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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RICHARD REINSDORF, an individual,	)	Case No. CV 10-07181 DDP (SSx)
	)	
Plaintiff,	)	<b>ORDER DENYING DEFENDANTS' MOTION TO DISMISS</b>
v.	)	
	)	
SKECHERS U.S.A, a Delaware corporation; SKECHERS U.S.A., INC., II, a Delaware corporation,	)	[Motion filed on 11/8/2010]
	)	
Defendants.	)	
_____	)	

Presently before the court is Defendants Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II (collectively, "Skechers")'s Motion to Dismiss. After reviewing the parties' moving papers and hearing oral argument, the court denies the motion and adopts the following order.

**I. Background**

Skechers is a shoe company. (Declaration of Fred Machuca in support of Motion to Dismiss ("Machuca Dec.") ¶ 5. In 2006, Skechers engaged Plaintiff Richard Reinsdorf ("Reinsdorf"), a photographer, to conduct a photo shoot in connection with

1 Skechers's marketing efforts. (Complaint ¶ 4.) Skechers engaged  
2 Reinsdorf for four additional photo shoots between 2007 and 2009.  
3 (Compl. ¶¶ 19, 23, 26, 30.)

4 Prior to each photo shoot, Skechers explained to Reinsdorf the  
5 type of images Skechers hoped to capture. (Machuca Dec. ¶ 12.)  
6 These explanations included storyboards and photographic examples,  
7 as well as drawings depicting particular poses for Skechers'  
8 selected models. (Id. ¶¶ 12, 14.) During the shoots, Reinsdorf  
9 posed models, arranged lighting and props, and otherwise directed  
10 the photography sessions. (Compl. ¶ 23.)

11 Skechers did not obtain Reinsdorf's services as "work for  
12 hire." (Compl. ¶¶ 5, 18.) Instead, Skechers obtained limited  
13 licenses to use Reinsdorf's work within North America for a six  
14 month period. (Id.) Reinsdorf delivered raw photographs ("the  
15 photographs") to Skechers at the conclusion of each photo shoot.  
16 (Machuca Dec. ¶ 15.)

17 Upon receiving the photographs from Reinsdorf, Skechers  
18 proceeded to modify the images for use in Skechers advertisements.  
19 (Id. ¶¶ 16, 17.) The alterations varied with each image, and  
20 ranged from slight modifications in models' skin tone to the  
21 substitution of models' body parts and the addition of substantial  
22 graphic effects. (Id. ¶¶ 17, 21.) These enhanced images were then  
23 used in Skechers advertisements (the advertisements). (Id. ¶ 16.)  
24 No raw, unaltered photograph was ever incorporated into a finished  
25 advertisement. (Id.)

26 Reinsdorf brought suit in this court alleging copyright  
27 infringement, as well as state law causes of action for breach of  
28 contract and unfair competition. Reinsdorf alleges that Skechers

1 utilized Reinsdorf's copyrighted images as part of Skechers's  
2 marketing efforts in violation of the temporal and geographic  
3 limits of the use licenses. (Compl. ¶ 6.) Skechers now moves to  
4 dismiss for lack of jurisdiction on the ground that the  
5 advertisements are joint works, and, therefore, that Skechers  
6 cannot have infringed its own copyright.

7 **II. Legal Standard**

8 Skechers asks this court to dismiss Reinsdorf's complaint for  
9 lack of jurisdiction under Federal Rule of Procedure 12(b)(1).  
10 Skechers is correct that this court may look to extrinsic, disputed  
11 facts when conducting a jurisdictional analysis. Roberts v.  
12 Corrothers, 812 F.2d 1173, 1177 (9th Cir. 1987). The 12(b)(1)  
13 standard is not appropriate, however, where issues of jurisdiction  
14 and substance are intertwined. Id. "In ruling on a jurisdictional  
15 motion involving factual issues which also go to the merits, the  
16 trial court should employ the standard applicable to a motion for  
17 summary judgment, as a resolution of the jurisdictional facts is  
18 akin to a decision on the merits." Augustine v. United States, 704  
19 F.2d 1074, 1077 (9th Cir. 1983). As discussed further below, the  
20 intent of the parties with respect to the photographs is essential  
21 to a determination whether the advertisements are joint works.  
22 Because this disputed issue goes both to jurisdiction and the  
23 merits of Reinsdorf's claim, the court treats Skechers motion as a  
24 Rule 56 motion for summary judgment.<sup>1</sup>

25 \_\_\_\_\_  
26 <sup>1</sup> The court notes that if Reinsdorf did intend to contribute  
27 to a joint work, and thus the advertisements did constitute joint  
28 works, this court would lack jurisdiction over Reinsdorf's claim.  
"[A] suit to bring the co-owner of a copyright to account [for any  
profits earned from the copyright] does not fall within the  
(continued...)

1 A motion for summary judgment must be granted when "the  
2 pleadings, depositions, answers to interrogatories, and admissions  
3 on file, together with the affidavits, if any, show that there is  
4 no genuine issue as to any material fact and that the moving party  
5 is entitled to a judgment as a matter of law." Fed. R. Civ. P.  
6 56(c). A party seeking summary judgment bears the initial burden  
7 of informing the court of the basis for its motion and of  
8 identifying those portions of the pleadings and discovery responses  
9 that demonstrate the absence of a genuine issue of material fact.  
10 See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

11 Where the moving party will have the burden of proof on an  
12 issue at trial, the movant must affirmatively demonstrate that no  
13 reasonable trier of fact could find other than for the moving  
14 party. On an issue as to which the nonmoving party will have the  
15 burden of proof, however, the movant can prevail merely by pointing  
16 out that there is an absence of evidence to support the nonmoving  
17 party's case. See id. If the moving party meets its initial  
18 burden, the non-moving party must set forth, by affidavit or as  
19 otherwise provided in Rule 56, "specific facts showing that  
20 there is a genuine issue for trial." Anderson v. Liberty Lobby,  
21 Inc., 477 U.S. 242, 250 (1986).

22 It is not the Court's task "to scour the record in search of a  
23 genuine issue of triable fact." Keenan v. Allan, 91 F.3d 1275,  
24 1278 (9th Cir. 1996). Counsel have an obligation to lay out their  
25 support clearly. Carmen v. San Francisco Sch. Dist., 237 F.3d 1026,  
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27 <sup>1</sup>(...continued)  
28 district court's jurisdiction over actions arising under copyright  
law." Oddo v. Ries, 743 F.2d 630, 633 n.2 (9th Cir. 1984).

1 1031 (9th Cir. 2001). The Court "need not examine the entire file  
2 for evidence establishing a genuine issue of fact, where the  
3 evidence is not set forth in the opposition papers with adequate  
4 references so that it could conveniently be found." Id.

5 **III. Discussion**

6 Skechers argues that it cannot be held liable for infringement  
7 because the Reinsdorf's raw photographs were merely contributions  
8 to a joint work: the finished advertisements. (Motion at 2.)  
9 Skechers argues that, because it is a co-author of those joint  
10 works, it cannot have infringed upon its own work. (Id.)

11 Skechers is correct that a co-author in a joint work cannot be  
12 liable to another co-owner for infringement of the copyright. Oddo  
13 v. Ries, 743 F.2d 630, 632-33 (9th Cir. 1984); Thomson v. Larson,  
14 147 F.3d 195, 199 (2d Cir. 1998).<sup>2</sup> A joint work is a copyrightable  
15 work prepared by (1) two or more authors who (2) make independently  
16 copyrightable contributions and (3) intend that those contributions  
17 be "merged into inseparable or interdependent parts of a unitary  
18 whole." Richlin v. Metro-Goldwyn-Mayer Pictures, Inc., 531 F.3d  
19 962, 969 (9th Cir. 2008). The first two factors are not at issue  
20 here. Skechers acknowledges that Reinsdorf is at least a co-author  
21 of the raw photographs, while Reinsdorf acknowledges that he played  
22 no role in the subsequent modifications to the raw photographs.<sup>3</sup>

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23  
24 <sup>2</sup> Though a joint author may use a work in any way he sees fit,  
25 he must nevertheless "account to other co-owners for any profits he  
26 earns from licensing or use of the copyright." Oddo v. Ries, 743  
F.2d 630, 632-33 (9th Cir. 1984); Thomson v. Larson, 147 F.3d 195,  
199 (2d Cir. 1998).

27 <sup>3</sup> Though Reinsdorf contends that he is sole author of the  
28 photographs, the court need not resolve that authorship issue.  
Regardless whether Reinsdorf is sole or joint author of the  
(continued...)

1 Skechers does not dispute that the photographs are copyrightable,  
2 nor can Reinsdorf seriously contend that Skechers' elaborate  
3 graphic designs and modifications possess the minimal degree of  
4 creativity necessary to constitute copyrightable work.

5 Thus, the only factor in dispute is the intent of the parties  
6 to merge their contributions into an inseparable whole. Contrary  
7 to Skechers' assertions, the evidence in the record does not  
8 indisputably establish that Reinsdorf intended that his photographs  
9 be incorporated into a joint work. Such intent is not evident from  
10 the face of Reinsdorf's complaint. The complaint alleges that  
11 Reinsdorf "entered into a series of written license agreements with  
12 Skechers for its exclusive use of his photos and images . . . ."  
13 (Compl. ¶ 55.) Though the complaint suggests that Reinsdorf  
14 intended that Skechers use his photographs, it does not establish  
15 how Reinsdorf intended Skechers to use his photos, let alone  
16 demonstrate intent to produce a joint work.

17 Reinsdorf also stated that Skechers could not have provided  
18 artistic direction for the photographs because Skechers did not  
19 know how the photographs would be "laid out until [Skechers] got  
20 [Reinsdorf's] final images and started building their  
21 advertisements around [the] photographs." (Declaration of Richard  
22 Reinsdorf in Opposition to Motion ¶ 40.) Reinsdorf's statement  
23 indicates that Skechers incorporated the photographs into the  
24 advertisements, but does not establish that, prior to seeing the  
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26 <sup>3</sup>(...continued)  
27 photographs, the finished advertisements were the product of  
28 contributions from two authors (Reinsdorf/Skechers (photographs)  
and Skechers (modifications), or Reinsdorf (photographs) and  
Skechers (modifications)).

1 finished advertisements, Reinsdorf knew or intended that Skechers  
2 would incorporate the photographs into some other work.

3 Lastly, the alleged limited use licensing agreement between  
4 Skechers and Reinsdorf could indicate a lack of intent to form a  
5 joint work. Reinsdorf's agent, Robert Heller, believed that  
6 Skechers's use of the photographs was limited to the terms of that  
7 license, and was not the type of "buy out" agreement that would  
8 entitle Skechers to use Reinsdorf's photographs as Skechers saw  
9 fit. (Declaration of Robert Heller in Opposition to Motion at 6.)  
10 Considering the evidence in the light most favorable to Reinsdorf,  
11 the court cannot conclude that he intended his photographs to  
12 constitute part of a joint work.<sup>4</sup>

13 **IV. Conclusion**

14 There is a triable issue of fact as to Reinsdorf's intent and  
15 the existence of a joint work. Accordingly, the Motion to Dismiss,  
16 which the court treats as a motion for summary judgment, is DENIED.

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18 IT IS SO ORDERED.

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21 Dated: March 9, 2011

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DEAN D. PREGERSON  
United States District Judge

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<sup>4</sup> The court notes that the record at this stage is largely undeveloped, perhaps because Skechers brought this motion under Rule 12(b)(1). The actual limited license agreement, for example, is not part of the current record. Further discovery will likely yield further pertinent information.