

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Rai v. Meta Platforms, Inc.*,
2024 BCSC 1408

Date: 20240802
Docket: S236564
Registry: Vancouver

Between:

Jasbir Rai

Plaintiff

And:

Meta Platforms, Inc. and Facebook Canada Ltd.

Defendants

Before: The Honourable Madam Justice Forth

Reasons for Judgment

The Plaintiff, appearing in person:

J. Rai

Counsel for the Defendants:

M. Spence
J. Suttner
O. Regev

Place and Date of Hearing:

Vancouver, B.C.
April 2, 2024

Place and Date of Judgment:

Vancouver, B.C.
August 2, 2024

Introduction

[1] The defendants apply for an order striking the plaintiff’s notice of civil claim, without leave to amend, pursuant to R. 22-7(2) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*] on the basis that it fails to comply with Rules 3-1 and 3-7. In the alternative, the defendants apply to strike pursuant to R. 9-5(1)(a), (b), and (c).

Background

[2] The plaintiff claims that she is a self-employed “spiritual influencer” who runs multiple spiritual websites online.

[3] On April 23, 2008, the plaintiff registered a trademark for the name “Bobby Dazzler”, with a specific font, with the Registrar of Trademarks (the “Trademark”). She says that she operates a business on the website bobbydazzler.guru under the pseudonym “Bobby Dazzler”. On her website, she sells self-help books and provides self-help services.

[4] The plaintiff asserts she has a copyright in the name “Bobby Dazzler” under the registration number 1053796. The defendants say that, according to the Canadian Copyright Database, the plaintiff’s registered copyright is in the literary work entitled, “Bobby Dazzler ‘got what’s hot!’ and still hot!” and not simply the name “Bobby Dazzler”.

[5] On September 25, 2023, the plaintiff filed the notice of civil claim.

[6] The plaintiff pleads the following facts, as summarized by the defendants at para. 19 of the notice of application:

- i. On November 15, 2017, the Plaintiff was alerted that the Mark was being used on Facebook by 80+ accounts and Pages, including “one purporting to belong to the Plaintiff’s trademark, not in her personal name...” (para 4);
- ii. On November 15, 2017, the Plaintiff’s friends reported that the Plaintiff’s Mark and Copyright were being used on Facebook (para 5);

- iii. The Plaintiff's counsel reported the infringement to Facebook, but only identified the location of the allegedly infringing content as "located on Facebook's platform by a number of users..." (para 7);
- iv. The Plaintiff sent a letter with the same information to the Defendants (para 9);
- v. The Defendants did not respond to the infringement letter. Instead, the Plaintiff alleges that the Defendants (without specifying which of the Defendants) began to "harass, annoy, agitate and overload the Plaintiff's email by acting in a belligerent manner." The Plaintiff alleges that these actions by the Defendants "confirmed that the [Mark] was being infringed upon..." The Plaintiff received a large number of emails from the Defendants and the alleged infringing accounts, which the Plaintiff failed to identify, remained on Facebook (para 10);
- vi. The Defendants' emails were "specifically addressed to [the Mark]" and the "characters, spelling, letters, shape, spelling [sic], colour, phonetic equivalence and design and similarity in sound to others infringing upon my trademark were exact in likelihood to the trademark of the Plaintiff..." (para 11);
- vii. The Defendants intentionally overloaded the Plaintiffs' email (para 12);
- viii. The Plaintiff did not follow the "unsubscribe" function embedded in the emails (para 14);
- ix. A stalker may have created the "fake/imposter account" (para 16);
- x. The Defendants' continued to send emails to the Plaintiff, which constituted trademark infringement (para 18);
- xi. The Plaintiff sent cease and desist letters to Meta (para 19);
- xii. The Plaintiff continues to receive emails from the Defendants (para 20);
- xiii. The Plaintiff did not consent to the use of the name "Bobby Dazzler" on Facebook (para 21);
- xiv. "The Defendant [sic] did NOT close down the accounts associated with [her] private and confidential email address nor those accounts that infringed upon [her] Trademark..." (para 23);
- xv. The Defendants cyber-stalked the Plaintiff and harassed her when they ought to have known the Mark and Copyright were being used "fraudulently" on Facebook (para 28);
- xvi. The Defendants violated the Plaintiff's privacy (para 29);
- xvii. The Defendants continue to let "fake/imposter" profiles remain on Facebook and continue emailing the Plaintiff (para 31);
- xviii. The Defendants have damaged the "spiritual business" of the Plaintiff and defamed her (para 32);
- xix. The Defendants have caused a decline in sales for the Plaintiff's books (para 33); and
- xx. The Defendants knew they were causing significant grief to the Plaintiff by not shutting down accounts named "Bobby Dazzler" (para 35).

[7] The plaintiff seeks the following relief:

- A. Aggravated and Punitive damages of fifty million (\$75,000,000) [sic];
- B. Compensatory Damages in order for deterrence;
- C. Specific Damages;
- D. Fines and Penalties that the court deems fit;
- E. Costs;
- F. The profiles using the Bobby Dazzler Trademark to be removed from the Facebook platform, especially those users in Canada;
- G. The identities of the person or person[s] responsible for the creation of the Plaintiffs [sic] fake Facebook page using her trademark;
- H. The termination of any and all Facebook emails being sent to the Plaintiff coming from Facebook Canada Inc., and/or Meta Platforms Inc. arriving from all Facebook email accounts;
- I. The termination of all fake profiles that use the “Bobby Dazzler” trademark on Facebook and/or Meta Platforms Inc.
- J. Determination as [to] where the facebookmail.com email originate from. I.e. Facebook Canada and/or Meta Platforms Inc. [sic]
- K. Such further and other relief as this honorable court may deem just and Met [sic].

[8] Under the Legal Basis, the plaintiff pleads that:

- 1. The Defendants knowingly allowed Facebook user accounts to open up under the Trademark name of “Bobby Dazzler” given the Plaintiff provided numerous notices of it being infringed upon and failed to close those accounts down.
- 2. The Defendants infringed upon the Plaintiffs [sic] Trademark, “Bobby Dazzler” by allowing Facebook users to use the “Bobby Dazzler” Trademark to create Facebook Profiles including one purporting to belonging to the Plaintiff and chose not [to] close it down.
- 3. The Defendants infringed upon the Plaintiffs [sic] Copyright, “Bobby Dazzler”.

Issue 1: Should the claim be struck pursuant to R. 22-7(2) of the Rules?

Legal Principles

[9] Rule 22-7(2) of the *Rules* provides:

Rule 22-7 – Effect of Non-compliance

Powers of court

- (2) Subject to subrules (3) and (4), if there has been a failure to comply with these Supreme Court Civil Rules, the court may
- (a) set aside a proceeding, either wholly or in part,
 - (b) set aside any step in the proceeding, or a document or order made in the proceeding,
 - (c) allow an amendment to be made under Rule 6-1,
 - (d) dismiss the proceeding or strike out the response to civil claim and pronounce judgment, or
 - (e) make any other order it considers will further the object of these Supreme Court Civil Rules.

[10] Rule 3-1 of the *Rules* provides, in relevant part:

Contents of notice of civil claim

- (2) A notice of civil claim must do the following:
- (a) set out a concise statement of the material facts giving rise to the claim;
 - (b) set out the relief sought by the plaintiff against each named defendant;
 - (c) set out a concise summary of the legal basis for the relief sought;
 - ...
 - (g) otherwise comply with Rule 3-7.

[11] The objective of a notice of civil claim was described in *Sahyoun v. Ho*, 2013 BCSC 1143:

[16] The new Rules alter the structure in which pleadings are to be prepared. The core object of a notice of civil claim, however, remains the same. That object is concisely captured in Frederick M. Irvine, ed., *McLachlin and Taylor, British Columbia Practice*, 3rd ed., vol. 1 (Markham, Ont.: LexisNexis Canada Inc., 2006) at 3-4 - 3-4.1:

If a statement of claim (or, under the current Rules, a notice of civil claim) is to serve the ultimate function of pleadings, namely, the clear definition of the issues of fact and law to be determined by the court, the material facts of each cause of action relied upon should be stated with certainty and precision, and in their natural order, so as to disclose the three elements essential to every cause of action, namely, the plaintiff's right or title; the defendant's wrongful act violating that right or title; and the consequent damage, whether nominal or substantial. The material facts should be stated succinctly and the particulars should follow and should be identified as such...

[12] Rule 3-1(2)(a) requires a plaintiff provide a concise statement of the material facts giving rise to the claim. A material fact is one that is essential in order to formulate a complete cause of action, if omitted, a cause of action is not effectively pleaded: *Sahyoun* at para. 25.

[13] Rule 3-7 prescribes the content of pleadings generally, and addresses what may or may not be pleaded in a notice of civil claim. Rules 3-7(18)–(24) address the requirements that plaintiffs provide sufficient particulars in a notice of civil claim as to clearly define their claims with specificity.

Positions of the Parties

[14] The defendants' position is that the notice of civil claim should be struck, pursuant to R. 22-7(2), on the basis that it fails to comply with Rules 3-1 and 3-7 by failing to plead material facts with the necessary specificity, or a recognized basis for any of the relief sought. Specifically, the defendants argue that the notice of civil claim is deficient for the following reasons:

1. It is confusing and nonsensical, and appears to merge the allegations of trademark infringement and the sending of emails;
2. It is replete with incomprehensible pleadings that fail to state a cause of action and no material facts are plead for the basis of any cause of action;
3. It repeatedly pleads evidence in violation of R. 3-7(1); and
4. It pleads conclusions of law without pleading material facts to support the conclusions.

[15] The plaintiff says that she attempted to follow the *Rules* to the best of her knowledge. If there are any deficiencies, she requests the right to amend due to her lack of experience.

Analysis

[16] The plaintiff relies on the decision in *Canada (Attorney General) v. Larkman*, 2012 FCA 204 at para. 62 [*Larkman*] for the principle that courts should provide self-represented litigants the opportunity to amend deficient pleadings due to the barriers they face. The *Larkman* decision does not address the issue of self-represented litigants and does not contain the quote cited by the plaintiff. However, other jurisprudence acknowledges that courts must be vigilant to ensure fairness to self-represented litigants, which includes a margin of lenience, though this does not relieve self-represented litigants of the obligation to comply with the *Rules*: *Laferriere v. Her Majesty the Queen*, 2019 BCSC 690 at para. 39.

[17] The notice of civil claim is confusing and the cause of action the plaintiff seeks is difficult to ascertain. The plaintiff pleads legal conclusions, including that there has been an infringement of her Trademark, cyber-stalking and harassment, and breach of privacy, but fails to plead the materials facts in support of such claims.

[18] In light of the fact that the plaintiff is self-represented, it is my view that the notice of civil claim would best be analyzed on whether it should be struck pursuant to Rule 9-5(1).

Issue 2: Should the claim be struck and the proceeding dismissed pursuant to R. 9-5(1) of the Rules?

Legal Principles

[19] Each of the defendants apply to have the pleadings struck and the action dismissed pursuant to R. 9-5(1)(a), (b), and (c). In relevant part, R. 9-5(1) provides:

At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that

- (a) it discloses no reasonable claim or defence, as the case may be,
- (b) it is unnecessary, scandalous, frivolous or vexatious,
- (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding...

...

and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[20] Pleadings will generally be struck out if they: (a) are unintelligible, confusing, and difficult to understand; (b) do not establish a cause of action and do not advance a claim known in law; or (c) are without substance in that they are groundless, fanciful, and trifle with the court’s time: *Dempsey et al. v. Envision Credit Union et al.*, 2006 BCSC 750 at para. 17. Claims of exaggerated damages also do nothing to bolster the seriousness of the pleadings: *References re Charter of Rights and Freedom*, s. 52(1), 2017 FC 30 at para. 42.

[21] As Justice Voith recognized in *Sahyoun v. Ho*, 2015 BCSC 392 at paras. 61–64, while the subrules of R. 9-5(1) address different concerns, there is also significant overlap among them. In the case of pleadings that are “so overwhelmed with difficulty that it is simply not possible [to] fully identify all of the specific inadequacies that exist, or to categorize those difficulties into the specific subparagraphs of R. 9-5(1)” the various provisions may apply together: *Simon v. Canada (Attorney General)*, 2017 BCSC 1438 at para. 53. While there is overlap in this case, I deal with each in turn.

R. 9-5(1)(a): Do the pleadings fail to disclose a reasonable claim against the defendants?

Legal Principles

[22] On a motion to strike for not disclosing a reasonable cause of action under R. 9-5(1)(a), the applicable test is whether it is plain and obvious, assuming the facts pleaded to be true, that the pleadings disclose no reasonable cause of action: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 17; *E.B. v. Director of Child, Family and Community Services*, 2016 BCCA 66 at para. 41. However, when determining whether the pleadings disclose a reasonable cause of action, the court is not required to take as true, allegations based on pure assumptions or wild speculations, or facts that are incapable of proof: *Young v. Borzoni et al*, 2007 BCCA 16 at paras. 25–31; *McDaniel v. McDaniel*, 2009 BCCA 53 at para. 22.

[23] Such allegations or facts should be subjected to skeptical analysis, particularly where the pleadings include broad allegations of things like harassment. Speculative or fanciful claims in a pleading may demonstrate that it is plain and obvious that no cause of action is disclosed: *Afifi v. British Columbia (Minister of Jobs, Tourism and Skills Training)*, 2020 BCSC 1451 at para. 27; *Olenga v. British Columbia*, 2015 BCSC 1050 at paras. 17, 21.

[24] The purpose of R. 9-5(1)(a) is to ensure the parties and the court have a clear understanding of the nature of the claims advanced. A party pleading a particular claim must plead assertions of fact which would establish the essential elements of a successful claim if proven. Prolix, convoluted, and incomprehensible pleadings do not lend themselves to permit the parties to have a clear understanding of the claims advanced: *Gill v. Canada*, 2013 BCSC 1703 at para. 7.

Positions of the Parties

[25] The defendants argue that the pleadings disclose no reasonable claim against them. The plaintiff's claims are based primarily on misunderstandings and misstatements of trademark and copyright law, which do not support a cause of action. The allegations that the defendants cyber-stalked, cyber-attacked, or cyber-bullied her are simply bald allegations and there are no explanations of how they relate to any established causes of action.

[26] The plaintiff asserts that the defendants have devalued her Trademark to make it appear worthless. She further argues that the defendants, in allowing fake/imposter accounts to remain, are infringing upon her Trademark.

[27] The plaintiff argues that she has been harassed and cyber-bullied via an overload of emails that she has received. She notes that Bill C-45 modified the *Criminal Code*, R.S.C. 1985, c. C-46, to incorporate "Negligence by Organization" and to allow for criminal liability to fall on "Organizations", as set out in ss. 22.1 and 22.2.

[28] The plaintiff further asserts that her private email account belongs to the Trademark, “Bobby Dazzler”, and that this email account has been breached by the actions of the defendants.

Analysis

[29] I accept that the pleadings offend R. 9-5(1)(a) on the basis that, as a whole, they are prolix, convoluted, and lacking in material facts and law. In my view, as currently pleaded, it is plain and obvious that no reasonable cause of action is disclosed.

[30] I will address some of the specific claims advanced:

Claim against Facebook Canada Ltd.

[31] The plaintiff names Facebook Canada Ltd. (“FB Canada”) as a defendant, although it is not entirely clear what specific allegations are being advanced against this defendant since, in many of the paragraphs, she simply references the *defendant*, and in others, the *defendants*.

[32] FB Canada asserts that it is plain and obvious that any claims against FB Canada cannot succeed since it does not host, operate, or control Facebook.

[33] In *Braet v. Ramputh et al.*, 2022 ONSC 6682, the Court states:

[2] Facebook Canada (“FB Canada”), is a legal and separate entity from FB, Inc. It does not host, operate, or control the Facebook service, which is operated and hosted by FB, Inc. and includes the website available at www.facebook.com and applications for mobile phones and tablets (collectively, “Facebook Services” or “FB Services”).

[3] On October 28, 2021, FB, Inc. changed its name to Meta Platform, Inc. (“Meta”)...

[34] The evidence in this application respecting FB Canada consists of a Federal Corporate Profile for FB Canada from Innovation, Science and Economics Canada Development, which is attached to an affidavit of a paralegal employed by counsel for the defendants. There is nothing in this document that supports the allegation that FB Canada does not host, operate, or control Facebook (now Meta).

[35] On the evidence before me, I am not satisfied that I can make the same findings as the Ontario Superior Court made in *Braet*. As such, I am not prepared to dismiss the claim against FB Canada on the basis it does not host, operate, or control Facebook. Such a finding has to be made on the evidentiary record in this proceeding and not the evidentiary record from another proceeding. As such, I will consider the various claims made as against the defendants and assess the merits of each of the individual claims advanced.

The Trademark Claims

[36] In essence, the plaintiff is asserting that she owns the trademark to the name “Bobby Dazzler” and that by emailing her at bobbydazzler@shaw.ca this is in breach of her Trademark. She believes that her email address contains the Trademark name. She further argues that by refusing to remove accounts using the name “Bobby Dazzler” from Facebook, the defendants are infringing her Trademark.

[37] If the plaintiff is seeking to enforce sections of the *Trademarks Act*, R.S.C. 1985, c. T-13 in this proceeding, she has commenced the action in the wrong court. Section 55 of the *Trademarks Act* requires that the Federal Court has jurisdiction to entertain any action or proceeding for the enforcement of any of the provisions of that Act.

Email Correspondence as a Breach of Trademark

[38] Nevertheless, it is clear that there is no reasonable claim in breach of trademark against the defendants for sending correspondence to an email address that includes the name “bobbydazzler”.

[39] Section 2 of the *Trademarks Act* defines “use”, in relation to a trademark, as “any use that by section 4 is deemed to be a use in association with goods or services”. Section 4 provides:

4(1) A trademark is deemed to be used in association with goods if, at the time of the transfer of the property in or possession of the goods, in the normal course of trade, it is marked on the goods themselves or on the packages in which they are distributed or it is in any other manner so

associated with the goods that notice of the association is then given to the person to whom the property or possession is transferred.

[40] The sending of an email that contains the words “bobbydazzler” is not a breach of the Trademark. The Trademark protects the use of the specific words in a specific font. It does not protect an email address that contains the same name.

[41] In addition, there is no allegation that the defendants are using, selling or performing any of the goods and services set out in the registered Trademark.

[42] I find that there is no reasonable claim advanced respecting the claim for breach of Trademark.

Failure to Remove an “Imposter” Account

[43] The plaintiff alleges that someone has set up imposter/fake account(s) on Facebook and that the defendants have failed to shut them down, despite her requests for them to do so. She asserts that in failing to shut down the imposter accounts, the defendants have infringed her Trademark.

[44] The plaintiff relies on the decision in *Durkin v. Facebook, Inc.*, 2022 BCSC 1305 in which Mr. Durkin asserted that an individual was using his identity on an imposter Facebook account without his knowledge or consent. Mr. Durkin attempted to use the prescribed online form for non-Facebook users to report imposters and identity theft. Each time he was advised that his request could not be processed. He finally couriered a letter to Facebook Canada Ltd. describing the identity theft and requesting the imposter page be taken down from the social media network. The defendants did not respond.

[45] Mr. Durkin commenced this action asserting that the defendants knowingly, recklessly, negligently, willfully, and without regard to validity made public record, personal information of the plaintiff in this action contrary to the British Columbia *Personal Information Protection Act*, S.B.C. 2003, c. 63 [*PIPA*] and the Canadian *Personal Information Protection and Electronics Document Act*, S.C. 2000, c. 5 [*PIPEDA*]. The plaintiff in this proceeding makes no reference to either of these Acts.

[46] The defendants in *Durkin* sought to strike the amended notice of civil claim relying on R. 9-5(1) on all four grounds. Justice Steeves accepted that the thrust of the claim was in negligence although the plaintiff had not plead the required four elements of negligence: *Durkin* at para. 31. The claim was further being advanced under *PIPA* and *PIPEDA*, although specific parts of the statutes relied on were not referenced.

[47] Justice Steeves agreed that Mr. Durkin’s claim was incomplete and could not proceed primarily under R. 9-5(1)(a), but he declined to strike the claim out entirely. He gave leave to Mr. Durkin to amend to include the four elements of negligence and the material facts related to those elements. Mr. Durkin was further required to specify the provisions of the privacy legislation that he relied on and the material facts related to those provisions.

[48] The issue of whether this plaintiff should be given an opportunity to amend is one which I will consider later in these reasons. I am persuaded that, as presently pleaded, there is no cause of action, particularly since the focus of the plaintiff’s allegation is that the existence of these imposter accounts is alleged to have breached her Trademark. This is a different claim from the one Mr. Durkin was alleging, which involved allegations of personal identify theft.

Breach of Copyright

[49] The plaintiff asserts that the defendants have infringed on her copyright of “Bobby Dazzler”; however, it is not clear in the notice of civil claim how the defendants breached any copyright that the plaintiff may have. The plaintiff provides no information on the nature of the copyright that she has. She asserts that she did not allow the defendants to use her copyright and that the fact this name is being used by multiple users on the Facebook platform is a breach of her copyright. The defendants assert that according to the Canadian Copyright Database, the plaintiff’s registered copyright is the literary work entitled, “Bobby Dazzler ‘got what’s hot!’ and still hot!”, and not the name “Bobby Dazzler”. Unfortunately, the defendants did not

provide the evidence to support such an assertion in the evidentiary record before me.

[50] Copyright is a statutory creature in Canada. Section 3(1) of the *Copyright Act*, R.S.C. 1985, c. C-42 defines copyright as a series of rights in a work:

3 (1) For the purposes of this Act, **copyright**, in relation to a work, means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole right

(a) to produce, reproduce, perform or publish any translation of the work,

(b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work,

(c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise,

(d) in the case of a literary, dramatic or musical work, to make any sound recording, cinematograph film or other contrivance by means of which the work may be mechanically reproduced or performed,

(e) in the case of any literary, dramatic, musical or artistic work, to reproduce, adapt and publicly present the work as a cinematographic work,

(f) in the case of any literary, dramatic, musical or artistic work, to communicate the work to the public by telecommunication,

(g) to present at a public exhibition, for a purpose other than sale or hire, an artistic work created after June 7, 1988, other than a map, chart or plan,

(h) in the case of a computer program that can be reproduced in the ordinary course of its use, other than by a reproduction during its execution in conjunction with a machine, device or computer, to rent out the computer program,

(i) in the case of a musical work, to rent out a sound recording in which the work is embodied, and

(j) in the case of a work that is in the form of a tangible object, to sell or otherwise transfer ownership of the tangible object, as long as that ownership has never previously been transferred in or outside Canada with the authorization of the copyright owner,

and to authorize any such acts.

[51] Generally, copyright infringement is the doing, without the consent of the copyright owner, of something reserved to the copyright owner under the *Copyright Act*. In relation to a work in which copyright subsists, s. 2 of the *Copyright Act*

defines “infringing” as “any copy, including any colourable imitation, made or dealt with in contravention of this Act”.

[52] Copyright is, in essence, a protection against plagiarism: *British Columbia v. Mihaljevic*, [1989] B.C.J. No. 956, 26 C.P.R. (3d) 184 (S.C.) at para. 17, aff’d [1991] 57 B.C.L.R. (2d) 46, 1991 CanLII 287 (C.A.).

[53] The use of the name in emails sent to her or the use of the name by other individuals of Facebook is clearly not a copyright infringement under the *Copyright Act*.

[54] Further, I accept that the plaintiff has not copyrighted the name “Bobby Dazzler” as provided for in *Winkler v. Hendley*, 2021 FC 498 at para. 147:

[147] As the plaintiffs point out, the definition of “work” in section 2 of the *Copyright Act* provides that a “**work** includes the title thereof when such title is original and distinctive.” At the same time, this does not make the title a separate work. Rather, it forms only part of the work as a whole: *Francis, Day & Hunter Ltd v Twentieth Century Fox Corp Ltd et al*, [1939] 4 DLR 353, 1939 CanLII 276 (UK JCPC) at pp 359–360.

[55] It is clear that simply the name “Bobby Dazzler” is not an original name, nor is it an original work in which copyright subsists: *Albo v. The Winnipeg Free Press et al.*, 2019 MBQB 34 at para. 63(e).

[56] I agree that the plaintiff has not plead any viable claim for copyright infringement. The use of the name in emails sent to her or the use of the name by other individuals of Facebook is clearly not a copyright infringement.

Harassment, Cyber-Stalking, Cyber-Attacking, and Cyber-bullying

[57] The plaintiff claims that the defendants have “harassed” her.

[58] Harassment is not a recognized tort in British Columbia: *Gidda v. Hirsch*, 2014 BCSC 1286 at paras. 48–50.

[59] In *Mainland Sawmills Ltd. et al v. IWA – Canada et al*, 2006 BCSC 1195 at para. 17, the Court assumed that if such a tort existed the elements of the tort are

outrageous conduct by the defendant, the defendant's intention of causing or reckless disregard of causing emotional distress, the plaintiff's suffering of severe or extreme emotional distress, and the actual proximate causation of the emotional distress to the defendant's outrageous conduct.

[60] There are no material facts plead that come close to asserting these elements, even if the tort of harassment exists as a tort in BC.

[61] The plaintiff makes the bald statement that the defendants have engaged in cyber-stalking, cyber-attacking, and cyber-bullying. While such conduct may form the basis for criminal charges in some circumstances, cyber-bullying, cyber-attacking, and cyber-stalking are not recognized as torts in BC. The tort of "internet harassment" has been recognized in Ontario; however, in *Skutnik v. British Columbia (Attorney General)*, 2021 BCSC 2408, Justice Branch found that this is not the case in BC:

[32] The Petition asserts that the petitioners have been harassed but fails to provide adequate particulars of any such harassment. Even if harassment was recognized as a tort in British Columbia, which it has not yet been, I would find that the absence of a proper pleading requires dismissal of such a claim: *Gaucher v. British Columbia Institute of Technology*, 2021 BCSC 289, at para. 86. I acknowledge that there has been some recognition of harassment as a potential new cause of action in Ontario in *Caplan v. Atas*, 2021 ONSC 670, but this is not the proper case to consider such a bold extension to the law in British Columbia given the innumerable other flaws in the pleadings.

[62] In any event, there are no material facts pleaded that support such allegations. As in *Skutnik*, given the flaws in the pleadings, this is not the proper case for me to consider "such a bold extension of the law in British Columbia". It is plain and obvious that these claims must fail.

Defamation

[63] At para. 32 of the notice of civil claim, the plaintiff asserts that she has been "defamed" and the actions of the defendant have "caused the brand of the Plaintiff to tarnish". I note that under the legal basis in the notice of civil claim, there is no assertion of a defamation claim.

[64] When a plaintiff brings a claim of defamation, R. 3-7(21)(a) requires that the plaintiff provide particulars of “the facts and matters on which the plaintiff relies in support of that sense”.

[65] As noted in *E.B. v. British Columbia (Child, Family and Community Services)*, 2019 BCSC 2200 at para. 62, there is a heightened requirement to particularize material facts in defamation cases because of the technical and pleading-dependent nature of defamation proceedings.

[66] The notice of civil claims fails to meet these requirements. There is no particularization of the allegedly defamatory statements and no material facts are pleaded that would establish the requisite elements of the claim.

[67] The suggestion that using the name “Bobby Dazzler” as part of an email address would consist of defamation has no basis in law.

Breach of Privacy

[68] The plaintiff asserts that the defendants have breached her privacy.

[69] In British Columbia, s. 1(1) of the *Privacy Act*, R.S.B.C. 1996, c. 373, states:

Violation of privacy actionable

1 (1) It is a tort, actionable without proof of damage, for a person, wilfully and without a claim of right, to violate the privacy of another.

(2) The nature and degree of privacy to which a person is entitled in a situation or in relation to a matter is that which is reasonable in the circumstances, giving due regard to the lawful interests of others.

(3) In determining whether the act or conduct of a person is a violation of another's privacy, regard must be given to the nature, incidence and occasion of the act or conduct and to any domestic or other relationship between the parties.

(4) Without limiting subsections (1) to (3), privacy may be violated by eavesdropping or surveillance, whether or not accomplished by trespass.

[70] Further, s. 3 (2) of the *Privacy Act* sets out that:

It is a tort, actionable without proof of damage, for a person to use the name or portrait of another for the purpose of advertising or promoting the sale of, or other trading in, property or services, unless that other, or a person entitled to consent on the other's behalf, consents to the use for that purpose.

[71] The plaintiff makes no reference to the *Privacy Act* or a breach of it. While this may be cured through amendment with reference to the particular sections at issue, there are no facts pleaded that clearly set out the nature of the act or conduct of the defendants that would constitute a wilful violation of the plaintiff's privacy. If the allegation is only that her privacy was breached as a result of emails being sent to her, that is insufficient to amount to a breach of privacy in the circumstances of this case.

[72] In conclusion, I agree that the pleadings violate R. 9-5(1)(a); however, I will briefly consider the application of R. 9-5(b) and (c).

Rule 9-5(1)(b) and (c): Are the pleadings frivolous, vexatious, embarrassing or likely to delay a fair trial?

Legal Principles

[73] In *Willow v. Chong*, 2013 BCSC 1083, Justice Fisher, as she then was, summarized the test for striking a pleading under R. 9-5(1)(b):

[20] Under Rule 9-5(1)(b), a pleading is unnecessary or vexatious if it does not go to establishing the plaintiff's cause of action, if it does not advance any claim known in law, where it is obvious that an action cannot succeed, or where it would serve no useful purpose and would be a waste of the court's time and public resources: *Citizens for Foreign Aid Reform Inc. v Canadian Jewish Congress*, [1999] B.C.J. No. 2160 (S.C.); *Skender v Farley*, 2007 BCCA 629. If a pleading is so confusing that it is difficult to understand what is pleaded, it may also be unnecessary, frivolous or vexatious. An application under this sub-rule may be supported by evidence.

[74] Under R. 9-5(1)(c), a pleading is "embarrassing" where it is so irrelevant that it will involve the parties in useless expense or where the pleadings are so confusing that it is difficult to understand what is being pleaded: *Citizens for Foreign Aid Reform Inc. v. Canadian Jewish Congress* [1999] B.C.J. No. 2160, 1999 CanLII 5860 (S.C.) at para. 47. A pleading is prejudicial where it fails to identify the cause of action, contains irrelevant material, or is intended to confuse: *Camp Development Corporation v. Greater Vancouver (Transportation Authority)*, 2009 BCSC 819 at para. 27, aff'd 2010 BCCA 284.

Position of the Parties

[75] The defendants argue that the plaintiff's claims are vexatious in that they do not establish any cause of action and they have no foundation in the law. They assert that the claim for "Aggravated and Punitive damages of fifty million (\$75,000,000)", being two different values, are exaggerated and have no basis in the pleadings.

[76] The plaintiff explains that there was a typo made in the pleadings and she is seeking damages of \$75,000,000, which was brought to the attention of the defendants. She relies on the "years of abuse" and suggests the amount is in line with other cases such as *Douez v. Facebook, Inc.*, 2022 BCSC 914.

[77] The plaintiff asserts that her claims are neither scandalous nor frivolous, arguing that Meta Platforms Inc. has had many issues with breach of privacy in Canada and the United States. She again points to the recent judgment in *Douez* in support.

Analysis

[78] I note that the *Douez* decision involved a certified class action in which the various class members' names and images were used in an advertising program called Sponsored Stories without their consent, and contrary to the privacy statutes in British Columbia and other provinces. The decision related to whether the court had jurisdiction to hear and decide cases under privacy legislation from other provinces in the class action proceeding. The Court found that it did and dismissed the summary trial brought by the defendant. This case has no similarity to the case at bar.

[79] As set out earlier in these reasons under the consideration of R. 9-5(1)(a), it is challenging to discern the cause of action that the plaintiff is asserting. The notice of civil claim is vague, confusing, and prolix.

[80] It is clear that the claim that the plaintiff is entitled to \$75 million in aggravated and punitive damages is one which is not supported in any way in the pleading. The

plaintiff appears to have simply picked a number, perhaps relying on the assertion made in the *Durkin* amended notice of civil claim. I accept that in making such an assertion, it supports that the pleading is frivolous and vexatious.

Remedy

[81] As I have found the pleadings offend R. 9-5(1), I must now decide whether to allow the plaintiff an opportunity to amend the pleadings or to strike them out.

Legal Principles

[82] As noted in *Sahyoun*, the Court should give some indulgence to the self-represented litigant who is not conversant in the *Rules* or the law: at para. 60.

[83] Pursuant to R. 22-7(2), where pleadings are not in compliance with the *Rules*, the Court may allow an amendment to be made under R. 6-1, which governs the amendment of pleadings.

[84] Further, where pleadings are in violation of R. 9-5(1)(a)–(d), the rule provides that the court may order that the pleading be struck out or amended in whole or in part. If the pleadings, as amended, could disclose a triable issue, the plaintiff should not be “driven from the judgment seat”: *Woolsey v. Dawson Creek (City)*, 2011 BCSC 751 at paras. 27–30

[85] The rationale for allowing amendments is to enable the real issues between the parties to be determined, fulfilling the fundamental objective of the *Rules*, being to ensure a just, speedy and inexpensive determination of every case on its merits: *T.J.A. v. R.K.M.*, 2011 BCSC 820 at para. 14.

[86] A judge’s discretion to permit amendments is unfettered, subject only to the general rule that it be exercised judicially: *Teal Cedar Products (1977) Ltd. v. Dale Intermediaries Ltd.* (1996), 19 B.C.L.R. (3d) 282, 1996 CanLII 3033 (C.A.) at 299.

[87] Denying a plaintiff, especially a self-represented litigant, an opportunity to rectify defective pleadings is a drastic remedy: *Kepa v. Catlin*, 2021 BCSC 1960 at para. 64. Where a claim is brought by a self-represented litigant, the Court should

consider whether defective pleadings can be corrected by way of amendment; however, the Court should not provide legal advice on how any deficiencies can be cured: *Mohebbi v. North Vancouver RCMP*, 2015 BCSC 2083 at para. 16.

Position of the Parties

[88] The defendants assert that the plaintiff should not be permitted to amend the claim since it likely would be a “moving target” to superficially bring it within the *Rules*, without actually disclosing a true cause of action against the defendants.

[89] The plaintiff seeks leave to amend so as to properly bring the claims in compliance with the *Rules*.

Analysis

[90] Given the above, I decline to exercise my discretion to allow the plaintiff to amend her pleading with respect to certain claims. In particular, the claims relating to trademark infringement, copyright infringement, harassment and cyber-bullying, cyber-stalking, cyber-attacking, and defamation are struck in their entirety. In my view, it is plain and obvious that these claims must fail and that they are incapable of being cured by amendment. The flaws are not mere technicalities, but are substantive in nature and reflect a misapprehension of the law in these areas.

[91] However, in my view, Ms. Rai’s pleading should not be struck in its entirety at this stage and she should be given the opportunity to file an amended notice of civil claim. Ms. Rai’s claims that she has been receiving emails from the defendants, which suggest that a Facebook profile has been set up using her email address, despite her claim that she has never given permission for her contact information to be used for this purpose, is concerning and raises issues related to her privacy and personal information. Furthermore, she asserts that she contacted the defendants on numerous occasions to have this matter resolved, with no response. In my view, as was the case in *Durkin*, the thrust of the plaintiff’s claim in this regard is rooted in negligence despite her not framing her pleadings as such.

[92] In light of these claims and the fact that Ms. Rai is a self-represented litigant and is seeking leave to amend her pleadings to bring them into compliance with the *Rules*, I exercise my discretion to allow her to file an amended notice of civil claim which properly pleads and particularizes the claims for breach of privacy and negligence. To be clear, the other claims raised in the original notice of civil claim are struck and should not be included in the amended pleading.

[93] Ms. Rai has until 4:00 pm on August 30, 2024 to file her amended pleadings. If an amended notice of civil claim is filed by that deadline, the defendants have leave to bring another application to strike the amended pleadings. If an amended pleading is not filed by that date, the plaintiff's claim is dismissed in its entirety.

[94] Rule 6-1 of the *Rules* sets out the procedural requirements for amending pleadings. I would also urge the plaintiff to seek legal advice on how to properly draft the amendment.

Conclusion

[95] The application of the defendants is allowed in part. The defendants are entitled to costs at Scale B. The plaintiff's signature on the form of the order is dispensed with. The defendants will provide the plaintiff with a filed copy of the order.

[96] I am not seized with any further applications in this action.

“Forth J.”