

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 16-2908(DSD/FLN)

Shock Doctor, Inc.

Plaintiff,

v.

Battle Sports Science, LLC,
and Active Brands Company, LLC,

Defendants.

James R. Steffen, Esq., Peter M. Routhier, Esq. and Faegre Baker Daniels, LLP, 90 South 7th Street, Suite 2200, Minneapolis, MN 55402, counsel for plaintiff.

Aaron A. Myers, Esq., Niall A. MacLeod, Esq. and Kutak Rock, LLP, 220 South Sixth Street, Suite 1750, Minneapolis, MN 55402, counsel for defendants.

This matter is before the court upon the motion to dismiss or, in the alternative, to transfer venue by defendants Battle Sports Science, LLC and Active Brands Company, LLC. Based on a review of the file, record, and proceedings herein, and for the following reasons, the court denies the motion.

This dispute arises out of defendants' production and sale of a line of "Oxygen" mouthguards that are sold in competition with plaintiff Shock Doctor Inc.'s "Max Airflow" mouthguards. Compl. ¶ 17. Shock Doctor argues that the defendants' advertising claims are false and, on August 29, 2016, brought claims for false advertising, violations of the Minnesota Deceptive Trade Practices Act, and unfair competition. See ECF No. 1.

Before Shock Doctor filed its complaint, Battle Sports filed suit against Shock Doctor in the District of Nebraska, alleging patent infringement, trade dress infringement, trademark infringement, unfair competition, and unjust enrichment. See Battle Sports Science, LLC v. Shock Doctor, Inc., No. 8:16CV352, 2016 WL 7046643, at *1 (D. Neb. Dec. 2, 2016).

On September 22, 2016, Active Brands and Battle Sports filed the instant motion to dismiss, or in the alternative, to transfer venue to the District of Nebraska. While the motion was pending, on October 7, 2016, Shock Doctor filed a similar motion in the Nebraska case to dismiss, or in the alternative, to transfer venue to the District of Minnesota. See id. at *2. The Nebraska court, among other things, transferred the action to the District of Minnesota after weighing the factors provided in Terra Int'l, Inc. v. Miss. Chem. Corp., 119 F.3d 688 (8th Cir. 1997). See id. at *11-13.

The parties agree that it would be convenient to consolidate the Nebraska and Minnesota litigation concerning the Oxygen and Max Airflow mouthguards. In light of the Nebraska court's decision to transfer the Nebraska litigation to Minnesota, the interests of judicial economy weigh heavily against transfer.

Accordingly, based on the above, **IT IS HEREBY ORDERED** that defendants' motion to dismiss or, in the alternative, to transfer venue [ECF No. 10] is denied.

Dated: January 6, 2017

s/David S. Doty
David S. Doty, Judge
United States District Court