

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF OREGON
3 PORTLAND DIVISION
4

5 EXACT ORDER SPECIALTIES, an Oregon)
Sole Proprietorship,)

6 Plaintiff,)

No. 03:12-cv-00631-HU

7 vs.)

8 GLOW INDUSTRIES, INC., an Ohio)
9 corporation; JASON GLOWACKI, an)
individual; and DOES 1-10;)

MEMORANDUM OPINION AND ORDER
ON MOTION TO TRANSFER VENUE
AND MOTION TO DISMISS

10 Defendants.)
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14 John E. Grant, III
Meltzer Grant LLC
107 S.E. Washington St., Suite 410
15 Portland, OR 97214

16 Attorney for Plaintiff

17
18 Christopher E. Hawk
Daniel J. Nichols
Gordon & Rees LP
19 121 S.W. Morrison St., Suite 1575
Portland, OR 97204

20 Charles V. Choken
21 David A. Welling
Choken Welling LLP
22 3020 W. Market St.
Akron, OH 44333

23 Attorneys for Defendants
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3 HUBEL, Magistrate Judge:

4 The plaintiff Exact Order Specialties ("Exact") brings this
5 action for trademark infringement against the defendants Glow
6 Industries, Inc. ("Glow"); Jason Glowacki ("Glowacki"); and Does 1-
7 10. The matter is before the court on Glow's Motion to Transfer
8 Venue (Dkt. #31), and Glowacki's Motion to Dismiss for Lack of
9 Personal Jurisdiction (Dkt. #36).

10 Exact, an Oregon corporation, is in the business of designing
11 and manufacturing various products, "including musical instruments,
12 guitar jack sockets, and premium smoking pipes." Dkt. #35, p. 3
13 (citing Dkt. #27, First Am. Cmpt., ¶ 11). Among other things,
14 Exact designs, manufactures, markets, and sells a small, portable
15 smoking pipe called the "Monkey Pipe." According to Exact, the
16 pipe is "made from high quality, hand finished hardwoods," and is
17 one of Exact's most popular products. *Id.* (citing Dkt. #27, ¶ 12).
18 On each Monkey Pipe, Exact places its "Exact Order Specialties Eye"
19 logo design (the "EOS Eye Logo"). Exact maintains federally-
20 registered trademarks for the EOS Eye Logo (Reg. No. 3,060,212),
21 and the term "Monkey Pipe" (Reg. No. 3,883,064). Exact claims its
22 EOS Eye Logo "is widely recognized by the consuming public of the
23 United States." Dkt. #27, ¶ 19.

24 According to Exact, a Glow employee named Brian Nupp contacted
25 Exact twice in February 2010, to express Glow's interest in whole-
26 saling Monkey Pipes. Dkt. #27, ¶¶ 25 & 26; Dkt. #35, p. 3. Jason
27 Davis, on behalf of Exact, corresponded with Nupp twice in March
28 2010, via e-mail, regarding Glow's inquiry. Exact claims that on

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1 March 15, 2010, Nupp renewed Glow's interest in wholesaling Monkey
2 Pipes, if Glow could receive certain payment terms. Dkt. #27,
3 ¶ 28. However, Glow never submitted a purchase order for the
4 Monkey Pipes. Dkt. #27, ¶ 29; Dkt. #35, p. 3.

5 According to Glow, in October 2011, it "purchased 1,010 pipes
6 at \$3.00 per pipe (\$3,030 worth of total product) from a company in
7 California that is not a party to this case." Dkt. #32, p. 2.
8 Glow then sold those pipes wholesale to various buyers, including
9 two sales to entities in Oregon: (1) a sale of ten pipes on
10 October 12, 2011, "at a total cost of \$62.50 to Magic Mushroom Lamp
11 Co. in Sutherlin, Oregon"; and (2) a sale of one pipe on Decem-
12 ber 6, 2011, "at a total cost of \$6.00 to Flashback T's in Coos
13 Bay, Oregon." *Id.*

14 Exact alleges the pipes sold by Glow to customers in Oregon
15 were called "USA Made Monkey Pipe[s]," featuring a copy of the EOS
16 Eye Logo, and bearing a false trademark symbol. Exact claims these
17 pipes were "an obvious, low quality knock-off of the Monkey Pipe,"
18 that infringed Exact's marks. Dkt. #27, ¶¶ 30, 32; Dkt. #35, p. 3.
19 Exact alleges Glow's sale of the knock-off Monkey Pipes has damaged
20 Exact's business, reputation, and goodwill, and Glow's sale of the
21 counterfeit pipes "is likely to cause confusion, mistake, and
22 deception by creating the false and misleading impression that
23 [Glow's] goods are manufactured or distributed by [Exact], or are
24 associated or connected with [Exact], or have the sponsorship,
25 approval, or endorsement of [Exact]." Dkt. #27, ¶ 45.

26 Exact filed this action on April 10, 2012, alleging federal
27 and state claims for trademark infringement and counterfeiting
28 against Glow, David Glowacki, Brian Nupp, and "Does 1-10." Dkt.

1 #1. On May 25, 2012, Glow filed a motion to transfer venue, Dkt.
2 #22, and the defendants David Glowacki and Brian Nupp filed a
3 motion to dismiss for lack of personal jurisdiction, Dkt. #24.
4 Exact filed its First Amended Complaint on June 4, 2012, deleting
5 David Glowacki and Brian Nupp as defendants, and adding Jason
6 Glowacki as a defendant. Dkt. #27; see Dkt. #37, p. 2. As a
7 result of Exact's filing of the Amended Complaint, the court found
8 the motion to transfer venue and motion to dismiss to be moot.
9 Dkt. #29. Glow filed its current motion to transfer venue on
10 June 18, 2012, Dkt. #31, and the defendant Jason Glowacki filed his
11 current motion to dismiss for lack of personal jurisdiction on
12 July 3, 2012, Dkt. #36. According to Exact, Glowacki "has been
13 served but has not yet appeared in this action." Dkt. #35, p. 4.

14 The current motions are fully briefed, and no party has
15 requested oral argument. I will address Glowacki's motion to
16 dismiss first, and then turn to consideration of Glow's motion to
17 transfer venue.

18
19 ***MOTION TO DISMISS***

20 Glowacki moves to dismiss Exact's case against him on the
21 basis that this court lacks personal jurisdiction over him. I
22 first will address Exact's argument that Glowacki failed to comply
23 with Local Rule 7-1, "because he did not make a good faith effort
24 through personal or telephone conference to resolve the dispute
25 with [Exact] despite certifying that he had done so." Dkt. #40,
26 p. 2. Exact's counsel has filed a declaration stating he never had
27 any personal or telephone conversation with any attorney for Jason
28 Glowacki regarding the present motion to dismiss. Dkt. #41.

1 Counsel describes contacts he had with defense counsel regarding
2 the previous motion to dismiss filed by David Glowacki and Brian
3 Nupp, and a conversation with Jason Glowacki's attorney after the
4 current motion was filed, during which defense counsel indicated he
5 believed he had complied with the Local Rule. *Id.* Exact argues
6 Glowacki's motion should be denied on the basis that no good-faith
7 effort was made to comply with the Local Rule.

8 "The obvious purpose of Local Rule 7-1(a) is to encourage
9 parties to resolve disputes amicably when possible, preserving
10 judicial resources for those matters that require the court's
11 intervention." *Thompson v. Federico*, 324 F. Supp. 2d 1152, 1172
12 (D. Or. 2004) (Mosman, J.); *accord Gerke v. Travelers Cas. Ins.*
13 *Co.*, 815 F. Supp. 2d 1190, 1198 (D. Or. 2011) (citing *Thompson*).
14 Here, the parties' counsel had some conversation regarding the
15 defendants' failure to comply with the Local Rule in connection
16 with the previous motion filed by David Glowacki and Brian Nupp.
17 Despite that conversation, Exact's counsel contends defense counsel
18 once again failed to comply properly with the Local Rule in
19 connection with Jason Glowacki's motion. According to Exact's
20 counsel, defense counsel asserted that because the parties had
21 discussed the jurisdictional issue in connection with the prior
22 motion to dismiss, "he believed he understood [Exact's] position on
23 the issue and that the requirement for conference was therefore
24 satisfied." Dkt. #41, ¶ 12. Glowacki's attorney has filed a
25 declaration detailing the attorneys' conversations from his point
26 of view, and indicating his belief that he did, in fact, make a
27 good-faith effort to comply with the Local Rule. Dkt. #45.

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