

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 26 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JANGLE VISION, LLC, a California limited liability company,

Plaintiff-Appellant,

v.

ALEXANDER WANG, INC., a Delaware Corporation; ALEXANDER WANG, an individual,

Defendants-Appellees.

No. 22-55642

D.C. No. 2:21-cv-09964-GW-E

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
George H. Wu, District Judge, Presiding

Argued and Submitted October 19, 2023
Pasadena, California

Before: PAEZ and H.A. THOMAS, Circuit Judges, and R. COLLINS,** District Judge.

Jangle Vision, LLC appeals the district court's dismissal of its claim against Alexander Wang, Inc. and Alexander Wang (together, "Wang") for infringing on

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Raner C. Collins, United States District Judge for the District of Arizona, sitting by designation.

its copyright in the Jangle Vision Twins. We have jurisdiction under 28 U.S.C. § 1291. “We review dismissals for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) de novo and may affirm on any ground supported by the record.” *Saloojas, Inc. v. Aetna Health of Cal., Inc.*, 80 F.4th 1011, 1014 (9th Cir. 2023). We affirm.

To bring a claim for infringement, a copyright owner must plausibly allege that the infringing work is “substantially similar” to the copyrighted work.¹ *Skidmore v. Led Zeppelin*, 952 F.3d 1051, 1064 (9th Cir. 2020) (en banc). Substantial similarity is measured according to an “intrinsic” and “extrinsic” test, both of which a plaintiff must satisfy to show infringement. *Id.*; see also *Rentmeester v. Nike, Inc.*, 883 F.3d 1111, 1118 (9th Cir. 2018) *overruled in part on other grounds by Skidmore*, 952 F.3d at 1065–69. “The extrinsic test assesses the objective similarities of the two works, focusing only on the protectable elements of the plaintiff’s expression.” *Rentmeester*, 883 F.3d at 1118. “Before that comparison can be made, the court must ‘filter out’ the unprotectable elements of the plaintiff’s work—primarily ideas and concepts, material in the public domain,

¹ The parties disagree whether the Twins should receive “broad” copyright protection, which prohibits “substantially similar” copies of a protected work, or whether they should receive “thin” copyright protection, which prohibits only “virtually identical” copies. See *Mattel, Inc. v. MGA Ent., Inc.* 616 F.3d 904, 913–14 (9th Cir. 2010) (explaining this distinction). Because we hold that there is no infringement even under the substantial similarity test, we assume that the Twins are entitled to broad copyright protection.

and *scènes à faire*” *Id.*

Jangle Vision alleges that Wang infringed on its copyright in the Twins by incorporating similar characters into an advertisement for a handbag.² Both the Twins and the characters in the advertisement represent tall, thin figures in skintight, solid-colored bodysuits with masks covering their face and head. As Jangle Vision acknowledges, however, most of these elements—including the idea of a figure in a body suit and mask, specific component of a character’s body type, and the pink color of the characters in the advertisement—are not independently protectable. *See Mattel, Inc.*, 616 F.3d at 915 (“The concept of depicting a young, fashion-forward female with exaggerated features . . . [is] unprotectable.”); *Daniels v. Walt Disney Co.*, 958 F.3d 767, 772 (9th Cir. 2020) (“colors themselves are not generally copyrightable”).

Once those unprotected elements are “filter[ed] out,” the works here are more dissimilar than similar. *See Rentmeester*, 883 F.3d at 1118. The design of the Twins’ bodysuits and face masks are distinct from those of the advertisement characters. The Twins, moreover, appear in different environments, are often colored differently, are positioned in different postures, and have faces that are

² Jangle Vision also alleged various other instances of copying, but conceded before the district court that many of these allegations did not independently rise to the level of actionable infringement. Jangle Vision appeals only the dismissal of its claim that Wang’s advertisement infringes on its copyright in the Twins.

distinctive and largely visible, while virtually no facial features are visible in the advertisement. Accordingly, Jangle Vision has not shown substantial similarity.

AFFIRMED.