SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

TRAVELERS UNITED,	)	
Plaintiff	)	**Case No. 2022-CA-003089-B**
	)	
v.	)	
	)	**Judge Neal E. Kravitz**
EXPEDITION 196, LLC, *et al.*,	)	
Defendants	)	

ORDER DENYING DEFENDANT'S MOTION TO DISMISS AND MOTION TO STRIKE

The defendants have filed a motion to dismiss the complaint, arguing that the court lacks subject matter jurisdiction over the dispute, *see* Super. Ct. Civ. R. 12(b)(1), and that the complaint fails to state a claim on which relief can be granted, *see* Super. Ct. Civ. R. 12(b)(6). The defendants also have also filed a motion to strike under Super. Ct. Civ. R. 12(f), arguing that the entire complaint should be stricken because it is unnecessarily long and redundant and is a malicious and cruel personal attack on defendant Cassie De Pecol. The plaintiff has filed oppositions to both motions, and the defendants have filed replies.

The court has carefully considered the parties' arguments and the entire record of the case. For the following reasons, the court concludes that both motions should be denied.

Governing Legal Standards

A complaint is subject to dismissal under Rule 12(b)(1) for a lack of subject matter jurisdiction if, among other things, the plaintiff lacks capacity to maintain an action, *see* D.C. Code § 29-105.02(b), or standing to bring the claims alleged, *UMC Dev., LLC v. District of Columbia*, 120 A.3d 37, 43 (D.C. 2015).

A complaint is subject to dismissal under Rule 12(b)(6) for failure to state a claim on which relief can be granted if it does not satisfy the requirement, set forth in Rule 8(a)(2), that it

contain "a short and plain statement of the claim showing that the pleader is entitled to relief." *See Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543–44 (D.C. 2011). The notice pleading rules do "not require detailed factual allegations," *id.* (internal quotation marks omitted) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)), and all factual allegations in a complaint challenged under Rule 12(b)(6) must be presumed true and liberally construed in the plaintiff's favor, *Grayson v. AT&T Corp.*, 15 A.3d 219, 228–29 (D.C. 2011) (en banc). Nevertheless, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face," and the plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Potomac Dev. Corp.*, 28 A.3d at 544 (internal quotation marks omitted) (quoting *Iqbal*, 556 U.S. at 678). Although a plaintiff can survive a Rule 12(b)(6) motion even if "recovery is very remote and unlikely," *Grayson*, 15 A.3d at 229 (internal quotation marks omitted), the "factual allegations must be enough to raise a right to relief above the speculative level," *OneWest Bank, FSB v. Marshall*, 18 A.3d 715, 721 (D.C. 2011) (internal quotation marks and brackets omitted). Conclusory allegations "are not entitled to the assumption of truth," and while "legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Potomac Dev. Corp.*, 28 A.3d at 544 (citing *Iqbal*, 556 U.S. at 664).

Finally, the court has discretion to strike from a pleading material that is "redundant, immaterial, impertinent, or scandalous." Super. Ct. Civ. R. 12(f).

Discussion

The defendants advance several arguments in support of their motion. The court will address each in turn.

I. Defendants' Motion to Dismiss

a. Capacity to sue in the District of Columbia

The defendants argue that the plaintiff lacks capacity to maintain a suit in the District of Columbia because it is a foreign corporation and is not registered to do business in the District. *See* D.C. Code § 29-105.02(b) ("A foreign filing entity or foreign limited liability partnership doing business in the District may not maintain an action or proceeding in the District unless it is registered to do business in the District.")

It appears that the plaintiff is a foreign corporation and that it was not registered to do business in the District of Columbia at the time it filed the complaint. Under § 29-105.02(b), the plaintiff therefore lacked capacity to sue at the time it filed the complaint.

Since then, however, the plaintiff has registered with the District of Columbia Department of Licensing and Consumer Protection ("DLCP") as a foreign corporation doing business in the District of Columbia. The plaintiff's registration has cured its previous incapacity to bring suit, even though the plaintiff did not register until after the defendants filed their motion to dismiss. *See Synanon Found., Inc. v. Bernstein*, 503 A.2d 1254, 1270 (D.C. 1986) (approving a stay of the proceedings "in order to give [the] corporation an opportunity to comply with the statutory provisions"). The plaintiff therefore may maintain this action despite its lack of capacity to sue at the time it filed the complaint.[1]

[1] The defendants argue that "Travelers United, Inc.," the non-profit now registered with DLCP, is different from "Travelers United," the entity that filed suit because Travelers United, Inc. asserts that it began doing business in 2023, while Travelers United appears to have operated in the District in prior years. The defendants contend that this inconsistency affects back fees the plaintiff may owe to DLCP. The question whether the plaintiff might owe back fees to the District, however, is not before the court. It is clear to the court that the plaintiff is now registered with DLCP (as Travelers United, Inc.). As such, the plaintiff has capacity to maintain this action.

b. Standing under the Consumer Protection Procedures Act ("CPPA")

The defendants argue that the plaintiff lacks standing to sue under the CPPA because it has failed to identify a consumer or class of consumers it represents. The court does not agree.

The CPPA authorizes non-profit organizations to sue "on behalf of the general public." D.C. Code § 28-3905(k)(1)(C). Specifically, a non-profit organization has standing to sue under the CPPA if (1) it is a public interest organization, (2) it seeks to represent consumers who could bring such a suit on their own based on a trade practice in violation of law, and (3) there is a nexus between its interest and the consumer class affected by the unlawful trade practice. D.C. Code § 28-3905(k)(1)(D)(i-ii).

The complaint satisfies these requirements. It alleges facts sufficient to make out a plausible claim that (1) Travelers United is a public interest organization, (2) it seeks to represent consumers who could bring suits individually based on having viewed the allegedly deceptive advertisements at issue, and (3) it has the same interest as individual consumers in opposing deceptive advertisements. *See Animal Legal Def. Fund v. Hormel Foods Corp*., 258 A.3d 174, 186 (D.C. 2021) ("[the plaintiff] adequately identifies the class of consumers it seeks to represent as D.C. consumers who are targeted[] and have been or will be misled"). The plaintiff therefore has established standing under the CPPA, at least at the pleading stage.

c. Defendant De Pecol as Merchant under the CPPA

The defendants argue that Ms. De Pecol is not a merchant within the meaning of the CPPA. Once again, the court does not agree.

The CPPA defines a merchant as one "who in the ordinary course of business does or would sell, lease (to), or transfer, either directly or indirectly, consumer goods or services, or a person who in the ordinary course of business does or would supply the goods or services which

are or would be the subject matter of a trade practice." D.C. Code § 28-3901(a)(3). This is an expansive definition — one that regulates those directly or indirectly involved in the supply side of commerce. As the Court of Appeals has explained, "the term 'merchant' is not limited to the actual seller of the goods or services but includes those 'connected with the "supply" side of a consumer transaction.'" *Adam A. Weschler & Son, Inc. v. Klank*, 561 A.2d 1003, 1004 (D.C. 1989) (quoting *Howard v. Riggs Nat'l Bank*, 432 A.2d 701, 709 (D.C. 1981)). "[D]isinterested third parties," by contrast, "are outside the CPPA's coverage." *Howard*, 432 A.2d at 710. Applying this distinction, the Court of Appeals has held that an auctioneer is sufficiently "connected with the 'supply' side" of commerce to be considered a merchant under the CPPA, *Adam A. Weschler & Son, Inc.*, 561 A.2d at 1004, but that an individual who makes a personal recommendation of a merchant is not sufficiently connected to be considered a merchant himself, *Howard*, 432 A.2d at 710.

The complaint makes out a plausible claim that Ms. De Pecol is sufficiently connected with the supply side of commerce to qualify as a merchant under the CPPA. In particular, the complaint alleges that Ms. De Pecol promotes consumer products in exchange for a fee, making her more like an auctioneer who facilitates consumer transactions in exchange for a fee than a disinterested third party who makes a personal recommendation to a consumer. It is the financial relationship that distinguishes the two situations: a private third party who merely recommends a good or service may lack any meaningful connection to the supply side of commerce, while a paid promoter, which the complaint alleges Ms. De Pecol to be, is sufficiently connected by dint of the payment. Therefore, the complaint has plausibly alleged that Ms. De Pecol is a merchant under the CPPA.

d. Veracity of Ms. Pecol's Contested Claims

The defendants argue that the plaintiff's claims fail as a matter of law because the disputed statements allegedly made by Ms. De Pecol are true or, at least, not verifiably false. The defendants advance this argument in two ways. First, they contend that because the plaintiff cannot identify the first woman to have traveled to every country in the world, it cannot disprove Ms. De Pecol's assertion that she was the first woman to do so. Second, they argue that Ms. De Pecol was, in fact, the first woman to travel to every country in the world.

The defendants' first argument is not logically sound. The plaintiff may be able to prove that a woman other than Ms. De Pecol traveled to every country in the world before Ms. De Pecol did, even if the plaintiff cannot identify the woman.

The defendants' second argument may support a defense at trial, but it is not sufficiently ironclad to defeat the plaintiff's claim at the pleading stage. The plaintiff alleges in the complaint that Ms. De Pecol's claims are false. Under Rule 12(b)(6), all factual allegations in the complaint must be taken as true and liberally construed in the plaintiff's favor. *Grayson v. AT&T Corp.*, 15 A.3d 219, 228–29 (D.C. 2011) (en banc). Without more than the defendants' bare denial of plaintiff's allegations, the plaintiff's claim cannot be viewed as implausible at this stage of the proceedings. Dismissal under Rule 12(b)(6) therefore is not appropriate.

e. Statute of Limitations

The defendants argue that part of the plaintiff's claim is time-barred, as some of the statements alleged in the complaint were made outside the three-year statute of limitations period — *i.e.*, more than three years before the filing of the complaint, on July 11, 2022. It may be that some of the statements relied on by the plaintiff were made before July 11, 2019 and thus fall outside the statute of limitations period. Given the alleged continuing presence of some of those

statements on Ms. De Pecol's website, however, the court is unable to determine at the pleading stage that any of all of those statements must be excluded from the claim as a matter of law.

f. Sufficiency of Allegations

Finally, the defendants argue that Ms. De Pecol's statements would not mislead a reasonable consumer and therefore do not violate the CPPA. Specifically, the defendants contend that even if the allegations in the complaint are taken as true, Ms. De Pecol made false statements about herself, not about any of the products she promoted.

The court is not persuaded. The plaintiff alleges that Ms. De Pecol misrepresented her accomplishments and associations, in violation of D.C. Code § 28-3904(b) and (e); and that she failed to disclose that some of her social media posts were paid advertisements, in violation of D.C. Code § 28-3904(f). These allegations are sufficient to make out a plausible claim. An influencer who misrepresents her background or omits relevant information to induce a consumer to purchase goods can be found to have misled the consumer in violation of the CPPA, particularly where, as here, the influencer's statements about herself are inextricably linked to her promotion of her products.

g. Summary

For the foregoing reasons, the defendants' motion to dismiss—for lack of capacity and standing, and for failure to state a claim on which relief can be granted—must be denied.

II. Defendants' Motion to Strike

As indicated above, the defendants also have filed a motion to strike the entire complaint under Super. Ct. Civ. R. 12(f) on the ground that it is unnecessarily long and redundant and a malicious and cruel personal attack on Ms. De Pecol.

Rule 12(f) authorizes the court to strike materials it deems "redundant, immaterial, impertinent, or scandalous." In this regard, the court again wishes to express its concern about the language and tone the parties and lawyers have used in their filings in the case and in their interactions with each other. To the extent the plaintiff has conceded that some of the language in the complaint was unnecessarily harsh or otherwise inappropriate, the court urges the parties to come to an agreement on an amended version that might be filed as a substitute. On the current record, however, the court does not conclude that the entire complaint should be stricken under Rule 12(f).

Accordingly, it is this 13th day of September 2023

ORDERED that the defendants' motions to dismiss and to strike are **denied**. It is further

ORDERED that the defendants have has until September 27, 2023 to file an answer to the complaint. *See* Super. Ct. Civ. R. 12(a)(4)(A). It is further

ORDERED that the case remains set for an initial scheduling conference on October 13, 2023 at 9:30 a.m.

Neal E. Kravitz, Associate Judge
(Signed in Chambers)

Copies to:
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