

Shelf Space Alone Not Enough To Establish Venue in WDTX

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On June 22, 2021, the court granted the defendant's Motion to Dismiss for Improper Venue in *Koss Corp. v. PEAG LLC DBA JLAB Audio*, Case No. 6:20-cv-00662-ADA. Because the plaintiff conceded the defendant did not reside in the Western District of Texas, the court's analysis focused on whether the defendant had a regular and established place of business in the District based on its shelf space at certain retail stores. In concluding the defendant did not have a regular and established place of business, the court made the following observations:

1. It was undisputed that the defendant did not own or lease real property, offices, or other places of business.
2. While the defendant sold products and had shelf space in certain retail stores in the District, the defendant did not exercise "the degree of control necessary to establish the stores and interactive displays as 'places of PEAG.'" The opinion did not address whether the products on the shelf space were accused of infringement.
3. The court acknowledged both the Federal Circuit and Eastern District of Texas have held that shelf space can serve as a "place" under the patent venue statute. Because the defendant did not perform sales-related operations like "restocking supplies, affixing pricing stickers, and arranging products," and did not participate in any business operations at the retail stores, the court said, "it would be incorrect to determine that [the defendant] leases or otherwise controls the shelf space that its products are sold on."
4. Without an employee or agent who regularly conducted business at the advertisement displays and shelf space, the defendant's displays could not be a physical place of business for venue purposes.

The court dismissed the case for improper venue and rendered the defendant's motion to transfer moot.

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