

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN W. FERRON,

Plaintiff,

v.

MEDIA BREAKAWAY, LLC, et al.,

Defendants.

Case No. 2:06-cv-322

JUDGE GREGORY L. FROST

Magistrate Judge Mark R. Abel

ORDER

This matter is before the Court for consideration of a motion to dismiss or, in the alternative, to stay the captioned case filed by Defendant Adteractive, Inc. (Doc. # 191). Also before the Court are motions for a stay predicated on the same grounds filed by Defendants LeadClick Media, Inc. (Doc. # 205), Rapid Response Marketing LLC (Doc. # 210), YFDirect, Inc., Emarketmakers, Inc., and Meta Reward, Inc. (Doc. # 214), and The Useful, LLC (Doc. # 237).

The basis for the requested stay is that the claims in this litigation are identical to the claims currently pending before the Sixth Circuit Court of Appeals in *Ferron v. Zoomego, Inc.*, Case No. 07-4007. The judicial officer presiding over the *Zoomego* proceedings in the district court reached a decision on Defendants' argument regarding the application of Federal Rules of Civil Procedure 9(b) and 12(b)(6) to the claims set forth in Plaintiff's pleading that is directly contrary to the position the undersigned took in the similar pending case of *Ferron v. Search Cactus, L.L.C.*, Case No. 2:06-cv-327. Thus, the court of appeals's forthcoming decision will effectively decide a key component of this case that presents a threshold issue that should be

resolved before the proceedings continue and much time and cost is devoted to complicated discovery.

Plaintiff opposes a stay of these proceedings. He argues that Defendants have failed to meet their burden of demonstrating that a stay would prevent undue hardship or inequity. Plaintiff also cites to the fact that this litigation has been pending for nearly two years, although he downplays the fact that the case is still essentially in its infancy as a result of amended pleading bringing in numerous additional defendants and as a result of repeated (and often unnecessary) disputes between the parties.

Upon consideration, this Court concludes that a stay is warranted. The undersigned may have been wrong in *Ferron v. Search Cactus, L.L.C.*, Case No. 2:06-cv-327, and an on-point Sixth Circuit decision will certainly provide an answer to the issues present in both that case and the instant litigation. The court of appeals is set to hear argument in *Zoomego* in May 2008. The issue before that court is one of the same issues that pervades the motions to dismiss. Given that the undersigned has previously issued a decision in another case that is directly contrary to the holding reached by another judicial officer in this District—and given that a resolution by the appellate court of that issue in accord with that other district court judge would control disposition of the motions to dismiss here—proceeding with this litigation at this time would unquestionably impose a hardship on all the parties. Equitable considerations favor a limited stay where, as here, the issue is likely to be resolved in a manner of months and, absent a stay, all of the parties would be involved in significant and costly discovery proceedings related to a notable volume of email. Although this Court is generally quite reluctant to stay any litigation, the Court recognizes that proceeding at this time would be inequitable. No party is substantially

