UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN F. TAMBURO D/B/A MAN'S BEST FRIEND SOFTWARE,	)	
Plaintiff,	)	
v.	)	Case No. 04 C 3317
STEVEN DWORKIN, KRISTEN HENRY, ROXANNE HAYES, KAREN MILLS, WILD SYSTEMS PTY, LTD., an Australian corporation,	)	Judge Joan B. Gottschall
Defendants.	)	

ORDER

Plaintiff John F. Tamburo d/b/a Man's Best Friend Software ("MBFS") has sued four individuals and an Australian corporation under numerous legal theories for losses MBFS allegedly incurred arising out of disputes as to ownership of the contents of online dog pedigree databases. Presently before the court is the defendants' joint motion to dismiss MBFS's third amended complaint, which argues among other things that Tamburo–who is proceeding *pro se*–is not the real party in interest. Although MBFS currently is a d/b/a for Tamburo as an individual, MBFS operated as an Illinois corporation, Versity Corp. ("Versity"), for the time periods at issue in the complaint.[1] Tamburo was the president, CEO and sole shareholder of Versity prior to its dissolution, which occurred around the time that this action was filed.

The third amended complaint alleges the following facts relevant to this motion. MBFS designs and sells software for use by animal breeders. One of MBFS's products is The Breeder's Standard .NET ("TBS.NET"), a program accessed via an internet web browser that provides paying customers with access to dog breeding and pedigree information stored in a database. Defendants

[1] The court takes judicial notice of the fact that Versity was incorporated before any of the activities alleged in the third amended complaint took place.

Steven Dworkin, Kristen Henry, Roxanne Hayes and Karen Mills (the "individual defendants") also operate websites that provide access to dog pedigree databases, but those websites apparently are not-for-profit ventures that offer access to their databases free of charge.

Tamburo wrote a computer program that automatically retrieved the pedigree information provided by the individual defendants' websites, removed the formatting, and imported that information into MBFS's TBS.NET product. According to the complaint, none of the individual defendants' websites employed any of the commonly accepted methods for disallowing access to the websites by automated programs or "robots"[2] such as the one deployed by MBFS. Nevertheless, the individual defendants voiced their displeasure that MBFS extracted the pedigree information from their databases and incorporated it into a commercial product. At least some of the individual defendants accused MBFS of theft of their respective database information on websites, internet discussion forums, or emails sent to multiple individuals, and also called for a public boycott of MBFS products. Examples of the complained of language are as follows:

- "MBFS (The Breeders [*sic*] Standard) purposefully and willfully stole the Pedigree Databases of many breeds, including this one, using a data mining robot. They are now offering access to the data for use at $9.95/month from their site."

- "Man's Best Friend Software aka The Breeders [*sic*] Standard has 'harvested' the information contained in the Poodle Pedigree database and other privately maintained online databases without permission and is SELLING this information on their web site. I call on MBFS to make this information available FREE to everyone, since the company maintains that the 'stolen' data is not copyright protected and free for the taking. Until this data is made available FREE to everyone PLEASE BOYCOTT MBF/TBS"

- "If you have submitted info to the Cavaliers Online database over the years and resent the fact that someone would steal your information and publish it on a paid website without your permission, please complain by email or phone to MBFS['s] owner: John F Tamburo ... Versity Corporation"

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[2] A "robot," in this context, is a computer program designed to traverse a website automatically, recursively retrieving all documents referenced by the website. *See* The Web Robots FAQ, http://www.robotstxt.org/wc/faq.html.

- "Breeders [*sic*] Standard has stolen my Schipperke database and is offering it as a perk if you buy their software. Schipperke people, you don't need that perk, as you already have my site to use for free ... I am asking the Schipperke fancy to complain loudly to MBFS. Why should I do all this work so MBFS can steal it and sell their software with this stolen perk?"

According to the complaint, MBFS sustained substantial economic harm as a result of these statements.

Some of MBFS's theories of liability are predicated on the individual defendants' alleged relationship with defendant Wild Systems Pty. Ltd. ("Wild"), a software company whose products compete with MBFS's offerings. At least some of the individual defendants advocate the use of Wild's "Breedmate" software and advertise Breedmate on their websites. In addition, Wild's president maintains an electronic "Breedmate User Group" discussion forum where much of the conduct complained of by MBFS allegedly occurred. According to the complaint, Wild worked in concert with the individual defendants to damage MBFS by falsely accusing MBFS of theft and by encouraging dog owners to request that their pedigree information be removed from MBFS's products. MBFS's nineteen count complaint seeks a declaratory judgment that the contents of the individual defendants' databases were facts not subject to copyright protection and that the copying of the database contents was otherwise permissible, and also charges the defendants with extortion, defamation, tortious interference with prospective business relationships, unfair competition, violation of federal and Illinois antitrust laws, and civil conspiracy.

Defendants argue that Versity, rather than Tamburo as an individual, is the real party in interest in this suit because "all of the actions alleged in the complaint arise from conduct initiated by Versity" and the context of the allegedly defamatory or otherwise unprivileged statements makes clear that the statements referenced MBFS as a business. The court agrees. The complaint and its numerous exhibits illustrate that Tamburo was acting as an agent of Versity, and each count with

the exception of the request for declaratory judgment stresses the alleged harm to MBFS's business interests. Because Versity is the real party in interest, defendants urge the court to dismiss this action or, in the alternative, require amendment to reflect Versity as plaintiff. Defendants' request is motivated at least in part by the fact that Tamburo is proceeding *pro se*, which is a privilege not afforded to corporations. *See, e.g., Scandia Down Corp. v. Euroquilt, Inc.*, 772 F.2d 1423, 1427 (7th Cir. 1985).

Tamburo does not dispute defendants' contention that Versity was the real party in interest for the time periods relevant to the complaint or that the suit was brought in his own name for purposes of appearing *pro se*. Rather, Tamburo argues that he currently has standing to bring this action because Versity was voluntarily dissolved and he is the successor to all of Versity's rights and assets, including causes of action.[3] However, as set forth below, the assignment of Versity's claims to Tamburo does not excuse the requirement that those claims be prosecuted through a duly licensed attorney.

As an initial matter, despite Tamburo's assertion that Versity "no longer exists," Versity is not incapable of pursuing this case in its own name merely because it has been dissolved. Corporations may remain in existence for a period of time after dissolution for the purpose of pursuing and defending litigation. As the Supreme Court explained: "[A] time-honored feature of the corporate device is that a corporate entity may be utterly dead for most purposes, yet have enough life remaining to litigate its actions. All that is necessary is a statute so providing." *Defense Supplies Corp. v. Lawrence Warehouse Co.*, 336 U.S. 631, 634-35 (1949). Illinois has such a "corporate survival" statute, which provides that "the dissolution of a corporation ... shall not take

[3] The "Contract of Transfer" assigning Versity's rights and assets to Tamburo provides that Versity "assigns to [Tamburo] all of its rights and liabilities in litigation, whether or not suit has been filed, including all rights to collective punitive damages and any other amount that, but for this assignment, would be due to Versity and/or inure to its benefit." Pl.'s Resp. Ex. 41 at ¶ 4.

away nor impair any civil remedy available to or against such corporation, its directors, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within five years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name." 805 ILCS 5/12.80.[4]

If Versity had brought these claims in its corporate name, it would have been required to appear by counsel. *Scandia Down*, 772 F.2d at 1427; *Strong Delivery Ministry Association v. Board of Appeals*, 543 F.2d 32, 33-34 (7th Cir. 1976). The rule that corporations may not appear *pro se* is "venerable and widespread." *Jones v. Niagara Frontier Transp. Auth.*, 722 F.2d 20, 22 (2d. Cir. 1983) (collecting cases). Because a corporation, out of necessity, must be represented by a natural person in court, there are strong policy reasons for requiring that person to be an attorney. Among other things, "the conduct of litigation by a nonlawyer creates unusual burdens not only for the party he represents but as well for his adversaries and the court. The lay litigant frequently brings pleadings that are awkwardly drafted, motions that are inarticulately presented, proceedings that are needlessly multiplicative. In addition to lacking the professional skills of a lawyer, the lay litigant lacks many of the attorney's ethical responsibilities, *e.g.*, to avoid litigating unfounded or vexatious claims." *Id.*

Circumventing the rule that a corporation must appear by counsel by assigning a corporation's claims to a non-lawyer is a practice which federal courts have repeatedly disapproved. *See, e.g., Jones*, 722 F.2d at 23 (assignment to CEO and sole shareholder); *Nat'l Indep. Theatre Distribs., Inc. v. Buena Vista Distrib. Co.*, 748 F.2d 602, 610-11 (11th Cir. 1984) (assignment to sole

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[4] Tamburo cites 805 ILCS 5/12.30, setting forth the effect of corporate dissolution, for the proposition that "dissolution of a corporation terminates its corporate existence"; however, this section also provides that "[d]issolution of a corporation does not ... [p]revent suit by or against the corporation in its corporate name." 805 ILCS 5/12.30(c)(4)

shareholder of dissolved corporation); *Capital Group, Inc. v. Gaston & Snow*, 768 F. Supp. 264 (E.D. Wisc. 1991) (assignment to president and sole shareholder). As the Second Circuit has explained, "[t]o allow [the lay individual] to appear *pro se* ... would be allowing him to flout a well-established and purposeful public policy by means of a procedural device. [The lay individual] chose to accept the advantages of incorporation and must now bear the burdens of that incorporation; thus, he must have an attorney present the corporation's legal claims." 722 F.2d at 23 (quoting *Mercu-Ray Industries, Inc. v. Bristol-Myers Co.*, 392 F. Supp. 16, 18-20 (S.D.N.Y. 1974)). Because Versity can still bring claims in its own name, the fact that Versity has been dissolved does not change this analysis. *See, e.g., Nat'l Indep. Theatre Distribs.*, 748 F.2d at 610-11; *Finast Metal Prods., Inc. v. United States*, 12 Cl. Ct. 759, 761-63 (1987).[5]

Although Tamburo is a frequent litigant in the Northern District of Illinois,[6] he is not an attorney, and his performance in this action to date underscores why the court should require Versity's claims to be brought by counsel. Tamburo's filings are numerous and often duplicative, contain mistakes of law and *ad hominem* invective, and baselessly charge defendants' counsel with making frivolous arguments, including the argument presently before the court. The court infers from these shortcomings no deliberate attempt to mislead the court or the defendants, but it is clear

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[5] Tamburo also maintains that, '[d]ue mainly to the defendants' trumped-up 'theft' charges, and their well-planned campaign to damage this company and promote the competitor who was helping them do this, I am unable to afford an attorney to prosecute this litigation." Pl.'s Resp. Ex. 40 ¶ 17. However, the argument that allegations of poverty entitle a corporation to appear *pro se* has been rejected by other courts, including a court in this circuit. *See, e.g., Glaston & Snow*, 768 F. Supp at 265; *Woodford Manufacturing Co. v. A.O.Q., Inc.*, 772 P.2d 652, 654 (Col. App. Ct. 1989). *See also Rowland v. CA Men's Colony*, 506 U.S. 194, 201-03 (1993) (rejecting argument that a corporation may proceed *in forma pauperis* upon the requisite proof of its indigency).

[6] *See, e.g., Tamburo v. eBay Inc.*, No. 02 C 5292 (N.D. Ill.); *Tamburo v. Current Credit, Inc.*, No. 00 C 1596 (N.D. Ill.); *Tamburo v. Dawn Treaders Inc.*, No. 99 C 4565 (N.D. Ill.); *Tamburo v. Duncan*, No. 96 C 4837 (N.D. Ill.); *Tamburo v. Calvin*, No. 94 C 5206 (N.D. Ill.).

Tamburo lacks the detachment and professional skill appropriate to the efficient conduct of this litigation. In addition, this suit may raise novel and highly complex issues regarding the scope of property rights in electronic content accessed over the Internet, and the court would be extremely burdened were it forced to decide these issues without the assistance of competent counsel for all parties.

For the reasons set forth above, MBFS's third amended complaint is dismissed without prejudice. MBFS may reinstate this litigation by filing an amended complaint signed by an attorney admitted to practice before this court within 45 days from the date of issuance of this order. Any future pleadings, motions, or any other papers filed on behalf of the plaintiff in this litigation likewise shall be signed by an attorney admitted to practice before this court.

ENTER:

/s/
Joan B. Gottschall
United States District Judge

Dated: June 24, 2005