

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LLM BAR EXAM, LLC,

Plaintiff,

v.

BARBRI, INC., COLUMBIA LAW
SCHOOL, NEW YORK UNIVERSITY
SCHOOL OF LAW, HARVARD LAW
SCHOOL, BENJAMIN N. CARDOZO
SCHOOL OF LAW, ST. JOHN'S
UNIVERSITY SCHOOL OF LAW, DUKE
UNIVERSITY SCHOOL OF LAW,
UNIVERSITY OF SOUTHERN
CALIFORNIA GOULD SCHOOL OF LAW,
FORDHAM UNIVERSITY SCHOOL OF
LAW, GEORGETOWN UNIVERSITY LAW
CENTER, EMORY UNIVERSITY SCHOOL
OF LAW, THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA, SYLVIA
T. POLO, and NITZA ESCALERA,

Defendants.
-----X

16 Civ. 3770 (KPF)

OPINION AND ORDER

KATHERINE POLK FAILLA, District Judge:

This is a dispute between two companies that prepare law school graduates for a time-honored (and seemingly Sisyphean) rite of legal passage: the bar examination. Each year, thousands of foreign attorneys obtain Master of Laws (“LL.M.”) degrees from American law schools. Since 2009, Plaintiff LLM Bar Exam, LLC (“LBE”) has sought to train many of these foreign LL.M. graduates to take and pass the New York and California bars. But LBE claims that it has been thwarted in its efforts by Defendant Barbri, Inc. (“Barbri”) — a

far older, and far larger, rival. Barbri, LBE alleges, stole LBE's proprietary idea for a bar review course catered to foreign LL.M. graduates. Its representatives disparaged LBE to would-be clients. And, critically, LBE claims that Barbri has colluded with law schools nationwide in order to monopolize the bar preparation industry.

In 2016, LBE sued Barbri, several law schools located in New York (collectively, the "New York Law Schools"),¹ and several other law schools located outside of New York (collectively, the "Non-New York Law Schools").² The First Amended Complaint — the operative complaint in this case — seeks relief under Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1-2; the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c) ("RICO"); the Copyright Act, 17 U.S.C. §§ 101 *et seq.*; and a battery of state laws.

Barbri, the New York Law Schools, and the Non-New York Law Schools (collectively, "Defendants") have filed a combined motion to dismiss the First Amended Complaint and three supporting briefs: (i) an omnibus brief on behalf of all Defendants; (ii) a brief on behalf of Barbri; and (iii) a brief on behalf of the

¹ These Defendants include Columbia Law School ("Columbia") and its Dean of Graduate Legal Studies, Sylvia T. Polo; Fordham University School of Law ("Fordham") and its Assistant Dean of Student Affairs, Nitza Escalera; New York University Law School ("NYU"); Benjamin N. Cardozo School of Law ("Cardozo"); and St. John's University School of Law ("St. John's").

² These Defendants include Harvard Law School ("Harvard"); Duke University School of Law ("Duke"); the University of Southern California Gould School of Law ("USC"); Georgetown University Law Center ("Georgetown"); and Emory University School of Law ("Emory"). Previously, LBE sued The Regents of the University of California. (Dkt. #1, #85). On December 1, 2016 — before Defendants moved to dismiss the First Amended Complaint — LBE voluntarily dismissed the Regents from this action. (Dkt. #89, 90).

Non-New York Law Schools. The first two of these briefs argue that LBE has failed to state a claim for relief, and urge the Court to dismiss the First Amended Complaint under Federal Rule of Civil Procedure 12(b)(6). The third brief contends that the Court lacks personal jurisdiction over the Non-New York Law Schools, and thus that the Court should dismiss the First Amended Complaint as to these defendants pursuant to Rule 12(b)(2).

The First Amended Complaint is 78 pages long and contains 63 exhibits. But it pleads no facts that plausibly support LBE's federal antitrust, RICO, or copyright claims. The Court declines to exercise supplemental jurisdiction over LBE's state-law causes of action, though it shares Defendants' skepticism as to the viability of these claims. Thus, and for the reasons set forth below, the Court grants Defendants' motion to dismiss.

BACKGROUND³

A. Factual Background

Broadly, the First Amended Complaint alleges that Defendants have committed misconduct along two axes — one vertical, and one horizontal. First, LBE claims that Barbri has entered into agreements with the New York Law Schools and the Non-New York Law Schools (the “Law School Agreements”). (See, e.g., FAC ¶ 44). Pursuant to the Law School Agreements,

³ This Opinion draws on facts from the First Amended Complaint (“FAC” (Dkt. #85)) and the Exhibits (“Ex.”) attached thereto. For purposes of this Opinion, the Court assumes that the First Amended Complaint's allegations are true. *E.g.*, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

For ease of reference, the Court will refer to LBE's opposition brief as “LBE Opp.” (Dkt. #102).

LBE alleges, Barbri donates money to these schools and hires their faculty members to teach bar review courses; in exchange, the law schools ensure that Barbri remains the country's preeminent provider of bar preparation courses. (*Id.*). Second, LBE alleges that the New York Law Schools and the Non-New York Law Schools — enticed by Barbri's financial support — have conspired with each other to prevent LBE from challenging Barbri. (*See, e.g., id.* at ¶¶ 197-99). The result, LBE claims, is that Barbri has monopolized the market for preparing foreign LL.M. graduates to take the bar (what LBE terms the "LLM Market"). (*Id.* at ¶¶ 29-31, 196).

Understanding this case requires the Court to take stock of the relationships between and among these parties. And given the First Amended Complaint's length, that task involves several steps. The Court will begin by listing the parties to this suit. Then, the Court will review LBE's allegations about the LLM Market. The Court will next turn to LBE's allegations about Barbri. And finally, the Court will consider LBE's allegations about the New York Law Schools and the Non-New York Law Schools.

1. The Parties

LBE "is a limited liability company" based in New York City. (FAC ¶ 9). It "offers test preparation courses for the New York State and California State bar examinations, designed for and marketed exclusively to internationally trained/educated lawyers who obtain or are in the process of obtaining [LL.M. degrees] in law schools across the United States." (*Id.*). The bulk of the First Amended Complaint's allegations concern LBE's courses that prepare foreign

LL.M. graduates to take the New York bar. (See, e.g., *id.* at ¶¶ 24, 26-27, 37, 48). LBE began marketing these courses — which “offer[] several unique features to assist [f]oreign LL.M. [s]tudents in passing the NY Bar Exam” — in spring 2009. (*Id.* at ¶¶ 25-26). And LBE enjoyed success after that point: Indeed, in a February 2016 e-mail to an administrator at USC, LBE’s founder, Emanuele Tosolini, wrote that LBE “ha[d] over 500 enrolled students.” (Ex. 57; see also FAC ¶¶ 27, 48, 64, 68, 96, 135, 144, 159)). But as a result of Defendants’ “collective actions ... all instigated and directed by Barbri, ... LBE was forced out of business” at a time not specified in the First Amended Complaint. (FAC ¶ 61).

Barbri “is a Delaware corporation” that provides bar review classes to both LL.M. and Juris Doctor (“J.D.”) graduates. (FAC ¶ 10). Barbri is “a direct competitor of LBE.” (*Id.*). And by LBE’s account, Barbri holds “a monopoly within the bar review marketplace”: LBE “assume[s]” that Barbri has an “over 80% market share” of that marketplace and enjoys “\$110 million [in] revenue.” (*Id.* at ¶ 43). “1.2 million” students have taken Barbri’s courses “[o]ver the past fifty [] years.” (*Id.*).

The New York Law Schools and the Non-New York Law Schools are all law schools “accredited by the American Bar Association.” (FAC ¶¶ 11-20). LBE alleges that foreign attorneys pursuing LL.M. degrees matriculate in high numbers at these ten schools. (*Id.* at ¶ 32). Polo is Columbia’s Dean of Graduate Legal Studies. (*Id.* at ¶ 22). And Escalera is an Assistant Dean of Student Affairs at Fordham. (*Id.* at ¶ 23).

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