

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

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|------------------------|---|--------------------------------|
| RONALD J. RILEY, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 3:08CV642-HEH |
| |) | |
| JOHN DOZIER and DOZIER |) | |
| INTERNET LAW, P.C., |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM ORDER
(Granting Defendant's Motion to Dismiss Pursuant to Rule 12(b)(1))

THIS MATTER is before the Court on Defendant's Motion to Dismiss Pursuant to Rule 12(b)(1) (Dk. No. 6), filed on October 29, 2008. The parties have filed extensive memoranda stating their respective positions. The Court will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court, and argument would not aid in the decisional process. For the reasons stated herein, the Motion is GRANTED, and the case is DISMISSED.

Plaintiff filed his Complaint for Declaratory Relief and Damages ("Complaint") with the Court on October 2, 2008. Plaintiff seeks a declaration from the Court that Defendants have no cause of action against him in their independent action against Plaintiff, which Plaintiff removed to this Court from the Circuit Court for the County of Henrico, Virginia ("Dozier Action").

Plaintiff bears the burden of establishing the existence of federal subject-matter

jurisdiction. *Richmond, Fredericksburg, & Potomac R.R. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991). Plaintiff first contends that the Court has diversity jurisdiction over this case because the parties possess diversity in citizenship and the amount in controversy exceeds \$75,000 pursuant to 28 U.S.C. § 1332. While the Complaint initially states that the amount in controversy exceeds \$75,000, Plaintiff's prayer for relief makes clear that the amount in controversy falls far short of the statutory threshold. (Compl. ¶¶ 2, 22.) In addition to declaratory relief, Plaintiff seeks nominal damages, punitive damages in the amount of \$1,000, and attorney's fees and costs. Even taking into consideration the \$25,000 in attorney's fees Plaintiff contends he has incurred to date, the amount in controversy is well below the statutory requirement of \$75,000. Accordingly, the Court finds that it lacks diversity jurisdiction over the case.

Plaintiff also purportedly invokes the Lanham Act as a basis for federal question jurisdiction under 25 U.S.C. § 1331. Plaintiff states that his use of the names "Dozier" and "Dozier Internet Law" on his websites do not amount to trademark infringement under the Lanham Act. (Compl., ¶ 20.) He also alleges that his use of the names constitute fair use and is protected by the First Amendment. (Compl., ¶ 20.) Plaintiff's assertions, however, do not confer subject-matter jurisdiction on the Court. They amount to nothing more than defenses to Defendants allegations in the Dozier Action and do not create an action arising under federal law. *See King v. Marriott Int'l, Inc.*, 337 F.3d 421, 424 (4th Cir. 2003).

In addition to his claims for damages, Plaintiff seeks declaratory relief from the Court stating that Defendants have no cause of action against him in the Dozier Action. The Declaratory Judgment Act, 28 U.S.C. § 2201, “does not provide a source of jurisdiction which is independent of substantive federal law.” *Gibraltar, P.R., Inc. v. Otoki Group, Inc.*, 104 F.3d 616, 619 (4th Cir. 1997). In other words, for the Court to grant declaratory relief under the Declaratory Judgment Act, it must possess an independent basis for exercising federal subject-matter jurisdiction. *Id.* As stated, the Court lacks subject-matter jurisdiction over Plaintiff’s claims.¹ Defendants’ Motion to Dismiss is GRANTED pursuant to Rule 12(b)(1), and the case is DISMISSED.

The Clerk is directed to send a copy of this Order to all counsel of record.

It is SO ORDERED.

 _____ /s/
Henry E. Hudson
United States District Judge

Date: Nov. 29, 2008
Richmond, VA

¹The Court must also decline to adjudicate this case under the abstention doctrine established in *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). “Where timely and adequate state court review is available, a federal court sitting in equity must decline to interfere . . . where the ‘exercise of federal review of the question in the case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.’” *RF&P v. Forst*, 4 F.3d 244, 253 (4th Cir. 1993) (citing *Burford*, 319 U.S. at 332–34). The Court finds that the Dozier Action affords the parties timely and adequate state court review of these claims, and any equity ruling by the Court would improperly interfere with Virginia’s efforts to address the claims.