

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION



LIBERTARIAN NAT'L COMMITTEE, INC.,

Plaintiff,

v.

ROBERT KLOR DEAN,

Defendant.

CIVIL ACTION NO.: 3:23-cv-155

JURY TRIAL DEMANDED

NOTICE AND MOTION TO DISMISS

Comes now the Defendant with his Motion to Dismiss.

1. The named Defendant is not a proper Defendant in that Robert Klor Dean is an individual. The entity, Tidewater Libertarian Party, would be the proper Defendant for such action.
2. The Defendant has taken all of the steps requested by the Plaintiff regarding using, advertising or publicizing any information that includes or refers to Plaintiff's Trademarks, thereby making this case moot.
3. James St. John was the Secretary, an officer, in the Tidewater Libertarian Party. Mr. St. John failed to file the required paperwork for continuing affiliation in the National Party (the Plaintiff), and then hand delivered the cease-desist letter on behalf of the Virginia Libertarian Party, therefore the Plaintiff comes to this court with unclean hands.

4. As a registered affiliate of the Libertarian Party of Virginia, the Tidewater Libertarian Party was to be notified that a meeting and vote of the State Central Committee members for removal of its affiliation. Such notice was never provided to the Tidewater Libertarian Party, or that such a meeting and vote ever took place.
5. Rather than causing damage or harm, the Defendant has enhanced the goodwill and reputation (Paragraph 70 of the complaint) as described in the exhibit that begins “On January 11, 2014” submitted as part of Defendant’s original answer which began “Dear Judge Young”.
6. 12(b)(6) Plaintiff admits that damages “cannot be fully measured.” (Paragraphs 42, 57, 72 and 78 of the Complaint) therefore the Plaintiff has failed to state a claim on which relief can be granted.
7. The Plaintiff has failed to comply with the Initial Scheduling Order of this Court to conduct a Rule 26(f) discovery planning conference, nor has an exchange of initial disclosures occurred pursuant to Federal Rule of Civil Procedure 26(a).
8. Count II should be dismissed as the Statute of Limitations has passed. Unfair competition has a two-year statute of limitations. The Plaintiff has acknowledged awareness prior to April 14, 2021.
9. The Plaintiff has failed to comply with the Order of this Court dated May 16, 2023 to file a Status Report addressing whether Defendant’s representations regarding the actions of the Tidewater Libertarian Party render the case and controversy before the court moot, WHICH THEY WOULD.

10. Under the Lanham Act, in order for the Plaintiff to establish trademark infringement, the Plaintiff must show that (a) the plaintiff has a valid and legally protectable mark; (b) the defendant used the mark in interstate commerce; and (c) the defendant's use of the mark to identify goods or services causes a likelihood of confusion. Here, the Complaint fails on the second and third elements, as no interstate commerce has occurred and confusion is likely. All marketing was directed toward local membership. The defendant has taken no action that could be construed as diverting members or membership fees away from the national party.
11. Venue is not proper at this action should have been filed in the Eastern District of Virginia.
- Plaintiff has also not addressed why venue is appropriate in this Division and/or whether the case should be transferred to the Norfolk Division of the Eastern District of Virginia.

June 3, 2023

Respectfully Submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the forgoing Amended Answer to Complaint was emailed on the 3rd day of June, 2023 to the following:

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