, which "constitutes *prima facie* evidence of the validity of a copyright." *Wildlife Express Corp. v. Carol Wright Sales, Inc.*, 18 F.3d 502, 507 (7th Cir. 1994). Thus, at the motion to dismiss stage, the Court accepts Plaintiffs' allegations that they have obtained a valid copyright for the Fidget Cube product and leaves the question of the validity of the copyright for a more developed record. *See Mid Am. Title Co.*, 991 F.2d at 422–23 (determining validity of a copyright "at the pleading stage will often be impossible" and is "more properly addressed at the

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