



was only filed to prevent transfer to the Western District of Pennsylvania.

The Court concludes that it cannot consider either of those arguments in deciding whether to consolidate the cases. The Court knows of no legal principle that prohibits someone from filing a lawsuit that is well founded in fact and law in order to give a strategic advantage to itself in another case. Because the defendant retailer, Car-Mic Enterprises, Inc., has answered the 03-6240 case, the Court does not have before it any motion to dismiss and cannot go behind the allegations of the complaint in deciding the consolidation motion. The Court does stress, however, that the grant of the motion to consolidate does not resolve the transfer issue.

Federal Rule of Civil Procedure 42 states in pertinent part:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary cost or delay.

There is no question that these two actions involve common questions of law or fact. They involve claims for patent infringement of the same two patents for the identical accused bed liners. They also both allege unfair competition and false

designation of origin for the identical "SR" trademark against the manufacturer and its retailer. STK argues that one of the patent claims against the retailer will have to be withdrawn. That may or may not be the case; but, at this point, the two complaints contain the same claims of patent infringement.

The defendant cites some cases in which courts have refused to consolidate cases involving infringement of the same patent. As the Court reads those cases, however, the courts were not faced with a situation where not only was it the same patent at issue but the same product at issue. Those cases appear to involve two different manufacturers who are both alleged to have infringed the same patent. Here, we have exactly the same product at issue. It seems to the Court that it would make no sense to litigate a case against the retailer separately from the case against the manufacturer when both cases involve the exact same product. The Court, therefore, will grant the motion for consolidation of the two cases.

As the Court said above, the consolidation of the two cases does not mean that the transfer motion should be denied. As the Court discussed with the parties in an on the record conference on February 20, 2004, the plaintiff shall have seven (7) days after it receives the Court's order on consolidation to submit any additional arguments in opposition to transfer of the

consolidated cases to the Western District of Pennsylvania. The defendant may then have seven (7) days thereafter to reply.



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MARY A. McLAUGHLIN, J.