

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>THE SUGAR ART, INC.,</b>	§	
<b>Plaintiff,</b>	§	
<b>v.</b>	§	<b>No. 3:17-CV-200-M</b>
<b>CONFECTIONERY ARTS</b>	§	
<b>INTERNATIONAL, LLC,</b>	§	
<b>Defendants.</b>	§	

**ORDER**

The District Court referred Confectionery Arts International, LLC’s (“Defendant”) Motion for Costs [ECF No. 12] to the United States Magistrate Judge for recommendation or determination. Order of Referral, ECF No. 20. Upon consideration, the Motion for Costs [ECF No. 12] is **GRANTED**.

**Background**

In September of 2016, The Sugar Art, Inc. (“Plaintiff”) brought suit against Confectionery Arts International, LLC in the Western District of Texas, Waco Division (“Western District Suit”). Def.’s Mot. 2, ECF No. 12. In the Western District Suit, Plaintiff requested declaratory judgment of non-infringement of an alleged trademark. Pl.’s App. 1, ECF No. 18.

In response to the Western District Suit, Defendant filed a motion to dismiss or, in the alternative, sought transfer of the action from the Western District of Texas to the District of Connecticut or the Northern District of Texas. Pl.’s App. 22, ECF No. 18. Plaintiff did not respond to Defendant’s Motion to Dismiss in the Western District, but instead filed a notice of voluntary dismissal on January 23, 2017. Def.’s Mot 2, ECF No. 12. Later that same day, Plaintiff filed an identical complaint in the Northern District of Texas. *Id.* Once again, Defendant

filed a motion to dismiss or, in the alternative, sought transfer to the District of Connecticut. Def.'s Mot. to Dismiss 4, ECF No. 7. On February 23, 2017, Defendant filed this Motion for Costs requesting that Plaintiff pay for costs incurred in defending the Western District Suit, amounting to \$7,962.50 for attorney's fees and \$179.87 for expenses, totaling to \$8,142.37. Def.'s Mot. 1, 4, ECF No. 12. On March 15, 2017, Plaintiff voluntarily dismissed the case. Notice of Dismissal 1, ECF No. 14.

Defendant argues that it is entitled to costs because there existed no basis for Plaintiff to file the Western District Suit. Def.'s Mot. 4, ECF No. 12. Defendant is a Connecticut limited liability company with its principal place of business in Connecticut. Def.'s App. 3, ECF No. 13-1. Defendant does not maintain any office in Texas and does not sell its products on the internet. *Id.* Plaintiff contends that a showing of good faith may be a factor in the Court's decision not to impose costs, and that the reward of costs is within the court's discretion. Pl.'s Br. 4, ECF. No. 17. This matter is ripe for determination.

### Analysis

Rule 41(d) provides:

[if] a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court (1) may order the plaintiff to pay all or part of the costs of that previous action; and (2) may stay the proceeding until the plaintiff has complied.

FED. R. CIV. P. 41(d). The award of costs under Rule 41(d) is at the Court's discretion. *Walkaway Canada, Inc. v. You Walk Away, LLC*, No. 3:10-CV-2657-L (BF), 2011 WL 2455734, at \*2 (N.D. Tex. May 12, 2011) (citing *Aten Int'l Co. Ltd. v. Emine Tech. Co., Ltd.*, 261 F.R.D. 112, 121-22). Although a showing of bad faith is not required for the Court to impose costs, a

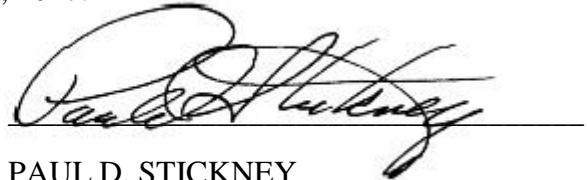
showing of good faith may be a factor in the Court's decision not to impose costs. *Id.* Rule 41(d) serves as a deterrent to forum shopping and does not distinguish between voluntary and involuntary dismissals. Thus, this Court retains the authority to award attorneys' fees as a condition to bringing the new action. *See Aten Int'l Co. Ltc.*, 261 F.R.D. at 121-22 (acknowledging the court's authority to grant costs under Rule 41(d) for a voluntarily dismissed action but declining to exercise its discretion to do so); *G.C. & K.B. Invs., Inc. v. Fisk*, No. 01-1256, 2002 WL 27772, \*7 (E.D. La. Jan. 8, 2002) (acknowledging the court's authority to grant costs under Rule 41(d) for a voluntarily dismissed action but declining to exercise its discretion to do so); *see also Hayes v. Bank of America*, No. 4:10-CV-1708, 2011 WL 148277, \*1 (E.D. Mo. Jan. 18, 2011) (granting motion to dismiss under Rule 41(a)(1)(A)(I) but conditioning any refiling on plaintiffs' payment of attorneys' fees to defendants); *Ashford Fin. LLC v. Anhui Tech. Imp. & Exp.*, No. 09 Civ. 7975, 2010 WL 4450910, \*2 (S.D.N.Y. Oct. 22, 2010) ("this case should be considered voluntarily dismissed under Rule 41(a)(1)(A), subjecting [plaintiff] to the provisions of Rule 41(d)").

Plaintiff emphasizes that because it filed the Western District Suit based on a good faith belief that Defendant sold its products to distributors in the Western District, the Court should deny Defendant's Motion for Costs. Pl.'s Resp. 2, ECF No. 17. Plaintiff further contends that it dismissed the Western District Suit in order to ensure proper service. *Id.* However, when refiling the case in the Northern District, Plaintiff committed the same defect of service as it did in the Western District Suit. Def.'s Reply 4, ECF No. 19.

Plaintiff does not dispute that the claims brought in the Northern District are the same as those in the Western District Suit. Therefore, the Court may award attorney's fees incurred by Defendant in the Western District Suit if it deems such award appropriate.

Upon consideration of the parties' briefs, the evidence produced at the hearing, and the applicable law, the Court finds that Plaintiff's actions were not taken in bad faith, however, attorney's fees are still appropriate given the circumstances. Defendant's attorney asserts that he worked 22.75 hours on the Western District Suit at the rate of \$350 an hour. Def.'s App. 8-9, ECF No. 13-1. The Court finds this rate is reasonable under the circumstances. Defendants also incurred \$179.87 in expenses. *Id.* Plaintiff did not contest the rate or amount of hours. Therefore, the Court awards Defendants \$7,962.50 in attorney's fees and \$179.87 in costs relating to the Western District Suit.

**SO ORDERED**, this 11<sup>th</sup> day of September, 2017.

A handwritten signature in black ink, appearing to read "Paul D. Stickney", is written over a horizontal line.

PAUL D. STICKNEY  
UNITED STATES MAGISTRATE JUDGE