

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
ANDERSON/GREENWOOD DIVISION

Flexible Technologies, Inc.,	)	C/A No. 8:17-cv-00117-DCC
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	ORDER
SharkNinja Operating, LLC; SharkNinja	)	
Management Company; SharkNinja Sales	)	
Company;	)	
	)	
Defendants.	)	

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This matter is before the Court on Plaintiff’s claim for patent infringement and a violation of the Defend Trade Secrets Act under federal law, and claims for trade secret misappropriation, breach of contract, and other violations of state law. ECF No. 1. Defendants’ filed a Motion to Dismiss or Transfer Due to Improper Venue, and/or to Dismiss for Failure to State a Claim. ECF No. 16. Plaintiff filed a Response in Opposition and Defendants filed a Reply. ECF Nos. 21, 27. The Motion is now ripe for resolution.

This Motion was referred to United States Magistrate Judge Jacquelyn D. Austin for a Report and Recommendation (“Report”) by Order of the Honorable Timothy M. Cain. ECF No. 30. On February 14, 2018, the Magistrate Judge issued a Report recommending that the Motion be granted in part and denied in part. ECF No. 37. The Magistrate recommends that the Motion to Dismiss for Improper Venue be denied, that the Motion to Transfer be granted and that this action be transferred to the United States District Court for the District of Delaware, and that the Motion to Dismiss for Failure to State a Claim be denied without prejudice and with leave to refile in the proper venue. Neither party has filed objections, and the time to do so has passed.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” (citation omitted)).

After considering the record in this case, the applicable law, and the Report of the Magistrate Judge, the Court finds no clear error and agrees with the Report’s recommendation that the Motion be granted in part and denied in part. Accordingly, the Court adopts the Report by reference in this Order. Defendants’ Motion [16] is GRANTED in part and DENIED in part. To the extent Defendants move to dismiss for improper venue, the Motion is denied. To the extent Defendants move to dismiss for failure to state a claim, the Motion is denied without prejudice and with leave to refile in the proper venue. To the extent Defendants move to transfer, the Motion is granted. This action is transferred to the United States District Court for the District of Delaware.

IT IS SO ORDERED.

March 5, 2018  
Spartanburg, South Carolina

s/ Donald C. Coggins, Jr.  
United States District Judge