

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: 5-HOUR ENERGY MARKETING AND
SALES PRACTICES LITIGATION**

MDL No. 2438

TRANSFER ORDER

Before the Panel: Pursuant to 28 U.S.C. § 1407, defendant Innovation Ventures, LLC, moves to centralize this litigation in the Central District of California. This litigation currently consists of nine actions pending in eight district courts, as listed in Schedule A.¹

All responding parties agree that centralization of these actions is appropriate, but disagree as to the transferee district. In addition to Innovation Ventures, plaintiffs in four actions on the motion and four potential tag-along actions request centralization in the Central District of California. Plaintiffs in another four actions, as well as one plaintiff in the alternative, favor centralization in the Northern District of Ohio.

On the basis of the papers filed and hearing session held, we find that these actions involve common questions of fact, and that centralization of these actions in the Central District of California will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. These actions share factual questions arising out of allegations that Innovation Ventures, LLC, used false advertising and deceptive marketing to mislead consumers concerning the benefits of its 5-Hour Energy “energy shot” product, particularly vis-à-vis other caffeinated stimulants. Centralization will eliminate duplicative discovery; prevent inconsistent pretrial rulings, including with respect to class certification; and conserve the resources of the parties, their counsel, and the judiciary.

We are persuaded that the Central District of California is the most appropriate transferee district for this litigation. It is the only district in which more than one action is pending—currently, there are three actions or potential tag-along actions pending there. The first-filed action has been pending in the district for over a year, and the Honorable Philip S. Gutierrez, who has presided over that action, is in the best position to incorporate it into the MDL in a manner that accommodates the progress already made in that action while also addressing the common factual and legal issues raised in the more recently filed actions. Additionally, the Central District of California is a convenient and accessible forum with the resources to devote to this litigation. Finally, centralization before Judge

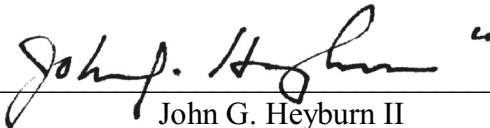
¹ The parties have notified the Panel of six related actions pending in the Central District of California, the Northern District of California, the Southern District of Indiana, the District of New Jersey, the District of New Mexico, and the Western District of Pennsylvania. These and any other related actions are potential tag-along actions. *See* Panel Rule 7.1.

-2-

Gutierrez permits the Panel to assign the litigation to an experienced judge with some familiarity with the issues in this litigation.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A and pending outside the Central District of California are transferred to the Central District of California and, with the consent of that court, assigned to the Honorable Philip S. Gutierrez for coordinated or consolidated pretrial proceedings with the action pending there.

PANEL ON MULTIDISTRICT LITIGATION



John G. Heyburn II
Chairman

Kathryn H. Vratil
Paul J. Barbadoro
Charles R. Breyer

W. Royal Furgeson, Jr.
Marjorie O. Rendell
Lewis A. Kaplan

**IN RE: 5-HOUR ENERGY MARKETING AND
SALES PRACTICES LITIGATION**

MDL No. 2438

SCHEDULE A

Northern District of Alabama

Bruce Pettway v. Innovation Ventures, LLC, C.A. No. 2:13-00248

Central District of California

Ilya Podobedov, et al. v. Living Essentials, LLC, et al., C.A. No. 2:11-06408
Cody Soto v. Innovation Ventures, LLC, C.A. No. 2:13-00591

Middle District of Florida

Junior Hermida v. Innovation Ventures, LLC, C.A. No. 2:13-00047

Southern District of Florida

Michael Feiner v. Innovation Ventures, LLC, C.A. No. 0:12-62495

Southern District of Illinois

Thomas R. Guarino v. Innovation Ventures, LLC, C.A. No. 3:13-00101

Eastern District of Louisiana

William Waring v. Innovation Ventures, LLC, C.A. No. 2:13-00156

Eastern District of Missouri

William Forrest v. Innovation Ventures, LLC, C.A. No. 4:13-00172

Northern District of Ohio

David Berger v. Innovation Ventures, LLC, C.A. No. 1:13-00333