

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

AYA SMITH,	)	
	)	
Plaintiff,	)	
	)	No. 19 CH 7357
v.	)	
	)	
TRENT ANDERSON, and	)	
EVERGREEN MUSIC NETWORK, INC.	)	
	)	
Defendants.	)	

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**ORDER**

Plaintiff, Aya Smith (“Smith”), brings this suit for violation of the Illinois Right of Publicity Act, 765 ILCS 1075/1 *et seq.* (“IRPA”), and the like statutes of seven other states. The complaint alleges the following facts, which we accept as true for purposes of the defendant Trent Anderson’s (“Anderson”) present motion to dismiss. Between January 12, 2018, and April 18, 2019, Smith was the lead female singer of Sushi Roll. Anderson is the drummer and founder of Sushi Roll. Sushi Roll is based in Chicago and performs cover songs at various venues throughout the United States. Anderson, along with defendant Evergreen Music Network, Inc., manages and books shows for Sushi Roll. On or about March 19, 2019, a promotional video, titled “Sushi Roll 2019 Spring PROMO” (“Promo Video”), was posted on Sushi Roll’s official YouTube page to promote Sushi Roll. The Promo Video is approximately four minutes long and features Smith and other members of Sushi Roll performing before an audience in the summer of 2018. Smith alleges that she did not grant permission to Anderson, either verbally or in writing, to use Smith’s name, voice, identity, or likeness in the Promo Video.

On March 20, 2019, Smith entered into a recording artist agreement with Warner Brothers Music Studios (“Warner Brothers”), under which Warner Brothers agreed to pay Smith \$1,500 for Smith to audition, and to allow Warner Brothers to record Smith’s voice, for the NBC television series, *The Voice*. On April 18, 2019, Smith notified Anderson of her intention to leave Sushi Roll. On April 24, 2019, Smith emailed Anderson asking him to “remove all photos and videos that include [Smith] from all Sushi Roll social media, websites, event pages, and promos, etc. [Smith does] not give Sushi Roll permission to continue using [Smith’s] images and videos. [Smith] will give you one week to take them down.” Anderson did not reply and on May 1, 2019, Smith sent Anderson a second letter demanding that he cease and desist use of Smith’s likeness. Anderson responded on May 2, 2019, stating that any videos that are on YouTube are not Sushi Roll’s responsibility, and that Smith’s photo on Sushi Roll’s website will be taken down by May 6, 2019. As of May 7, 2019, Anderson still had not removed Smith’s likeness from Sushi Roll’s social media and homepage. As of June 10, 2019, the Promo Video was still available for public viewing.

Smith alleges in Count I that Anderson violated the IRPA, which prohibits the use of an individual’s identity for commercial purposes without his written consent. 765 ILCS 1075/30.

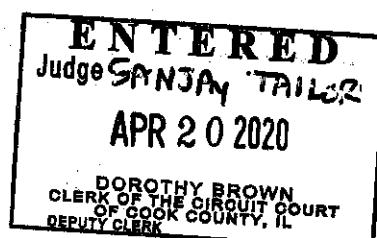
Smith also alleges violations of the right of publicity statutes of seven other states where Sushi Roll has performed: Florida (Count II); Indiana (Count III); Ohio (Count IV); Pennsylvania (Count V); South Dakota (Count VI); Tennessee (Count VII); and Wisconsin (Count VIII). In his opening motion, Anderson seeks dismissal on three bases: (a) Smith consented to the use of her likeness; (b) the Court lacks subject matter jurisdiction to hear claims based on the right of publicity statutes of states other than Illinois'; and (c) the complaint is moot because he already complied with Smith's requests. Anderson presents numerous new arguments in his reply, which we elect not to address now in fairness to Smith. Reply briefs are limited to responses to arguments already made, not to raise new arguments. *Cf. People v. Borges*, 88 Ill. App. 3d 912, 918 (1st Dist. 1980).

Anderson first argues that the complaint judicially admits that Smith gave Anderson permission to use her likeness – and thus is factually insufficient to state a claim for violation of the IRPA – by alleging that on April 24, 2019, Smith told Anderson that he could not *continue* to use her likeness. However, to satisfy the consent requirement under the IRPA, an individual's consent must be in writing, 765 ILCS 1075/30(a), and Smith does not allege that she gave Sushi Roll or anyone else written permission to use her likeness. *See also Trannel v. Prairie Ridge Media, Inc.*, 2013 IL App (2d) 120725, ¶¶ 23–26 (written consent required for use of photograph on cover of media kit because it was for commercial purpose even though defendant had written consent for use of photograph in news article). Thus, the complaint is not self-defeating.

Next, Anderson argues that the Court lacks subject matter jurisdiction to hear Smith's claims alleging violations of right of publicity statutes other than Illinois'. However, Anderson cites no law and fails to develop his argument. A court "is not merely a repository into which a [litigant] may 'dump the burden of argument and research.'" *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 459 (1st Dist. 2009). This ruling, of course, is without prejudice as the Court's jurisdiction over the subject matter may be raised at any time.

Last, Anderson argues that Smith's complaint is moot because he removed Smith's likeness from Sushi Roll's official YouTube page before Smith filed her complaint. On a motion to dismiss, the Court must accept as true all well pled allegations and any reasonable inferences from these facts. *Mattis v. State Univ. Ret. Sys.*, 296 Ill. App. 3d 675, 682-83 (4th Dist. 1998). Smith alleges that photos of her and the Promo Video were still available for viewing on June 12, 2019, less than a week before she filed her complaint. Moreover, even if Anderson has already discontinued the use of Smith's likeness, that would only moot the remedy of injunctive relief, not the remedy of damages under the IRPA and counterpart state statutes. Thus, Smith's claim is not moot.

Anderson's motion to dismiss is denied. Anderson shall answer the complaint within 28 days. The Clerk shall notify all counsel of record of the entry of this Order.



Entered:

*Sanjay T. Taylor*