

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL CASE NO. 1:13cv31

CLEAN CONTROL CORPORATION,)
)
 Plaintiff,)
)
 vs.)
)
 TERRY D. SIMPSON, d/b/a)
 TS Products Online,)
)
 Defendant.)
 _____)

ORDER

THIS MATTER is before the Court on the Defendant's Motion to Dismiss [Doc. 11].

PROCEDURAL HISTORY

This action was initiated by the Plaintiff on February 14, 2013 alleging claims of trademark infringement, cybersquatting, and unfair competition pursuant to the Lanham Act as well as common law claims. [Doc. 1]. In the Complaint, it is alleged that the Plaintiff is the owner and continuous user of United States Patent and Trademark registration No. 3956561 for LETHAL. [Id. at 1-3]. It is also alleged that the Plaintiff uses this mark in connection with hunting, fishing and outdoor related scent elimination

products, bug sprays, attractants and cleaners. [Id. at 1]. The Defendant is alleged to be making junior use of the mark LETHAL HUNT and a corresponding domain LETHALHUNT.COM in connection with the online sale of hunting, fishing, camping and outdoor related products. [Id.]. That use, it is alleged, infringes on the Plaintiff's mark and has caused and is likely to continue to cause confusion. [Id.].

The Defendant appeared *pro se* on April 1, 2013, by filing the pending Motion to Dismiss. [Doc. 11]. The Plaintiff timely filed a response in opposition to the motion. [Doc. 12].

DISCUSSION

It is first noted that the Rules of Practice and Procedure of the United States District Court for the Western District of North Carolina require that supporting legal briefs be filed contemporaneously with motions. Local Rule 7.1(C). The Defendant did not file a brief in support of the Motion to Dismiss. For this reason alone, the motion must be dismissed.

In the motion, the Defendant basically recounts facts in support of his position that he is not infringing the Plaintiff's mark and discloses attempts by the parties to resolve the issues between them. [Doc. 11]. The Plaintiff also poses questions to the Court therein. [Id.]. It is unclear on what grounds the motion is based but it is best construed as a motion to dismiss

for failure to state a claim. Fed.R.Civ.P. 12(b)(6). The Plaintiff refers in the motion to matters which are outside the scope of the Complaint, which is not allowed pursuant to the Federal Rules of Civil Procedure. Fed.R.Civ.P. 12(d).

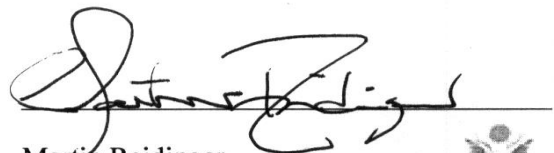
For these reasons the Motion to Dismiss must be denied. The Defendant is cautioned that should he elect to continue to appear *pro se* in this matter, he must abide by the rules of procedure as well as the rules of this Court.

ORDER

IT IS, THEREFORE, ORDERED that the Defendant's Motion to Dismiss [Doc. 11] is hereby **DENIED**.

IT IS FURTHER ORDERED that on or before fifteen (15) days from entry of this Order, the Defendant shall file Answer or otherwise make appearance in this action in compliance with all applicable rules of practice and procedure.

Signed: April 25, 2013


Martin Reidinger
United States District Judge

