

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

VOIP-PAL.COM, INC.,

Plaintiff

v.

AMAZON.COM, INC.,
AMAZON.COM SERVICES LLC, and
AMAZON WEB SERVICES, INC.,

Defendants.

CASE NO. 6:20-cv-00272-ADA

**AMAZON'S OPPOSITION TO MOTION OF PLAINTIFF VOIP-PAL.COM, INC.
TO DISMISS OR, IN THE ALTERNATIVE, STRIKE AMAZON'S COUNTERCLAIMS**

On July 31, 2020, Plaintiff VoIP-Pal.Com, Inc. (“VoIP-Pal”) filed a First Amended Complaint against Defendants Amazon.com, Inc., Amazon.com Services LLC, and Amazon Web Services, Inc. (collectively, “Amazon”) (Dkt. No. 31.) After amending its complaint, VoIP-Pal then filed a motion to dismiss or strike the counterclaims in Amazon’s answer to the original complaint. (Dkt. No. 32.)

VoIP-Pal’s First Amended Complaint “supersedes the original complaint and renders it of no legal effect.” *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994). As a result, Amazon’s counterclaims to the original complaint and VoIP-Pal’s motion to strike those counterclaims are both moot. *See Parker v. ABC Debt Relief Co.*, No. 3:10-CV-1332-P, 2011 WL 13156845, at *4 (N.D. Tex. Nov. 10, 2011); *List Interactive, Ltd. v. Knights of Columbus*, No. 17-cv-00210-RBJ, 2017 WL 4621277, at *4 (D. Colo. Oct. 13, 2017).

Moreover, Amazon has filed an answer to VoIP-Pal’s First Amended Complaint. While Amazon contends that its counterclaims were sufficiently plead, that is not an issue that merits the Court’s attention at this time. Thus, Amazon has not included counterclaims in its answer to the First Amended Complaint, thereby also rendering moot VoIP-Pal’s motion to dismiss or strike. *Parker*, 2011 WL 13156845, at *4 (denying motion to dismiss counterclaims as moot where “Defendants’ First Amended Answer does not include the counterclaim Plaintiffs seeks [sic] to strike”).

Accordingly, VoIP-Pal’s motion to dismiss or strike should be denied as moot.

Dated: August 14, 2020

Respectfully submitted,

/s/ M. Craig Tyler

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ATTORNEYS FOR DEFENDANTS
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LLC; and Amazon Web Services, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on August 14, 2020, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(b).

/s/ M. Craig Tyler

M. Craig Tyler