

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

PRYTIME MEDICAL DEVICES, INC.,

Plaintiff,

v.

CERTUS CRITICAL CARE, INC.,

Defendant.

C.A. No. 23-060-RGA-JLH

REPORT AND RECOMMENDATION

Pending before the Court is Defendant's Motion to Dismiss Plaintiff's Complaint. (D.I. 9.) I held a hearing on November 3, 2023. I recommend that Defendant's motion be GRANTED.

1. For the reasons announced from the bench at the conclusion of the hearing, Counts I (False Advertising under 15 U.S.C. § 1125(a)) and II (Unfair Competition under 15 U.S.C. § 1125(a)) should be dismissed under Federal Rule of Civil Procedure 12(b)(6).

2. The remaining claims are state law claims. The parties are not diverse. For the reasons announced from the bench at the conclusion of the hearing, I recommend that the Court decline to exercise jurisdiction over the remaining state law claims, in accordance with 28 U.S.C. § 1367(c)(3).

3. Plaintiff should be granted leave to amend its complaint to address the deficiencies within 14 days.

This Report and Recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B), (C), Federal Rule of Civil Procedure 72(b)(1), and District of Delaware Local Rule 72.1. Any objections to the Report and Recommendation shall be filed within fourteen days and limited to ten pages. Any response shall be filed within fourteen days thereafter and limited to ten pages.

The failure of a party to object to legal conclusions may result in the loss of the right to de novo review in the district court. The parties are directed to the Court's "Standing Order for Objections Filed Under Fed. R. Civ. P. 72," dated March 7, 2022, a copy of which can be found on the Court's website.

Dated: November 3, 2023



Jennifer L. Hall
UNITED STATES MAGISTRATE JUDGE