

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION



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ZACHARY RICHARD ZELLERS,

Plaintiff,

v.

DIZ JACKSON *et al.*,

Defendants.

CAUSE NO. 3:25cv161 DRL

ORDER

On February 20, 2025, Zachary Zellers filed a *pro se* complaint and a motion for leave to proceed *in forma pauperis*. Mr. Zellers submitted a standard *in forma pauperis* form detailing that he has no gross income and limited assets [2]. That said, his complaint [1] does not meet federal pleading standards. *See* 28 U.S.C. § 1915(a)(1).

The court construes Mr. Zellers's *pro se* pleading liberally and takes all well-pleaded allegations as true. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Still, though *pro se* litigants are not held to the same standards as attorneys, *Kyle v. Patterson*, 196 F.3d 695, 697 (7th Cir. 1999), they are not exempt from the rules of civil procedure, *Jones v. Phipps*, 39 F.3d 158, 163 (7th Cir. 1994). Mr. Zellers's complaint does not comply with the Federal Rules of Civil Procedure.

Mr. Zellers says Diz Jackson and two John Does are using the trademark "DJ ZMAN" on the internet and social media without authorization, and this improper use threatens his reputation and brand [1 at 2; 1-1 at 1, 4-6]. He provides documents showing that the Secretary of State of Indiana has issued the trademark to DJ ZMAN LLC [1-1 at 2-3]. He lacks the names for two of his defendants and addresses for all three, but asks the court to find out who is responsible [1 at 1-2].

The court has an independent obligation to ensure its subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3); *Smith v. Am. Gen. Life & Accident Ins. Co.*, 337 F.3d 888, 892 (7th Cir. 2003). Federal district courts have original jurisdiction over federal question cases—that is, “civil actions arising under the Constitution, laws, or treaties of the United States,” 28 U.S.C. § 1331—and diversity jurisdiction over lawsuits brought by citizens of different states when the amount in controversy exceeds \$75,000, 28 U.S.C. § 1332. Federal Rule of Civil Procedure 8 “requires a short and plain statement of the jurisdictional basis, which, however must be alleged affirmatively and distinctly and cannot be established argumentatively or by mere inference.” *McCready v. eBay, Inc.*, 453 F.3d 882, 890-91 (7th Cir. 2006) (quotations and citation omitted).

The court has federal question jurisdiction over certain trademark claims under the Lanham Act. 15 U.S.C. § 1051 *et seq.* Mr. Zellers has alleged Indiana trademark protection for “DJ ZMAN,” and a federally registered trademark isn’t needed under § 43(a)(1) of the Lanham Act for claim of trademark infringement likely to cause confusion. *See* 15 U.S.C. § 1125(a)(1)(A); *B & B Hardware, Inc., v. Hargis Indus., Inc.*, 575 U.S. 138, 144-145 (2015) (“owner of a mark, whether registered or not, can bring suit in federal court if another is using a mark that too closely resembles the plaintiff’s” and that use “is likely to cause confusion, or to cause mistake, or to deceive.”) (citation omitted); *Johnny Blastoff, Inc. v. Los Angeles Rams Football Co.*, 188 F.3d 427, 435 (7th Cir. 1999) (“Infringement of unregistered marks is actionable under the Lanham Act.”). As a result, the court would have federal question jurisdiction over such a claim.

But the complaint has another vital jurisdictional problem: the “DJ ZMAN” trademark is held by DJ ZMAN LLC, not Mr. Zellers [1-1 at 2-3]. This means DJ ZMAN LLC’s trademark is allegedly being infringed upon, and Mr. Zellers lacks the requisite injury to have standing to sue. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563 (1992) (injury in fact “requires that the party seeking review be himself among the injured”) (quotation and citation omitted). Rather, DJ ZMAN LLC, the real party in interest, must bring any such suit. An LLC cannot litigate *pro se* or be represented in litigation by a non-lawyer, *Philos Techs., Inc. v. Philos & D, Inc.*, 645 F.3d 851, 857-58 (7th Cir. 2011); *United States v. Hagerman*, 545 F.3d 579, 581-82 (7th Cir. 2008), nor can one litigate *in forma pauperis*, *Rowland v. Cal. Men’s Colony*, 506 U.S. 194, 196 (1993) (“only a natural person may qualify for treatment *in forma pauperis* under § 1915”).

The court must next determine whether his complaint is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant. 28 U.S.C. § 1915(e)(2)(B). Though the court must construe his complaint liberally, *see Erickson*, 551 U.S. at 94, it has “ample authority to dismiss frivolous or transparently defective suits spontaneously,” *Hoskins v. Poelstra*, 320 F.3d 761, 763 (7th Cir. 2003). The court will not grant the *in forma pauperis* motion if the complaint fails to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii). A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The statement must contain enough factual matter, accepted as true, to state a plausible claim, not a speculative one. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

Mr. Zellers seeks to prevent others from using the “DJ ZMAN” trademark without authorization. To do so under § 43(a)(1) of the Lanham Act, he must show a defendant has used in connection with any goods or services “any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which . . . is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person.” 15 U.S.C. § 1125(a)(1)(A); see *Forest River, Inc. v. InTech Trailers, Inc.*, 699 F. Supp.3d 712, 724-25 (N.D. Ind. 2023). His complaint only says others are using the trademark on social media. He doesn’t say the defendants have used the trademark in connection with goods or services, and he hasn’t said anything about likelihood of confusion. The complaint omits the details necessary to state a plausible claim.

The complaint has other issues. Mr. Zellers may not name John Does in a lawsuit and ask the court to investigate their identities and activities on his behalf. To begin, “it is pointless to include lists of anonymous defendants in federal court; this type of placeholder does not open the door to relation back under Fed. R. Civ. P. 15, nor can it otherwise help the plaintiff.” *Wudtke v. Davel*, 128 F.3d 1057, 1060 (7th Cir. 1997) (citation omitted). Beyond that, plaintiffs prosecute their cases, not the court. Discerning the identities, addresses, and other information about the defendants is homework DJ ZMAN LLC will have to do on its own.

Given that he is proceeding *pro se*, the court will afford Mr. Zellers another opportunity and let him file an amended complaint. See *Abu-Shawish v. United States*, 898 F.3d 726, 738 (7th Cir. 2018). He can substitute DJ ZMAN LLC as the plaintiff in this case, and the company—

so long as represented by counsel—can amend and proceed if it states a plausible claim. Any amended complaint must establish that the case falls within the limited jurisdiction of this court and provide as many facts as to what has transpired, such as the harm, who caused the harm, how they caused the harm, when they caused the harm, and the like. There must be sufficient facts pleaded to allow the court and the defendant to understand there is a plausible claim.

Accordingly, the court DENIES Mr. Zellers’s motion to proceed *in forma pauperis* without prejudice [2], AFFORDS leave to amend the complaint to become compliant with the federal rules by March 28, 2025, CAUTIONS him that failure to comply with this deadline, plead federal jurisdiction, pay the filing fee, or file a rule-compliant amended complaint will result in the dismissal of his case without further notice because his current complaint doesn’t establish his standing (a jurisdictional defect) and doesn’t state a claim.

SO ORDERED.

March 3, 2025

s/ *Damon R. Leichty*
Judge, United States District Court