

**IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 0:22-CV-61407-SMITH

SHENZHEN HAPPY VAPING
TECHNOLOGY LTD.,

Plaintiff,

v.

LOGIC TECHNOLOGY DEVELOPMENT
LLC, and
JAPAN TOBACCO INTERNATIONAL
U.S.A., INC.,

Defendants.

**DEFENDANTS' RENEWED MOTION TO STAY
DISCOVERY AND OTHER DEADLINES**

Defendants, Logic Technology Development LLC (“Logic”) and Japan Tobacco International U.S.A., Inc. (“JTI USA”), through their undersigned counsel, hereby file this Renewed Motion to Stay Discovery and Other Deadlines, and Incorporated Memorandum of Law¹, and state as follows:

1. Plaintiff filed its Complaint against Defendants for patent infringement on July 28, 2022 (ECF 1).

¹ Defendants renew and incorporate by reference its previous briefing including Defendants’ Motion for Stay Discovery and Other Deadlines and Incorporated Memorandum of Law filed on February 17, 2023 (ECF 30) and its Reply in Support of Defendants’ Motion to Stay Discovery and Other Deadlines filed on March 10, 2023 (ECF 32).

2. The Complaint alleged patent venue based on several addresses in Florida, none of which constitutes a “regular and established place of business” of either Defendant, which is required to show patent venue.

3. Defendants filed a Motion to Dismiss for Improper Venue or to Transfer Venue (“Motion to Dismiss”) on December 15, 2022 (ECF 13). As addressed in the motion, this case should be dismissed for improper patent venue as the Defendants are incorporated elsewhere (i.e., Delaware and California) and do not have a “regular and established place of business” in Florida under the Supreme Court’s interpretation of the patent venue statute. See *id.* at 1, 5-11.

4. Plaintiff filed its Response in Opposition to Defendants’ Motion to Dismiss on December 29, 2022 (ECF 17). Shortly thereafter, on January 5, 2023, Plaintiff filed its First Amended Complaint (“Amended Complaint”), relying on the same addresses in Florida to assert patent venue in this Court (ECF 21). While the Amended Complaint included new legal theories it did nothing to resolve the patent venue defects that exist in this case.

5. On January 17, 2023, Defendants reasserted and incorporated by reference its previous Motion to Dismiss in response to Plaintiff’s First Amended Complaint by filing a Notice to Reassert Motion to Dismiss for Improper Venue or to Transfer Venue (ECF 24) (“Reasserted Motion to Dismiss”), attached as Exhibit A. See *Ct.-Appointed Receiver for Lancer Mgmt. Grp. LLC v. Cable Rd. Invs. Ltd.*, No. 05-60145-CIV, 2007 WL 9698235, at *3 (S.D. Fla. Jan. 17, 2007) (“Any defendant may reassert its motion to dismiss to the Third Amended Complaint by filing a new motion to dismiss or by filing a notice to the Court that it wishes to reassert its previously filed motion to dismiss.”).

6. Defendants also filed its Reply to Plaintiff's Response in Support of its Motion to Dismiss on January 17, 2023 (ECF 25). The Reply addressed the Amended Complaint and explained why it did not raise any new venue considerations for this action.

7. Defendants' Reasserted Motion to Dismiss is supported by sworn declarations from Defendants' corporate officers and directors which Plaintiff has not challenged. *See* Declarations of Nadezda Pshenitsyna (ECF 13-1, ECF 25-2) and Brendan Lemoult (ECF 13-2, ECF 25-1).

8. Plaintiff never sought leave to propound discovery relating to venue in connection with Defendants' Motion to Dismiss or the Reasserted Motion to Dismiss.

9. After all briefing related to the Reasserted Motion to Dismiss was completed, and without leave of Court, Plaintiff served its First Request for Production on February 6, 2023, seeking venue related discovery.

10. Defendants subsequently filed a Motion for Stay Discovery and Other Deadlines on February 17, 2023, seeking a stay of discovery until this Court ruled upon the Motion to Dismiss (ECF 30).

11. On June 15, 2023, the Court entered paperless orders denying as moot Defendants' Motion to Dismiss (ECF 44) and Defendants' Motion to Stay (ECF 45), which the Court found were mooted by Plaintiff's filing of an amended complaint.

12. Defendants' Reasserted Motion to Dismiss (ECF 24) directed at the First Amended Complaint remains pending and has not yet been ruled upon on by the Court.

13. Defendants renew and incorporate herein by reference their previously filed Motion to Stay and Incorporated Memorandum of Law (ECF 30) and Reply in Support of

Defendants' Motion to Stay Discovery and Other Deadlines (ECF 32), as the same pressing issues raised in the previous Motion to Stay persist.

14. On June 16, 2023, Defendants' counsel conferred with counsel for Plaintiff regarding the present Renewed Motion for Stay. Plaintiff would not agree to a stay, and has now doubled-down, serving two additional sets of discovery requests on June 20th and June 23rd while Plaintiff's Motion to Compel (ECF 38) regarding its previous discovery request remains pending and unresolved, resulting in a series of disputed motions that require the Court's intervention.

15. Because Defendants' Reasserted Motion to Dismiss (ECF 24) is meritorious, case dispositive, and supported by uncontroverted declarations, Defendants respectfully request a stay of all discovery and pending deadlines in this case until after this Court has ruled on Defendants' Reasserted Motion to Dismiss.

16. A stay is reasonable under the circumstances to protect Defendants from the burden and unnecessary expense that will result from Plaintiff's unfounded attempt to establish venue in this Court, where it does not exist. A stay will also avoid the burden and expense on the Court of sorting through discovery disputes between the parties, including unnecessary requests related to jurisdictional discovery.

WHEREFORE, Defendants respectfully request that this Court enter an Order granting Defendants' Renewed Motion for Stay of discovery and all other pending deadlines in this case until this Court has ruled upon Defendants' Reasserted Motion to Dismiss.

CERTIFICATE OF COMPLIANCE WITH S.D. FLA. L. R. 7.1(a)(3)(A)

Pursuant to Local Rule 7.1(a)(3)(A), we hereby certify that undersigned counsel for Defendants conferred with Plaintiff's counsel on June 16, 2023, in a good faith effort to resolve the issues raised herein, but Plaintiff would not agree to the requested stay.

Respectfully submitted,

**KLUGER, KAPLAN, SILVERMAN, KATZEN &
LEVINE, P.L.**

/s/ Terri Meyers
Terri Meyers
Fla. Bar No. 881279
tmeyers@klugerkaplan.com
201 S. Biscayne Boulevard, 27th Floor
Miami, FL 33131
Tel: (305) 379-9000

**FINNEGAN, HENDERSON, FARABOW, GARRETT
& DUNNER, LLP**

C. Gregory Gramenopoulos (admitted *pro hac vice*)
c.gregory.gramenopoulos@finnegan.com
Kelly S. Horn (admitted *pro hac vice*)
kelly.horn@finnegan.com
Matthew R. Ritter (admitted *pro hac vice*)
matthew.ritter@finnegan.com
901 New York Avenue N.W.
Washington, DC 20001
Tel: (202) 408-4000

*Attorneys for Defendants Logic Technology Development
LLC and Japan Tobacco International U.S.A., Inc.*