

**Lowis v Avon Prods., Inc.**

2023 NY Slip Op 32319(U)

July 10, 2023

Supreme Court, New York County

Docket Number: Index No. 190234/2022

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. ADAM SILVERA**

**PART 13**

*Justice*

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**INDEX NO. 190234/2022**

BARBARA LOWIS, TREVOR LOWIS,

**MOTION DATE 11/18/2022**

Plaintiff,

**MOTION SEQ. NO. 001**

- v -

AVON PRODUCTS, INC., BARRETT'S MINERALS INC., BATUS HOLDINGS INC., SUED INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO BRITISH AMERICAN COSMETICS, YARDLEY CO. AND YARDLEY OF LONDON, INC., BRENNTAG NORTH AMERICA, INC., SUED INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO MINERAL PIGMENT SOLUTIONS, INC. AND AS SUCCESSOR-IN-INTEREST TO WHITTAKER CLARK & DANIELS, INC., BRENNTAG SPECIALTIES LLC F/K/A BRENNTAG SPECIALTIES, INC. F/K/A MINERAL PIGMENT SOLUTIONS, INC., SUED INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO WHITTAKER CLARK & DANIELS, INC., CHARLES B. CHRYSTAL COMPANY, INC., CHRISTIAN DIOR, INC., CHRISTIAN DIOR PERFUMES LLC, CLINIQUE LABORATORIES LLC F/K/A CLINIQUE LABORATORIES, INC., A SUBSIDIARY OF THE ESTEE LAUDER COMPANIES INC., COLOR TECHNIQUES, INC., CONOPCO, INC., A SUBSIDIARY OF UNILEVER UNITED STATES, INC. AND D/B/A UNILEVER HOME & PERSONAL CARE USA, SUED INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO CHESEBROUGH MANUFACTURING COMPANY A/K/A CHESEBROUGH-PONDS A/K/A CHESEBROUGH-POND'S USA CO., COSMETIC SPECIALTIES, INC., SUED INDIVIDUALLY AND FORMERLY D/B/A G&G SPECIALTY PRODUCTS CO., COTY, INC., ESTEE LAUDER, INC., A SUBSIDIARY OF THE ESTEE LAUDER COMPANIES, INC., THE ESTEE LAUDER COMPANIES, INC. SUED INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO LEN-RON MANUFACTURING CO. INC., ESTEE LAUDER INTERNATIONAL, INC., L'OREAL TRAVEL RETAIL AMERICAS, INC. AND D/B/A LANCOME, SUED INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO HELENA RUBINSTEIN INC., L'OREAL USA, INC. D/B/A LANCOME, SUED INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO HELENA RUBINSTEIN INC., LORNAMEAD INC. D/B/A YARDLEY OF LONDON A/K/A YARDLEY, LVMH FRAGRANCE BRANDS US LLC, LVMH MOET HENNESSY LOUIS VUITTON INC., LVMH PERFUMES AND COSMETICS INC., LVMH PERFUMES & COSMETICS LLC, MAYBELLINE

**DECISION + ORDER ON MOTION**

LLC, PFIZER INC., PLAYTEX PRODUCTS, LLC F/K/A PLAYTEX PRODUCTS, INC., A SUBSIDIARY OF EDGEWELL PERSONAL CARE BRANDS, LLC, PRESERSE CORPORATION, SUED INDIVIDUALLY AND D/B/A PRESERSE INTERNATIONAL CORP, THE PROCTER & GAMBLE COMPANY, SUED INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO YARDLEY OF LONDON A/K/A YARDLEY, THE SHULTON GROUP AND/OR SHULTON INC. AND ITS INTERNATIONAL DIVISION, SHULTON INC., SUED INDIVIDUALLY AND AS SUCCESSOR TO THE SHULTON GROUP AND ITS INTERNATIONAL DIVISION, SPECIALTY MINERALS INC., SUED INDIVIDUALLY AND AS A SUBSIDIARY OF MINERALS TECHNOLOGIES INC., WHITTAKER CLARK & DANIELS, INC., WYETH HOLDINGS LLC F/K/A WYETH HOLDINGS CORPORATION F/K/A AMERICAN CYANAMID COMPANY, SUED INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO THE SHULTON GROUP AND/OR SHULTON INC. AND ITS INTERNATIONAL DIVISION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 46, 47, 48, 49, 50, 51, 62, 63, 64, 65

were read on this motion to/for

DISMISS

Upon the foregoing documents, it is ordered that defendant Batus Holdings, Inc.'s ("Batus") motion seeking dismissal of this action, pursuant to CPLR §3211(a)(8), and plaintiff's cross-motion seeking jurisdictional discovery are decided in accordance with the decision below.

In this asbestos action, defendant Batus seeks to dismiss the complaint against it on the basis that it has no connections to the State of New York and the Court has no personal jurisdiction over it. Defendant Batus alleges that "[i]t is not an operating company and has never engaged in an active trade of business in products in New York or anywhere else." See Memorandum of Law in Support of Defendant Batus Holdings, Inc.'s Motion to Dismiss the Complaint for Lack of Personal Jurisdiction Pursuant to N.Y.C.P.L.R. § 3211(a)(8), at p. 3.

Plaintiff opposes and files a cross-motion seeking jurisdictional discovery regarding moving defendant's nexus to New York via business with or a successive interest in Yardley of

London, Inc., a manufacturer of asbestos-containing talc at issue in the instant case. Defendant Batus opposes the cross-motion and denies any successive interest in or ownership of Yardley of London, Inc. manufacturing.

To find personal jurisdiction, the Court must determine whether it has general or specific jurisdiction over the moving defendant. New York's general jurisdiction statute CPLR §301 and the long arm statute CPLR §302(a) govern jurisdiction over a non-domiciliary defendant. As to general jurisdiction pursuant to CPLR §301, it must be established that a defendant's "affiliations with the State [of] New York are so continuous and systematic as to render it essentially at home in the...State". *Robins v Procure Treatment Ctrs., Inc.*, 157 AD3d 606, 607 (1<sup>st</sup> Dep't 2018)(internal brackets and citations omitted). "Aside from an exceptional case, a corporation is at home only in a state that is the company's place of incorporation or its principal place of business". *Lowy v Chalkable, LLC*, 186 AD3d 590, 592 (2<sup>nd</sup> Dep't 2020)(internal quotations and citations omitted). The relevant inquiry regarding a corporate defendant's place of incorporation and principal place of business, is at the time the action is commenced. *See Lancaster v Colonial Motor Freight Line, Inc.*, 177 AD2d 152, 156 (1<sup>st</sup> Dep't 1992).

The Court notes that defendant Batus has established, and plaintiff does not contest, that it is both incorporated outside of and maintains its principal place of business outside the State of New York.

As for long arm jurisdiction, CPLR §302(a) states that specific jurisdiction may be exercised over a non-resident who "(1) transacts any business within the state or contracts anywhere to supply goods or services in the state; or (2) commits a tortious act within the state...; or (3) commits a tortious act without the state causing injury to person...within the state...if he (i) regularly does or solicits business, or engages in any other persistent course of

conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or (4) owns, uses or possesses real property situated within the state.”

Here, plaintiff has presented information sufficient to raise issues of fact surrounding Batus’ relationship to Yardley of London, Inc. and business in New York. Defendant Batus offers a broad denial that “[n]one of [plaintiff’s] exhibits suggest[] the existence of a relationship between BATUS Holdings and New York” and that the exhibits do not “refer to BATUS Holdings”. Reply Memorandum of Law in Further Support of Defendant Batus Holdings, Inc.’s Motion to Dismiss the Complaint for Lack of Personal Jurisdiction Pursuant to N.Y.C.P.L.R. § 3211(a)(8), at p. 4-5.

However, plaintiff correctly states that the affidavit of Lisa M. Oakes is “silent as to...BATUS’ previous contacts with New York”. Plaintiffs’ Memorandum of Law in Opposition to Defendant Batus Holdings, Inc.’s Motion to Dismiss the Complaint for Lack of Personal Jurisdiction, at p. 8. Defendant Batus attempts to separate the U.S. subsidiary from these matters. Plaintiff has, however, demonstrated that a connection exists in that there was a possible New York office and that there were advertisements in New York. . Thus, plaintiff has provided sufficient evidence to demonstrate that jurisdictional discovery is needed herein. As such, plaintiff’s cross-motion is granted and defendant Batus’ motion to dismiss is denied without prejudice to renew at the conclusion of discovery.

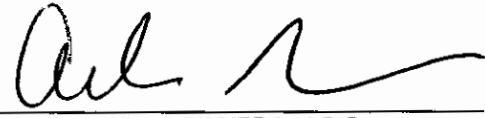
Accordingly, it is

ORDERED that defendant Batus’ motion to dismiss is denied without prejudice to renew at the conclusion of discovery; and it is further

ORDERED that plaintiff's cross-motion for jurisdictional discovery is granted; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.



ADAM SILVERA, J.S.C.

07/10/2023

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE