

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

REZA GANJAVI,)	
)	
Plaintiff,)	Case No. 06 C 4189
)	
v.)	PLAINTIFF'S RESPONSE AND
)	MEMORANDUM IN OPPOSITION TO
)	DEFENDANT TODD TIPTON'S
)	MOTION TO DISMISS
JEREMY C. SMITH, CINDY SMITH,)	
TODD TIPTON, WILLIAM D.)	
JENNINGS, DELOITTE CONSULTING)	Judge Gettleman
LLC, DELOITTE & TOUCHE USA LLP,)	Magistrate Judge Denlow
DOES 1-10,)	
)	
Defendants.)	
_____)	

**PLAINTIFF'S RESPONSE AND MEMORANDUM IN OPPOSITION TO DEFENDANT TODD
TIPTON'S MOTION TO DISMISS**

NOW COMES the Plaintiff, Reza Ganjavi, by and through his attorneys, Law Offices of Khoi Dang-Vu, P.C. and Khoi Dang-Vu, and respectfully submits this Response and Memorandum in Opposition to Defendant Todd Tipton's Motion to Dismiss. In support of his Response, Plaintiff states as follows:

FACTUAL SUMMARY

Plaintiff, Reza Ganjavi (www.rezamusica.com) is a record producer, classical musician, as well as an information technology and management consultant, who has produced a number of successful Compact Disks (CD's) in the Classical Guitar genre (www.rezamusica.info contains hundreds of pages of bona fide listener comments about the CD's). Plaintiff's address in the United States is 2331, Westwood Boulevard #152, Los Angeles, California 90064.

On information and belief, Defendant Todd Tipton ("Tipton", "Defendant") is an individual residing at 4409 Aldrich Avenue S., Minneapolis, Minnesota 55419. On information and belief, Defendant Jeremy Smith ("Smith") is an individual residing at 605 W. Madison Street, Apt 4811, Chicago, Illinois 60661.

With respect to Tipton and Smith, it has been Plaintiff's position based on numerous pieces of evidence, that, at various times, the two were liable for or more of the following violations against the Plaintiff, and that they directly and indirectly collaborated with each other in committing these offenses:

- a) fraudulent use of Plaintiff's identity;
- b) fraudulent publication of material using Plaintiff's email address and name, including issuing racial slurs against African-Americans and persons of African descent, sympathizing with terrorist; explicitly threatening to kill a person, uttering ethnic slurs against Plaintiff, and directing obscenity at others, all using Plaintiff's forged identity.
- c) setup of mock websites to damage Plaintiff's business and reputation;
- d) publication of fictitious, forged, and altered material which were falsely attributed to Plaintiff as the author;
- e) publication of material which placed Plaintiff in a highly offensive light;
- f) publicly accusing Plaintiff of being a pedophile (which is absolutely false);
- g) copying and publishing Plaintiff's work without his permission and without privilege;
- h) violating Plaintiff's rights to attribution and integrity;
- i) attempting to assassinate Plaintiff's character;
- j) Using Plaintiff's identity to publicize false, negative, scandalous, and damaging statements about Plaintiff's products, artistic credibility, and reputation.

On August 3, 2006, Plaintiff filed the instant action against Defendants, Jeremy C. Smith, Cindy Smith, Deloitte & Touche USA LLP, Deloitte Consulting and John Does 1-10, alleging theories of forgery, violation of attribution under the Copyright Act, false presentation under the Lanham Act, false light invasion of privacy, per se libel and slander, libel and slander, appropriation of name and likeness, intentional infliction of emotional distress, negligent infliction of emotional distress, intentional interference with prospective economic advantage, unfair competition, common law copyright infringement, intentional misrepresentation, negligent misrepresentation, vicarious liability, and negligent enablement. A related case had previously been filed in the United States District Court for the Central District of California alleging the same or similar causes of actions against some of the same defendants in the instant case. Through ongoing discovery, Plaintiff discovered the identities of additional defendants, Todd Tipton (“Tipton”) and William D. Jennings (“Jennings”) and bases for adding Tipton and Jennings as additional defendants. Accordingly, on September 11, 2006, Plaintiff filed his First Amended Complaint which contained, among a number of typographical changes, included the addition of Tipton and Jennings as additional defendants.

On November 21, 2006, Defendant Jeremy Smith filed a Motion for a More Definite Statement. This Court granted Defendant Jeremy Smith's Motion for a More Definite Statement on December 11, 2006, giving Plaintiff leave to file his Second Amended Complaint by December 29, 2006. On December 7, 2006, Defendant Todd Tipton filed a Motion to Dismiss Plaintiff's Amended Complaint for Lack of Personal Jurisdiction with respect to Defendant Todd Tipton. Plaintiff has filed his Second Amended Complaint concurrently with this Response and Memorandum in Opposition to Defendant Todd Tipton's Motion to Dismiss Plaintiff's Amended Complaint for Lack of Personal Jurisdiction with respect to Defendant Todd Tipton. This Response and Memorandum is based on the facts and allegations presented in Plaintiff's Second Amended Complaint, which contain identical theories as those enumerated in the first two complaints filed by Plaintiff in the instant action.

ARGUMENT

Initially, Plaintiff notes that the Motion to Dismiss seeks dismissal of the First Amended Complaint with respect to Defendant Todd Tipton. Since then, Plaintiff has filed a Second Amended Complaint concurrently with this Response. This alone renders Defendant's Motion to Dismiss moot.

This Court does not have specific jurisdiction over Defendant.

Notwithstanding the above, Plaintiff does not dispute that this Court lacks general jurisdiction over Defendant Todd Tipton. However, it is Plaintiff's position that this Court has specific jurisdiction over Defendant Todd Tipton based on activities conducted by Defendant Todd Tipton expressly aimed at the state of Illinois.

The first specific jurisdiction requirement is "purposeful availment," which ensures that nonresident defendants will not be haled into court based on random or fortuitous contacts with the forum state. This requirement is satisfied if the defendant has taken some deliberate action toward the forum state. It is not required that a defendant be physically present or have physical contacts with the forum as long as such actions are "purposefully directed" toward forum residents.

A Sixth Circuit case, *CompuServe, Inc. v. Patterson*, 89 F.3d 1257 (6th Cir. 1996), is instructive. In that case, the court held that the defendant, a Texas resident who had advertised his product via a computer information service, CompuServe, located in Ohio, was subject to personal jurisdiction in Ohio because the Texas resident had taken direct actions that created a connection with Ohio. He subscribed to CompuServe, loaded his software onto the CompuServe system for others to use, and advertised his software on the CompuServe system. Similarly, in *Inset Systems, Inc. v. Instruction Set, Inc.*, 937 F.Supp. 161 (D.Conn. 1996), a Connecticut district court found that a static Web site created jurisdiction in a trademark infringement claim against a Massachusetts corporation that had no other significant contacts in Connecticut.

Defendant has purposefully availed himself of the privilege of conducting activities in Illinois.

Defendant correctly notes that Plaintiff's claims revolve around statements that were made and published by Defendants in an online environment. However, Defendant's contention that the statements at issue appeared in a forum that did not specifically target residents of Illinois or the State of Illinois is incorrect. Whether Defendant intended that the statements' readership be limited to residents of Illinois is certainly questionable; what is not questionable is that Defendant was aware that at least one of the individuals with whom he was collaborating in the publication of the statements and the setting up of forged websites was a resident of Illinois. To wit, Defendant's claim in his sworn affidavit that, prior to the filing of the lawsuit in the Central District of California, Defendant "had never been in contact with Jeremy Smith, and...was not aware that Jeremy Smith was a resident of

Illinois,” is patently false.¹ [Exhibit 1].

Before and after the lawsuit was filed in the Central District of California, there were numerous instances of Defendant collaborating with Jeremy Smith in actions and publications of statements meant to tarnish the reputation of the Plaintiff. Moreover, even if Defendant in fact had no knowledge of Jeremy Smith's residence in Illinois prior to the filing of the lawsuit in California, Defendant certainly had knowledge of Smith's residency after that suit was filed, given that Defendant was also named a party in the complaint in that action, which stated in no uncertain terms the residency of Jeremy Smith. The relevance of this is that the allegations in the present lawsuit, as enumerated in Plaintiff's Second Amended Complaint, in addition to alleging actions and statements occurring prior to the filing of the California lawsuit, also include actions and statements by Defendant which continued after the filing of that suit. Thus even if Defendant in fact had no knowledge of Jeremy Smith's residence prior to the filing of the lawsuit in the Central District of California, that lack of knowledge is irrelevant.

In addition, numerous posts and online publications by Defendant, although readily available for viewing by the general public, were purportedly directed at Jeremy Smith. Plaintiff has received communications from Jeremy Smith which also appear to suggest that prior to the filing of the present action, Defendant was in substantial and continuous e-mail communication with Jeremy Smith, the subject matter of which included some of the actions complained of in the present lawsuit, *i.e.*, the Defendants' collaboration in the harassment and defamation of Plaintiff. [Exhibit 1].

Under the *Inset Systems* or *Patterson* analysis, the fact that the publications and forged websites that Defendant assisted in producing could be viewed by residence of Illinois would be alone sufficient to establish personal jurisdiction against the Defendant. In addition to the creation of publications and a forged website which could readily be viewed by the general public in Illinois, there is the additional fact in this case that the performing of such actions, Defendant collaborated with someone he knew or should have known resided in Illinois. See, *e.g.*, *Fenn v. MLeads Enterprises*, 103 P.3d 156 (Utah App. 2004)(Utah appellate court held that the act of causing a single e-mail to be sent to forum state

¹ As discussed below, even if substantiated, the relevance of whether Defendant knew of Smith's residence prior to the filing of suit in the Central District of California is questionable since knowledge of such residence obtained after filing of that suit would be sufficient for personal jurisdiction.

was sufficient for personal jurisdiction absent any other contact). By the very act of collaboration with Jeremy Smith, Defendant availed himself of the laws of the state of Illinois. Defendant contends that “Plaintiff fails to allege the identity of the companies and individuals or that these statements [made by Defendant] were expressly aimed at Illinois. To the contrary, at the very least, the statements were expressly aimed at Jeremy Smith, given that, without such communications between Defendant and Jeremy Smith, the collaboration between the defendants would hardly have been possible. [Exhibit 1].

Exercising personal jurisdiction over Defendant would comport with fair play, substantial justice, and judicial economy.

The facts in this case involve, among other things, the publication of statements, forged websites, and conduct all meant to defame and tarnish Plaintiff's reputation. Moreover, it has been Plaintiff's position, based on a thorough investigation conducted by Plaintiff prior to filing suit, that the actions attributed to the Defendants were undertaken in a collaborative and cooperative manner. It has further been Plaintiff's position that Defendant Jeremy Smith has, at all relevant times, been the coordinator, if not the “ring-leader” of this collaborative effort. One of the pseudonyms Defendant Jeremy Smith used was “CyberTroll Administrator”. In that capacity, he coordinated activities between the other “cyber-gang” members, Todd Tipton and William Jennings (Exhibit 1).

It is Plaintiff's belief that further discovery will show that the majority of the planning for the actions taken against the Plaintiff by the Defendants, including by Defendants Tipton and Jennings, had their source in Chicago, Illinois, where Defendant Jeremy Smith resided. It is further Plaintiff's belief that much of the planning was done through e-mail and other communications directed by the other defendants to Jeremy Smith in Chicago. Accordingly, much of the evidence produced by such planning and collaboration would probably be in Chicago.

Given the collaborative nature of the offenses, it is evident that requiring separate trials to be held in Texas (in the case of Jennings) and Minnesota (in the case of Tipton) would in no way comport with the interest of judicial economy. Rather, given that collaboration between the defendants, and in addition, the purposeful availment by the Defendant of the forum state in the exercise of that collaboration, the exercise of personal jurisdiction over the Defendant would comport with fair play, substantial justice and judicial economy.

CONCLUSION

Defendant's motion seeks dismissal of the first amended complaint with respect to the

Defendant. Since the filing of that motion, Plaintiff has filed a Second Amended Complaint, that alone renders Defendant's Motion to Dismiss moot. Notwithstanding the above, it is evident that Defendant has more than sufficiently availed himself of the State of Illinois that this Court would properly have personal jurisdiction over the Defendant. Defendant's publications and statements over the internet would alone be sufficient basis for specific jurisdiction. In addition, Defendant further availed himself of the State of Illinois in direct communications he conducted with Jeremy Smith in furtherance of their collaborative efforts against the Plaintiff. For those reasons, Defendant's Motion to Dismiss should be denied.

Alternatively, Plaintiff requests that he be allowed to take limited discovery on the issue to determine whether Defendant's online publications and collaboration with Defendant Jeremy Smith established minimum contact with Illinois for purposes of personal jurisdiction.

DATED: December 29, 2006

Respectfully submitted,

/s/ Khoi Dang-Vu

Khoi Dang-Vu

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