

Judge Albright Grants Customer Defendants Sailpoint, Vistra, and Clear Channel's Motions to Sever and Stay While Suit Against Manufacturer Box Remains Pending

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On December 29, 2022, Judge Albright issued two orders applying the customer suit exception to Plaintiff Topia's patent infringement claims against defendants Sailpoint, Vistra, and Clear Channel, all customers of defendant Box. In both orders, one involving Sailpoint and Vistra and the other involving Sailpoint and Clear Channel, Judge Albright agreed to sever the claims against the customer defendants and stay those claims pending resolution of Topia's claims against Box.

The customer suit exception applies in certain cases where the supplier or manufacturer and the customer are named as defendants in the same action and, if applied, allows the case against the manufacturer defendant to proceed separately. The exception exists to avoid imposing the burdens of trial on the customer in situations where the manufacturer is the true defendant in a dispute. Courts look at three factors to decide whether the exception should apply: whether the customer defendant is merely a reseller, whether the customer agrees to be bound by the outcome of the plaintiff's case against the manufacturer, and whether the manufacturer is the only source of the infringing product.

Here, the main issue in front of Judge Albright was whether Sailpoint, Clear Channel, and Vistra were merely resellers of the infringing product. While the customer defendants argued that the claims against them were entirely duplicative of the claims against Box, Topia responded that Sailpoint engaged in distinct acts of infringement through active marketing and promotion, and thus that they could not be considered mere resellers. Judge Albright sided with the customer defendants, holding that "while some claims against [Sailpoint, Vistra, and Clear Channel] may persist after the outcome of Topia's claims against Box, the outcome of the claims against Box will resolve the *major issues* concerning the claims against the customer."

Judge Albright also granted the customer defendants' motions to stay the case while the suit against Box plays out, concluding that a stay would not delay Topia from litigating the ultimate question of infringement, and that it would simplify the issues in the later cases against Sailpoint, Vistra and Clear Channel.

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