

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	George W. Lindberg	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	11 C 9069	DATE	5/31/2012
CASE TITLE	PUMA S.E. vs. Arctic Cat Inc.		

DOCKET ENTRY TEXT

Defendant’s motion to transfer [21] is granted. This action is ordered transferred to the District of Minnesota.

■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

Plaintiff PUMA S.E.’s complaint alleges claims of copyright and trademark infringement, false designation of origin, and dilution in violation of the Lanham Act; and violations of Illinois law. Before the court is defendant Arctic Cat Inc.’s motion to transfer this action to the District Court for the District of Minnesota, pursuant to 28 U.S.C. § 1404(a). For the reasons stated below, the motion is granted.

A district court may transfer a civil action to any other district where the case might have been brought, “[f]or the convenience of parties and witnesses, in the interest of justice.” 28 U.S.C. § 1404(a). In evaluating the convenience of the parties and witnesses, courts should consider the plaintiff’s choice of forum, the location of the material events, the residence of the parties, the parties’ relative abilities to bear the expense of a trial in a particular forum, and the relative ease of access to evidence and witnesses in each forum. *Research Automation, Inc. v. Schrader-Bridgeport Int’l, Inc.*, 626 F.3d 973, 978 (7th Cir. 2010); *Moore v. AT & T Latin Am. Corp.*, 177 F. Supp. 2d 785, 789 (N.D. Ill. 2001).

In determining the interests of justice, courts should consider their familiarity with the applicable state law, the speed at which the case will proceed to trial, the desirability of resolving the controversy in each district, and the relationship of the community to the controversy. *See Research Automation, Inc.*, 626 F.3d at 978. The movant bears the burden of establishing that the transferee forum is clearly more convenient. *See Coffey v. Van Dorn Iron Works*, 796 F.2d 217, 219-20 (7th Cir. 1986).

Plaintiff does not dispute that defendant resides in the District of Minnesota. The court finds that venue is proper in the District of Minnesota, and that this case could have been brought there. *See* 28 U.S.C. § 1391(b)(1).

The court next considers the factors relating to the convenience of the parties and witnesses.

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Plaintiff's choice to file its action here ordinarily would weigh heavily against transfer. *See United Air Lines, Inc. v. Mesa Airlines, Inc.*, 8 F. Supp. 2d 796, 798 (N.D. Ill. 1998). However, plaintiff is located in Germany and because this is not plaintiffs' home forum, its choice is entitled to less deference than in the ordinary case. *See Plotkin v. IP Axess, Inc.*, 168 F. Supp. 2d 899, 902 (N.D. Ill. 2001).

Defendant argues that the location of material events is Minnesota, because that is where defendant is located, where defendant designed and developed the product at issue, and where defendant made its marketing and sales decisions. Plaintiff observes that both parties market and sell their products nationwide, including in this district.

"[I]n infringement cases, 'the location of the infringer's principle place of business is often the critical and controlling consideration' because such suits 'often focus on the activities of the alleged infringer, its employees, and its documents.'" *Tech. Concepts L.P. v. Zurn Indus., Inc.*, No. 02 C 5150, 2002 WL 31433408, at *3 (N.D. Ill. Oct. 31, 2002). Moreover, when a defendant's products are sold in many states, the fact that it sells its products in a particular state "does not establish a particularly strong connection" with that state. *See id.* The court finds that the location of material events favors transfer.

The court turns to the residence and convenience of the parties. Defendant is located in Thief River Falls, Minnesota. Plaintiff's principle place of business is in Germany, and its North American subsidiary is in Westford, Massachusetts, outside of Boston. No party is located in Illinois. Plaintiff argues that the Northern District of Illinois nevertheless is more convenient for it than the District of Minnesota because there are direct flights available from Frankfurt, Germany to Chicago, and none from Frankfurt to Minneapolis; plaintiff also notes that direct flight options between Boston and Minneapolis are more limited and expensive than between Boston and Chicago. The court finds that defendant's location in the District of Minnesota outweighs the minimally more convenient flights to Chicago for plaintiff. This factor also favors transfer.

Defendant's documents are located in Minnesota. According to plaintiffs, some of the relevant documents and physical evidence are already located in plaintiff's counsel's offices in Illinois. Neither side suggests that the evidence in this case would be difficult to transport from one location to another, however, and therefore the access of proof factor is neutral. *See Kammin v. Smartpros, Ltd.*, No. 07 C 2665, 2007 WL 3046128, at *2 (N.D. Ill. Oct. 9, 2007).

The court next examines the convenience of the witnesses. The court weighs the convenience of non-party witnesses more heavily than the convenience of witnesses within the control of the parties, since party witnesses are presumed to appear voluntarily. *See First Nat'l Bank v. El Camino Resources, Ltd.*, 447 F. Supp. 2d 902, 913 (N.D. Ill. 2006).

Defendant identifies five party witnesses who live in Minnesota, and who have knowledge relating to defendant's trademarks, marketing, advertising, sales and distribution. In addition, defendant identifies two non-party witnesses who live in Minnesota and were involved in the design and development of defendant's "air cat" trademark and handle defendant's advertising in Minnesota. Defendant also states that there may be other non-party witnesses who work for the company that applies defendant's cat design to certain products; defendant does not specifically identify these witnesses, however. Plaintiff states that its witnesses are located in Germany and Boston. Neither side identifies any witnesses located in Illinois. The court finds that the convenience of witnesses factor favors transfer.

Finally, the court considers the interest of justice factors. Several of plaintiff's claims in this case involve questions of federal law, with which this court and the District Court for the District of Minnesota are

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equally familiar. Although the remaining claims involve questions of Illinois law, the parties do not contend that they raise complex or unsettled issues, such that it would be advantageous for this court to try the case. *See First Nat'l Bank*, 447 F. Supp. 2d at 914 (noting that a court's familiarity with state law is a neutral factor where the law in question is neither complex nor unsettled). The court finds that the familiarity with applicable law factor is neutral.

Relevant statistics indicate that for the twelve-month period ending March 31, 2011, the median time from filing to trial was 24.8 months in the Northern District of Illinois and 20.4 months in the District of Minnesota. *See Federal Court Management Statistics (2011)*, available at "<http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2011/tables/C05Mar11.pdf>". This factor slightly favors transfer.

Finally, the only connection between this controversy and the Northern District of Illinois is that the parties sell their products here, as they do in other states nationwide. The court finds that the interest of justice factors favor transfer.

Having carefully balanced the relevant factors, the court concludes that defendant has established that the District of Minnesota is clearly more convenient than the Northern District of Illinois. The motion to transfer this case pursuant to 28 U.S.C. § 1404(a) is granted.

A handwritten signature in black ink, appearing to read "George Lindberg". The signature is written in a cursive style with a long, sweeping tail on the final letter.