

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

PRESENT: Hon. Sherry Klein Heitler
Administrative Order

KEMISTRE 8, LLC d/b/a AKADEMIKS,

Plaintiff,

- v -

INDEX NO. 600651/10

OLD SCHOOL CLOTHING COMPANY LLC and
WEEPLAY KIDS, LLC,

Defendants.

Administrative Order:

By letter dated July 14, 2010, counsel for plaintiff requests that this action be transferred into the Commercial Division pursuant to Uniform Rule 202.70 (e). Counsel for defendant Weeplay Kids, LLC objects to this application as untimely.

On June 7, 2010, defendant Weeplay served a Request for Judicial Intervention (RJI), in connection with its motion to dismiss. Weeplay's counsel marked the RJI as "other matter, trademark license dispute." However, at that time, Weeplay did not file the RJI, because admittedly, the parties were discussing a voluntary agreement to stay discovery and the filing of an amended RJI, marking the case commercial. On June 30, 2010, plaintiff informed Weeplay that it was not going to enter into the stipulation. On July 2, 2010, Weeplay filed the RJI, and the matter was assigned to I.A.S. Part 10.

Uniform Rule 202.70 (e) places a 10-day time limit on these applications, measured from the receipt of a copy of the RJI by the non-filing party. Here, that day was June 7, 2010. However, the RJI was not filed until the following month, because the parties were specifically discussing the stipulation and the filing of an amended RJI, designating the case as a commercial matter. Thus, the circumstances of this case require that the 10-day period of time commence on July 6, 2010, the day the RJI was processed by the Motion Support Office, and the first day plaintiff could have known that Weeplay's counsel did not amend the RJI, and that a non-commercial judge had been assigned.

Accordingly, the request for a transfer to the Commercial Division is granted, as this matter clearly falls into the category of matters to be heard in the Commercial Division. The Motion Support Office is directed to randomly reassign this case to the Commercial Division. (Defendant's motion to dismiss is currently returnable in the Motion Submissions Part on August 11, 2010.)

Dated: July 30, 2010

ENTER: , A.J.

HON. SHERRY KLEIN HEITLER
ADMINISTRATIVE JUDGE

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION