

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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GENIUS MEDIA GROUP INC.,

Plaintiff,

**MEMORANDUM & ORDER**  
19-CV-7279 (MKB)

v.

GOOGLE LLC and LYRICFIND,

Defendants.

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MARGO K. BRODIE, United States District Judge:

Plaintiff Genius Media Group Inc. commenced the above-captioned action on December 3, 2019 in the New York Supreme Court, Kings County, against Defendants Google LLC (“Google”) and LyricFind, Inc. (“LyricFind”). (Notice of Removal ¶ 1, Docket Entry No. 1.) On December 30, 2019, Defendants removed the action to the Eastern District of New York. (*Id.*) Plaintiff alleges that Defendants misappropriated lyric transcriptions from its website and then used that content for Defendants’ “own financial benefit and to [Plaintiff’s] financial detriment,” and asserts state law claims for breach of contract, indemnification, unfair competition under both New York common law and California statutory law, and unjust enrichment. (Compl. ¶¶ 1–2, 111–209, annexed to Notice of Removal as Ex. A, Docket Entry No. 1.)

Plaintiff moves to remand the action to state court. (Pl. Mot. to Remand (“Pl. Mot.”), Docket Entry No. 15; Pl. Mem. in Supp. of Pl. Mot. (“Pl. Mem.”), Docket Entry No. 15-1.) Defendants oppose the motion. (Defs. Opp’n to Pl. Mot. (“Defs. Opp’n”), Docket Entry No. 16.) For the reasons set forth below, the Court denies Plaintiff’s motion and dismisses the Complaint for failure to state a claim.

## I. Background

According to the allegations in the Complaint, Plaintiff is a “digital media company,” one of whose “primary services is the development and maintenance of . . . annotated music lyrics.” (Compl. ¶ 1.) LyricFind is a Canadian company that maintains a database of music lyrics. (*Id.* ¶¶ 8–9.) Both Plaintiff and LyricFind “license lyrics for display [and distribution] from music publishers.” (*Id.* ¶¶ 18–19.) Google “owns and operates . . . the internet’s dominant search platform.” (*Id.* ¶ 14.) Pursuant to an agreement between Defendants, “LyricFind provides lyrics to Google for use in . . . Google’s search results.” (*Id.* ¶ 12.)

### a. Plaintiff’s services and business model

While music publishers “usually own the copyright in the lyrics for a given song,” companies like Plaintiff and LyricFind “do not typically receive any actual lyrics transcriptions in connection with their licensing agreements,” (*id.* ¶ 18), and must otherwise generate or obtain the lyrics they have licensed for display, (*see id.* ¶ 19). Plaintiff “provides a platform” for an online community of “music enthusiasts who transcribe music lyrics.” (*Id.* ¶ 19.) The transcription process is “arduous,” and Plaintiff has “invested ten years and millions of dollars to build the technology and community that support[] collaborative lyrics transcription.” (*Id.* ¶ 20.) In addition to this collaborative transcription process, Plaintiff also “obtains lyrics . . . directly” from artists. (*Id.* ¶ 19.) Plaintiff “earns revenue in several ways,” including by “licens[ing] its database of high-quality lyrics” to “major companies, such as Apple,” and by “generat[ing] ad revenue through web traffic on its website and apps.” (*Id.* ¶ 22.)

All visitors to Plaintiff’s website are bound by terms and conditions (the “Terms of Service”), “which are accessible to users from all pages of [Plaintiff’s] website.” (*Id.* ¶ 24.) The Terms of Service prohibit, *inter alia*, the unauthorized “licens[ing], . . . copy[ing],

modif[ication], s[ale], . . . [or] transm[ission] for any commercial purpose, [of] any portion of [Plaintiff's] Service, or access to [Plaintiff's] Service.”<sup>1</sup> (*Id.* ¶¶ 112, 115.) The Terms of Service also prohibit, *inter alia*, the unauthorized “modif[ication], copy[ing], . . . s[ale], [or] distribution” of Plaintiff's content, other than a user's own content that a user has “legally upload[ed]” to Plaintiff's website.<sup>2</sup> (*Id.* ¶ 119.)

**b. Google's lyrics information boxes and Plaintiff's suspicions of misconduct**

Many visitors arrive at Plaintiff's website via a search engine, “most typically Google's,” and Plaintiff “is often the top-ranked organic search result on Google for lyrics search queries.” (*Id.* ¶¶ 23, 25.) However, even if Plaintiff is the top-ranked organic result for a user's lyrics search, a Google search feature known as an “Information Box” may still appear “above all other organic search results,” displaying “the complete lyrics for the requested song.” (*Id.* ¶¶ 28–29.) Such lyrics Information Boxes are often “displayed in such a manner that the user cannot see any other search results without first scrolling down,” (*id.* ¶ 30), and significantly reduce the “click-

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<sup>1</sup> The Terms of Service provision regarding commercial use provides that: Unless otherwise expressly authorized herein or by [Plaintiff's] express written consent, you agree not to display, distribute, license, perform, publish, reproduce, duplicate, copy, create derivative works from, modify, sell, resell, exploit, transfer or transmit for any commercial purpose, any portion of the Service, or access to the Service. The Service is for your personal use and may not be used for direct commercial endeavors without the express written consent of [Plaintiff].

(Compl. ¶ 115.)

<sup>2</sup> The Terms of Service provides that: Except as expressly authorized by [Plaintiff] in writing, you agree not to modify, copy, frame, scrape, rent, lease, loan, sell, distribute or create derivative works based on the Service of the [Plaintiff] Content, in whole or in part, except that the foregoing does not apply to your own User Content that you legally upload to the Service.

(Compl. ¶ 119.)

through rate” to Plaintiff’s website, (*id.* ¶¶ 101–02).

When Google introduced the Information Box feature into its lyrics search results, Plaintiff “observed that the lyrics in those Information Boxes were sometimes identical, on a character-for-character basis,” to lyrics on Plaintiff’s website. (*Id.* ¶¶ 46–47.) Because such a match “is highly unlikely” given the particular nature of the lyrics transcription process, Plaintiff came to suspect that its “lyrics . . . were being misappropriated.” (*Id.* ¶¶ 48–49.)

**c. Plaintiff investigates suspected misconduct and puts Defendants on notice of its findings**

In August of 2016, in an effort to further investigate this suspected misappropriation, Plaintiff created a “digital watermark to embed in certain lyrics appearing on its site” (“Watermark #1”). (*Id.* ¶ 59.) Watermark #1 consisted of a “distinctive pattern of curly . . . and straight apostrophes,” which, when converted into “dots” and “dashes,” “spells out ‘REDHANDED’ in Morse code.” (*Id.* ¶ 60.) In May of 2017, Plaintiff notified Google via email that it had found Watermark #1 in Google’s lyrics Information Boxes, “prov[ing] that Google was displaying lyrics copied from [Plaintiff’s] website.” (*Id.* ¶ 62.) In response to that initial email and subsequent follow-up communications by Plaintiff, Google informed Plaintiff that it was “looking into the issue.” (*Id.* ¶¶ 62–63.)

In October of 2018, Plaintiff “designed [and implemented] an experiment to more systematically assess the incidence of lyrics misappropriated from [Plaintiff’s] website in Google’s lyrics Information Boxes,” based on which Plaintiff “concluded that the incidence of lyrics irrefutably copied from [Plaintiff’s] website in Google’s lyrics Information Boxes was widespread and that the copying was systematic.” (*Id.* ¶¶ 64, 67.)

In April of 2019, Plaintiff “again notified Google, in writing, that it was displaying content misappropriated from [Plaintiff’s] website,” in response to which Google eventually

“identified LyricFind as the source of the lyrics [in] the examples that [Plaintiff] provided to Google.” (*Id.* ¶¶ 68, 70.) Plaintiff then “wrote to LyricFind to request that it cease and desist from the misappropriation and commercialization of content appearing on [Plaintiff’s] website.” (*Id.* ¶ 71.) Despite having been “placed on actual notice of their behavior,” Defendants failed to take “any steps to cease such conduct.” (*Id.* ¶ 72.)

On June 16, 2019, the *Wall Street Journal* published an article detailing Plaintiff’s allegations that Defendants had copied lyrics from Plaintiff’s website. (*Id.* ¶ 74.) On June 18, 2019, Google stated in a blog post that it had asked LyricFind “to investigate the issue to ensure [it is] following industry best practices in [its] approach,” and affirmed Google’s commitment to “uphold high standards of conduct for [itself] and from the partners [it] work[s] with.” (*Id.* ¶ 77.)

Soon after the article’s publication, Google began adding source attributions to its lyrics Information Boxes, including attributions to LyricFind for lyrics that Plaintiff had previously notified Google appeared to be taken from Plaintiff’s website. (*Id.* ¶ 81.) Around the same time, Plaintiff “discovered that Watermark #1 had disappeared from Google’s lyrics Information Boxes.” (*Id.* ¶ 82.) Suspecting “a deliberate effort . . . to conceal [continued] misappropriation of lyrics from [Plaintiff’s] website,” Plaintiff created a second watermark, this time designed to spell out the word “GENIUS” in Morse code (“Watermark #2”). (*Id.* ¶¶ 83–84.) Plaintiff then watermarked one set of lyrics on its website with Watermark #1, a second group of lyrics with Watermark #2, and a third set of lyrics with both Watermark #1 and Watermark #2. (*Id.* ¶ 85.) In monitoring the three sets of lyrics, Plaintiff observed Watermark #2 on lyrics in both the second and third groups, but did not observe Watermark #1 on any lyrics in either the first or third group. (*Id.* ¶ 86.) In a number of instances involving lyrics in which Plaintiff had embedded both Watermark #1 and Watermark #2, Plaintiff observed that Watermark #2, “the

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