

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

AUTHENTICOM, INC.,

Plaintiff,

v.

ORDER

CDK GLOBAL, LLC and
THE REYNOLDS AND REYNOLDS COMPANY,

17-cv-318-jdp

Defendants.

Authenticom asks the court to summarily deny defendants' motions to dismiss and to dismiss Reynolds's counterclaims as procedurally improper. Dkt. 190. I have some sympathy for Authenticom's position. The parties have expended a great deal on the preliminary injunction proceedings, and it would be much more efficient to present the potentially dispositive issues all at once in motions for summary judgment.

Nevertheless, the court will not summarily deny defendants' motions to dismiss. At Authenticom's request, its motion for preliminary injunction was briefed, heard, and decided on an expedited basis. The court must "be cautious in adopting conclusions of law made in ruling on a preliminary injunction because the posture of the case at that time inevitably entails incomplete evidentiary materials and hurried consideration of the issues." *Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Stop Treaty Abuse-Wis., Inc.*, 991 F.2d 1249, 1258 (7th Cir. 1993). It seems unlikely that the court would dismiss the core antitrust claims on a Rule 12 motion, but the court did not reach the merits of several of Authenticom's claims at all. The bottom line is that defendants are entitled to test the legal sufficiency of Authenticom's pleading by a Rule 12 motion.

That said, the court will not promise expedited consideration of defendants' motions to dismiss. The court will grant Authenticom's request to extend the briefing schedule. CDK does not oppose the requested extension, Dkt. 203, at 7, and Reynolds indicates that it is amenable to extending the briefing schedule, too, *see* Dkt. 200, at 2 n.4. Authenticom's response(s) to the motions to dismiss will be due September 8, 2017, as requested. Defendants' replies will be due October 6, 2017. But note well: the parties are warned to press on with discovery in case the Rule 12 motions are denied. The court intends to keep this case on schedule for summary judgment and trial, so that the ultimate resolution is not delayed.

Reynolds has agreed to withdraw its counterclaims. Dkt. 200, at 2 n.3. It will refile them with its answer.

ORDER

IT IS ORDERED that:

1. Plaintiff Authenticom, Inc.'s motion for summary denial of defendants' motions to dismiss and to dismiss or strike Reynolds's counterclaims, or, in the alternative, for an extension of time, Dkt. 190, is GRANTED in part and DENIED in part.
2. Plaintiff's response(s) to the motions to dismiss, Dkt. 175 and Dkt. 187, will be due September 8, 2017. Defendants' replies will be due October 6, 2017.
3. Defendant the Reynolds and Reynolds Company's counterclaims, Dkt. 180, are withdrawn. The clerk's office should disregard the entry. Reynolds will refile its counterclaims with its answer.

Entered August 4, 2017.

BY THE COURT:

/s/ _____
JAMES D. PETERSON
District Judge