

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE REGULATORY FUNDAMENTALS :  
GROUP LLC, :

Plaintiff, :

-v- :

GOVERNANCE RISK MANAGEMENT :  
COMPLIANCE, LLC d/b/a MANHATTAN :  
ADVISERS, et al., :

Defendants. :

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KATHERINE B. FORREST, District Judge:

13 Civ. 2493 (KBF)

ORDER

On April 15, 2013, plaintiff The Regulatory Fundamentals Group LLC (“plaintiff” or “RFG”) filed this action against defendants Governance Risk Management Compliance, LLC (“GRMC”) d/b/a Manhattan Advisers (“MA”), John Does 1-10, Manhattan Advisers LLC, and Greg V. Wood (“defendants”), alleging violations of the Copyright Act. (See Compl., Apr. 15, 2013, ECF No. 1.) On July 12, 2013, plaintiff filed an amended Complaint (see Am. Compl., July 12, 2013, ECF No. 21), and on November 21, 2013, defendants filed a motion for summary judgment. (See Defs.’ Mot., Nov. 21, 2013, ECF No. 38.) On January 23, 2014, the Court held argument on that motion.

Three different websites are at issue in this litigation: (1) RFG’s website; (2) MA’s website; and (3) a website that RFG was hired by GRMC to create on a “white-label” basis, pursuant to the terms of an agreement (the “Services Agreement”)

entered into by RFG and GRMC on October 30, 2012. (See Greg V. Wood's Aff. in Supp. Mot. Summ. J. ("Wood Aff."), Ex. 1, Nov. 21, 2013, ECF No. 40-1.)

Plaintiff's primary allegation is that defendants engaged in copyright infringement by pulling content owned by RFG and using it on MA's website – both without RFG's permission and without providing credit to RFG. (Tr. 12.) In response, defendants concede that they took content created by RFG, but claim that they used the content to solicit customers for the white-label site in accordance with the terms of the Services Agreement. (Tr. 14-16.)

Section 1.1 of the Services Agreement states that "RFG shall, for and on behalf of MA, provide the Services to (a) MA's customers who submit Orders (defined below) for the Services and enter into Terms of Service (defined below) ('Customers') and (b) each such Customer's authorized (i) employees and (ii) contractors ((i) and (ii) together, 'End Users'). RFG will provide the Services through a website (the 'Site') on a white[-]label basis . . . ." (Wood Decl., Ex. 1 at 1 (emphasis added).)<sup>1</sup>

Section 3.1 of the Services Agreement provides: "RFG hereby grants to MA a non-exclusive, non-transferable right and license during the Term solely to sublicense to Customers and End Users the right access (through the Site) and use

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<sup>1</sup> Schedule 1, which explains the term "Services," states: "RFG's web-based regulatory information software and services, RFG Pathfinder® and RFG Watch®, are delivered through its website located at www.RegFG.com. RFG Pathfinder® is an intuitive platform that simplifies legal, regulatory and contractual requirements applicable to hedge fund and private equity fund advisers and facilitates internal communications and organizational learning across the firm. RFG Watch® provides interactive regulatory and risk assessment alerts, complete with built-in audit functionality." (Wood Decl., Ex. 1 at 11.)

the Services pursuant to the Terms of Service.” (Id. at 2 (emphasis added).) The Services Agreement also provides:

Except with respect to the rights expressly granted to MA by this Agreement, as between MA and RFG, RFG retains all right, title and interest (including all patent rights, copyrights, trade secrets and other proprietary rights) in and to the Site, the Services and all components thereof and content contained therein, and MA is not by reason of this Agreement acquiring any rights therein or thereto.

(Wood Decl., Ex. 1 at 3.)

As for the white-labeling requirement, Section 3.6 requires that RFG provide:

[T]he Site and the Services to MA, the Customers and the End Users on a white-label basis such that they will be branded with MA’s name, trademarks or service marks and other elements identifying MA (together the ‘MA Marks’) pursuant to specifications (the ‘Specifications’) to be mutually agreed by the parties. . . . MA acknowledges and agrees that RFG may include the phrase ‘Powered by RFG Pathfinder®’ or a substantially similar phrase on the first page of the Site displayed after an End User logs into the Site and wherever the MA Marks appear in the Site.

(Id. at 3.)

While defendants argue that their use of RFG content was solely for purposes of marketing the white-label website – and that such use was allowed under the terms of the Services Agreement – issues of fact preclude summary judgment at this juncture. For example, why is it not the case that only RFG may provide the Services? Isn’t the right to sublicense to customers the right to access the site different from MA’s taking material and using it on its own site? Moreover, it is unclear as a factual matter whether defendants’ use of RFG content was, in fact, to solicit customers to the white-label website, rather than merely to increase their

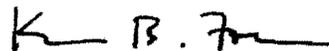
own position, credibility, or reputation in the industry; and, there is insufficient evidence to determine whether the parties ever intended for defendants to use RFG content for marketing purposes under the terms of the Services Agreement.

Accordingly, the Court hereby DENIES defendants' motion for summary judgment. The parties are ORDERED to confer and submit a proposed discovery schedule within one week of the date of this Order. The parties are FURTHER ORDERED to appear for a status conference before the undersigned on **April 4, 2014 at 4:00 P.M.**

The Clerk of Court is directed to terminate the motion located at ECF No. 38.

SO ORDERED.

Dated: New York, New York  
February 3, 2014



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KATHERINE B. FORREST  
United States District Judge