

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Loretta L. Samuel and William R. Samuel,)	
)	C/A No. 3:11-0423-MBS
Plaintiffs,)	
)	
vs.)	
)	OPINION AND ORDER
ESPN, Inc.; and Federation Internationale de Football Association,)	
)	
Defendants.)	
)	

Plaintiffs Loretta L. Samuel and William R. Samuel, proceeding pro se, filed a complaint on February 22, 2011, alleging copyright infringement of a design used by Defendant ESPN, Inc. during the 2010 World Cup. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Paige J. Gossett for pretrial handling.

This matter is before the court on motion to dismiss for failure to comply with a court order to provide discovery, which motion was filed by Defendant ESPN, Inc. on May 24, 2012. See Fed. R. Civ. P. 37. By order filed May 25, 2012, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Plaintiff was advised of the dismissal procedures and the possible consequences of failing to respond adequately. Plaintiffs filed a response to Defendants' motion on May 29, 2012 and a supplemental response on June 6, 2012. Defendant ESPN, Inc. file a reply on June 8, 2012. Plaintiffs filed a surreply on June 11, 2012. On September 4, 2012, the Magistrate Judge issued a Report and Recommendation in which she noted that Plaintiffs had now provided Defendant ESPN, Inc. with all the documentary evidence they possessed to support their claims and damages. The Magistrate Judge concluded that sanctions under Rule 37 are not warranted. Accordingly, the Magistrate Judge recommended that Defendant ESPN, Inc.'s motion to dismiss be denied. The

Magistrate Judge also noted that Defendant Federation Internationale de Football Association had not been timely served with process. She recommended that this Defendant be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m). No party filed objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court may accept, reject, or modify, in whole or in part, the Report and Recommendation or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has thoroughly reviewed the record. The court adopts the Report and Recommendation and incorporates it herein by reference. Defendant’s motion to dismiss (ECF No. 138) is **denied**. Defendant Federation Internationale de Football Association is **dismissed without prejudice** pursuant to Rule 4(m). The case is recommitted to the Magistrate Judge for additional pretrial handling.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Chief United States District Judge

Columbia, South Carolina

September 26, 2012