

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO
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4

VENROD TRADING CO., INC.,

Plaintiff,

v.

ASSOCIATED BRANDS, INC.,

Defendant.

Civil No. 13-1265 (JAF)

5
6 **OPINION AND ORDER**

7 Plaintiff Venrod Trading Co., Inc. (“Venrod”) is suing Associated Brands, Inc.
8 (“Associated Brands”). (Docket No. 1.) Associated Brands initiated suit against Venrod
9 in the U.S. District Court for the District of New Jersey two months before Venrod filed
10 this complaint. (Docket No. 10.) Now, Associated Brands moves the court to dismiss
11 Venrod’s action before us, or to transfer it to the New Jersey district court. (Docket
12 No. 10.) We grant the request for transfer. Associated Brands also asks us to impose
13 sanctions upon Venrod’s attorneys for imposing excessive costs. We deny this request
14 without prejudice, allowing Associated Brands to raise it before the New Jersey court at
15 the appropriate time.

16 On February 22, 2013, Associated Brands filed a complaint against Venrod in the
17 U.S. District Court for the District of New Jersey, assigned to Judge Renee Marie Bumb.
18 (Docket No. 10-1 at 7.) Associated Brands alleged that it delivered goods to Venrod,
19 which Venrod agreed to pay for but did not. (Docket No. 10-1 at 17.) On April 2, 2013,
20 Venrod filed a motion to dismiss that complaint. (Docket No 10-1 at 8.) The same day,
21 Venrod filed a complaint against Associated Brands in the U.S. District Court for the

1 District of Puerto Rico. (Docket No. 1.) In the Puerto Rico complaint, Venrod alleged
2 that Associated Brands breached the non-competition and confidentiality clauses in their
3 packaging contract. (Docket No. 1.)

4 Back in New Jersey, Associated Brands and Venrod filed oppositions, cross-
5 motions, and replies. (Docket No. 10-1 at 9-10.) On May 22, 2013, Judge Bumb denied
6 Venrod's motion to dismiss or transfer the action. (Docket No. 10-1 at 13.) On July 9,
7 Associated Brands and Venrod submitted a joint proposed discovery plan for the New
8 Jersey action. (Docket No. 10-1 at 15.) In the space provided for any other issues, the
9 parties wrote:

10 At this time, there is a related matter between the same parties
11 pending in the United States District Court for the District of
12 Puerto Rico. Associated Brands, Inc. has requested that
13 Venrod dismiss this case and file any claims it has related to
14 the contracts between the Parties as a Counterclaim in the
15 District of New Jersey. Venrod is considering this but has
16 thus far refused to do so.

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18 (Docket No. 10-1 at 20.) On July 17, 2013, Venrod filed an answer to the complaint with
19 counterclaims against Associated Brands. (Docket No. 10-1 at 11.) In a July 10, 2013,
20 scheduling order, the New Jersey court set a timetable for the progression of the case.
21 (Docket No. 10-1 at 22.)

22 On July 24, 2013, Associated Brands filed a motion in our court to dismiss or, in
23 the alternative, to transfer the case pursuant to 28 U.S.C. § 1404(a), in favor of the first-
24 filed New Jersey action. (Docket No. 10.) In this motion, Associated Brands also
25 requested that we impose sanctions against Venrod and/or its counsel by granting
26 Associated Brands its reasonable attorney's fees and costs incurred in filing this motion.

1 (Docket No. 10.) On August 15, 2013, Venrod filed a memorandum in opposition to the
2 motion to dismiss or transfer. (Docket No. 17.) On September 16, 2013, Associated
3 Brands filed a reply. (Docket No. 20.) On November 4, 2013, Venrod filed a surreply.
4 (Docket No. 24.) On November 13, 2013, Associated Brands filed a response in
5 opposition to the surreply. (Docket No. 29.)

6 Under 28 U.S.C. § 1404(a), “a district court may transfer any civil action to any
7 other district or division where it might have been brought.” 28 U.S.C. § 1404(a).
8 Actions involving “the same parties and similar subject matter” simultaneously pending
9 in different district courts lead to “wasted resources because of piecemeal litigation, the
10 possibility of conflicting judgments, and a general concern that the courts may unduly
11 interfere with each other’s affairs.” TPM Holdings, Inc. v. Intra-Gold Indus. Inc., 91
12 F.3d 1, 4 (1st. Cir. 1996). To avoid such pitfalls, when “the overlap between the two suits
13 is nearly complete,” the court that first had jurisdiction typically decides the dispute while
14 the other court defers. Id. When the overlap is less than complete, the second court looks
15 to factors such as the “extent of overlap, the likelihood of conflict, the comparative
16 advantage and the interest of each forum in resolving the dispute.” Id.

17 Here, the two actions certainly involve the same parties and similar subject matter.
18 Further, the overlap between the two suits appears nearly complete. Both actions center
19 on a packaging and shipping contract between Associated Brands and Venrod. (Docket
20 No. 1; Docket No 10-1.) The New Jersey action was filed months before the action in
21 our court, and has progressed farther. (Docket No. 10-1.) Therefore, we defer to the
22 jurisdiction of the New Jersey court and transfer this case for possible consolidation.

1 Associated Brands also asks the court to order that Venrod's counsel pay for
2 excessive costs that were incurred. (Docket No. 10.) Under 28 U.S.C. § 1927, "any
3 attorney ... who so multiplies the proceedings in any case unreasonably and vexatiously
4 may be required by the court to satisfy personally the excess costs, expenses, and
5 attorney's fees reasonably incurred because of such conduct." 28 U.S.C. § 1927. We
6 choose not to impose these sanctions, but they may be raised before the New Jersey court
7 at an appropriate time.

8 For the foregoing reasons, Associated Brands' motion to dismiss or, in the
9 alternative, to transfer (Docket No. 10) is **GRANTED IN PART** and **DENIED IN**
10 **PART**. This case is **TRANSFERRED** to the U.S. District Court for the District of New
11 Jersey. The request for sanctions is **DENIED** without prejudice.

12 **IT IS SO ORDERED.**

13 San Juan, Puerto Rico, this 30th day of January, 2014.

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S/José Antonio Fusté
JOSE ANTONIO FUSTE
U. S. DISTRICT JUDGE