

Exhibit A

United States Court of Appeals for the Federal Circuit

ANDRA GROUP, LP,
Plaintiff-Appellant

v.

**VICTORIA'S SECRET STORES, L.L.C., VICTORIA'S
SECRET STORES BRAND MANAGEMENT, INC.,
VICTORIA'S SECRET DIRECT BRAND
MANAGEMENT, LLC, L BRANDS, INC.,**
Defendants-Appellees

2020-2009

Appeal from the United States District Court for the
Eastern District of Texas in No. 4:19-cv-00288-ALM-KPJ,
Judge Amos L. Mazzant, III.

Decided: August 3, 2021

MAEGHAN WHITEHEAD, Griffith Barbee PLLC, Dallas,
TX, argued for plaintiff-appellant. Also represented by
CASEY GRIFFITH.

RICHARD WILLIAM MILLER, Ballard Spahr LLP, At-
lanta, GA, argued for defendants-appellees. Also repre-
sented by LYNN E. RZONCA, Philadelphia, PA.

Before REYNA, MAYER, and HUGHES, *Circuit Judges*.

HUGHES, *Circuit Judge*.

Andra Group, LP appeals the district court's grant in part of the Defendants' motion to dismiss for improper venue. Because we find that venue is improper in the Eastern District of Texas as to the three dismissed defendants under 28 U.S.C. § 1400(b), we affirm.

I

Defendants are related companies. *Andra Grp., LP v. Victoria's Secret Stores, LLC*, No. 4:19-cv-288, 2020 WL 1465894 at *1 (E.D. Tex. Mar. 26, 2020) (*Decision*). L Brands, Inc. (LBI) is the corporate parent of several retailers in the apparel and home product field. *Id.* This case involves the parent LBI and several Victoria's Secret entities: (1) Victoria's Secret Stores, LLC (Stores) operates the physical Victoria's Secret stores; (2) Victoria's Secret Direct Brand Management, LLC (Direct) manages the victoriasscret.com website and the Victoria's Secret mobile application; and (3) Victoria's Secret Stores Brand Management, Inc. (Brand) creates Victoria's Secret branded intimate apparel and beauty products. *Id.* "LBI's subsidiaries each maintain their own corporate, partnership, or limited liability company status, identity, and structure." *Id.* Each Defendant is incorporated in Delaware. *Andra Grp., LP v. Victoria's Secret Stores, LLC*, No. 4:19-cv-288, 2020 WL 2478546, at *2 (E.D. Tex. Feb. 24, 2020) (*Report and Recommendation*), *report and recommendation adopted, Decision*, 2020 WL 1465894. LBI, Direct, and Brand (collectively, the Non-Store Defendants) do not have any employees, stores, or any other physical presence in the Eastern District of Texas (the District). *Id.* at *3. Stores operates at least one retail location in the District. *Id.* at *5.

In April 2019, Andra sued Defendants for infringement of U.S. Patent No. 8,078,498 (the '498 patent), which claims

inventions directed to displaying articles on a webpage, including applying distinctive characteristics to thumbnails and displaying those thumbnails in a “master display field.” ’498 patent 11:27–42. **[J.A. 56]** Andra’s infringement claims are directed to the victoriasssecret.com website, related sites, and smartphone applications that contain similar functionality as the website. Appellant’s Br. 3–4.

Defendants moved to dismiss the infringement suit for improper venue under 28 U.S.C. § 1406(a), or in the alternative, to transfer the lawsuit to the Southern District of Ohio. Andra filed an amended complaint, and the Defendants renewed their motion. *Report and Recommendation*, 2020 WL 2478546, at *1. Defendants argued that venue was improper because Stores did not commit acts of infringement in the District and the Non-Store Defendants did not have regular and established places of business in the District.

The magistrate judge recommended that the Non-Store Defendants be dismissed for improper venue but that the suit continue against Stores, because testimony by one Stores employee supported a finding of the alleged infringing acts in the District. *Id.* at *4–5. The magistrate judge did not consider transfer, because the parties had only briefed the issue of transfer where venue was improper against all the Defendants. *Id.* at *5. The magistrate judge discussed a potential division in the case, where venue was proper against some Defendants and improper against others, in a telephone conference on February 19, 2020, and Andra stated that it would proceed in the District against the Defendants who were not dismissed even if some of the Defendants were dismissed. *Id.*

After reviewing objections by both parties to the magistrate’s report and recommendation, the district court adopted the findings and conclusions of the magistrate judge as the findings and conclusions of the court. *Decision*,

2020 WL 1465894 at *1. The district court dismissed the Non-Store Defendants without prejudice for improper venue on March 26, 2020. In a departure from its earlier statement that it would proceed against any Defendants who were not dismissed, Andra voluntarily dismissed the last remaining Defendant, Stores, and the district court subsequently dismissed all remaining claims without prejudice on May 15, 2020. Andra timely filed notice of appeal of the dismissal of the Non-Store Defendants for improper venue.

II

“We review de novo the question of proper venue under 28 U.S.C. § 1400(b).” *Westech Aerosol Corp. v. 3M Co.*, 927 F.3d 1378, 1381–82 (Fed. Cir. 2019). “[T]he plaintiff has the burden of establishing proper venue under 28 U.S.C. § 1400(b).” *Id.*

28 U.S.C. § 1400(b) provides that “[a]ny civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.” A “domestic corporation ‘resides’ only in its State of incorporation for purposes of the patent venue statute.” *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514, 1517 (2017).

Because each Defendant is incorporated in Delaware, no defendant “resides” in Texas for the purpose of patent venue. Thus, to establish venue in this case, Andra must show that each Defendant committed acts of infringement and maintains a regular and established place of business in the Eastern District of Texas.

To show that a defendant has a regular and established place of business, there are three requirements: “(1) there must be a physical place in the district; (2) it must be a

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.