

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

TYRONE BLOCKER,

Plaintiff,

v.

BANDMINE.COM, et al.,

Defendants.

MOSMAN, J.,

No. 3:16-cv-1709-AC

OPINION AND ORDER

On August 25, 2017, Magistrate Judge John V. Acosta issued his Findings and Recommendation (“F&R”) [75], recommending GRANTING Defendant eBay, Inc.’s (“eBay”) Motion to Dismiss [8] Plaintiff Tyrone Blocker’s (“Blocker”) First Amended Complaint¹ with prejudice and without leave to amend, GRANTING Defendant Webnames CA Inc.’s (“Webnames”) motion to dismiss [29] for failure to state a claim with leave to amend, and DISMISSING Blocker’s claim against Bandmine.com (“Bandmine”) for lack of timely service.

Blocker filed objections and amended objections, which the Court accepted. Defendant Webnames responded to the objections, and Defendant eBay responded to the amended objections.

¹ After the parties completed their briefing on Defendants’ Motion to Dismiss, Blocker filed a First Amended Complaint [56]. In light of the Amended Complaint, Judge Acosta ordered Defendants to file supplemental briefs addressing to extent to which Plaintiff’s amendments cured the defects asserted in Defendants’ Motions to Dismiss, if at all. Defendants filed supplemental briefing.

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendations as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny with which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon careful review, I agree with Judge Acosta's recommendations and ADOPT the Amended Findings and Recommendation [75] as my own opinion. Defendant eBay's Motion to Dismiss [8] Plaintiffs' First Amended Complaint with prejudice and without leave to amend is GRANTED. Defendant Webnames' Motion to Dismiss [29] for lack of jurisdiction is GRANTED. Blocker's claims against Bandmine are DISMISSED for lack of timely service.

Defendant eBay's Motion for Sanctions [29] is DENIED. Plaintiff, however, is cautioned that any attempts to file amended complaints naming eBay as a defendant or to file subsequent lawsuits against eBay arising from the same transactional nucleus of facts may support a finding of bad faith, exposing Blocker to sanctions under Section 1927, Rule 11, or the Court's inherent power to sanction.

Plaintiff may file an amended complaint against Defendant Webnames. Any amended complaint must remedy the jurisdictional defects present in the Complaint and First Amended

Complaint and allege sufficient facts to establish Blocker's interest in the intellectual property at issue in his claims. Additionally, any amended complaint must be filed within thirty days of the date this order is filed. Failure to file an amended complaint may result in dismissal of this case.

IT IS SO ORDERED.

DATED this 26 day of September, 2017.



MICHAEL W. MOSMAN
Chief United States District Judge