

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ACH FOOD COMPANIES, INC.,)	
)	
Plaintiff,)	
)	
vs.)	No. 04-2589-BV
)	
WISCON CORP.,)	
)	
Defendants.)	

ACH FOOD COMPANIES, INC.,)	
)	
Plaintiff,)	
)	
vs.)	No. 04-2892-Mlv
)	
WISCON CORP.,)	
)	
Defendants.)	

ORDER GRANTING PLAINTIFF'S MOTION TO CONSOLIDATE

Before the court is the November 10, 2004 motion of the plaintiff, ACH Food Companies, Inc., to consolidate Civil Action No. 04-2892, now pending before Judge John P. McCalla, with Civil Action No. 04-2589, now pending before Judge J. Daniel Breen. The motion was referred to the United States Magistrate Judge for determination. For the following reasons, the motion is granted.

Two actions involving common questions of law or fact can be consolidated for the convenience of the court and the parties. FED. R. CIV. P. 42(a). More specifically, Federal Rule of Civil Procedure 42(a) provides:

When actions involving a common question of law or fact

are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Id. In deciding whether to consolidate two actions, the court should balance the risk of prejudice and confusion with the chance at achieving inconsistent results in the two matters. *In re Cree, Inc.*, 219 F.R.D. 369, 371 (M.D.N.C. 2003). The court should also consider "the burden on the parties, witnesses, and judicial resources by multiple lawsuits, the length of time required to try multiple suits versus a single suit, and the relative expense required for multiple suits versus a single suit." *Id.* (citing *Arnold v. Eastern Air Lines*, 681 F.2d 186, 193 (4th Cir. 1982)).

The two lawsuits which ACH seeks to consolidate involve the same parties, same questions of law, and the same questions of fact. The only difference between the two cases can be found in the factual allegations asserted in ¶ 10 and ¶ 19 of the two complaints. The first complaint alleges that "ACH is ready, willing and able to use the CAPULLO DE MAZOLA Marks [and] has undertaken extensive preparations to launch United States sales of canola oil under the CAPULLO DE MAZOLA Marks . . ." The second complaint alleges that ACH has "sold thousands of bottles of CAPULLO DE MAZOLA canola oil in U.S. commerce." Thus, it appears to the court that having two independent lawsuits would lead to duplicative discovery and trials. In order to avoid unnecessary costs and to promote judicial economy and efficiency, the lawsuits

should not proceed separately; therefore, consolidation is appropriate. Furthermore, in the interest of a speedy trial and the preservation of judicial resources, Case No. 04-2892, the later-filed case should follow the same scheduling order, Doc. No. 38, that was entered November 16, 2004, in Case No. 04-2589, the earlier-filed case.

The court is aware that a motion to dismiss for lack of subject matter jurisdiction is pending in Case No. 04-2589, the earlier-filed case. Regardless of the disposition of that motion, consolidation of these cases is proper. Historically, in this district, when cases are consolidated, they are normally assigned the earlier-filed case number, and the other case is generally administratively closed. In this case however, Case No. 04-2892, the later-filed case, should not be administratively closed until the court has ruled on the motion to dismiss in Case No. 04-2589. If the court grants the motion to dismiss in Case No. 04-2589, the consolidated cases should proceed under Case No. 04-2892.

Accordingly, the motion to consolidate Case No. 04-2589 and Case No. 04-2892 is granted.

IT IS SO ORDERED this 30th day of December 2004.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE