

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

PETONYAK MACHINERY CORPORATION

PLAINTIFF

V.

CASE NO. 4:10CV00772 JMM

BRANDT INDUSTRIES LTD., ET AL.

DEFENDANTS

ORDER

Pending before the Court is Defendants's Motion to Dismiss, Stay or Transfer (#10). For the reasons stated below, the Motion to Stay is granted.

On July 6, 2010, Defendants filed a complaint against the Plaintiff in the United States District Court for the Southern District of Indiana, Indianapolis Division, for Declaratory Judgment and Injunctive Relief regarding a disputed trademark ("Indiana Case"). On July 7, 2010, Plaintiff filed the instant case raising the same issues and claims regarding the trademark dispute ("Arkansas Case").

On August 10, 2010, Defendants filed a motion in the Arkansas Case contending that the "first to file" rule should apply and this Court should decline to exercise jurisdiction over this matter and defer to the Indiana Court. Defendants asked that this Court to either stay or dismiss the complaint. Alternatively, Defendants sought to have the Court transfer the complaint to the Southern District of Indiana pursuant to 28 U.S.C. § 1404(a). On August 20, 2010, Plaintiff filed a Motion to Transfer in the Indiana Case asking that the case be transferred to Arkansas.

On September 29, 2010, this Court granted a Joint Motion for Extension of Initial Scheduling Order and stayed all deadlines until it had ruled on the pending Motion to Dismiss, Stay or Transfer.

Generally, “where two courts have concurrent jurisdiction, the first court in which jurisdiction attaches has priority to consider the case.” *Orthmann v. Apple River Campground, Inc.*, 765 F.2d 119, 121 (8th Cir. 1985) (citations omitted). Because a stay, as opposed to a dismissal, will potentially save judicial resources, the Court will grant Defendants’s Motion to Stay until such time as a ruling is made in Indiana Case.

IT IS SO ORDERED THIS 13 day of January, 2011.



James M. Moody
United States District Judge