

ANDRA GROUP, LP v. VICTORIA'S SECRET STORES, LLC, Appeal No. 2020-2009 (Fed. Cir. August 3, 2021). Before Reyna, Mayer, and Hughes. Appealed from E.D. Tex. (Judge Mazzant, III).

Background:

Andra filed a patent infringement lawsuit in the Eastern District of Texas ("District") alleging that a website (www.victoriasscret.com) operated by the defendants' businesses infringes on Andra's patent. The defendants include a parent company ("LBI") and three subsidiaries (referred to as "Stores," "Direct," and "Brand"), which are entities handling different aspects of the businesses under the brand Victoria's Secret. Stores operates retail store locations for the Victoria's Secret brand in the District.

The defendants collectively filed a motion to dismiss for improper venue asserting that (i) Stores did not commit any acts of infringement in the District, and (ii) LBI, Direct, and Brand (referred to as "Non-Store Defendants") do not have a regular and established place of business in the District because only Stores operates the retail store locations. The district court denied-in-part the motion to dismiss with respect to Stores, and granted-in-part the motion to dismiss with respect to the Non-Store Defendants because the Non-Store Defendants do not have a regular and established place of business in the District. Andra appealed the dismissal of the Non-Store Defendants.

Issue/Holding:

Did the district court err in finding that venue was improper because of a lack of a regular and established place of business by the Non-Store Defendants in the District? - No, affirmed.

Discussion:

The Federal Circuit stated that a regular and established place of business requires the regular, physical presence of an employee or other agent of a defendant conducting the defendant's business. To satisfy this requirement, Andra asserted two alternative theories.

First, Andra argued that employees of Stores at the retail locations in the District are agents of the Non-Store Defendants. An agency relationship is only established if a principal has a right to direct or control the actions of an agent. Andra argued that LBI controls store employees by dictating store operations, hiring and firing of employees, and controlling compliance with a Code of Conduct for employees. The Federal Circuit found LBI's control insufficient because testimony from a retail store manager showed the store manager has complete control of the hiring/firing and the conduct of employees.

Andra also argued that Direct controls store employees by dictating the handling of returns of products purchased on the website. The Federal Circuit found a lack of evidence to support that Direct controls the return process by employees at the store locations. Andra argued that Brand controls the distribution and sales of the products that are available at store locations. The Federal Circuit held that control of products does not equate to control of employees of the store locations. Thus, the Federal Circuit held that no agency relationship exists.

Second, Andra argued that the Non-Store Defendants ratified the retail store locations as their own place of business based on the same facts used to support Andra's theory of an agency relationship. The Federal Circuit relied on its decision in *In re Cray* to evaluate whether the Non-Store Defendants ratified the retail store locations as their own. The Federal Circuit disagreed with Andra and found that none of the evidence presented by Andra shows that any of the Non-Store Defendants actually engage in their business at the retail store locations beyond having business relationships within a shared business model.