

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:
November 19, 2010

ORAL ARGUMENT REQUESTED

I. INTRODUCTION

Defendant Filatura Pettinata V.V.G. Di Stefano Vaccari & C. (S.A.S.) (“Filatura”) moves to dismiss this action in its entirety pursuant to Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction.

Plaintiff, Cascade Yarns, Inc. (“Cascade”), has failed to allege that Filatura has the substantial, continuous, and systemic contacts with Washington required to subject it to this Court’s general jurisdiction, or that it either purposefully availed itself of the privilege of conducting activities in Washington or purposefully directed any activities toward Washington.

1 Moreover, while Defendant David Watt does not even have minimum contacts with the United
2 States necessary to support personal jurisdiction under Rule 4(k)(2), Defendants Designer Yarns,
3 Ltd., Sion Elalouf, Diane Elalouf, Jay Opperman, and Debbie Bliss (collectively, with Filatura,
4 the “Non-KFI Defendants”), are all subject to the jurisdiction of the courts of New York.
5 Accordingly, Cascade’s cannot establish personal jurisdiction over Filatura. This action,
6 therefore, should be dismissed in its entirety as against Filatura.

7 8 **II. FACTS**

9 Cascade’s allegations of facts relevant to the personal jurisdiction of Filatura are as
10 follows:

11 -Filatura is a closely-held Italian entity with a place of business in Benna, Italy.

12 -Filatura manufactured the Debbie Bliss yarns at issue in this case.

13 -Filatura communicated with Messrs. Elalouf (in New York) and Watt (in England)
14 regarding the Debbie Bliss yarns at issue in this case.

15 *See* Amended Complaint at ¶¶ 7, 32, 55.

16 Notably absent from the Complaint are allegations of any intentional acts of Filatura that
17 were expressly aimed at Washington causing harm the brunt of which was suffered and which
18 Filatura knows is likely to be suffered in Washington. Moreover, Cascade has failed to allege
19 that Filatura owns any real estate, bank accounts, or other property located in Washington, that it
20 maintains offices or a registered agent for service of process in Washington, that it pays any
21 taxes to Washington, or that it is registered or licensed to do business in Washington.

22 23 **III. LAW AND ARGUMENT**

24 **1. Cascade Has Failed To Establish Personal 25 Jurisdiction Over Filatura**

26 For a court to exercise personal jurisdiction over a nonresident defendant, the defendant
27 must have sufficient “minimum contacts” with the state where the court is located so that

1 exercising jurisdiction will not offend “traditional notions of fair play and substantial justice.”¹
 2 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004). The policy
 3 behind the rule is to provide some predictability so that a potential defendant will have fair
 4 warning that its activities may subject it to suit in a remote forum. *Burger King Corp. v.*
 5 *Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174 (1985).

6 Cascade bears the burden of demonstrating that the Court has personal jurisdiction over
 7 Filatura. *Schwarzenegger*, 374 F.3d at 800; *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1108
 8 (2002). Cascade cannot “simply rest on the bare allegations of its complaint.” *Dole Food Co.*,
 9 303 F.3d at 1108 (quoting *Amba Marketing Sys., Inc. v. Jobar Int’l, Inc.*, 551 F.2d 784, 787 (9th
 10 Cir. 1977)). Cascade must carry its burden by showing that Filatura is subject to either general
 11 or specific jurisdiction in Washington. Cascade, however, cannot do so for Filatura or indeed
 12 any of the Non-KFI Defendants.

13

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

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

21 The standard for general jurisdiction is an “exacting” one “because a finding of general
 22 jurisdiction permits a defendant to be haled into court in the forum state to answer for any of its

23 ¹ 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 activities anywhere in the world.” *Schwarzenegger*, 374 F.3d at 801; *Tuazon*, 433 F.3d at 1169.
2 Before a court may exercise general jurisdiction, an out-of-state defendant’s contacts with the
3 forum state must be so “continuous and systematic” that they “approximate physical presence” in
4 the state. *Id.* As the Ninth Circuit said in *Tuazon*, to be subject to general jurisdiction, a
5 defendant “must not only step through the door, it must also ‘sit down and make itself at home’”
6 in the forum state. *Id.* (quoting *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*,
7 284 F.3d 1114, 1125 (9th Cir. 2002)); *see also Helicopteros*, 466 U.S. at 415-16.

8 In evaluating whether a defendant is subject to general jurisdiction, the Ninth Circuit
9 considers “whether the defendant makes sales, solicits or engages in business in the state, serves
10 the state’s markets, designates an agent for service of process, holds a license, or is incorporated
11 there.” *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000)
12 *overruled on other grounds by Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*,
13 433 F.3d 1199, 1207 (9th Cir. 2006). At the same time, “[i]t is abundantly clear that a
14 corporation does not necessarily submit to general jurisdiction in every state in which it merely
15 sells a product.” *Tuazon*, 433 F.3d at 1174; *see also Bancroft & Masters*, 223 F.3d at 1086
16 (merely “engaging in commerce with residents of the forum state is not in and of itself the kind
17 of activity” giving rise to general jurisdiction). Relevant indicia of the nature and extent of a
18 defendant’s contacts with the forum include the longevity, continuity, and volume of activity;
19 economic impact; physical presence; and integration into the state’s regulatory or economic
20 markets. *Tuazon*, 433 F.3d at 1172.

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

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

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

21 In the present case, Cascade has failed to allege any contacts of Filatura with
22 Washington. More specifically, Cascade has failed to make any allegation that Filatura is
23 domiciled in Washington or that it conducts “substantial” or “continuous and systematic”
24 activities in Washington. To the contrary, Cascade has alleged only that Filatura is an Italian
25 business entity involved in the sourcing of certain of the yarns at issue in this matter. *See*
26 Amended Complaint at ¶ 7).

1 Given the complete absence of *any* alleged contacts by Filatura with Washington, it is
2 inconceivable that Cascade has met the high standard required to establish general jurisdiction –
3 that Filatura’s contacts with Washington are so “continuous and systematic” that they
4 “approximate physical presence” or equate to “sit[ting] down and mak[ing themselves] at home”
5 in Washington. *Tuazon*, 433 F.3d at 1169. As a consequence, general jurisdiction over Filatura
6 cannot be established.

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8 **B. Filatura Is Not Subject To Specific Jurisdiction**

9 Filatura is also not subject to specific jurisdiction in this Court; that is, jurisdiction
10 limited to the claims asserted in this action. A court may exercise specific jurisdiction if three
11 factors are present: (1) the defendant has performed some act or consummated some transaction
12 within the forum or otherwise purposefully availed himself of the privileges of conducting
13 activities in the forum, (2) the claim arises out of or results from the defendant's forum-related
14 activities, and (3) the exercise of jurisdiction is reasonable. *Bancroft & Masters*, 223 F.3d at
15 1086. “If any of the three requirements is not satisfied, jurisdiction in the forum would deprive
16 the defendant of due process of law.” *Omeluk*, 52 F.3d at 270.

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

24 A foreign act that is both aimed at and has effect in the forum satisfies the first
25 requirement of the specific jurisdiction analysis. *Calder v. Jones*, 465 U.S. 783, 104 S. Ct. 1482
26 (1984). To satisfy this test a defendant “must have (1) committed an intentional act, which was
27 (2) expressly aimed at the forum state, and (3) caused harm, the brunt of which is suffered and

1 which the defendant knows is likely to be suffered in the forum state.” *Bancroft & Masters*, 223
 2 F.3d at 1088 (citing *Panavision Int'l*, 141 F.3d at 1321). Moreover, the Ninth Circuit has
 3 cautioned courts not to focus too narrowly on the test’s third prong – the effects prong – holding
 4 that “something more” is needed in addition to a mere foreseeable effect. *Bancroft & Masters*,
 5 223 F.3d at 1087. Specifically the Ninth Circuit has stated:

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

12 *Id.*

13 Personal jurisdiction over employees or officers of corporations in their individual
 14 capacities “must be based on their personal contacts with the forum state and not on the acts and
 15 contacts carried out solely in a corporate capacity.” *Bingham v. Blair LLC*, 2010 U.S. Dist.
 16 LEXIS 40796, *5-6 (W.D. Wash. Apr. 26, 2010). Jurisdiction over an employee “does not
 17 automatically follow from jurisdiction over the corporation which employs him; nor does
 18 jurisdiction over a parent corporation automatically establish jurisdiction over a wholly owned
 19 subsidiary.” *Id.* at *6. “Each defendant’s contacts with the forum State must be assessed
 20 individually.” *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781, 104 S. Ct. 1473, 1482
 21 (1984); *Calder*, 465 U.S. at 790, 104 S. Ct. at 1487; *see also Rush v. Savchuk*, 444 U.S. 320, 332
 22 (1980) (“The requirements of *International Shoe* . . . must be met *as to each defendant* over
 23 whom a state court exercises jurisdiction”) (emphasis added).

24 **1. Filatura Has Neither Purposefully Availed Itself Of The
 25 Privilege Of Conducting Activities In, Nor Purposefully
 26 Directed Its Activities Toward, Washington**

27 Cascade cannot establish purposeful availment because, as is discussed above, it has not
 alleged that Filatura has taken any action within Washington, such as executing or performing a
 contract within the state, by which it “purposefully availed [itself] of the privilege of doing

1 business” there. *Schwarzenegger*, 374 F.3d at 802. Similarly, Cascade has not established that
2 Filatura purposefully directed any of its activities toward Washington.

3
4 **2. To Prove Purposeful Direction, Cascade Must**
5 **Show That Filatura Expressly Aimed Its Actions**
6 **Toward Washington**

7 To establish purposeful direction, Cascade must prove that Filatura “(1) committed an
8 intentional act, (2) expressly aimed at [Washington], (3) causing harm that the defendant knows
9 is likely to be suffered in [Washington].” *Dole Food*, 303 F.3d at 1111 (internal quotation marks
10 omitted). This test is satisfied only if Filatura has engaged in wrongful acts individually targeted
11 at Washington causing harm to Cascade whom Filatura knows to be a resident of Washington.

12 *Id.*

13 **3. Filatura Did Not Expressly Aim Conduct At Washington**

14 Cascade cannot point to any intentional act of Filatura with respect to the matters alleged
15 this action which it expressly aimed at Washington. Cascade has not alleged that Filatura has
16 sold, distributed or advertised allegedly mislabeled yarn products in Washington, nor that any of
17 the allegedly mislabeled yarn products were manufactured in Washington. As a result, Cascade
18 has not shown that Filatura has purposefully availed itself of the privilege of doing business in
19 Washington or that it has purposefully directed any activities toward Washington. Accordingly,
20 specific jurisdiction over Filatura cannot be established.

21
22 **C. Filatura Is Not Subject To Rule 4(k)(2) Personal Jurisdiction**

23 Filatura is also not subject to personal jurisdiction under Fed. R. Civ. P. 4(k)(2), which
24 allows federal courts to exercise personal jurisdiction over a defendant who “is not subject to
25 jurisdiction in any state’s courts of general jurisdiction.” The rule is intended to apply to non-
26 resident defendants “having contacts with the United States sufficient to justify application of
27 United States law and to satisfy federal standards of forum selection, but having insufficient

1 contact with any single state to support jurisdiction.” Fed. R. Civ. P. 4(k)(2) 1993 Advisory
2 Committee’s Note. Establishing personal jurisdiction under Rule 4(k)(2) requires the satisfaction
3 of three elements: (1) the claim against the defendant must arise under federal law; (2) the
4 defendant must not be subject to the personal jurisdiction of any state court of general
5 jurisdiction, and (3) the exercise of personal jurisdiction must comport with due process.
6 *Holland Am. Line*, 485 F.3d at 461; *see also Glencore Grain*, 284 F.3d at 1126. Under the third
7 element, “[t]he due process analysis under Rule 4(k)(2) is nearly identical to traditional personal
8 jurisdiction analysis with one significant difference: rather than considering contacts between the
9 [defendant] and the forum state, [the Court] consider[s] contacts with the nation as a whole.”
10 *Holland Am. Line*, 485 F.3d at 462.

11 While Cascade’s claims in the present action arise under the Lanham Act, 15 U.S.C. §
12 1125(a), as well as under RICO, Cascade cannot satisfy the second requirement under the Rule,
13 namely, that Defendants are not subject to the personal jurisdiction of any state court of general
14 jurisdiction. In the present case, all of the Non-KFI Defendants are subject to the personal
15 jurisdiction of the courts of the State of New York. Mr. Watt is a British citizen whose contacts
16 with the United States would not even satisfy the due process requirements of Rule 4(k)(2).
17 Thus, Mr. Watt would not be subject to this Court’s jurisdiction even if all of the Non-KFI
18 Defendants weren’t subject to the jurisdiction of the courts of another state. As a result, as all of
19 the Defendants who would be amenable to suit anywhere in the United States are subject to the
20 jurisdiction of New York courts, Cascade is unable to satisfy the second requirement of Rule
21 4(k)(2). Accordingly, there is no basis for the exercise of Rule 4(k)(2) jurisdiction over Filatura.
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IV. CONCLUSION

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

5 DATED this 29th day of October, 2010.
6

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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:

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DATED this 29th day of October, 2010.

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