

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BANCO CENTRAL DE VENEZUELA,)
a Venezuelan government organization,)
))
Plaintiff,)
))
v.)
))
DOLARTODAY, LLC, a Delaware limited)
liability company; GUSTAVO DIAZ VIVAS,)
an Alabama resident; IVAN DARIO)
LOZADA-SALAS, a Washington resident;)
and JOSE ENRIQUE ALTUVE LOZADA)
a Florida resident,)
))
Defendants.)

Civil Action No. 15-965-GMS

ORDER

WHEREAS, on October 23, 2015, Banco Central de Venezuela (“the Central Bank”) filed a Complaint against DolarToday, LLC (“DolarToday”) alleging (1) violation of the Racketeer Influenced and Corrupt Organizations Act (the “RICO” Act); (2) violation of the Lanham Act; (3) violation of Article 1185 of the Venezuelan Civil Code (the “Venezuelan Code”); and (4) unjust enrichment. (D.I. 1.)

WHEREAS, presently before the court is DolarToday’s Motion to Dismiss the Complaint with prejudice for lack of subject matter jurisdiction under Rule 12(b)(1) filed on December 17, 2015. (D.I. 16.) DolarToday argues that the Central Bank does not plead Article III standing for any claim asserted in the Complaint. (*Id.*)¹

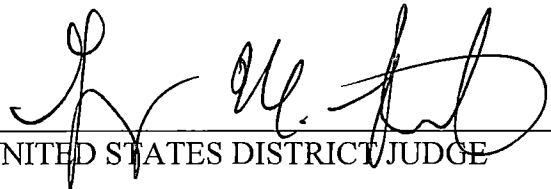
¹ DolarToday also move to dismiss the claims under the Venezuelan Code, RICO Act, and Lanham Act, and for unjust enrichment under Delaware law, pursuant to Rule 12(b)(6) for failure to state a claim for which relief can be granted. The court will only address the threshold 12(b)(1) issue because it is dispositive.

WHEREAS, having considered the party's positions as set forth in their papers, the pleadings, as well as the applicable law;

IT IS HEREBY ORDERED that:

1. The Defendant's motion to dismiss (D.I. 16) is GRANTED without prejudice;²
2. The Plaintiff shall, within seven (7) days, submit an amendment to the Complaint correcting, if it can, the deficiencies noted by the court.

Dated: February 26, 2016


UNITED STATES DISTRICT JUDGE

² DolarToday correctly argues that the Central Bank lacks standing. A plaintiff's Article III standing is a threshold prerequisite to invoke the court's jurisdiction. *In re Schering Plough Corp*, 678 F.3d 235, 245-46 (3d Cir. 2012) (citations omitted). A plaintiff must establish three elements for Article III standing: (1) an "injury in fact," (2) that is "fairly traceable" to Defendants' alleged misconduct; and (3) that is "likely" to be "redressed by "a favorable decision" in the case at hand. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

To establish an "injury-in-fact," Plaintiff must affirmatively plead sufficient plausible facts to allege the invasion of a legally protected interest that is (1) "particularized," (2) "concrete," and (3) "actual or imminent, not conjectural or hypothetical." *Id.* Here, the alleged "injury" is the "acceleration" or "exacerbation" of price inflation in Venezuela. (D.I. 1 at 23.) Price inflation in a nation's economy is not an injury sufficiently particularized to the Central Bank. Rather, inflation is a generalized harm. Additionally, an alleged injury must be "concrete" both qualitatively and temporally. *Whitmore v. Arkansas*, 495 U.S. 149, 155; 158, (1990). Here, inflation is not sufficiently identifiable, but a hypothetical injury. Having found that there is no injury in fact, the court need not reach the remaining standing requirements. In conclusion, Central Bank lacks Article III standing and the court lacks subject matter jurisdiction as a matter of law.