

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>CHARLES WEINACKER,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>CIV. ACT. NO. 1:22-cv-28-TFM-MU</b>
	)	
<b>PETFRIENDLY, INC., et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**MEMORANDUM OPINION AND ORDER**

On May 3, 2023, the Magistrate Judge entered a Report and Recommendation in which it recommends the motion to dismiss (Doc. 31) be granted in part and denied in part. See Doc. 37. Specifically, some claims would be dismissed with prejudice, some claims dismissed without prejudice, and some claims remain. *Id.* Plaintiff timely filed his objections and Defendants timely filed their response to the objections. See Docs. 38, 39.

The Court has reviewed the objections filed by Plaintiff and found the do little to address the well-reasoned analysis of the Magistrate Judge. As such, they are due to be overruled.

Therefore, after due and proper consideration of all portions of this file deemed relevant to the issues raised, and a *de novo* determination of those portions of the Recommendation to which objection is made, the Report and Recommendation of the Magistrate Judge is **ADOPTED** as the opinion of this Court. Accordingly, it is **ORDERED** as follows:

- (1) Defendants' Motion to Dismiss (Doc. 31, filed 1/20/23) is **GRANTED in part** and **DENIED in part**.
- (2) The motion to dismiss is granted to the extent the following claims are **DISMISSED with prejudice**:
  - a. Claim 1, as to any trademark infringement claim brought pursuant to 15 U.S.C. § 1114(a) and as to any claim related to the existence of a "registered" trademark; and
  - b. Claim 4 (contributory trademark infringement).
- (3) The motion to dismiss is further granted to the extent the following claims are **DISMISSED without prejudice**:
  - a. Claim 6 (copyright infringement); and
  - b. Claim 8 (unjust enrichment).
- (4) The motion to dismiss is denied and the following claims remain pending in this action:
  - a. Claim 1, as to claims brought pursuant to 15 U.S.C. § 1125(a);
  - b. Claim 2 (common law trademark infringement);
  - c. Claim 3 (dilution);
  - d. Claim 5 (reputational damage); and
  - e. Claim 7 (false designation and unfair competition).

This case is **REFERRED BACK** to the Magistrate Judge for further proceedings.

**DONE** and **ORDERED** this 2nd day of August, 2023.

/s/Terry F. Moorer  
TERRY F. MOORER  
UNITED STATES DISTRICT JUDGE