

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

PITONYAK MACHINERY CORPORATION

PLAINTIFF

V.

CASE NO. 4:10CV00772 JMM

BRANDT INDUSTRIES LTD., ET AL.

DEFENDANTS

ORDER

On July 6, 2010, Brandt Industries Ltd. And Brandt Agricultural Products Ltd (“Brandt”) filed a complaint against Pitonyak Machinery Corporation (“Pitonyak”) 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”). (Case No. 1:10-cv-0857-TWP-DML). On July 7, 2010, Petonyak filed the above styled case against Brandt in this Court raising the same issues and claims regarding the trademark dispute (“Arkansas Case”).

On August 10, 2010, Brandt 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. Brandt asked this Court to either stay or dismiss the complaint. Alternatively, Brandt 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, Pitonyak 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. On January 13, 2011, this Court stayed the complaint until a decision had been made in the Indiana Case.

On February 11, 2011, the United States District Court for the Southern District of Indiana, Indianapolis Division, issued an Order denying Pitonyak's Motion to Transfer. Based upon that Order and this Court's previous order staying the case, the Clerk of the Court is directed to transfer the above styled case to the United States District Court for the Southern District of Indiana, Indianapolis Division. *See Orthmann v. Apple River Campground, Inc.*, 765 F.2d 119, 121 (8th Cir. 1985) ("the first court in which jurisdiction attaches has priority to consider the case").

IT IS SO ORDERED THIS 15 day of February, 2011.



James M. Moody
United States District Judge