



District Court Holds That Distributor Relationships Alone Do Not Establish Venue

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Plaintiff Wet Sounds Inc. (“Wet Sounds”) sued defendants PowerBass, USA, Inc. (“PowerBass”), Dow Electronics, and AV Audio Vision, Inc. for patent infringement in the Southern District of Texas. PowerBass moved to dismiss Wet Sound’s complaint or, alternatively, to transfer venue to the Central District of California. PowerBass has no physical presence in the Southern District of Texas. Wet Sounds, however, argued that PowerBass is “inseparably commingled” with its codefendants, who distribute PowerBass products in Houston, and therefore has a regular and established business in the district. Wet Sounds argued that retail dealerships in Houston authorized to sell PowerBass products were distribution centers that satisfied the physical presence requirement established in *In re Cray*. In addition, Wet Sounds amended its original complaint to include federal and common law claims of trademark infringement.

In its April 17, 2018 order, the Court distinguished between the type of distribution centers discussed in *In re Cray* and the distribution centers used by PowerBass. *In re Cray* stated that the physical presence requirement is met if a defendant uses an employee’s home “like a distribution center.” Here, PowerBass’s distributors are not employees of PowerBass. The Court held that, because there is “no record evidence that PowerBass owns, leases, or controls the third-party distributors in the Houston area,” PowerBass did not have the necessary regular and established place of business in the Southern District of Texas for purposes of venue.

Wet Sounds also argued that defendants’ jointly infringing acts warranted venue in the Southern District of Texas. The Court rejected that argument, stating that, even if judicial economy supported keeping defendants in the district, the Court’s options are limited when venue is not proper.

The Court also found that the doctrine of pendent venue was not applicable to this case. Pendent venue allows a case to proceed in a jurisdiction where venue is proper as to one claim and improper as to other claims, but all of the claims arise from a common set of facts. The Court explained that most courts have rejected the application of pendent venue in patent cases. Because the primary claims at issue in this case were patent infringement claims, rather than the federal and common law trademark infringement claims later added by Wet Sounds, pendent venue was not justified.

Wet Sounds, Inc. v. PowerBass USA, Inc., No. 4:17-cv-03258 (S.D. Tex. April 17, 2018, Memorandum and Opinion Granting in Part and Denying in Part the Motion to Dismiss or Transfer Venue) (Rosenthal, C.J.).

Categories

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Infringement

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