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Illinois Antitrust Case Highlights Venue Requirements

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In Industrial Models Inc. v. SNF Inc.,[1] the Illinois District Court for the Northern District of Illinois dismissed Industrial Models' antitrust case against SNF Inc. d/b/a Brand FX Body Company for improper venue. The decision serves as an instructive reminder regarding venue requirements for bringing suit and what can happen when filing in the wrong forum.

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Background

In January 2012, Industrial Models, an Illinois corporation that manufactured machined components, decided to enter the United States market for fiberglass utility truck bodies and spent money and invested other resources toward that end, including the purchase of molds for manufacturing the truck bodies.[2] Brand FX later sought to buy the molds from Industrial Models without success.[3] In March 2013, Brand FX sued Industrial Models in Texas alleging trade dress infringement but later filed a notice of nonsuit and dismissed the case without prejudice.[4] At some point, Brand FX allegedly told Badger Truck, with whom Industrial Models had a business relationship, that Industrial Models was infringing its intellectual property rights in an alleged attempt to interfere with Industrial Models' business.[5]

In October 2014, Industrial Models filed suit against Brand X in the United States District Court for the Northern District of Illinois, Eastern Division, claiming that Brand X violated the Sherman Act by restraining competition in the United States market for fiberglass utility bodies when it tried to impede Industrial Models' business dealings through the above activities and sought damages under the Clayton Act. Industrial Models also asserted claims for tortious interference with economic advantage and declaratory relief that its molds do not infringe any intellectual property rights held by Brand FX.[6]

Industrial Models alleged venue was proper in the Northern District of Illinois pursuant to 15 U.S.C. § 22 because Brand X transacted business, and may be found, in the district.[7] Industrial Models also alleged venue was proper pursuant to 28 U.S.C. §§ 1391(b), (c) and (d), because "a substantial part of the events giving rise to the claims occurred in this district and a substantial part of the property that is the subject of the action is situated in this district, and Brand FX transacts business in this district, and ... Brand FX has continuous and systematic business contacts with this district such that Brand FX is subject to personal jurisdiction here."[8]

Brand FX moved to dismiss for lack of personal jurisdiction, arguing it had no meaningful contacts with Illinois to justify its being sued there. Alternatively, Brand X argued venue was improper.[9] A declaration from the company's vice president supporting the motion represented that Brand FX is a Texas corporation, with its principal place of business in Fort Worth, Texas, and that the corporation has never had an office or distribution center or employees in Illinois, has no assets in Illinois, does not exercise control over a subsidiary or distributor that transacts business in Illinois, does not sell its product directly to consumers in Illinois, and has never promoted its product in Illinois. The declaration also represented that the corporation's employees have traveled to Illinois less than one time a year. The declaration conceded that Brand FX's truck bodies are sold in all 50 states, including Illinois, but represented that any sales are made through independent, unaffiliated dealers who sell multiple brands and products, and that Brand X's product sold in Illinois through such dealers amount to less than 1 percent of Brand X's total sales.[10]

In response, Industrial Models did not dispute the factual claims in the declaration but argued that 1 percent of sales in Illinois was substantial in light of Brand X's annual revenues that approach $80 million, and emphasized that Brand X has a manufacturer in Joliet, Illinois, that distributes marketing materials, has dealers in Illinois and operates a website accessible in Illinois that directs customers to Illinois dealers.[11]

Court Finds Personal Jurisdiction Exists but That Venue Is Lacking

Section 12 of the Clayton Act, 15 U.S.C. § 22, "provides for nationwide service of process and, therefore, nationwide service of process." As a result, the court found that "personal jurisdiction of Brand FX (a Texas corporation with substantial ties to the United States), exists here, as it would any district in the United States."[12]

Under the Clayton Act, venue is proper only in judicial districts where the corporation is an inhabitant, is found or transacts business.[13] "A corporation is an inhabitant of the state of its incorporation and is found in districts where it is present and carries on continuous local activities."[14] The court concluded that Brand X was not an inhabitant of the Northern District of Illinois nor found there, reasoning that Brand X was a Texas corporation with its principal place in Texas, and that "the Court cannot say Brand X maintained a presence or carried on continuous activities in the district" based on the undisputed jurisdiction facts set forth in the declaration.[15]

In the context of the Clayton Act, "transacts business" is given "the practical everyday business or commercial concept of doing or carrying on business of any substantial character."[16] For purposes of Section 12 of the Clayton Act, a defendant "transacts business" when a defendant "promote[s] its goods through product demonstration, solicit[s] orders through sales people located in the district, and ship[s] product to the district."[17] A defendant also "transacts business" when it maintains offices, provides customer assistance or makes substantial purchase in the district, or when it "exercise[s] extensive control over a business or distributor that transact[s] business in the district."[18]

In reliance on KM Enterprises, the court concluded that Brand X did not transact business in the Northern District of Illinois and, therefore, venue was improper under the Clayton Act, reasoning: "Brand X has no employees, no offices, no presence in this district; it does not do business of any substantial character in this district; and, to the extent it sells any product in this district, it does so through entities it does not control."[19]

The venue provision that would operate absent a special statutory provision like Section 12 of the Clayton Act, 28 U.S.C § 1391, "provides that venue is proper in any district where the defendant 'resides' — an inquiry that effectively merges with the personal jurisdiction analysis of International Shue"[20] The court concluded that

venue was not proper under § 1391, reasoning that the facts did not establish "the type of continuous and systematic contacts with the forum that are necessary to justify the exercise of general jurisdiction, and they do not suggest any attempt on the part of Brand FX to 'purposefully exploit' the Illinois market."[21] Furthermore, "the limited contacts Brand FX has with the district have nothing to do with this lawsuit," and therefore, specific jurisdiction also was lacking.[22]

Notwithstanding, Industrial Models argued that jurisdiction and thus venue was proper because Brand FX reached out to the forum in an attempt to buy the molds, threatened Industrial Models with erroneous intellectual property claims when such attempt failed, sued Industrial Models in alleged sham litigation in Texas, and interfered with Industrials' business in connection with its contact with Badger Truck.[23] In rejecting this argument for finding venue proper, the court stated: "Yet none of these 'contacts' are sufficient to bring this cause of action in Illinois. The 'sham litigation' was filed in Texas. The offer to purchase the molds and the 'threats' for violation of trade dress were made, if at all, via telephone — as were the communications to Badger Trust (which is located in Wisconsin). Other than Industrial Models' presence in Illinois, these jurisdictional facts add nothing to connect defendant to the state."[24] And the "mere fact [defendant's] conduct affected plaintiff with connections to the forum State does not suffice to authorize jurisdiction."[25]

Finding that venue was improper, the court granted Brand X's Motion and dismissed the action, with such dismissal not precluding the refiling and litigating of the claims in the proper forum. [26]

Conclusion

Plaintiffs have the burden of establishing that venue is proper. The Industrial Models decision highlights this burden and the importance for plaintiffs of focusing on the venue requirements and being able to make the requisite showing in an effort to avoid dismissal of the case and the time and expense associated with having filed in an improper forum.

Defendants likewise should focus on venue requirements and seek to dismiss for improper venue when appropriate based on competent evidence that provides facts to support such relief, with the hope for the outcome that occurred in the Industrial Models decision.

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[1] 2015 U.S. Dist. LEXIS 64404 (May 18, 2015).

[2] Id. at *1-2.

[3] Id. at *2

[4] Id.

[5] Id.

[6] Id. at *3, *14.

[7] Id.

[8] Id. at *3-4.

[9] Id. at *4.

[10] Id. at *4-5

[11] Id. at *6

[12] Id. at *7.

[13] 15 U.S.C. § 22.

[14] 2015 U.S. Lexis 64404, at *8 (quoting United Phosphorus Ltd. v. Agnus Chemical Co., 1996 U.S. LEXIS 4129 (N.D. Ill. April 2, 1996) (citing CCP Corp. v. Wynn Oil Co., 354 F. Supp. 1275, 1278 (N.D. Ill. 1973)).

[15] Id.

[16] Id. at *9, quoting KM Enterprises, Inc. v. Global Traffic Technologies, Inc., 5 F.3d 718, 731 (7th Cir. 2013), citing United States v. Scophony Corporation, 333 U.S. 795, 807 (1948).

[17] Id. at *9, quoting KM Enterprises, Inc., 5 F.3d at 731, citing Eastman Kodak Co. v. Photo Materials Co., 273 U.S. 359 (1927).

[18] Id. at *9 (quoting KM Enterprises, Inc., 5 F.3d at 731).

[19] Id. at *10.

[20] Id. at *10-11; International Shue Co. v. Washington, 326 U.S. 310 (1945).

[21] Id. at *11-12 (citation omitted).

[22] Id. at *12.

[23] Id. at *13.

[24] Id.

[25] Id. at *14, quoting Advances Tactical Ordnance Systems, LLC v. Real Action Paintball, Inc., 751 F.3d 796, 801 (7th Cir. 2014).

[26] Id. at *14.
