

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRADY MARKETING COMPANY, INC.,
Plaintiff,
v.
KAI USA, LTD.,
Defendant.

Case No. [16-cv-02854-RS](#)

**ORDER DENYING DEFENDANT’S
MOTION TO DISMISS AND
TRANSFERRING THIS MATTER TO
THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF
OREGON**

In this contract suit, defendant KAI USA, Ltd. (“KAI”) moves to dismiss plaintiff Brady Marketing Company, Inc.’s (“Brady”) claims on the grounds of forum non conveniens, pursuant to a clause in the parties’ contract stating: “The parties agree that Clackamas County, in the State of Oregon, shall be the proper forum for any action . . . brought under this Agreement.” Although this clause is valid and mandatory, see Order Req. Suppl. Br. 1, it is unclear “whether [it] identifies Clackamas County Circuit Court as the exclusive forum for any disputes, or whether the U.S. District Court for the District of Oregon [which encompasses all Oregon counties] is also a proper forum,” *id.* Thus, the parties were “ordered to file briefs addressing whether the appropriate course is to transfer this matter to the District of Oregon . . . address[ing] (1) whether transfer . . . is proper; and (2) whether the interests of justice favor the transfer.” *Id.* at 8-9.

Neither party’s supplemental brief engages sufficiently with the issue. KAI argues, falsely, that the “forum selection clause here specifies ‘Clackamas County, Oregon as the exclusive

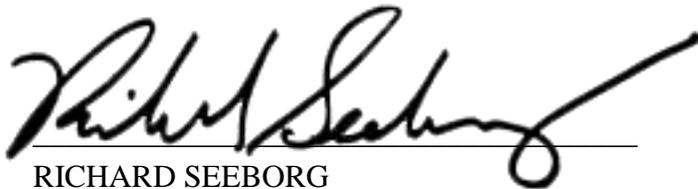
1 venue,” Def.’s Suppl. Br. 1 (emphasis added), which of course it does not. The clause refers only
2 to forum. KAI also announces that the “interest of justice analysis is unnecessary,” id. at 2
3 (internal quotation marks omitted), and cites in support of its motion a series of cases dealing with
4 contract clauses specifying a judicial venue, id. at 2-5. Brady, meanwhile, reiterates its rejected
5 argument that the forum-selection clause violates public policy, Pl.’s Suppl. Br. 1-2; Order Req.
6 Suppl. Br. 4-6, and argues the apparently undisputed point that KAI is subject to personal
7 jurisdiction in California. Pl.’s Suppl. Br. 2.

8 Since the parties’ briefs are altogether unenlightening on the subject of whether this action
9 should be dismissed for forum non conveniens or transferred to the District of Oregon pursuant to
10 28 U.S.C. § 1404(a), the action shall be transferred “to avoid the necessity of plaintiff having to
11 file and serve a new action.” Cf. Voicemail Club, Inc. v. Enhanced Servs. Billing, Inc., No. C 12-
12 02189 SI, 2012 WL 4837697, at *4 (N.D. Cal. Oct. 10, 2012) (deeming transfer pursuant to 28
13 U.S.C. § 1406(a) preferential to dismissal).

14 Defendant’s motion to dismiss is denied, and this action is hereby transferred to the United
15 States District Court for the District of Oregon.

16 **IT IS SO ORDERED.**

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18 Dated: September 22, 2016



RICHARD SEEBORG
United States District Judge

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