

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. Sherry Klein Heitler
Administrative Order

PENGUIN GROUP (USA) INC.,

Plaintiff,

- v -

INDEX NO. 650214/2012

TIME/WARNER RETAIL SALES & MARKETING
SERVICES, INC.,

Defendant.

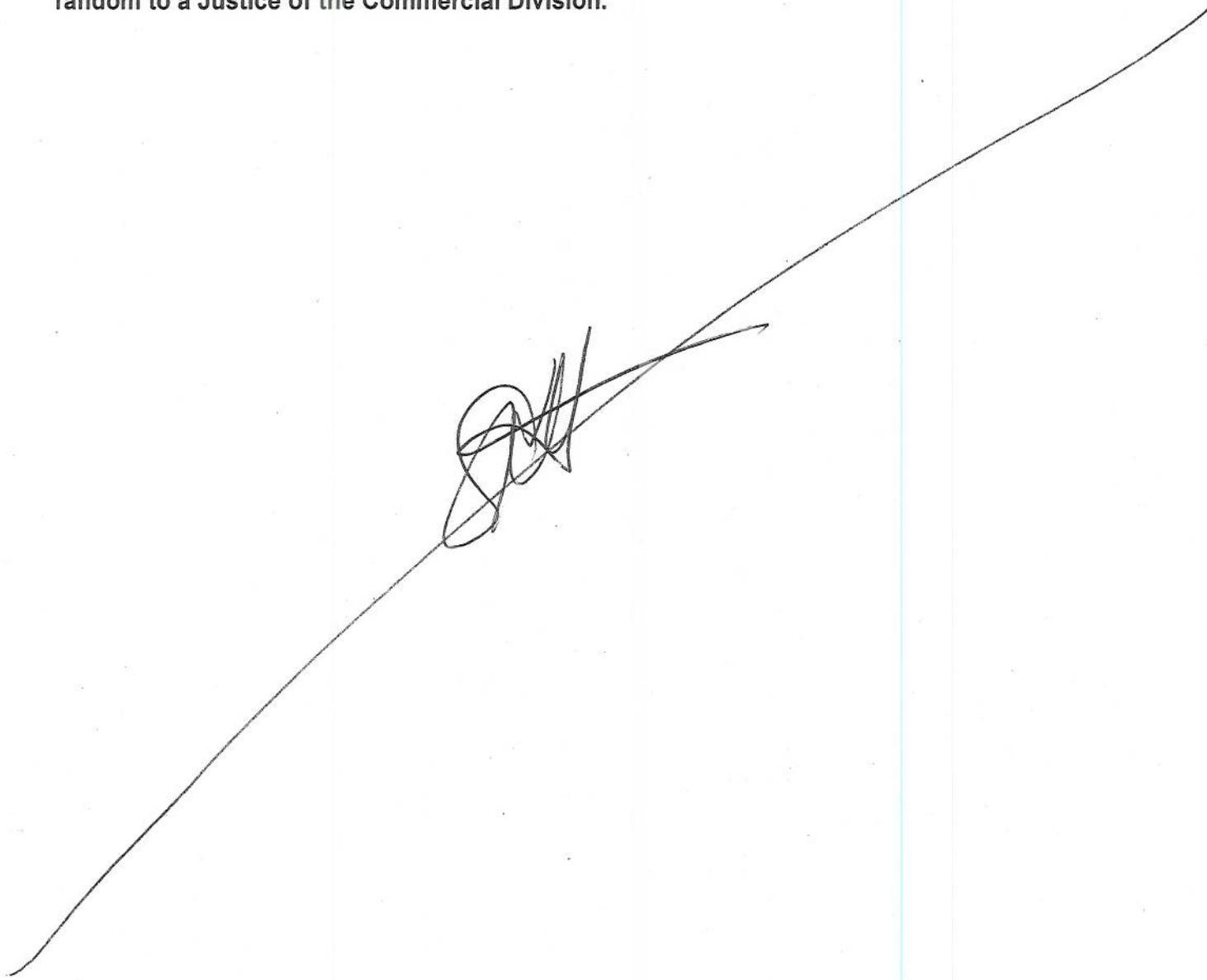
Administrative Order:

By letter dated May 11, 2012, counsel for defendant requests that this action be assigned to the Commercial Division. Counsel for the plaintiff opposes the application as untimely in his letter dated May 14, 2012.

A Request for Judicial Intervention (RJI) was filed on April 26, 2012 by plaintiff's counsel in connection with a motion for partial summary judgment. The box for "Commercial - Contract" matters was checked, but counsel for the plaintiff did not submit the required Commercial Division RJI Addendum. Thus, the case was assigned to a non-commercial part. Uniform Rule 202.70 (e) states that "[i]f a case is assigned to a non-commercial part because the filing party did not designate the case as 'commercial' on the RJI, any other party may apply by letter application . . . within ten days after receipt of a copy of the RJI, for a transfer of the case into the Commercial Division." Where, however, the RJI designates the case as a commercial matter, but is not assigned to the Commercial Division due to the absence of the required statement in support, an error by the clerk's office or some other reason, the court has construed the 10-day time limit as running from the assignment of the case to a non-commercial part. This case was assigned to the Hon. Anil Singh in I.A.S. Part 61 on May 3, 2012, and the application for a transfer was made on May 11, 2012. Thus, defendant's application is deemed timely.

There is no dispute that this action, involving a claim for breach of a distribution agreement, arises out of business dealings (Uniform Rule 202.70 [b] [1]), and that the amount in controversy exceeds \$150,000 (Uniform Rule 202.70 [a]).

The application to transfer this action to the Commercial Division is granted, and the Motion Support Office is directed to reassign this case from Part 61 (Singh, J.) at random to a Justice of the Commercial Division.



Dated: May 16, 2012

ENTER: _____ , A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION