

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

LITTLE KIDS, INC., :
Plaintiff, :
 :
v. : C.A. No. 18-533WES
 :
18th AVENUE TOYS, LTD., :
Defendant. :

REPORT AND RECOMMENDATION

PATRICIA A. SULLIVAN, United States Magistrate Judge.

In 2018, Plaintiff Little Kids, Inc., (“Little Kids”) sued Defendant 18th Avenue Toys, Ltd., (“18th Avenue”) asserting six registered federal trademarks protecting its BUBBLE BUCKET® and related products. On December 30, 2019, the parties entered into a settlement agreement, pursuant to which the Court entered a permanent injunction (“PI”); the parties’ agreement provided for the holding of an escrowed judgment in favor of Little Kids and against 18th Avenue for a fixed sum,¹ to be entered and executed only if 18th Avenue breached the PI. As the PI was in the process of being presented, signed and issued by the Court, Little Kids claims that it became aware of facts establishing that 18th Avenue was committing an ongoing breach of the PI. Based on its discoveries, Little Kids filed a motion to amend/supplement its complaint (ECF No. 28), seeking leave of Court to add new parties and allegations based on post-complaint developments. It also filed a motion for entry of the escrowed judgment (ECF Nos. 30, 34) for a fixed sum.

In a memorandum and order that issued earlier today (ECF No. 46), the Court laid out a summary of the facts and arguments presented by the parties in connection with these motions

¹ The terms of the settlement agreement are confidential; it was filed under seal in connection with these motions. The Court uses “a fixed sum” instead of the actual amount in light of this agreement.

and granted Little Kids' motion for leave to file an Amended/ Supplemental Complaint. This pleading includes a new Count X, which asserts the precise claim set out in the motion for entry of judgment. Further, both Count X and the motion for entry of judgment will require extensive discovery and a hearing to determine the applicable facts, particularly where the online offering allegedly in violation of the PI was not posted directly by 18th Avenue, but rather was posted by an entity named Hutton Toys, LLC, with which Little Kids claims 18th Avenue was conspiring and/or was an alter ego; 18th Avenue hotly denies all such allegations.

Based on the foregoing, and in the interest of judicial efficiency, I recommend that the Court pass the motion for entry of judgment (ECF Nos. 30, 34) for now, as mooted by the assertion of the precise same claim as Count X of the now-authorized Amended/Supplemental Complaint. As the parties proceed with discovery, Little Kids may refile the motion for entry of judgment at any time, subject to whatever scheduling order the Court may enter.

Any objection to this report and recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen (14) days of its receipt. See Fed. R. Civ. P. 72(b)(2); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court's decision. See United States v. Lugo Guerrero, 524 F.3d 5, 14 (1st Cir. 2008); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
May 20, 2020