

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASCADE YARNS, INC., a Washington)
corporation,)
)
Plaintiff,)
)
v.)
)
KNITTING FEVER, INC., a New York)
Corporation, DESIGNER YARNS, LTD., a)
corporation of England, FILATURA)
PETTINATA V.V.G. DI STEFANO VACCARI)
& C. (S.A.S.) an entity organized or existing)
under the laws of Italy, SION ELALOUF, an)
individual, DIANE ELALOUF, an individual,)
JAY OPPERMAN, an individual, DEBBIE)
BLISS, an individual, DAVID WATT, an)
individual and DOES 1-50,)
)
Defendants.)

Case No. C10-00861 RSM

**REPLY BRIEF IN SUPPORT OF
MOTION TO DISMISS FOR LACK
OF PERSONAL JURISDICTION**

**Noted on Motion Calendar:
November 26, 2010**

I. INTRODUCTION

Although Plaintiff, Cascade Yarns, Inc. (“Cascade”), provides pages of vituperative but irrelevant and inaccurate accusations, it offers only three relevant arguments in its Opposition to Defendant Filatura Pettinata V.V.G. Di Stefano Vaccari & C. (S.A.S.)’s (“Filatura’s”) Motion to Dismiss for Lack of Personal Jurisdiction. Each of these arguments lacks merit.

1 **II. ARGUMENT**

2 First, Cascade argues that this Court has general jurisdiction over Filatura because
 3 Filatura has transacted business within Washington by shipping yarn into Washington and
 4 invoicing Cascade in Washington for that yarn. *See* Opp. at 10. In support of this argument,
 5 Cascade offers the Declaration of Robert Dunbabin, filed in conjunction with its Opposition,
 6 which attaches invoices, shipping bills, and tariff documents associated with four purchase
 7 orders that collectively amount to less than \$120,000 of Malizia yarn – a yarn not at issue in this
 8 case – from Filatura to Cascade in 2005. *See* Dunbabin Decl., Ex. A. Measured against the
 9 applicable legal standard set forth in Filatura’s initial motion to dismiss, such a small volume of
 10 sales is nowhere near sufficient to meet the “exacting” standard necessary for the exercise of
 11 general jurisdiction. *See* Motion Dismiss for Lack of Personal Jurisdiction [Dkt. 88] (the
 12 “Motion to Dismiss”) at 4-6. Even if Filatura had made a significant volume of sales into
 13 Washington—which it did not¹—the sale of a product alone is not sufficient to give rise to
 14 general jurisdiction. *See id.*; *see also* *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain*
 15 *Co.*, 284 F.3d 1114, 1124-25 (9th Cir. 2002) (no general jurisdiction where defendant’s only
 16 contacts with the forum state amounted to sixteen shipments of rice sold through an
 17 independently employed sales agent). *See generally* *Helicopteros Nacionales de Colombia, S.A.*
 18 *v. Hall*, 466 U.S. 408, 415-16 (1984) (refusing to find general jurisdiction even where defendant
 19 spent \$4 million in the forum state and purchased 80% of its helicopters and parts from sources
 20 in the forum state).

21 Notably, Cascade has failed to allege that Filatura has any physical presence in

22 _____
 23 ¹ In its argument, Cascade conflates sales in the United States generally with sales in Washington, but the only evidence Cascade presents in support of sales in Washington is the small number of sales reflected in the documents attached to the Dunbabin Declaration. *See* Opp. at 3.

1 Washington, that it pays any taxes in Washington, that it has any employees in Washington, that
2 it is incorporated in Washington, that it holds any licenses in Washington, or that it has an agent
3 for service of process in Washington. Accordingly, the exercise of general personal jurisdiction
4 over Filatura in Washington would be improper. *See, e.g., Bingham v. Blair LLC*, 2010 U.S.
5 Dist. LEXIS 40796, *5-8 (W.D. Wash. Apr. 26, 2010).

6 Cascade's second argument for exercising personal jurisdiction over Filatura is that this
7 Court has jurisdiction under Rule 4(k)(1)(C) through section 1965(b) of the RICO statute.
8 Specifically, Cascade argues that because RICO provides for nationwide service of process,
9 jurisdiction is proper if Filatura's contacts with the United States, as opposed to the State of
10 Washington, satisfy due process. *See Opp.* at 10. This argument is a red herring. The RICO
11 national contacts test does not apply to a defendant, like Filatura, who was not served under the
12 RICO service provisions. Notably, Filatura was served *outside* the United States, and therefore
13 Cascade must rely on the traditional minimum contacts analysis, a test it cannot meet. *See, e.g.,*
14 *Doe v. Unocal Corp.*, 27 F. Supp.2d 1174, 1184 (C.D. Cal. 1998) (plaintiffs "must rely on the
15 traditional minimum contacts analysis" associated with the state's long-arm statute because
16 RICO's national contacts test did not apply to foreign defendants).

17 Even if Filatura had been served in the United States under RICO's service of process
18 provisions, Cascade's argument would still fail. To impose nationwide service under section
19 1965(b), Cascade must establish that there is no other district in which a court would have
20 jurisdiction over all the alleged co-conspirators. *See Butcher's Union Local No. 498, United*
21 *Food & Commercial Workers v. SDC Inv. Inc.*, 788 F.2d 535, 538 (9th Cir. 1986). In the present
22 case, however, all the alleged co-conspirators, other than Mr. Watt, are subject to the personal
23 jurisdiction of the courts of the State of New York. *See Motion to Dismiss* at 9. Mr. Watt is a

1 British citizen, whose contacts with the United States would not even satisfy due process
2 requirements. *Id.* Thus, Mr. Watt would not be subject to this Court’s jurisdiction even if all the
3 other Defendants were not subject to the jurisdiction of the courts of another state. As a result,
4 all the Defendants who would be amenable to suit anywhere in the United States are subject to
5 the jurisdiction of New York courts.

6 Cascade’s second argument also relies on an inapplicable jurisdictional analysis. As is
7 clear from its plain language, the RICO long-arm statute provides that defendants residing in
8 another “district” – in the United States – can be brought before the court in a different district if
9 justice so requires. 18 U.S.C. § 1965(b). By its terms, the statute does not apply to residents of
10 foreign countries. *See National Asbestos Workers Med. Fund v. Philip Morris, Inc.*, 86 F. Supp.
11 2d 137, 139 (E.D.N.Y. 2000) (“because [defendant] was not served with process in accordance
12 with RICO’s nationwide service provision. Rule 4(k)(1)(D) does not afford a basis for [personal]
13 jurisdiction.”). In *National Asbestos Workers*, the court reasoned that section 1965(b)’s language
14 limiting nationwide service of process to parties “residing in any other district . . . appears to
15 limit the section’s coverage to United States residents,” *Id.* at 140. Because RICO contains no
16 provision for worldwide service, a plaintiff who attempts to obtain personal jurisdiction over a
17 foreign national served outside the United States “must rely on the long-arm statute of the state
18 in which he files his suit.” *Stauffacher v. Bennett*, 969 F.2d 455, 460 (7th Cir. 1992).

19 Finally, Cascade argues that Filatura is subject to the exercise of specific jurisdiction in
20 this district. It bases this argument principally on a widely criticized imputation theory, *i.e.*, that
21 because *other* defendants have allegedly engaged in harmful conduct aimed at the forum state,
22 and because Cascade alleges a conspiracy among all defendants, the alleged misconduct of other
23 defendants may be imputed to Filatura. As a threshold matter, this argument rests on the

1 incorrect presumption that the other defendants have had sufficient contacts with Washington to
2 be subject to jurisdiction here. As explained in the Motion to Dismiss for Lack of Personal
3 Jurisdiction [Dkt. 34], the allegations against Designer Yarns, Ltd., Sion Elalouf, Diane Elalouf,
4 Jay Opperman, Debbie Bliss, and David Watt are insufficient to establish jurisdiction.

5 In any event, there is no viable support for the notion that one defendant's contacts with a
6 forum state can be imputed to another for purposes of personal jurisdiction. The Ninth Circuit
7 has not adopted this so-called "conspiracy theory of jurisdiction." Although the Ninth Circuit has
8 not had to reach the question whether or not the theory is constitutionally viable, it has
9 specifically recognized that the theory has been widely criticized by courts and commentators,
10 and has rejected an analogous conspiracy theory of venue. *See Chirila v. Conforte*, 2002 U.S.
11 App. LEXIS 20382 at *10-11 (9th Cir. Mar. 11, 2002) (rejecting a conspiracy theory of
12 jurisdiction argument because allegations of conspiracy were insufficient, and noting that
13 "[t]here is a great deal of doubt surrounding the legitimacy of this conspiracy theory of personal
14 jurisdiction"); *see also Stauffacher*, 969 F.2d at 460 ("The cases are unanimous that a bare
15 allegation of conspiracy between the defendant and a person within the personal jurisdiction of
16 the court is not enough" to establish personal jurisdiction over the defendant.); *Kipperman v.*
17 *McCone*, 422 F. Supp. 860, 873 n.14 (N.D. Cal. 1976) ("[P]ersonal jurisdiction over any non-
18 resident individual must be premised upon forum-related acts personally committed by the
19 individual. Imputed conduct is a connection too tenuous to warrant the exercise of personal
20 jurisdiction.").

21 The only facts that Cascade alleges regarding the notion that Filatura has itself engaged in
22 conduct aimed at the forum state – as opposed to the conduct of others that Cascade argues
23 should be imputed to Filatura – are a handful of shipments of Malizia yarn made by Filatura to

1 Cascade in 2005, and a single email to KFI in 2006 that referenced Cascade yarns. *See* Opp. at
2 13-15. None of Cascade’s present claims, however, arises out of Filatura’s shipments of Malizia
3 yarn to Cascade in 2005. To the contrary, all of Cascade’s allegations relate to *other* yarns of
4 Filatura and others. These sales by Filatura in 2005, therefore, cannot support the exercise of
5 jurisdiction.

6 Filatura’s email to KFI in 2006 relates to suggested alternatives to responding to rumors
7 in the trade about the fiber content of certain yarns. *Id.* This one email in no way evidences a
8 conspiracy, and in any event, does not meet the test that even Cascade concedes is applicable,
9 namely, that it was (1) an intentional act; (2) expressly aimed at the forum state; that (3) “caused
10 harm, the brunt of which is suffered and which the defendant knows is likely to be suffered in the
11 forum state.” *Bancroft & Masters, Inc. v. August Nat’l Inc.*, 223 F.3d 1082, 1088 (9th Cir.
12 2000), *overruled on other grounds by Yahoo! Inc. v. La Ligue Contre Le Racisme Et*
13 *L’Antisemitisme*, 433 F.3d 1199, 1207 (9th Cir. 2006). Simply put, there is no basis for the
14 exercise of personal jurisdiction over Filatura.

1 **III. CONCLUSION**

2 For the foregoing reasons, this Court should dismiss this entire action as against
3 Defendant Filatura Pettinata V.V.G. Di Stefano Vaccari & C. (S.A.S.) for lack of personal
4 jurisdiction.

5 DATED this 29th day of November, 2010.

6 Respectfully submitted,

7 Pepper Hamilton LLP

8 By /s/Joshua R. Slavitt

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the date set forth below, I electronically filed the foregoing Reply Brief in Support of the Motion to Dismiss for Lack of Personal Jurisdiction with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 29th day of November, 2010.

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