

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

STRATOSAUDIO INC.,)	
)	Case No. 6:20-CV-01131-ADA
Plaintiff,)	
)	
v.)	JURY TRIAL DEMANDED
)	
VOLKSWAGEN GROUP OF)	
AMERICA, INC.,)	
)	
Defendant.)	

STRATOSAUDIO, INC.'S OPPOSITION TO
VOLKSWAGEN GROUP OF AMERICA, INC.'S
MOTION TO DISMISS OR TRANSFER

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I. INTRODUCTION

Volkswagen Group of America, Inc.’s (“Volkswagen”) Motion to Dismiss or Transfer (D.I. 16) (“Motion”) presents one main argument for transfer: that Plaintiff StratosAudio, Inc. (“StratosAudio”) cannot utilize Volkswagen’s dealers in this District to establish venue because the dealers are “separate entities.” Motion at 4. This argument both ignores the controlling law on venue determination for patent cases and the facts regarding Volkswagen’s relationship to its dealers.

The U.S. Court of Appeals for the Federal Circuit has set forth the legal requirements for venue that relate to a defendant’s “control” or “ratification” of a place of business. *In re Cray*, 871 F.3d 1355, 1363 (Fed. Cir. 2017). Notwithstanding Volkswagen’s arguments, the mere fact that a defendant and an entity in a judicial district are “separate entities” is not dispositive in determining venue.

In addition, Volkswagen’s Motion ignores the facts of its *actual* relations with its dealers. The reality is that Volkswagen ratifies and controls almost every aspect of its dealers’ business, including, but not limited to, (i) the location, structure, use, and maintenance of its dealers’ premises and facilities, (ii) advertising, (iii) sales, (iv) parts, (v) inventory, (vi) service and warranty, (vi) pricing, (viii) personnel, and (ix) records keeping. As set forth in more detail below, Volkswagen’s ratification and control over its dealers is so pervasive that Volkswagen even controls what brochures the dealers must display in their waiting areas, as well as what computer equipment and stationery the dealer may use.

Judge Gilstrap in the Eastern District of Texas has already examined the venue issue raised by Volkswagen – whether a vehicle manufacturer ratifies or controls its dealers under *In Re Cray* – and determined that venue in that judicial district was proper. *Blitzsafe Tex., LLC v. Bayerische Motoren Werke AG*, 2018 U.S. Dist. LEXIS 173065 (E.D. Tex. Sep. 5, 2018). This

Court should apply that same analysis and reach the same conclusion: that Volkswagen's dealers' premises are, for the purposes of venue, to be treated as Volkswagen's own place of business. Volkswagen's Motion to Dismiss/Transfer for Improper Venue should be denied.

II. LEGAL STANDARDS

A plaintiff bears the burden of establishing proper venue. *In re Cray Inc.*, 871 F.3d at 1360. On a motion to dismiss for improper venue, a plaintiff need only present facts which, taken as true, establish venue. *Langton v. CBeyond Communication, LLC*, 282 F. Supp. 2d 504, 508 (E.D. Tex. 2003). "Courts will accept as true uncontroverted facts in a plaintiff's pleadings, and will resolve any conflicts in the plaintiff's favor." *Id.*; see also *etradeshow.com, Inc. v. Netopia Inc.*, 2004 WL 515552, at *2 (N.D. Tex. Jan. 30, 2004).

Venue for domestic defendants in patent infringement cases is governed by 28 U.S.C. § 1400(b). *TC Heartland LLC v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1514, 1521 (2017). Section 1400(b) provides that "[a]ny civil action for patent infringement may be brought [1] in the judicial district where the defendant resides, or [2] where the defendant has committed acts of infringement and has a regular and established place of business." *TC Heartland*, 137 S. Ct. at 514. As to venue under the second prong of Section 1400(b), there are "three general requirements relevant to the inquiry: (1) there must be a physical place in the district; (2) it must be a regular and established place of business; and (3) it must be the place of the defendant." *In re Cray Inc.*, 871 F.3d 1355 at 1360.

III. ARGUMENT

Volkswagen meets the requirements of the second prong of Section 1400(b). First, Volkswagen has not disputed – because there can be no dispute – that Volkswagen's dealerhips are both "physical places" within the District and that they are "regular and established." See, e.g., *Blitzsafe Tex., LLC v. Bayerische Motoren Werke AG*, 2018 U.S. Dist. LEXIS 173065, *13

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