

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROBERT BOSCH LLC,)
)
Plaintiff,)

v.)

Civil Action No. 12-574-LPS

ALBEREE PRODUCTS, INC., API)
KOREA CO., LTD., SAVER)
AUTOMOTIVE PRODUCTS, INC., and)
COSTCO WHOLESALE CORPORATION,)
Defendants.)

REDACTED PUBLIC VERSION

COSTCO WHOLESALE CORPORATION,)
)
Counter-Plaintiff,)

v.)

ROBERT BOSCH LLC and ROBERT BOSCH)
GMBH,)
)
Counter-Defendants.)

MEMORANDUM ORDER

At Wilmington this 17th day of March, 2016:

Having reviewed the parties' briefing (D.I. 200, 209, 223) on API Korea Co., Ltd.'s ("API") Renewed Motion to Dismiss the Second Amended Complaint for Lack of Personal Jurisdiction (D.I. 200), **IT IS HEREBY ORDERED** that API's motion to dismiss is **DENIED**.

1. On September 29, 2014, the Court denied without prejudice API's Motion to Dismiss the Second Amended Complaint for Lack of Personal Jurisdiction, and granted Robert

Bosch LLC's ("Bosch" or "Plaintiff") request for jurisdictional discovery with respect to API. (D.I. 76, 77) In its Memorandum Opinion issued that day, the Court set out the factual background and applicable legal standards, which the Court will not repeat in full here.¹ See *Robert Bosch, LLC v. Alberee Prods., Inc.*, 70 F. Supp. 3d 665, 670-77 (D. Del. 2014). With regard to API, the Court concluded:

Although Bosch argues there is an agency relationship between API and Alberee or Saver, Bosch does not offer any significant evidence of such relationships. Bosch's only support for its position is that (1) Albert Lee, the owner of Alberee, and Choon Bae Lee, the owner of API, jointly applied for a patent related to wiper blades in Korea and are co-inventors on a U.S. Patent; (2) API sells millions of components to Alberee; and (3) Saver has represented itself as having manufacturing facilities in Korea. API is a Korean company with no evident relationship with Saver or Costco. Alberee takes possession of the API-manufactured components in Busan, Korea, importing them to the United States through Los Angeles, California.

Nor has Bosch met its burden to demonstrate personal jurisdiction over API under the dual jurisdiction theory. . . . API sold components to a Maryland company, which assembled and sold them to another Maryland company, which in turn sold them to a national distributor. Aside from the components appearing in Delaware as finished products, there is no evidence that API has any ties to Delaware other than this suit. Examining the limited evidence presented, it is insufficient to establish that API had the requisite intent to serve Delaware.

Id. at 680 (internal citations omitted).

¹Bosch continues to bear only a prima facie burden for establishing personal jurisdiction over API, as there has not been a jurisdictional hearing regarding jurisdictional discovery, and the parties have not indicated that the jurisdictional facts are undisputed. See *Celgard, LLC v. SK Innovation Co.*, 2015 U.S. App. LEXIS 11536, at *9 (Fed. Cir. July 6, 2015) ("In this case, jurisdictional discovery was conducted and the district court did not conduct a jurisdictional hearing, but we see no indication that the parties agreed that the jurisdictional facts were not in dispute. . . . As such, Celgard must make a prima facie showing of jurisdiction.").

2. Plaintiff argues that jurisdictional discovery has revealed evidence that API has an agency relationship with Alberee and Saver.² Under agency theory, a defendant company may be subject to personal jurisdiction under Delaware's long-arm statute based on contacts attributed to the defendant company's affiliate. *See Intellectual Ventures I LLC v. Nikon Corp.*, 935 F. Supp. 2d 787, 793 (D. Del. 2013); *C.R. Bard, Inc. v. Guidant Corp.*, 997 F. Supp. 556, 559-60 (D. Del. 1998). Agency theory may be applied not only to parents and subsidiaries, but also to companies that are "two arms of the same business group," operate in concert with each other, and enter into agreements with each other that are nearer than arm's length. *See Cephalon, Inc. v. Watson Pharm., Inc.*, 629 F. Supp. 2d 338, 348 (D. Del. 2009); *Wesley-Jessen Corp. v. Pilkington Visioncare, Inc.*, 863 F. Supp. 186, 188-89 (D. Del. 1993). Among the factors for determining whether an agency relationship exists are: "[1] the extent of overlap of officers and directors, [2] methods of financing, [3] the division of responsibility for day-to-day management, and [4] the process by which each corporation obtains its business." *Eastman Chem. Co. v. AlphaPet Inc.*, 2011 WL 6004079, at *12 (D. Del. Nov. 4, 2011) (internal citation omitted).

3. Plaintiff does not point to any overlap of officers or directors. With respect to financing methods, Plaintiff contends that sales to Alberee, which constitute [REDACTED] [REDACTED] provide capital for API (*see* D.I. 210 Ex. 1 at 42-43, 97), and that API has relied on photos of Saver and Alberee products in a loan application (*see id.* at 79-81, 92-94; D.I. 210 Ex. 2 at API0021856-61). The Court disagrees that either of these circumstances leads to a

²Although Plaintiff also argues for an "alter ego" relationship, it does not point to any fraud or inequity which would allow the Court to "pierce the corporate veil." *See Applied Biosystems, Inc. v. Cruachem, Ltd.*, 772 F. Supp. 1458, 1463 (D. Del. 1991) ("Under the alter ego or piercing the corporate veil doctrine, courts will ignore the corporate boundaries between parent and subsidiary if fraud or inequity is shown.").

conclusion that API's method of financing reflects an agency relationship as opposed to an arms-length buyer-seller relationship. (See D.I. 210 Ex. 1 at 45-46) (API's 30(b)(6) witness stating "[t]hey [Alberee] are our largest customer, so that would be the relationship") With respect to involvement in day-to-day management, Plaintiff points to: (1) a bank report for Alberree and Saver referring to [REDACTED] (2) an email from a non-officer Saver employee referring to [REDACTED] [REDACTED] (3) Alberree's involvement in design and product quality issues via multiple visits per year by Alberree CEO Albert Lee to API's plant in Korea (see D.I. 210 Ex. 1 at 52-54); and (4) API's use of the name "Saver" at its manufacturing plant and in its domain name, which API's 30(b)(6) witness has testified was chosen because API wanted – but was unable – to sell finished products under the Saver brand in Korea (*id.* at 71-74; D.I. 210 Ex. 2 at API0021847). Here too, the Court disagrees that any of these circumstances should result in a finding of an agency relationship. Neither the bank report nor the email from a non-official employee are admissions by API. While the latter may create a factual dispute regarding API's representation that Alberree is API's customer (*compare* D.I. 210 Ex. 4 at SAVER0188970 with D.I. 210 Ex. 1 at 45-46), it cannot be viewed as reflecting Alberree's involvement in API's "day-to-day management." *Godfrey v. United States*, 748 F.2d 1568, 1575 (Fed. Cir. 1984) (describing day-to-day management as including daily office visits, making personnel decisions, ordering materials and supplies, conducting correspondence, setting job prices, negotiating contracts, preparing invoices, disbursing and signing checks, making bank deposits, using business address, and being on the payroll). The same goes for Mr. Albert Lee's occasional visits to API's plant. See *id.* Although API's use of the brand name Saver suggests a closer than arms-

length relationship, API has provided an adequate explanation for the use of the brand name, which Plaintiff does not appear to dispute. Finally, with respect to obtaining business, Plaintiff emphasizes that [REDACTED] involves a long-term arrangement to supply components to Alberee (see D.I. 210 Ex. 1 at 97), which, in turn, receives most of its components for the accused products from API (see D.I. 210 Ex. 3 at 9). Alberee's business is primarily aimed at supplying Saver, and Saver obtains its business from nationwide retailers such as Costco. (See D.I. 210 Ex. 1 at 46-48, 120-21) While this fourth factor could weigh in favor of a finding of agency, it is insufficient in the totality of the circumstances to allow the Court to conclude that an agency relationship exists. Accordingly, the Court will not attribute Alberee or Saver's jurisdictional contacts to API.

4. Next, Plaintiff argues that jurisdictional discovery has revealed additional facts in support of a finding of dual, or stream-of-commerce, jurisdiction based on subsections c(1) and c(4) of Delaware's long-arm statute. See 10 Del. C. § 3104. Under this approach, jurisdiction exists when a defendant displays "an intent to serve the Delaware market" and "this intent results in the introduction of [a] product into the market and . . . plaintiff's cause of action arises from injuries caused by that product." *Belden Techs., Inc. v. LS Corp.*, 829 F. Supp. 2d 260, 267-68 (D. Del. 2010). Here, jurisdictional discovery has shown that API is not only aware that the components it ships to Alberee are used in wiper blade products sold in the United States through a U.S. distribution chain involving Alberee, Saver, and Costco (see D.I. 210 Ex. 1 at 33, 48-49, 110-13, 120-21), but also knows that Costco is "one of the largest distributors in the U.S." (*id.* at 121). Furthermore, the finished wiper blade products have actually been sold by Costco in Delaware. (See D.I. 40 at ¶ 3) In the absence of any evidence that API intended to exclude

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