

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
FLORIDA, TAMPA DIVISION

Bubble Down, LLC v. Real Capital Partners, GP, LLC

Bubble Down · No. 8:25-cv-315-KKM-CPT · Decided January 5, 2026

SUMMARY

The court denies defendants’ motion to dismiss a complaint alleging trademark infringement, unfair competition, and copyright infringement. The court holds that the complaint is not an impermissible shotgun pleading and sufficiently alleges direct and vicarious liability against the individual defendants.

CASE DETAILS

COURT	United States District Court for the Middle District of Florida, Tampa Division
WRITING FOR THE COURT	Kathryn Kimball Mizelle
JURISDICTION	United States District Court for the Middle District of Florida, Tampa Division
DECIDED	January 5, 2026
DOCKET	8:25-cv-315-KKM-CPT
DISPOSITION	denied
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss the complaint as an impermissible shotgun pleading and for failure to allege facts supporting the personal liability of two individual defendants. The court denied the motion in its entirety.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true and construes them in the light most favorable to the plaintiff, determining whether the complaint states a claim that is plausible on its face.
PRECEDENTIAL VALUE	unknown

TOPICS

- motions to dismiss
- pleadings
- trademark infringement
- copyright infringement
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the complaint was an impermissible shotgun pleading because it asserted claims against multiple defendants collectively without specifying each defendant's conduct.
2. Whether the complaint adequately alleged that Harris and Consalvo were personally liable for direct trademark and copyright infringement.
3. Whether the complaint adequately alleged that Harris and Consalvo were vicariously liable for Sud Stop's copyright infringement.
4. Whether Count V stated a vicarious copyright infringement claim against Sud Stop.

HOLDINGS

1. The complaint was not an impermissible shotgun pleading because it could fairly be read to allege that all three defendants were responsible for the alleged infringing conduct and therefore gave each defendant adequate notice of the claims and grounds for liability.
2. The complaint adequately alleged that Harris and Consalvo personally participated in and actively caused the alleged trademark infringement, so the motion to dismiss the trademark claims against them was denied.
3. The complaint adequately alleged that Harris and Consalvo personally participated in the alleged copyright infringement, so the copyright claims against them could proceed at the pleading stage.
4. The complaint sufficiently alleged vicarious copyright infringement liability because it alleged that Harris and Consalvo had the ability to supervise Sud Stop's infringing activity and had a financial interest in that activity.

KEY QUOTATIONS

“The fact that defendants are accused collectively does not render the complaint deficient so long as the complaint can be fairly read to aver that all defendants are responsible for the alleged conduct, such that each defendant has notice of the claims against him.”

“An individual is personally liable if she actively and knowingly caused the infringement, meaning that she actively participated as a moving force in the decision to engage in the infringing acts.”

“An individual may also be vicariously liable if he “has the ability to supervise infringing activity and has a financial interest in that activity.””

FACTUAL BACKGROUND

Bubble Down operates Florida car-wash facilities and owns trademark and copyright registrations for its Smile Face Design logo. It alleged that Sud Stop, a competing car-wash business operated by Real Capital Partners GP, LLC and its owners Christopher Harris and Robert Consalvo, used a logo incorporating distinctive features of

Bubble Down's logo in physical facilities and online advertising. After Bubble Down demanded that defendants stop using the similar logo, defendants allegedly refused and continued the challenged uses.

PROCEDURAL HISTORY

Bubble Down filed a complaint asserting Lanham Act trademark infringement and unfair competition, common-law unfair competition, and copyright infringement claims against Real Capital Partners GP, LLC, Christopher Harris, and Robert Consalvo. The defendants moved to dismiss, arguing that the complaint was an impermissible shotgun pleading and inadequately alleged direct or vicarious liability for Harris and Consalvo. The court denied the motion and ordered defendants to answer by January 16, 2026.

DISPOSITION

denied

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 557, 570 (2007)
- Pielage v. McConnell, 516 F.3d 1282, 1284 (11th Cir. 2008)
- Weiland v. Palm Beach County Sheriff's Office, 792 F.3d 1313, 1320, 1323 (11th Cir. 2015)
- Kyle K. v. Chapman, 208 F.3d 940, 944 (11th Cir. 2000)
- Auto. Alignment & Body Serv. v. State Farm Mut. Auto. Ins., 953 F.3d 707, 733 (11th Cir. 2020)
- Crowe v. Coleman, 113 F.3d 1536, 1539 (11th Cir. 1997)
- Whitehurst v. G & A Rest. Mgmt., Inc., No. 2:20-CV-67-MRM, 2020 WL 2062462, at *2 (M.D. Fla. Apr. 29, 2020)
- Sprint Sols., Inc. v. Fils-Amie, 44 F. Supp. 3d 1224, 1227 (S.D. Fla. 2014)
- Pierson v. Orlando Reg'l Healthcare Sys., 619 F. Supp. 2d 1260, 1271-74 (M.D. Fla. 2009)
- United Techs. Corp. v. Mazer, 556 F.3d 1260, 1271 (11th Cir. 2009)
- Edmondson v. Velvet Lifestyles, LLC, 43 F.4th 1153, 1163-64 (11th Cir. 2022)
- Chanel, Inc. v. Italian Activewear of Fla., Inc., 931 F.2d 1472, 1477 (11th Cir. 1991)
- Babbit Elecs., Inc. v. Dynascan Corp., 38 F.3d 1161, 1184 (11th Cir. 1994) (per curiam)
- S. Bell Tel. & Tel. Co. v. Associated Tel. Directory Publishers, 756 F.2d 801, 811 (11th Cir. 1985)
- Software Brokers of Am., Inc. v. Doticom Corp., 484 F. Supp. 3d 1205, 1214 (S.D. Fla. 2020)
- BUC Int'l Corp. v. Int'l Yacht Council Ltd., 489 F.3d 1129, 1138 n.19 (11th Cir. 2007)

OPINION

Bubble Down, LLC v. Real Capital Partners, GP, LLC et al.

PER CURIAM.

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

TAMPA DIVISION

BUBBLE DOWN, LLC,

Plaintiff, v. Case No. 8:25-cv-315-KKM-CPT

REAL CAPITAL PARTNERS,

GP, LLC et al., Defendants. _____

ORDER

Bubble Down, LLC, sues Real Capital Partners GP, LLC (doing business as Sud Stop Car Wash), Christopher Harris, and Robert Consalvo for trademark infringement, unfair competition, and copyright infringement. See Compl. (Doc. 1). The defendants move to dismiss the complaint as an impermissible shotgun pleading, arguing that Bubble Down improperly asserts “multiple claims against multiple defendants without specifying which of the Defendants is responsible for which acts or omissions.” MTD (Doc. 18) at

4. The defendants also claim that Bubble Down fails to allege facts that would make Harris or Consalvo liable. See *id.* at 6–10. Bubble Down opposes. Resp. (Doc. 24). For the following reasons, I deny the defendants’ motion.

I. BACKGROUND

Bubble Down owns and operates several car wash facilities in Florida. Compl. ¶¶ 11–13. To promote its business, “Bubble Down has invested significant resources to develop numerous word marks, designs, and logos that it uses in connection with the services it provides.” *Id.* ¶ 13. Specifically, Bubble Down owns trademark and copyright registrations for its “Smile Face Design” logo, which it uses to promote its car washing business in “website marketing, social media marketing, sponsorships, public outreach events, and through other means.” *Id.* ¶¶ 13, 19–24. According to Bubble Down, “the relevant consuming public has come to identify the Smile Face Design with [its] brand and its car washing facilities.” *Id.* ¶ 23. Defendants Harris and Consalvo own and operate Sud Stop,¹ a Nevada limited liability company and competitor car washing business with at least one facility in Florida. *Id.* ¶¶ 8–9, 14. Bubble Down alleges that “Sud Stop’s car wash facilities utilize and display a logo that incorporates numerous features that are distinctive to Bubble Down’s Smile Face Design.” *Id.* ¶ 14. Sud Stop also uses the logo in its online advertising. See *id.* ¶¶ 17–19; Ex. A (Doc. 1-1). ¹ The complaint also alleges that Harris and Consalvo are Co-Chairmen and, respectively, CEO and President of Real Capital Partners GP, LLC, the “General Partner of Sud Stop.” Compl. ¶¶ 52–53. At all other times, the complaint does not distinguish between Real Capital Partners and Sud Stop, and the defendants do not appear to contest that representation. Upon learning of Sud Stop’s similar logo, Bubble Down explained to the defendants “how [it] needed to protect its brand and guard against consumers confusing Sud Stop with the Bubble Down brand” and demanded that the defendants cease and desist using their similar logo. *Id.* ¶ 15. The defendants refused the demand, and Bubble Down sued. *Id.* ¶ 16. Against all three defendants, Bubble Down brings claims under the Lanham Act for trademark infringement (Count I) and unfair competition (Count II), as well for common law unfair

competition (Count III) and copyright infringement under the Copyright Act (Count IV). See Compl. ¶¶ 27–50. Bubble Down brings a vicarious copyright infringement claim against Harris and Consalvo (Count V), both of whom it alleges “had the power to control, supervise, and direct the activities of Sud Stop” and “directly benefitted financially from the infringing activities.” Id. ¶¶ 54–56. The defendants move to dismiss the entire complaint as a shotgun pleading and argue that Bubble Down fails to allege facts establishing Harris’s or Consalvo’s personal liability. See MTD.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 8(a)(2) requires “a short and plain statement of the claim showing that the pleader is entitled to relief.” This pleading standard “does not require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’ ” Id. (quoting *Twombly*, 550 U.S. at 555). “Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’ ” Id. (quoting *Twombly*, 550 U.S. at 557). “To survive a motion to dismiss” under Rule 12(b)(6), a plaintiff must plead sufficient facts to state a claim that is “plausible on its face.” Id. (quoting *Twombly*, 550 U.S. at 570). A claim is facially plausible when a “plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. The complaint’s factual allegations are accepted “as true” and construed “in the light most favorable to the plaintiff.” *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008).

III. ANALYSIS

The defendants move to dismiss the entire complaint as a shotgun pleading, or, in the alternative, to dismiss all counts against Harris and Consalvo for lack of facts suggesting their personal liability, either directly or vicariously.² I address each argument in turn. ² The defendants also argue that Bubble Down fails to state a claim for vicarious copyright infringement against Sud Stop in Count V. MTD at 9–10. The defendants’ argument is moot because Bubble Down concedes that Count V “is asserted against only Consalvo and Harris,” not Sud Stop. Resp. at 8. A. Shotgun Pleading The defendants assert that Bubble Down’s complaint is an impermissible shotgun pleading because it “asserts ‘multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions.’ ” MTD at 4 (quoting *Weiland v. Palm Beach Cnty. Sheriff’s Off.*, 792 F.3d 1313, 1323 (11th Cir. 2015)). Bubble Down responds that accusing the defendants collectively does not run afoul of shotgun pleading rules because “the complaint can be fairly read to allege that all defendants are responsible for the accused conduct.” Resp. at 6. I agree. “Shotgun pleadings” are “[c]omplaints that violate either Rule 8(a)(2) or Rule 10(b), or both,” by “fail[ing] to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim

rests.” Weiland, 792 F.3d at 1320, 1323. One kind of shotgun pleading commits “the relatively rare sin of asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against.” *Id.* at 1323. But “[t]he fact that defendants are accused collectively does not render the complaint deficient” so long as “[t]he complaint can be fairly read to aver that all defendants are responsible for the alleged conduct,” such that each defendant has notice of the claims against him. *Kyle K. v. Chapman*, 208 F.3d 940, 944 (11th Cir. 2000); accord *Auto. Alignment & Body Serv. v. State Farm Mut. Auto. Ins.*, 953 F.3d 707, 733 (11th Cir. 2020); see *Crowe v. Coleman*, 113 F.3d 1536, 1539 (11th Cir. 1997) (“When multiple defendants are named in a complaint, the allegations can be and usually are to be read in such a way that each defendant is having the allegation made about him individually.”); *Whitehurst v. G & A Rest. Mgmt., Inc.*, No. 2:20-CV-67-MRM, 2020 WL 2062462, at *2 (M.D. Fla. Apr. 29, 2020) (rejecting shotgun pleading argument where it was “possible each Defendant could have engaged in all the acts” alleged). Here, the defendants have adequate notice of the claims against them. In leveling allegations of trademark and copyright infringement against the “Defendants,” the complaint asserts that Sud Stop, Harris, and Consalvo each committed the underlying infringing conduct. See *Crowe*, 113 F.3d at 1539. And it is reasonable to infer that each defendant could commit each act because Harris and Consalvo “direct[] Sud Stop’s business activities within this State, District, and Division.” Compl. ¶¶ 9–10; see *id.* ¶¶ 54–56. In fact, Sud Stop can only act through its agents. See *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1271 (11th Cir. 2009) (“It is axiomatic that a corporation . . . cannot act other than through its officers, employees, and agents.”). So, unlike complaints where “broad allegations are directed at a large and diverse group of defendants,” Bubble Down’s allegations are limited to specific infringing marks used by a single business and its two operators. *Sprint Sols., Inc. v. Fils-Amie*, 44 F. Supp. 3d 1224, 1227 (S.D. Fla. 2014) (citing *Pierson v. Orlando Reg’l Healthcare Sys.*, 619 F. Supp. 2d 1260, 1271–74 (M.D. Fla. 2009), *aff’d*, 451 F. App’x. 862 (11th Cir. 2012) (*per curiam*)). Because the complaint can be fairly read to aver that all three defendants are responsible for the alleged conduct, the complaint does not fail as a shotgun pleading.

B. Direct and Vicarious Liability The defendants next argue that Bubble Down “fails to allege specific facts that [Harris or Consalvo] personally engaged in or participated in the allegedly infringing or wrongful activity,” and thus cannot be held personally liable, either directly or vicariously. MTD at 7–9. Bubble Down responds that when the factual allegations are accepted and construed in its favor, “it can be reasonably inferred that Consalvo and Harris actively and knowingly caused the infringement and therefore are personally liable.” Resp. at 10. At this stage, I agree. Bubble Down sufficiently alleges that Harris and Consalvo participated in the infringing and unfairly competitive activities. To start, “[b]ecause corporations are run by individuals, ‘[n]atural persons, as well as corporations, may be liable for trademark infringement under the Lanham Act.’ ” *Edmondson v. Velvet Lifestyles, LLC*, 43 F.4th 1153, 1163–64 (11th Cir. 2022) (quoting *Chanel, Inc. v. Italian Activewear of Fla., Inc.*, 931 F.2d 1472,

1477 (11th Cir. 1991)). “An individual is personally liable if she actively and knowingly caused the infringement,” meaning that she “actively participated as a moving force in the decision to engage in the infringing acts.” *Id.* at 1164 (citation modified); see *Babbitt Elecs., Inc. v. Dynascan Corp.*, 38 F.3d 1161, 1184 (11th Cir. 1994) (per curiam) (holding that “a corporate officer who directs, controls, ratifies, participates in, or is the moving force behind the infringing activity” is personally liable for that infringement). Likewise, under the Copyright Act, “[a]n individual, including a corporate officer who . . . personally participates in that activity is personally liable for the infringement.” *S. Bell Tel. & Tel. Co. v. Associated Tel. Directory Publishers*, 756 F.2d 801, 811 (11th Cir. 1985) (citation modified); *Software Brokers of Am., Inc. v. Doticom Corp.*, 484 F. Supp. 3d 1205, 1214 (S.D. Fla. 2020) (“[A] corporate officer can be held liable for copyright infringement based on his personal involvement and participation in the infringing activity.” (citation modified)). An individual may also be vicariously liable if he “has the ability to supervise infringing activity and has a financial interest in that activity.” *S. Bell Tel.*, 756 F.2d at 811; *BUC Int’l Corp. v. Int’l Yacht Council Ltd.*, 489 F.3d 1129, 1138 n.19 (11th Cir. 2007) (recognizing the same). The defendants mistakenly rely on Bubble Down’s allegations regarding Harris’s and Consalvo’s “power to control, supervise, and direct” Sud Stop to argue that neither individual directly infringed. See MTD at 6–9. As explained above, though, Bubble Down’s allegations of direct trademark and copyright infringement pertain equally to Harris and Consalvo. Sud Stop cannot act without them, *United Techs.*, 556 F.3d at 1271, and Bubble Down’s allegations make little sense otherwise. Viewed this way, Bubble Down’s complaint fairly alleges each owner-operator’s direct participation in the purportedly impermissible use of Bubble Down’s logo. For example, “Defendants [Harris and Consalvo] have plans to open several more cash wash facilities . . . in Florida,” received but “refus[ed] to comply” with Bubble Down’s demand to stop using the “Bubble Logo,” and “continue to advertise, promote, and market [Sud Stop’s] car wash facilities with its Bubble Logo on the website.” Compl. ¶¶ 14–

18. Harris and Consalvo “used and continued to use” Bubble Down’s protected marks in Sud Stop’s car washing business, *id.* ¶ 35, and, according to Bubble Down, did so “willful[ly], knowing[ly], and intentional[ly].” *Id.* ¶¶ 30, 39, 42, 48; see *id.* ¶ 46 (Harris, Consalvo, and Sud Stop “knowingly used, distributed, and/or reproduced Bubble Down’s Asserted Works, or derivates thereof, without Bubble Down’s permission”). These allegations—imputed to each Sud Stop owner—show that they “actively participated as a moving force in the decision to engage in the infringing acts,” *Edmondson*, 43 F.4th at 1164 (citation modified), and “personally participate[d]” in the infringement, *S. Bell Tel.*, 756 F.2d at 811. In the alternative, Bubble Down sufficiently alleges that Harris and Consalvo are vicariously liable for Sud Stop’s direct copyright infringement. On this score, Bubble Down asserts Sud Stop knowingly used its copyrighted works without permission and provides examples of that use, both online and at Sud Stop’s physical locations. See Compl. 9 45-50; Ex. A (showing online and retail displays of the disputed Bubble Logo). Bubble Down then claims that Harris and Consalvo, in their co-chair and officer roles,

“control, supervise, and direct the activities of Sud Stop,” “directly benefitted financially from the infringing activities of Defendant Sud Stop,” and “had the right and ability to supervise and control the infringing activities of Sud Stop.” Compl. 4 54-56. Construing all inferences in Bubble Down’s favor, those facts, while perhaps not teeming with detail, are sufficient to allege Harris’s and Consalvo’s “ability to supervise” and “financial interest” in Sud Stop’s infringing activity, the two prerequisites for holding a corporate officer vicariously liable for copyright infringement. S. Bell Tel., 756 F.2d at 811.

IV. CONCLUSION

Accordingly, the following is ORDERED:

1. Defendants’ Motion to Dismiss (Doc. 18) is DENIED.
2. Defendants must file an answer to the complaint no later than January 16, 2026. ORDERED in Tampa, Florida, January 5, 2026. 7, Famlall Wy United States District Judge 10