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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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10 SAFEWORKS, LLC, a Washington limited
liability company,

11 Plaintiff,

12 v.

13 SPYDERCRANE.COM, LLC, an Arizona
14 corporation,

15 Defendant.

Case No. 08-0922-JPD

ORDER ON DEFENDANT'S MOTION
TO DISMISS FOR LACK OF
JURISDICTION, OR, IN THE
ALTERNATIVE, TO TRANSFER CASE
TO THE DISTRICT OF ARIZONA

16
17 I. INTRODUCTION AND SUMMARY CONCLUSION

18 This matter comes before the Court on Defendant Spydercrane.com, LLC's Motion to
19 Dismiss, or, in the alternative, to Transfer Case to the District of Arizona. Dkt. No. 8.

20 Defendant seeks dismissal of this case for lack of personal jurisdiction, or, alternatively, to
21 transfer the venue of this action to the District of Arizona, where Defendant resides. Having
22 reviewed all of the pleadings and supporting documents, the Court finds that Defendant has
23 purposefully availed itself of the forum of Washington State through its mix of internet and
24 non-internet contacts, Plaintiff's claims arise out of that conduct, and Defendant has not
25 presented a "compelling case" that jurisdiction is unreasonable. Accordingly, Defendant's
26 motion to dismiss, or, in the alternative, to transfer case to the District of Arizona is DENIED.

1 II. FACTUAL BACKGROUND

2 Defendant's principal place of business is in Arizona and it operates a business that
3 sells cranes manufactured by UNIC Corporation of Japan as well as replacement parts.
4 Plaintiff SafeWorks, LLC is based in Tukwila, Washington and manufactures lifting, hoisting,
5 safety and access equipment used in various industries. Dkt. No. 16, ¶ 4.1. Plaintiff brings
6 several claims against Defendant, including claims for trademark infringement, false
7 designation of origin, trademark dilution, and unfair competition. Dkt. No. 16.

8 Defendant maintains a website that was created in September 2001, Dkt. No. 9, ¶ 4,
9 and is accessible throughout the United States. Customers cannot purchase products
10 electronically through the website, but the website does contain a parts order form for printing
11 and faxing, company contact information, including a toll-free number, and a link to send an
12 e-mail to the company. The website also contains product information and parts manuals, and
13 states that Defendant offers delivery nationwide.

14 Defendant has had three customers in Washington. Two of the customers have made
15 only one parts purchase each from Defendant. Dkt. No. 24, ¶ 5. The third customer, Coast
16 Crane, purchased \$6,869 in parts from Defendant between August 2001 and April 2005, and
17 made an additional parts purchase of \$67 in August 2007. Dkt. No. 20 at 11-13. Defendant's
18 business relationship with Coast Crane appears to have curtailed significantly in 2005 because
19 Coast Crane began selling products of UNIC Corporation's competitor, Tadano of Japan. Dkt.
20 No. 24, ¶ 3.

21 Defendant has not sold any cranes in Washington. Dkt. No. 9, ¶ 5. Defendant did sell
22 a crane for \$98,270 to Coast Crane in August 2005 which was invoiced to Coast Crane's
23 Seattle office, but was delivered to the City of Livermore in California.¹ Dkt. No. 24, ¶ 2.
24 Since the filing of this lawsuit, a potential Washington customer, long familiar with

25
26 ¹ In addition to Washington, Coast Crane has offices in California, Oregon, Alaska and
Canada.

1 Defendant, has made an inquiry about purchasing a crane from Defendant, but that transaction
2 has not been consummated. Dkt. No. 9, ¶ 6.

3 Defendant also advertises in print media, including trade journals, on a nationwide
4 basis. Dkt. No. 20 at 4, 18. Defendant has received inquiries about its products from potential
5 customers in Washington. Dkt. No. 20 at 18.

6 III. DISCUSSION

7 Where, as here, the court has received and considered declarations and discovery
8 materials, Plaintiff need only demonstrate a prima facie showing of the jurisdictional facts to
9 avoid dismissal or transfer of venue for lack of jurisdiction. *See Boschetto v. Hansing*, 539
10 F.3d 1011, 1015 (9th Cir. 2008). Unless directly contravened, Plaintiff's version of the facts is
11 taken as true, and conflicts between the facts are resolved in Plaintiff's favor. *Schwarzenegger*
12 *v. Fred Martin Co.*, 374 F.3d 797, 800 (9th Cir. 2004).

13 The parties do not dispute that Defendant is not subject to general jurisdiction in
14 Washington. However, Defendant asserts that there is no specific jurisdiction for Plaintiff's
15 claims either. Specific jurisdiction requires that (1) the non-resident defendant must
16 purposefully direct his activity or consummate a transaction with the forum or a resident
17 thereof; or purposefully avail himself of the privilege of conducting activities in the forum; (2)
18 the claim must arise out of or relate to the defendant's forum-related activities; and (3) the
19 exercise of jurisdiction must be reasonable. *See Boschetto*, 539 F.3d at 1016. Plaintiff bears
20 the burden of proving the first two prongs of the test, and if it can do so, the burden shifts to
21 Defendant to present a "compelling case" that the exercise of jurisdiction would not be
22 reasonable. *Id.*

23 1. Purposeful Availment

24 To have purposefully availed itself of the privilege of doing business in the forum, a
25 defendant must have "taken deliberate action within the forum state," *Cybersell, Inc. v.*
26 *Cybersell, Inc.*, 130 F.3d 414, 417 (9th Cir. 1997), or "performed some type of affirmative

1 conduct which allows or promotes the transaction of business within the forum state,”
2 *Boschetto*, 539 F.3d at 1016. In determining whether a defendant’s website-based contacts in
3 the forum state are sufficient to confer jurisdiction, the Ninth Circuit has analyzed the issue
4 under the so-called Zippo “sliding scale” test, which looks at how “interactive” or “passive”
5 the website is. *See Cybersell*, 130 F.3d at 419 (quoting *Zippo Mfg. Co. v. Zippo Dot Com,*
6 *Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997)). The more interactive the website is, the more
7 likely it is that the website will support jurisdiction in the forum state. However, even
8 operating a passive website, in conjunction with “something more” that demonstrates that the
9 defendant directed activity toward the forum state, is sufficient to confer jurisdiction. *See,*
10 *e.g., Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1020 (9th Cir. 2002) (finding
11 jurisdiction based upon passive website and radio and print advertising directed into the
12 forum); *Panavision Int’l, L.P. v. Toepfen*, 141 F.3d 1316, 1322 (9th Cir. 1998) (finding
13 jurisdiction based upon passive website and letters sent into the forum).

14 Here, Plaintiff has shown, and Defendant does not contest, that Defendant uses a
15 website that advertises and promotes its products. Defendant’s website is not entirely passive
16 because, in addition to posting product information and parts manuals, it contains a parts order
17 form for printing and faxing, a toll-free telephone number, a link to send an e-mail to the
18 company, and a notice that Defendant offers delivery nationwide. On the other hand,
19 Defendant’s website also does not fall squarely within the Zippo test’s “middle ground”
20 because it does not allow a user to exchange information electronically with the website’s host
21 computer. *See Zippo Mfg. Co.*, 952 F. Supp. at 1124. Accordingly, Defendant’s website falls
22 somewhere between the passive end of the Zippo spectrum and the middle ground. Absent
23 “something more” that shows that Defendant has directed activity toward Washington State,
24 the website alone would likely be insufficient to confer personal jurisdiction.

25 However, not only has Defendant operated a more-than-passive website, it has engaged
26 in the “something more” that is necessary to support jurisdiction. Defendant has sold parts to

1 three different customers in Washington. Although there is no evidence that these sales were
2 generated by Defendant's website, a mix of internet and non-internet contacts with a forum
3 will support jurisdiction. *See, e.g., Rio Props., Inc.*, 284 F.3d at 1020; *Toys "R" Us, Inc. v.*
4 *Step Two, S.A.*, 318 F.3d 446, 453-54 (3rd Cir. 2003). While two of Defendant's Washington
5 customers have made only one parts purchase each, Dkt. No. 24, ¶ 5, the third customer, Coast
6 Crane, purchased \$6,869 in parts on various occasions between August 2001 and April 2005,
7 Dkt. No. 20 at 11-13. Defendant's business activity with Coast Crane appears to have dropped
8 drastically in 2005, but Coast Crane did make a parts purchase in August 2007, indicating that
9 the customer relationship is not completely inactive. Dkt. No. 24, ¶ 3, Dkt. No. 20 at 11-13.
10 Defendant also sold a crane for \$98,270 to Coast Crane in August 2005 which, though
11 delivered to California, was invoiced to Coast Crane's Seattle office. Dkt. No. 24, ¶ 2.

12 In addition to the foregoing business activity, Defendant advertises in print media,
13 including trade journals, on a nationwide basis, Dkt. No. 20 at 4, 18, and there is no evidence
14 that this advertising does not reach prospective customers in Washington. Indeed, Defendant
15 acknowledges that it has received inquiries about its products from potential customers in
16 Washington. Dkt. No. 20 at 18.

17 In sum, Defendant's more-than-passive website, in conjunction with its non-internet
18 contacts of sales to Washington residents and national advertising in print media, are sufficient
19 to demonstrate that Defendant purposefully availed itself of Washington.

20 2. Arising out of the Forum-Related Activities

21 In order to "arise out of" the forum-related activities, the claim must be a "but for"
22 result of those activities. *Rio Props., Inc.*, 284 F.3d at 1021. Defendant argues that the claims
23 cannot arise out of its contacts in Washington because UNIC products do not contain the
24 "Spydercrane" mark. Dkt. No. 23 at 3. However, Plaintiff's claims are based on Defendant's
25 website and the sales of its products to Washington residents; it is Defendant's use of the
26 "Spydercrane" mark to advertise and sell the UNIC products in Washington that forms the

1 basis of Plaintiff's alleged injury. Therefore, "but for" Defendant's forum-related activities,
2 plaintiff would not have allegedly suffered harm.

3 3. Reasonableness

4 In determining whether it is reasonable to exercise specific jurisdiction, courts in the
5 Ninth Circuit consider seven factors: (1) the extent of a defendant's purposeful injection into
6 the forum, (2) the burden on the defendant in defending in the forum, (3) the extent of conflict
7 with the sovereignty of the defendant's state, (4) the forum state's interest in adjudicating the
8 dispute, (5) the most efficient judicial resolution of the controversy, (6) the importance of the
9 forum to the plaintiff's interest in convenient and effective relief, and (7) the existence of an
10 alternative forum. *Panavision Int'l, L.P. v. Toepfen*, 141 F.3d 1316, 1323 (9th Cir. 1998). As
11 no single factor is dispositive, a court must balance all seven factors. *Id.* Defendant must
12 present a "compelling case" that the exercise of jurisdiction would not be reasonable.
13 *Boschetto v. Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008).

14 Here, Defendant has purposefully injected itself into Washington through its more-
15 than-passive website and by making sales to Washington residents. Therefore, the first factor
16 weighs in favor of the Court's exercise of personal jurisdiction.

17 As to the second factor, while Defendant asserts that the burden of defending itself in
18 Washington is "wholly disproportionate" to the incidental business conducted in Washington,
19 Defendant has not adduced any evidence demonstrating what percentage of its business is
20 conducted in Washington. In any event, unless the "inconvenience is so great as to constitute
21 a deprivation of due process, it will not overcome clear justifications for the exercise of
22 jurisdiction." *Toepfen*, 141 F.3d at 1323. Defendant has not shown that any inconvenience is
23 so great as to deprive it of due process. This factor is neutral, or weighs in Plaintiff's favor.

24 The third factor concerns the extent to which the Court's exercise of jurisdiction in
25 Washington would conflict with the sovereignty of Arizona, Defendant's state of domicile.
26 Three of Plaintiff's claims are made under federal law which would be analyzed the same in

1 every district. Plaintiff's fourth claim for unfair competition under Washington law would
2 require a similar analysis in Arizona. Accordingly, the exercise of jurisdiction by a federal
3 court in Washington does not implicate sovereignty concerns of Arizona. This factor weighs
4 in favor of jurisdiction.

5 The fourth factor concerns the forum state's interest in adjudicating the dispute.
6 Washington has a substantial interest in adjudicating this dispute because Plaintiff is a
7 Washington resident that alleges tortious injury due to the conduct of another. *See CE*
8 *Distrib., LLC v. New Sensor Corp.*, 380 F.3d 1107, 1112 (9th Cir. 2004). However, this
9 interest is diminished somewhat because Plaintiff promotes and sells its products domestically
10 and internationally, not exclusively in Washington. *See Terracom v. Valley Nat'l Bank*, 49
11 F.3d 555, 561 (9th Cir. 1995). This factor is neutral, or weighs in Plaintiff's favor.

12 Efficiency of forum, the fifth factor, is evaluated by looking at where the witnesses and
13 the evidence are likely to be located. This factor is no longer weighed heavily given the
14 modern advances in communication and transportation. *Toeppen*, 141 F.3d at 1323. In any
15 case, this factor is likely neutral because there are witnesses and evidence in both Washington
16 and Arizona.

17 The sixth factor, the plaintiff's interest in convenient and effective relief, is given little
18 weight. *Id.* at 1324. While Plaintiff is based in Washington and it may be more costly and
19 inconvenient for Plaintiff to litigate in Arizona, the burden on Plaintiff would be relatively
20 slight. This factor is essentially neutral.

21 The seventh factor, availability of an alternative forum, weighs in Defendant's favor.
22 Although it may be more costly and inconvenient for Plaintiff to litigate in Arizona, it would
23 not be an unreasonable burden.

24 Balancing the above factors, Defendant has failed to present a "compelling case" that
25 the exercise of jurisdiction in Washington would be unreasonable.

1 IV. CONCLUSION

2 Defendant purposefully availed itself of the forum of Washington State through its mix
3 of internet and non-internet contacts, Plaintiff's claims arise out of that conduct, and
4 Defendant has not presented a "compelling case" that jurisdiction would be unreasonable.
5 Accordingly, Defendant's motion to dismiss, or, in the alternative, to transfer case to the
6 District of Arizona is DENIED.

7 DATED this 12th day of November, 2008.

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10 JAMES P. DONOHUE
11 United States Magistrate Judge
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