

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

INSECO, INC., a Florida
corporation,

Plaintiff,

v.

Case No: 2:18-cv-77-FtM-99CM

US DURALAST, INC., US
DURALAST, INC., and JOHN
DOES, Various John Does,
Janes Does and ABC
Companies,

Defendants.

OPINION AND ORDER

This matter comes before the Court on defendant's Motion to Dismiss, or Alternatively to Transfer Venue or Stay (Doc. #14) filed on March 23, 2018. Plaintiff filed a Response in Opposition (Doc. #20) on April 16, 2018. For the reasons set forth below, the portion of the motion seeking dismissal for failure to state claims is granted, and the remainder of the motion is otherwise denied.

This is a trademark infringement case brought by plaintiff Inesco, Inc. based upon defendants' alleged infringement of plaintiff's mark. (Doc. #1.) Plaintiff filed a six-count Complaint, alleging: (1) Federal trademark infringement under 15 U.S.C. §§ 1114, 1117; (2) Federal unfair competition under 15 U.S.C. § 1125(a); (3) Federal false designation of origin, false

advertising, and false description under 15 U.S.C. § 1125(a)(1)(a); (4) Federal false advertising under 15 U.S.C. § 1125(a)(1)(b); (5) Declaratory relief under 28 U.S.C. § 2202; and (6) Florida unfair competition, false designation of origin, and false description. (Doc. #1.) Each count adopted and incorporated all the preceding paragraphs of the Complaint, (Doc. #1, ¶¶ 51, 56, 61, 66, 68), resulting in a "shotgun complaint." "The typical shotgun complaint contains several counts, each one incorporating by reference the allegations of its predecessors, leading to a situation where most of the counts (i.e., all but the first) contain irrelevant factual allegations and legal conclusions." Strategic Income Fund, L.L.C. v. Spear, Leeds & Kellogg Corp., 305 F.3d 1293, 1295 (11th Cir. 2002). The Court will therefore dismiss the Complaint with leave to amend. The Court will otherwise deny the motion, with leave to refile a similar motion, if appropriate, after an amended complaint is filed.

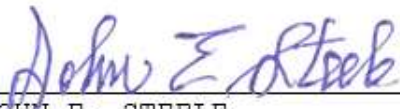
Accordingly, it is hereby

ORDERED AND ADJUDGED:

1. Defendant's Motion to Dismiss, or Alternatively to Transfer Venue or Stay (Doc. #14) is **GRANTED IN PART** to the extent it seeks dismissal for failure to state a claim upon which relief may be granted. The Motion is otherwise **DENIED**.

2. The Complaint (Doc. #1) is dismissed without prejudice to filing an Amended Complaint within **fourteen (14) days** of the date of this Opinion and Order.

DONE and ORDERED at Fort Myers, Florida, this 7th day of May, 2018.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Counsel of Record