

**Koppla Ltd. v Maco Bag Corp.**

2008 NY Slip Op 31943(U)

June 17, 2008

Supreme Court, New York County

Docket Number: 0603682/2007

Judge: Doris Ling-Cohan

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

PRESENT: Hon. Doris Ling-Cohan

PART 36

Index Number : 603682/2007  
**KOPPLA LTD**  
 vs.  
**MACO BAG CORPORATION**  
 SEQUENCE NUMBER : # 001  
 CHANGE VENUE  
 4

INDEX NO. 603682-01

MOTION DATE

MOTION SEQ. NO. #001

MOTION CAL. NO.

on this motion to/for Change venue

PAPERS NUMBERED

1, 2

3

4

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits

Replying Affidavits

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion *by defendant to change the venue of this action is denied in accordance with the attached memorandum decision.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

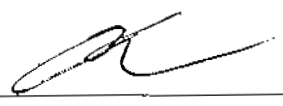
**FILED**

JUN 20 2008

COUNTY CLERK'S OFFICE  
NEW YORK

HON. DORIS LING-COHAN

Dated: 6/17/08



J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 36

-----X  
KOPPLA LTD. d/b/a KOPPLA NUTRIENTS CORP.,

Plaintiff,

-against-

MACO BAG CORPORATION,

Defendant.  
-----X

DORIS LING-COHAN, J.:

**FILED**  
JUN 20 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

Index № 603682/07

Motion Seq. No.: 001

This is a motion by defendant Maco Bag Corporation (Maco) for an order, pursuant to CPLR 510 and 511, changing venue to Wayne County, New York, on the ground that New York is not a proper county under CPLR 510 (1).

Plaintiff Koppla Ltd d/b/a Koppla Nutrients Corp. (Koppla Ltd) commenced this action, sounding in tort and/or breach of contract, by service of a summons and complaint on or about October 23, 2007. The dispute centers around packaging services provided by Maco which, apparently, did not perform up to plaintiff's expectations. According to plaintiff, it sustained damages as a result of defendant's faulty packaging of its dietary supplements.

The complaint states that the action is venued in New York County based on the location of plaintiff's principal place of business at 11K, 90 Gold Street, New York, New York. It is undisputed that defendant's principal place of business and its offices are located in Wayne County in upstate New York. It is also undisputed that an entity known as Natural Chemistry, Inc. (Natural Chemistry) is a Delaware corporation with its principal place of business at 76 Progress Drive, Stamford, Connecticut.

Issue was joined, on or about December 26, 2007, by service of Maco's answer together

with a demand to change venue. Maco then served the instant motion, dated January 18, 2008, for an order changing venue to Wayne County on the ground that New York is not a proper county pursuant to CPLR 510 (1). According to movant, it conducted business with an entity entitled "Koppla Nutrients a division of Natural Chemistry Inc." Therefore, as a division of Natural Chemistry, plaintiff's principal place of business is, likewise, located in Stamford, Connecticut, and not in New York County. As proof, Maco submits copies of plaintiff's product labels, advertisements, and letterheads which uniformly identify the entity with whom Maco was doing business as "Koppla Nutrients a division of Natural Chemistry Inc." of either Stamford, or Norwalk, Connecticut. None of the printed materials give a New York address.

Maco also submits the sworn affidavit of its company president, Craig Miller (Miller). In it, Miller attests to the fact that his company entered into an agreement<sup>1</sup> with "Koppla Nutrients, a division of Natural Chemistry Inc." of Connecticut, and not with Koppla Ltd of Manhattan (New York County), for the packaging of dietary supplements. Miller's attached evidence includes a copy of package labels imprinted with the following corporate identification:

Koppla Nutrients, a Division of Natural Chemistry, Inc., 76 Progress Drive,  
Stamford, CT. 06902, (212) 285-2256 (NYC) (203) 316-4479, website:  
www.kopplanutrients . com, e-mail: rsoenko@naturalchemistry . com.

Miller also attached copies of correspondence concerning packaging arrangements which were written by Ron Sosenko (Sosenko), who identifies himself in the correspondence as the "founder" or "founder/owner of Koppla Nutrients," and which were received by Maco. Two letters, one dated November 2, 2006, and one dated December 4, 2006, speak of issues regarding packaging size, format, and quality control, and both contain the following printed letterhead:

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<sup>1</sup>Neither party submits a copy of the subject agreement.

Koppla Nutrients - A division of Natural Chemistry Inc., 40 Richards Avenue - Norwalk CT - 06854, 212-285-2256 (New York office phone / fax) - 203-295-2300 (CT office phone) - 800-879-1233 (CT office fax); www.kopplanutrients.com.

Maco also submits a copy of Sosenko's December 11, 2006 e-mail regarding packaging which evidently was sent from Sosenko's e-mail address at Natural Chemistry ("rsosenko@naturalchemistry"), and which contains a statement that Sosenko would be in his "New York office most of Tuesday (12/12) . . .," as well as a note that a particular phone number refers to the New York "office" phone number.

Finally, Maco submits a copy of a letter written by Sosenko, dated August 23, 2007, which again, contains the above-referenced letterhead, and which states, in relevant part:

I am writing this letter on behalf of Koppla Nutrients regarding the damages that our company has sustained as a result of . . . quality control that took place in conjunction with the packaging of product by Maco Bag for Koppla Nutrients . . .

I await your prompt response.  
[signature]  
Ron Sosenko  
Founder/Owner Koppla Nutrients

Maco argues that, while the precise nature of the relationship between plaintiff and Natural Chemistry Inc. is unclear, Maco of Wayne County, New York did business with Koppla Nutrients of Connecticut and not with Koppla Ltd of New York City. Therefore, the only county in the state of New York in which this dispute could be venued is Wayne County.

Plaintiff opposes the motion for a change of venue on the ground that it is not a division of Natural Chemistry Inc., but rather, it is a separate, corporate entity located entirely in lower Manhattan, New York County. To this end, plaintiff submits the sworn affidavit of Sosenko identifying himself as the "President and Chief Executive Officer of Koppla Ltd. d/b/a Koppla

Nutrients, a domestic corporation with its principal place of business located at 90 Gold Street, 11K, New York, New York. 10038.” In his affidavit, Sosenko states that it was Koppla Ltd, not Natural Chemistry, that engaged in the business negotiations which culminated in the subject packaging agreement, and that Natural Chemistry had and has no knowledge of the agreement. In an attempt to explain why the letterhead and labels state “Koppla Nutrients a division of Natural Chemistry Inc.,” he states that he wanted to use Natural Chemistry’s brand name for marketing purposes “in an effort to present [his company] . . . as a more established and larger corporation” and was given permission to do so. Sosenko’s affidavit also states that “Koppla Nutrients” does not have either an office or staff in Norwalk, Connecticut, and that “[i]ts offices are located in New York County and all business is transacted out of its one and only office in New York County.”

Plaintiff also submits the sworn affidavit of Robert Kulperger (Kulperger), Chief Executive Officer of Natural Chemistry, in which Kulperger states that: (1) Natural Chemistry is not, and was not, a party to the agreement between Koppla Ltd and Maco; (2) no representative from his company negotiated or communicated with any Maco representatives; (3) Koppla Ltd is not a division of Natural Chemistry; (4) the companies do not share in each other’s profits or losses; (5) each company files separate corporate taxes; and (6) each company has separate bank accounts and separate clientele. Kulperger acknowledges that, despite the lack of connection between the two companies, he has allowed Sosenko to use Natural Chemistry’s name in its letterhead and product labels for Koppla Ltd’s promotional purposes.

Sosenko’s contrary assertions notwithstanding, the submissions reveal the multiple actions taken by Sosenko to depict Koppla Ltd as an entity affiliated with Natural Chemistry, and

that this action was purposely taken to mislead the market. The misleading and confusing information was repeated in Sosenko's day-to-day written business dealings and negotiations with Maco, and was repeated and reinforced through the packaging process itself (provided by Maco) by way of the corporate identification labels. However, the fact that Koppla Ltd may be known by different corporate names, or that Koppla Ltd may transact business under one or more corporate names (see Matter of Harmon v Ivy Walk Inc., 48 AD3d 344, 347 [1<sup>st</sup> Dept 2008]), does not, in and of itself, render the placement of venue in New York County improper. (CPLR 510 (1) provides, in relevant part, "[t]he court, upon motion, may change the place of trial of an action where:

1. the county designated for that purpose is not a proper county."

Despite the abundance of evidence submitted in support of defendant's motion, it is well settled that the "designation of a county as the location of a corporation's principal office in a certificate of incorporation is controlling in determining corporate residence for the purposes of venue. (CPLR 503 [c])" (Conway v Gateway Assoc., 166 AD2d 388, 389 [1<sup>st</sup> Dept 1990] [internal citations omitted]).

Attached as exhibit H to the motion is a copy of the New York State Department of State, Division of Corporations (DOS) corporate entity information which names New York as the "county" and "jurisdiction" for "Koppla Limited." Specifically, the initial May 3, 1990 DOS filing identifies #11K, 90 Gold Street, New York, New York 10038-1841 as: (1) the location of Koppla Ltd's principal executive office; (2) the location of Koppla Ltd's chairman or chief executive officer; and (3) the address to which DOS would mail process if process is accepted on behalf of Koppla Ltd. Venue was, therefore, not improperly based in New York County (see

Discolo v. River Gas & Wash Corp., 41 AD3d 126 [1<sup>st</sup> Dept 2007] (“we look at the certificate of incorporation to determine a corporation’s principal place of business”).

However, under the circumstances presented here, there may be factors warranting a discretionary change of venue to Wayne County (Conway v Gateway Assoc., 166 AD2d at 389). Accordingly, defendant may, within a reasonable time upon the completion of discovery, move for a change of venue pursuant to CPLR 510 (3), if appropriate.

Accordingly, it is

ORDERED that the motion for a change of venue pursuant to CPLR 510 (1) is denied.

Dated:

6/17/08

  
Hon. Doris Ling-Cohan, J.S.C.

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**FILED**  
JUN 20 2008  
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