

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NORTH ATLANTIC OPERATING
COMPANY, INC., *et al.*,

Plaintiffs,

Civil Case No. 18-10134
Honorable Linda V. Parker

v.

HOT BOX DEALS, *et al.*,

Defendants.

**OPINION AND ORDER GRANTING PLAINTIFFS' MOTION
TO AMEND COMPLAINT (ECF NOS. 45 & 46)**

Plaintiffs North Atlantic Operating Company, Inc. and National Tobacco Company, L.P. (“Plaintiffs”) filed a complaint on January 11, 2018 to restrain the counterfeit sales of ZIG-ZAG® Orange—its cigarette paper products and packaging—by anonymous sellers operating on eBay and other online platforms. (ECF No. 1.) Presently before the Court is Plaintiffs’ Motion to Amend Complaint, filed September 19, 2018. (ECF Nos. 45, 46, 47.) Defendants did not file a response. For the reasons that follow, the Court grants Plaintiffs’ motion.

I. Factual and Procedural Background

With their Complaint, Plaintiffs filed an *ex parte* application for a temporary restraining order and an account and asset freeze order, temporarily freezing the online-seller Defendants’ access to the associated eBay, PayPal, and other e-

commerce accounts. (*See* ECF No. 6.) This Court granted the motion in its entirety, including Plaintiffs' request to serve all Defendants and third-party service providers by email, other electronic means, and/or overnight courier. (*See* ECF No. 17.)

Subsequently, Plaintiffs entered into discovery exchanges and settlement discussions with some Defendants who were dismissed from the lawsuit. (ECF No. 46 at PgID 1539.) Plaintiffs continued investigating counterfeit ZIG-ZAG® Orange for sale on eBay, and the post-suit investigation revealed: (1) additional online sellers of counterfeit ZIG-ZAG® Orange operating through the same distribution channels as the presently named Defendants; and (2) at least one additional eBay account (skohistani95), apparently operated by the current Defendants Tamanna Kohistani and eBay Seller TAMANKOHISTAN_0. (*Id.*) Thus, Plaintiffs seek to amend their complaint to add five new defendant groups, add information concerning the Kohistani Defendants' additional account, and remove dismissed Defendants. (*Id.*)

II. Applicable Law & Analysis

Federal Rule of Civil Procedure 15(a) instructs the courts to freely grant leave to amend "when justice so requires." This is because, as the Supreme Court has advised, "[i]f the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his

claim on the merits.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). However, a motion to amend a complaint should be denied if the amendment is brought in bad faith or for dilatory purposes, results in undue delay or prejudice to the opposing party, or would be futile. *Id.* An amendment is futile when the proposed amendment fails to state a claim upon which relief can be granted and thus is subject to dismissal pursuant to Rule 12(b)(6). *Rose v. Hartford Underwriters Ins. Co.*, 203 F.3d 417, 420 (6th Cir. 2000).

There is no evidence that the amendment was brought in bad faith or for a dilatory purpose. The amendment will not result in undue delay or prejudice. Furthermore, the amendment would not be futile. One reason for granting leave to amend is to permit a party to assert matters that were unknown at the time of the original complaint. *See Iron Workers’ Local No. 25 Pension Fund v. Klassic Servs., Inc.*, 913 F. Supp. 541, 543 (E.D. Mich. 1996). Therefore, the Court grants Plaintiffs leave to file their amended complaint in order to add new defendants, add a related eBay account for one of the Defendant groups, and remove dismissed Defendants.

III. Conclusion

Accordingly,

IT IS ORDERED that Plaintiffs’ Motion to Amend Complaint (ECF Nos. 45 & 46) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiffs shall file the Amended Complaint no later than fourteen days from the date of this Order.

ALTERNATIVE SERVICE

IT IS FURTHER ORDERED that, good cause having been shown, Plaintiffs may serve upon all Defendants, Third Party Providers, and necessary third parties the documents initiating this matter, including the Complaint, Summons(es), *Ex Parte* Motion and supporting papers (including Declarations), Motion to Seal and Order thereon, Plaintiffs' corporate disclosure statements, and the Order herein, by e-mail or other electronic means, and/or by overnight courier, when practicable, to the degree necessary to ensure and effectuate service.

IT IS SO ORDERED.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: December 3, 2018

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, December 3, 2018, by electronic and/or U.S. First Class mail.

s/ R. Loury
Case Manager