

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

COMMERCIAL CONNECT, LLC)	CASE NO. 3:16-CV-00012-JHM
)	
Plaintiff,)	
)	
v.)	
)	
INTERNET CORPORATION FOR ASSIGNED)	
NAMES AND NUMBERS and THE)	
INTERNATIONAL CENTRE FOR)	
DISPUTE RESOLUTION,)	
)	
Defendants.)	
<hr/>)

**SPECIAL APPEARANCE BY DEFENDANT INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS' IN SUPPORT OF DISMISSAL OF THE ACTION
WITH PREJUDICE, IN ACCORDANCE WITH THIS COURT'S
APRIL 12, 2016 ORDER TO SHOW CAUSE**

INTRODUCTION

Plaintiff Commercial Connect, LLC (“Plaintiff”) has repeatedly failed to abide by the applicable Federal Rules of Civil Procedure and this Court’s orders. Plaintiff’s latest disregard for the process comes in Plaintiffs’ failure to respond to this Court’s April 12, 2016 Order to Show Cause regarding dismissal (“OSC”). (ECF No. 13.) In accordance with that OSC, defendant Internet Corporation for Assigned Names and Numbers (“ICANN”) hereby submits this brief statement in support of a dismissal with prejudice.¹

Beyond the clear deficiencies in Plaintiff’s Complaint, as highlighted in the Court’s January 26, 2016 Order denying Plaintiff’s Motion for Preliminary Injunction (ECF No. 11), dismissal with prejudice is warranted for at least three reasons. First, Plaintiff has failed to serve ICANN with the Complaint within 90 days of filing it, as required by Fed. R. Civ. P. 4 (“Rule 4”). Second, Plaintiff failed to respond to this Court’s OSC, which ordered Plaintiff to file a written submission explaining why Rule 4 did not mandate dismissal of the action. Third, Plaintiff disobeyed this Court’s January 26, 2016 Order which granted Plaintiff’s motion to withdraw and required Plaintiff to “secure replacement counsel” within thirty days. (ECF No. 11 at 2.) It appears that Plaintiff has abandoned this case, and it should therefore be dismissed with prejudice.

ARGUMENT

ICANN submits this short brief to demonstrate why dismissal with prejudice is warranted on three independent grounds.

¹ By filing this submission, ICANN does not submit to jurisdiction in this Court, or any court in Kentucky, and does not waive the requirement that Plaintiff properly serve ICANN with process.

First, Rule 4 *requires* that a court dismiss an action with prejudice if a “defendant is not served within 90 days after the complaint is filed[.]” Fed. R. Civ. P. 4(m). Here, the Complaint was filed on January 6, 2016, therefore Plaintiff’s 90-day deadline to serve ICANN with the Complaint fell on April 5, 2016. As such, Rule 4 requires that the Court dismiss the action with prejudice.

Second, this Court has already recognized that Plaintiff has missed its deadline to serve defendants with the Complaint, and issued the OSC requiring Plaintiff to “show cause, in writing, as to why the above-styled action should not be dismissed” by April 25, 2016. (ECF No. 13.) Plaintiff did not file a response by the April 25, 2016 deadline set forth in the OSC. Dismissal is therefore warranted for this reason, as well. *See, e.g., Shultz v. Taylor*, No. 3:14CV-P238-H, 2014 U.S. Dist. LEXIS 155076, at *1 (W.D. Ky. Oct. 31, 2014) (dismissing action after petitioner failed to submit response to order to show cause regarding why action should not be dismissed).

Third, Plaintiff is a corporate entity, and this Court has already recognized that “it is settled law that a corporation must appear in federal court through licensed counsel.” (ECF No. 11 at 2 (citing cases).) For that reason, in granting Plaintiff’s counsel’s motion to withdraw, this Court required Plaintiff to “secure substitute counsel” within thirty days, namely by February 25, 2016. (*Id.*) Plaintiff failed to do so. Accordingly, the action should be dismissed with prejudice for this independent reason as well, given that Plaintiff is a corporate entity and cannot proceed *pro se*. (*Id.*)

CONCLUSION

For the foregoing reasons, ICANN respectfully requests that the Court dismiss the above-captioned action with prejudice.

Dated: 28 April 2016

Respectfully submitted,

/s/ Michael W. Oyler

Michael W. Oyler

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INTERNET CORPORATION FOR

ASSIGNED NAMES AND NUMBERS