UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WEICAN MENG,

Plaintiff,

– against –

XINHUANET CO., LTD.,

Defendant.

OPINION AND ORDER

16 Civ. 6127 (ER)

Ramos, D.J.:

Weican Meng ("Plaintiff") brought this action against Xinhuanet Co., Ltd. ("Defendant"), challenging an order issued by the Beijing Office of the Asian Domain Name Dispute Resolution Center ("ADNDRC") to transfer the domain name "Xinhua.news" (the "Domain Name") from Plaintiff to Defendant. Plaintiff asserts seven claims against Defendant under federal and state law. Before the Court is Defendant's motion to dismiss the Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Doc. 18. For the reasons stated below, the two federal claims brought by Plaintiff are dismissed and the Court declines to exercise supplemental jurisdiction over the state claims. Accordingly, Defendant's motion is GRANTED.

I. Factual Background[1]

Plaintiff works in the business of publicity, news, and information. Am. Compl. ¶ 35. Plaintiff runs the "Boxun" electronic news media, which publishes daily website articles and a hardcopy magazine called "Boxun Journal Monthly." *Id.* ¶¶ 3–4. On July 12, 2015, Plaintiff,

[1] The following factual background is based on allegations in the Amended Complaint ("Am. Compl."), Doc. 17, which the Court accepts as true for purposes of the instant motion. *See Koch v. Christie's Int'l PLC*, 699 F.3d 141, 145 (2d Cir. 2012).

acting on behalf of Boxun, registered the Domain Name with Name.com, Inc. *Id.* ¶ 23. Plaintiff used the Domain Name as the platform for Boxun's internet publication. *Id.*

Defendant is a comprehensive news information portal under China Xinhua News Agency. *Id*. ¶ 8. Defendant owns thirty-one local channels and releases daily global news in different languages, *id*. ¶ 9, and has a New York office at Times Square. *Id*. ¶ 14. Defendant registered and owns the domain names "Xinhuaet.com," "Xinhuaet.com.cn," "Xinhua.org," "Xinhua.cn," and "News.cn." *Id.* ¶ 12.

On May 5, 2016, Defendant filed a complaint with the ADNDRC Beijing Office pursuant to the Rules for Uniform Domain Name Dispute Resolution Policy ("UDRP") approved by the Internet Corporation for Assigned Names Numbers ("ICANN').[2] Am. Compl., Ex. 2, at 1. On June 20, Plaintiff submitted his response to the ADNDRC Beijing Office. *Id.* On July 21, 2016, the ADNDRC arbitrator ruled in favor of Defendant and held that the Domain Name is confusingly similar to Defendant's registered service marks, that Plaintiff has no rights or legitimate interests in the Domain Name, and that the Domain Name was registered and is being used in bad faith. Am. Compl. ¶¶ 7–13. The panel ordered the Domain Name to be transferred to Defendant.[3] *Id.* ¶ 13.

[2] ICANN is the nonprofit organization that is responsible for the management of the internet domain name system. Defendant's Memorandum of Law in Support of Motion to Dismiss ("Def.'s Mem.") (Doc. 19) n. 1. The ADNDRC is a dispute resolution service provider accredited by the ICANN, and it was jointly established by the China International Economic and Trade Arbitration Commission and the Hong Kong International Arbitration Center in 2002. *Id.*

[3] Defendant contends that according to Section 4(k) of UDRP, the order to transfer the Domain Name is stayed due to the filing of the instant law suit, and that the ownership of the Domain Name still rests with Plaintiff. Def.'s Mem. at 3–4. URDP § 4(k) provides that "the mandatory administrative proceeding requirements shall not prevent [either party] from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded," and that the decision will not be implemented if the party has commenced a lawsuit within ten days of the notice of the decision, and that no further action will be taken until there is a resolution between the parties, or the lawsuit has been dismissed or withdrawn. *Id*. at n. 2. Defendant does not challenge the instant action on grounds that it was filed more than ten days after notice of the decision. The factual record before the Court does not indicate the date of notification, although the ruling was issued on July 21, 2016.

II. Procedural Background

On August 2, 2016, Plaintiff, acting *pro se*, filed the instant action. Complaint, Doc. 1. On December 23, 2016, pursuant to an agreement by the parties, Plaintiff, assisted by counsel, filed an Amended Complaint, alleging two federal claims—unfair and deceptive competition under Federal Trade Commission Act, and failure to register with the U.S. Department of Justice pursuant to the Foreign Agents Registration Act. Plaintiff also alleges state law claims of trover and conversion, trespass to chattel, and unjust enrichment.[4] Am. Compl. On January 23, 2017, Defendant filed the instant motion to dismiss Plaintiff's Amended Complaint. Defendant's Notice of Motion to Dismiss ("Def's Mot.") (Doc. 18). Plaintiff's counsel subsequently sought to withdraw, and on March 3, 2017, the Court granted Plaintiff's counsel's withdrawal. Doc. 24. Plaintiff has been acting *pro se* since.

III. Legal Standard

A. Rule 12(b)(6) Motion to Dismiss Standard

Under Rule 12(b)(6), a complaint may be dismissed for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). When ruling on a motion to dismiss pursuant to Rule 12(b)(6), the Court must accept all factual allegations in the complaint as true and draw all reasonable inferences in the plaintiff's favor. *Koch v. Christie's Int'l PLC*, 699 F.3d 141, 145 (2d Cir. 2012). However, the Court is not required to credit "mere conclusory statements" or "threadbare recitals of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)); *see also id*.

[4] Additionally, Plaintiff alleges that Defendant infringed on his "trade name privacy," and that Defendant illegally expropriated and nationalized a U.S. citizen's property in violation of the Fifth Amendment and the "law of nations." Am. Compl. ¶¶ 71–77. These claims are not cognizable. First, "trade name privacy and infringement" is not a cause of action under Federal or New York state law. Second, the Fifth Amendment only applies to the federal government, and a claim cannot be brought against foreign entities or private actors. *San Francisco Arts & Athletics, Inc. v. U.S. Olympic Comm.*, 483 U.S. 522, 522 (1987). Third, Plaintiff generically asserts without specifying what "law of nations" Defendant has allegedly violated. Plaintiff thus fails to assert any valid claims based on these allegations, and they are dismissed.

at 681 (citing *Twombly*, 550 U.S. at 551). "To survive a motion to dismiss, a complaint must contain sufficient factual matter . . . to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). If the plaintiff has not "nudged [his] claims across the line from conceivable to plausible, [the] complaint must be dismissed." *Twombly*, 550 U.S. at 570.

B. *Pro Se* Plaintiff

The same standard applies to motions to dismiss for *pro se* plaintiffs. *See Zapolski v. Fed. Republic of Germany*, 425 F. App'x 5, 6 (2d Cir. 2011). Generally, the Court is obligated to construe a *pro se* complaint liberally, and to interpret a *pro se* plaintiff's claims as raising the strongest arguments that they suggest. *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d. Cir. 2006). Here, however, while Plaintiff is currently proceeding *pro se*, the Amended Complaint was drafted with the assistance of his retained lawyer. Courts in this District have observed that it would be "fundamentally unfair" to extend the special solicitude typically afforded *pro se* parties to submissions drafted by lawyers. *Simpson v. Wells Fargo Bank*, No. 15 Civ. 1487 (JMF), 2016 WL 393544, at *2 (S.D.N.Y. Feb. 1, 2016); see also *CIT Grp./Commercial Servs., Inc. v. Prisco*, 640 F. Supp. 2d 401, 407 (S.D.N.Y. 2009) (concluding that *pro se* defendant's motion papers assisted by a counsel need not be given the liberal reading normally afforded to a *pro se* party). While Plaintiff's Amended Complaint need not be given the liberal reading normally afforded to a *pro se* party, the ruling of this Court would not change if the Court gives it such a reading.

IV. Discussion

1. Unfair and Deceptive Competition Under the Federal Trade Commission Act

Plaintiff alleges a federal claim of unfair and deceptive competition pursuant to Section 5 of the Federal Trade Commission Act ("FTCA"). Am. Compl. ¶ 57. The FTCA empowers the Federal Trade Commission to enforce the statute when there are unfair or deceptive acts or practices in or affecting commerce, and does not provide for a private cause of action for consumers. *Shostack v. Diller*, No. 15 Civ. 2255 (GBD) (JLC), 2016 WL 958687, at *4 (S.D.N.Y. Mar. 8, 2016) (citing *Alfred Dunhill Ltd. v. Interstate Cigar Co*., 499 F.2d 232, 237 (2d Cir. 1974)). Accordingly, the Court dismisses the unfair and deceptive competition claim with prejudice.

2. Failure to Register with the U.S. Department of Justice Pursuant to the Foreign Agents Registration Act

Plaintiff claims that Defendant and its agents, acting under the sponsorship of Xinhua News Agency, have failed to register themselves with the U.S. Department of Justice according to the Foreign Agents Registration Act ("FARA"). Am. Compl. ¶¶ 69–70.

The FARA requires that agents representing the interests of foreign powers in a "political or quasi-political capacity" disclose their relationship with the foreign government and information about related activities and finances. 18. U.S.C. §219. The purpose of the Act is "to provide centralized reporting system to track activities of agents acting on behalf of foreign countries . . . and no language in statute or its legislative history suggests that Congress intended to establish cause of action in any entity other than Federal Government." *Comm. for a Free Namibia v. S. W. Africa People's Org*., 554 F. Supp. 722 (D.D.C. 1982). Accordingly, the Court dismisses the FARA claim with prejudice.

3. Supplemental Jurisdiction Over the Remaining State Law Claims

Federal district courts have supplemental jurisdiction over state law claims "that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). The doctrine of supplemental jurisdiction is traditionally "a doctrine of discretion, not of plaintiff's right." *Kolari v. N.Y.-Presbyterian Hosp.*, 455 F.3d 118, 122 (2d Cir. 2006) (quoting *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966)). Subsection (c) of § 1367 enumerates circumstances in which a district court "may decline to exercise supplemental jurisdiction over a claim under subsection (a)." 28 U.S.C. § 1367(c). One such circumstance is where, as here, "the district court has dismissed all claims over which it has original jurisdiction." *Id.* at § 1367(c)(3).

Once a district court's discretion is triggered under § 1367(c)(3), it balances the traditional "values of judicial economy, convenience, fairness, and comity" in deciding whether to exercise jurisdiction. *Kolari*, 455 F.3d at 122 (quoting *Carnegie–Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988)). The Supreme Court has noted that in a case where all federal claims are eliminated before trial, "the balance of factors . . . will point toward declining to exercise jurisdiction over the remaining state-law claims." *Id.* (quoting *Cohill*, 484 U.S. at 350 n. 7); *see also Gibbs*, 383 U.S. at 726 ("Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law . . . [I]f the federal law claims are dismissed before trial . . . the state claims should be dismissed as well."). Accordingly, as Plaintiff's federal claims have all been dismissed with prejudice, the Court declines to exercise jurisdiction over the remaining state law claims.

V. Conclusion

For the reasons stated above, Defendants' motion to dismiss Plaintiff's Amended Complaint is GRANTED with prejudice. Accordingly, Defendants' motion requesting oral argument is DENIED as moot. The Clerk of the Court is respectfully directed to terminate the motion, Doc. 18, and close the case.

It is SO ORDERED.

Dated: July 24, 2017
New York, New York

Edgardo Ramos, U.S.D.J.