

The Honorable Ricardo S. Martinez

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASCADE YARNS, INC., a Washington corporation,

Plaintiffs,

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 under the laws of Italy; SION ELALOUF, a natural person, DIANE ELALOUF, a natural person, JAY OPPERMAN, a natural person, DEBBIE BLISS, a natural person, DAVID WATT, a natural person, and DOES 1-50,

Defendants.

Civil Action No. 2:10-cv-00861 RSM

MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

NOTE ON MOTION CALENDAR:
August 13, 2010

ORAL ARGUMENT REQUESTED

I. INTRODUCTION

Defendants Designer Yarns, Ltd., Sion Elalouf, Diane Elalouf, Jay Opperman, Debbie Bliss, and David Watt (collectively, the “Non-KFI Defendants”), move to dismiss this action in its entirety pursuant to Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction.¹

¹ Defendant Filatura Pettinata V.V.G. Di Stefano Vaccari & C. (S.A.S.) (“Filatura”) does not join in the present motion as it has not yet been served with process in this matter. It is noted, however, that the arguments set forth herein as to the Non-KFI Defendants would appear to apply with equal force to Filatura as well.

1 Plaintiff, Cascade Yarns, Inc. (“Cascade”), has failed to allege that any of the Non-KFI
2 Defendants have the substantial, continuous, and systemic contacts with Washington required to
3 subject them to this Court’s general jurisdiction, or that any of them either purposefully availed
4 themselves of the privilege of conducting activities in Washington or purposefully directed any
5 activities toward Washington. Moreover, while Mr. Watt does not even have minimum contacts
6 with the United States necessary to support personal jurisdiction even under Rule 4(k)(2), all of
7 the remaining Non-KFI Defendants are subject to the jurisdiction of the courts of New York.
8 Accordingly, Cascade’s cannot establish personal jurisdiction with respect to any of the Non-KFI
9 Defendants. The Non-KFI Defendants respectfully submit that this action should be dismissed in
10 its entirety.

11
12 **II. FACTS**

13 Cascade’s allegations of facts relevant to the personal jurisdiction of the Non-KFI
14 Defendants are as follows:

- 15 -Designer Yarns, Ltd. (“DY”) is a British company with an office in England
- 16 -DY conducts business with Knitting Fever, Inc. (“KFI”) and Ms. Bliss
- 17 -Mr. Elalouf is the chief executive officer of KFI
- 18 -Mr. and Mrs. Elalouf are residents of New York
- 19 -Mr. Opperman is a resident of New Jersey and a shareholder of DY
- 20 -Ms. Bliss is a British subject² residing in England who conducts business with DY
- 21 -Mr. Watt is a British subject involved in the management of DY

22 *See* Amended Complaint at ¶¶ 6, 8-12.

23 Notably absent from the Complaint are any allegations of intentional acts of the Non-KFI
24 Defendants that were expressly aimed at Washington causing harm the brunt of which was

25 _____
26 ² Since passage of the British Nationality Act of 1981, use of the term “British subject”
has been discontinued in favor of “British citizen.”

1 suffered and which the Non-KFI Defendants know is likely to be suffered in Washington.
 2 Moreover, Cascade has failed to allege that any of the Non-KFI Defendants own any real estate,
 3 bank accounts, or other property located in Washington, that any of them maintain offices or a
 4 registered agent for service of process in Washington, that any of them pay any taxes to
 5 Washington, or that any of them are registered or licensed to do business in Washington.

6 7 **III. LAW AND ARGUMENT**

8 **1. Cascade Has Failed To Establish Personal** 9 **Jurisdiction Of The Non-KFI Defendants**

10 For a court to exercise personal jurisdiction over a nonresident defendant, the defendant
 11 must have sufficient “minimum contacts” with the state where the court is located so that
 12 exercising jurisdiction will not offend “traditional notions of fair play and substantial justice.”³
 13 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004). The policy
 14 behind the rule is to provide some predictability so that a potential defendant will have fair
 15 warning that its activities may subject it to suit in a remote forum. *Burger King Corp. v.*
 16 *Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174 (1985).

17 Cascade bears the burden of demonstrating that the Court has personal jurisdiction over
 18 the Non-KFI Defendants. *Schwarzenegger*, 374 F.3d at 800; *Dole Food Co., Inc. v. Watts*, 303
 19 F.3d 1104, 1108 (2002). Cascade cannot “simply rest on the bare allegations of its complaint.”
 20 *Dole Food Co.*, 303 F.3d at 1108 (quoting *Amba Marketing Sys., Inc. v. Jobar Int’l, Inc.*, 551
 21 F.2d 784, 787 (9th Cir. 1977)). Cascade must carry its burden by showing that each of the Non-

22
 23 ³ A district court’s exercise of personal jurisdiction must comport with both the long-arm
 24 statute of the forum state and due process. *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d
 25 267, 269 (9th Cir. 1995). Because Washington’s long-arm statute extends personal jurisdiction
 26 to the limit of federal due process, however, this Court need only analyze whether exercising
 27 jurisdiction satisfies the requirements of due process. *Id.* Cases in which the Supreme Court has
 recognized that due process limits jurisdiction on foreign corporations include *Asahi Metal*
Industry Co. v. Superior Court, 480 U.S. 102, 107 S. Ct. 1026 (1987) and *Helicopteros*
Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 104 S. Ct. 1868 (1984).

1 KFI Defendants is subject to either general or specific jurisdiction in Washington. Cascade,
2 however, cannot do so for any of the Non-KFI Defendants.

3
4 **A. The Non-KFI Defendants Are Not Subject To General Jurisdiction**

5 General jurisdiction – jurisdiction to adjudicate any and all claims against a defendant
6 regardless of where they arose – may be exercised when a defendant has substantial, continuous
7 and systematic contacts with the forum state. *Helicopteros Nacionales de Colombia, S.A. v.*
8 *Hall*, 466 U.S. 408, 415-16 (1984). Moreover, the exercise of general jurisdiction must be
9 reasonable. *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1175 (9th Cir. 2006);
10 *Schwarzenegger*, 374 F.3d at 802.

11 The standard for general jurisdiction is an “exacting” one “because a finding of general
12 jurisdiction permits a defendant to be haled into court in the forum state to answer for any of its
13 activities anywhere in the world.” *Schwarzenegger*, 374 F.3d at 801; *Tuazon*, 433 F.3d at 1169.
14 Before a court may exercise general jurisdiction, an out-of-state defendant’s contacts with the
15 forum state must be so “continuous and systematic” that they “approximate physical presence” in
16 the state. *Id.* As the Ninth Circuit said in *Tuazon*, to be subject to general jurisdiction, a
17 defendant “must not only step through the door, it must also ‘sit down and make itself at home’”
18 in the forum state. *Id.* (quoting *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*,
19 284 F.3d 1114, 1125 (9th Cir. 2002)); *see also Helicopteros*, 466 U.S. at 415-16.

20 In evaluating whether a defendant is subject to general jurisdiction, the Ninth Circuit
21 considers “whether the defendant makes sales, solicits or engages in business in the state, serves
22 the state’s markets, designates an agent for service of process, holds a license, or is incorporated
23 there.” *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000)
24 *overruled on other grounds by Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*,
25 433 F.3d 1199, 1207 (9th Cir. 2006). At the same time, “[i]t is abundantly clear that a
26 corporation does not necessarily submit to general jurisdiction in every state in which it merely
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1 sells a product.” *Tuazon*, 433 F.3d at 1174; *see also Bancroft & Masters*, 223 F.3d at 1086
2 (merely “engaging in commerce with residents of the forum state is not in and of itself the kind
3 of activity” giving rise to general jurisdiction). Relevant indicia of the nature and extent of a
4 defendant’s contacts with the forum include the longevity, continuity, and volume of activity;
5 economic impact; physical presence; and integration into the state’s regulatory or economic
6 markets. *Tuazon*, 433 F.3d at 1172.

7 The facts as alleged in the present case do not remotely warrant exercising general
8 jurisdiction over any of the Non-KFI Defendants. In *Helicopteros*, the Supreme Court held that
9 the defendant Venezuelan helicopter transportation company was not subject to general
10 jurisdiction in Texas even though it had spent \$4 million over a four-year period, purchasing 80
11 percent of its helicopters, spare parts, and accessories from Texas sources. *Helicopteros*, 466
12 U.S. at 418. The defendant’s president had traveled to Texas and its pilots and managers
13 attended regular training sessions there. *Id.* at 410-11. These substantial contacts with Texas
14 were insufficient to subject the defendant to general jurisdiction in Texas.

15 Likewise, in *Bancroft & Masters*, the defendant, the Georgia country club that organizes
16 the PGA Masters Tournament, was held not subject to general jurisdiction in California
17 notwithstanding continuing license agreements with two television networks and “a handful of
18 California vendors,” and occasional unsolicited sales of tickets and merchandise to California
19 residents. *Bancroft & Masters*, 223 F.3d at 1086. The Court noted that the defendant country
20 club was not registered or licensed to do business in California, paid no taxes and maintained no
21 bank accounts in California, targeted no print, television or radio advertising toward California,
22 and maintained a “passive” website from which consumers could not make purchases. *Id.*

23 By contrast, in *Tuazon* the Court found general jurisdiction in Washington for a
24 defendant that had substantial contacts with the state. The defendant held a license to do
25 business in Washington for more sixty years, advertised in purely local publications for more
26 than fifty years, engaged in local political activity to protect its market, maintained a permanent
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1 office and workforce of up to forty full-time employees in the state, and made sales in
2 Washington that generated enormous revenues and hundreds of millions of dollars in annual net
3 sales. *Tuazon*, 433 F.3d at 1167-68, 1173-74. In so holding, the Court noted that limited sales
4 and licensing arrangements, or merely interacting with a limited number of customers or
5 suppliers, would not be enough to establish general jurisdiction in the state where those activities
6 occurred. *Id.* at 1174.

7 In the present case, Cascade has failed to allege any contacts of the Non-KFI Defendants
8 with Washington. More specifically, Cascade has failed to allege that any of the Non-KFI
9 Defendants is domiciled in Washington or that any of them conduct “substantial” or “continuous
10 and systematic” activities in Washington. To the contrary, Cascade has alleged only that
11 Designer Yarns, Ltd. is a British company with a office located in England, Mr. and Mrs. Elalouf
12 are residents of New York, Mr. Opperman is a resident of New Jersey, and Ms. Bliss and Mr.
13 Watt are British subjects⁴ who reside or maintain offices in England. *See* Amended Complaint at
14 ¶¶ 6, 8-12).

15 Given the complete absence of *any* alleged contacts by the Non-KFI Defendants with
16 Washington, it is inconceivable that Cascade has met the high standard required to establish
17 general jurisdiction – that the Non-KFI Defendants’ contacts with Washington are so
18 “continuous and systematic” that they “approximate physical presence” or equate to “sit[ting]
19 down and mak[ing themselves] at home” in Washington. *Tuazon*, 433 F.3d at 1169. As a
20 consequence, general jurisdiction over the Non-KFI Defendants cannot be established.

21
22 **B. The Non-KFI Defendants Are Not Subject To Specific Jurisdiction**

23 The Non-KFI Defendants are also not subject to specific jurisdiction in this Court; that is,
24 jurisdiction limited to the claims asserted in this action. A court may exercise specific
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⁴ *See* footnote 2, *supra*.

1 jurisdiction if three factors are present: (1) the defendant has performed some act or
2 consummated some transaction within the forum or otherwise purposefully availed himself of the
3 privileges of conducting activities in the forum, (2) the claim arises out of or results from the
4 defendant's forum-related activities, and (3) the exercise of jurisdiction is reasonable. *Bancroft*
5 & *Masters*, 223 F.3d at 1086. “If any of the three requirements is not satisfied, jurisdiction in the
6 forum would deprive the defendant of due process of law.” *Omeluk*, 52 F.3d at 270.

7 The Ninth Circuit Court of Appeals has refined this test to consider whether the
8 defendant has either: (1) “purposefully availed” himself of the privilege of conducting activities
9 in the forum; or (2) “purposefully directed” his activities toward the forum. *Schwarzenegger*,
10 374 F.3d at 802. To meet the purposeful availment requirement under the first prong of the test,
11 “the defendant must have performed some type of affirmative conduct which allows or promotes
12 the transaction of business within the forum state.” *Roth v. Garcia Marquez*, 942 F. 2d 617, 621
13 (9th Cir. 1991) (citing *Sinatra v. National Enquirer*, 854 F.2d 1191, 1195 (9th Cir. 1988)).

14 A foreign act that is both aimed at and has effect in the forum satisfies the first
15 requirement of the specific jurisdiction analysis. *Calder v. Jones*, 465 U.S. 783, 104 S. Ct. 1482
16 (1984). To satisfy this test a defendant “must have (1) committed an intentional act, which was
17 (2) expressly aimed at the forum state, and (3) caused harm, the brunt of which is suffered and
18 which the defendant knows is likely to be suffered in the forum state.” *Bancroft & Masters*, 223
19 F.3d at 1088 (citing *Panavision Int'l*, 141 F.3d at 1321). Moreover, the Ninth Circuit has
20 cautioned courts not to focus too narrowly on the test’s third prong – the effects prong – holding
21 that “something more” is needed in addition to a mere foreseeable effect. *Bancroft & Masters*,
22 223 F.3d at 1087. Specifically the Ninth Circuit has stated:

23 Subsequent cases have struggled somewhat with *Calder*’s import,
24 recognizing that the case cannot stand for the broad proposition that a
25 foreign act with foreseeable effects in the forum state will always give
26 rise to specific jurisdiction. We have said that there must be “something
27 more” We now conclude that “something more” is what the
Supreme Court described as “express aiming” at the forum state.

Id.

1 Personal jurisdiction over employees or officers of corporations in their individual
2 capacities “must be based on their personal contacts with the forum state and not on the acts and
3 contacts carried out solely in a corporate capacity.” *Bingham v. Blair LLC*, 2010 U.S. Dist.
4 LEXIS 40796, *5-6 (W.D. Wash. Apr. 26, 2010). Jurisdiction over an employee “does not
5 automatically follow from jurisdiction over the corporation which employs him; nor does
6 jurisdiction over a parent corporation automatically establish jurisdiction over a wholly owned
7 subsidiary.” *Id.* at *6. “Each defendant’s contacts with the forum State must be assessed
8 individually.” *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781, 104 S. Ct. 1473, 1482
9 (1984); *Calder*, 465 U.S. at 790, 104 S. Ct. at 1487; *see also Rush v. Savchuk*, 444 U.S. 320, 332
10 (1980) (“The requirements of *International Shoe* . . . must be met *as to each defendant* over
11 whom a state court exercises jurisdiction”) (emphasis added).

12
13 **1. The Non-KFI Defendants Have Neither Purposefully Availed**
14 **Themselves Of The Privilege Of Conducting Activities In, Nor**
15 **Purposefully Directed Their Activities Toward, Washington**

16 Cascade cannot establish purposeful availment because, as is discussed above, none of
17 the Non-KFI Defendants are alleged to have taken any action within Washington, such as
18 executing or performing a contract within the state, by which they “purposefully availed
19 [themselves] of the privilege of doing business” there. *Schwarzenegger*, 374 F.3d at 802.
20 Similarly, Cascade has not established that any of the Non-KFI Defendants purposefully directed
21 their activities toward Washington.

22 **2. To Prove Purposeful Direction, Cascade Must**
23 **Show That The Non-KFI Defendants Expressly**
24 **Aimed Their Actions Toward Washington**

25 To establish purposeful direction, Cascade must prove that each of the Non-KFI
26 Defendants “(1) committed an intentional act, (2) expressly aimed at [Washington], (3) causing
27 harm that the defendant knows is likely to be suffered in [Washington].” *Dole Food*, 303 F.3d at

1 1111 (internal quotation marks omitted). This test is satisfied as to each of the Defendants only
2 if each of the Defendants has engaged in wrongful acts individually targeted at Washington
3 causing harm to Cascade whom each of the Defendants knows to be a resident of Washington.

4 *Id.*

5
6 **3. None Of The Non-KFI Defendants
Expressly Aimed Conduct At Washington**

7 Cascade cannot point to any intentional act of any of the Non-KFI Defendants with
8 respect to the matters alleged this action which they expressly aimed at Washington. Cascade
9 has not alleged that the Non-KFI Defendants have sold, distributed or advertised allegedly
10 mislabeled yarn products in Washington, nor that any of the allegedly mislabeled yarn products
11 were manufactured in Washington. As a result, Cascade has not shown that any of the Non-KFI
12 Defendants have purposefully availed themselves of the privilege of doing business in
13 Washington or that any of them have purposefully directed any activities toward Washington.
14 Accordingly, specific jurisdiction over the Non-KFI Defendants cannot be established.

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16 **C. Defendants Are Not Subject To Rule 4(k)(2) Personal Jurisdiction**

17 The Non-KFI Defendants also are not subject to personal jurisdiction under Fed. R. Civ.
18 P. 4(k)(2), which allows federal courts to exercise personal jurisdiction over a defendant who “is
19 not subject to jurisdiction in any state’s courts of general jurisdiction.” The rule is intended to
20 apply to non-resident defendants “having contacts with the United States sufficient to justify
21 application of United States law and to satisfy federal standards of forum selection, but having
22 insufficient contact with any single state to support jurisdiction.” Fed. R. Civ. P. 4(k)(2) 1993
23 Advisory Committee’s Note. Establishing personal jurisdiction under Rule 4(k)(2) requires the
24 satisfaction of three elements: (1) the claim against the defendant must arise under federal law;
25 (2) the defendant must not be subject to the personal jurisdiction of any state court of general
26 jurisdiction, and (3) the exercise of personal jurisdiction must comport with due process.

1 *Holland Am. Line*, 485 F.3d at 461; *see also Glencore Grain*, 284 F.3d at 1126. Under the third
2 element, “[t]he due process analysis under Rule 4(k)(2) is nearly identical to traditional personal
3 jurisdiction analysis with one significant difference: rather than considering contacts between the
4 [defendant] and the forum state, [the Court] consider[s] contacts with the nation as a whole.”

5 *Holland Am. Line*, 485 F.3d at 462.

6 While Cascade’s claims in the present action arise under the Lanham Act, 15 U.S.C. §
7 1125(a), as well as under RICO, Cascade cannot satisfy the second requirement under the Rule,
8 namely, that Defendants are not subject to the personal jurisdiction of any state court of general
9 jurisdiction. In the present case, all of the Non-KFI Defendants, other than Mr. Watt, are subject
10 to the personal jurisdiction of the courts of the State of New York. Mr. Watt is a British citizen
11 whose contacts with the United States would not even satisfy the due process requirements of
12 Rule 4(k)(2). Thus, Mr. Watt would not be subject to this Court’s jurisdiction even if all of the
13 other Non-KFI Defendants weren’t subject to the jurisdiction of the courts of another state. As a
14 result, as all of the Defendants who would be amenable to suit anywhere in the United States are
15 subject to the jurisdiction of New York courts, Cascade is unable to satisfy the second
16 requirement of Rule 4(k)(2). Accordingly, there is no basis for the exercise of Rule 4(k)(2)
17 jurisdiction over the Non-KFI Defendants.

1 **IV. CONCLUSION**

2 For the foregoing reasons, this Court should dismiss this entire action as against
3 Defendants Designer Yarns, Ltd., Sion Elalouf, Diane Elalouf, Jay Opperman, Debbie Bliss, and
4 David Watt for lack of personal jurisdiction.

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6 DATED this 26th day of July, 2010.

7
8 Pepper Hamilton LLP
9 Attorneys for Defendants

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the date set forth below, I electronically filed the foregoing 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:

Robert J. Guite, Esquire
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DATED this 26th day of July, 2010.

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The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
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AT SEATTLE

CASCADE YARNS, INC., a Washington
corporation,

Plaintiffs,

v.

KNITTING FEVER, INC., a New York
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corporation of England, FILATURA
PETTINATA V.V.G. DI STEFANO
VACCARI & C. (S.A.S.), an entity organized
under the laws of Italy; SION ELALOUF, a
natural person, DIANE ELALOUF, a natural
person, JAY OPPERMAN, a natural person,
DEBBIE BLISS, a natural person, DAVID
WATT, a natural person, and DOES 1-50,

Defendants.

Civil Action No. 2:10-cv-00861 RSM

**[PROPOSED] ORDER TO DISMISS
FOR LACK OF PERSONAL
JURISDICTION**

NOTE ON MOTION CALENDAR:
August 13, 2010

ORAL ARGUMENT REQUESTED

ORDER

AND NOW, this ____ day of _____, 2010, upon consideration of
Defendants Designer Yarns, Ltd., Sion Elalouf, Diane Elalouf, Jay Opperman, Debbie Bliss, and
David Watt's Motion to Dismiss for Lack of Personal Jurisdiction, any opposition filed in
response thereto, and for good and sufficient cause shown, it is hereby

ORDERED that the Motion is GRANTED; and it is further

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ORDERED that action is hereby DISMISSED in its entirety as to Defendants Designer Yarns, Ltd., Sion Elalouf, Diane Elalouf, Jay Opperman, Debbie Bliss, and David Watt.

BY THE COURT:

Ricardo S. Martinez, U.S.D.J.