

Danger of Inconsistent Judgments Outweighs Deference to Plaintiff's Choice of Forum

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August 18, 2008

F.T.C. v. Cephalon, Inc.

Background

Cephalon manufactures the prescription wakefulness drug, Provigil, for which, modafinil is the active ingredient. Cephalon owns U.S. Patent No. RE37,516 for modafinil. Teva Pharmaceuticals USA, Inc., Mylan Pharmaceuticals, Inc., Barr Laboratories, Inc., and Ranbaxy Laboratories Ltd. filed applications to sell generic versions of modafinil and were deemed "first filers" with the FDA to be granted a 180-day exclusive right of sale for their generic versions. Cephalon filed a single patent infringement suit against those companies on March 28, 2003, which was ultimately settled with each company.

The Basis of the Claim

A direct purchaser of Provigil filed suit against Cephalon and the four generic manufacturers in the Eastern District of Pennsylvania on April 27, 2006, alleging that the settlements violated Sections 1 and 2 of the Sherman Act. Subsequently, the FTC brought suit in the District of Columbia on February 13, 2008 against Cephalon alleging violations of Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b). Cephalon then moved to transfer the FTC case to the Eastern District of Pennsylvania, as both actions were premised upon the same operative facts and events. The FTC opposed the transfer by arguing that the U.S. is entitled to deference in choosing its forum for antitrust actions and to transfer the case to the Eastern District of Pennsylvania would unduly delay the government's prosecution of the case.

Factors to Consider with Venue Change

A district court may transfer any civil action to another district where it originally could have been brought, though there are several factors to consider when deciding to transfer a case. Among those are private and public interest considerations. Private interest considerations include: a plaintiffs' choice of forum; a defendants' choice of forum; where the claim arose; the convenience of the parties and witnesses; and the ease of access to sources of proof. Public interest considerations include: a transferee's familiarity with the governing laws; the relative congestion of the calendars of the potential transferee and transferor courts; and the local interest in deciding local controversies at home. *Thayer/Patricof Educ. Funding LLC v. Pryor Res.*, 196 F.Supp.2d 21, 31 (D.D.C. 2002) (quoting *Shapiro, Lifschitz & Schram, P.C. v. R.E. Hazard, Jr.*, 24 F.Supp.2d 61, 71 (D.D.C. 1998)).

Application of Private Interest Considerations

With regard to the private interest considerations, the Court established that the FTC was correct in asserting that a plaintiff's choice of forum is ordinarily entitled to "great deference" in the transfer inquiry. *Thayer/Patricof Educ. Funding*, 196 F.Supp.2d at 31. However, the Court has given guidelines for this deference: "if the particular controversy has meaningful ties to the forum...the plaintiff's choice of forum is given substantial deference." *Thayer/Patricof Educ. Funding*, 196 F.Supp.2d at 31 (citing *Wilderness Soc'y v. Babbitt*, 104 F.Supp.2d 10, 12-13 (D.D.C. 2000)). The Court established that there are no

meaningful ties between the District of Columbia and the events (or parties) that gave rise to this action brought by the FTC. As such, the Court said, "[t]he interests of justice are better served when a case is transferred to the district where related actions are pending." *Reiffin, v. Microsoft Corp.*, 104 F.Supp.2d 48,56 (D.D.C. 2000) (quoting *Martin-Trigona v. Meister*, 668 F.Supp. 1, 3 (D.D.C. 1987)). The Court showed that the danger and burden of inconsistent judgments against one defendant based on the same events outweighs whatever legitimate interest the FTC may have in bringing suit in the District of Columbia.

Application of Public Interest Considerations

The Court also established that the first factor of familiarity with the governing laws weighed in favor of Cephalon: because the district court in Pennsylvania had litigation pending before it for two years involving the precise factual and legal situation raised by the FTC, transfer was supported for judicial efficiency purposes.

Further, based on the relative congestion of the transferee and transferor courts, the Court found that the civil cases in the Eastern District of Pennsylvania had a shorter median filing-to-disposition period. Therefore, the case would be resolved more expeditiously in the Eastern District of Pennsylvania.

Conclusion

Cephalon's motion to transfer the action to the Eastern District of Pennsylvania was granted because both the private and public considerations

weighed in its favor. A court hearing cases with the same set of facts and concerning the same legal issues is in better standing to hear a similar case. This minimizes the danger of inconsistent judgments against one defendant based on the same events to further the interests of justice.

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