

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SIMPLICITY, INC. : CIVIL ACTION
 :
 v. : NO. 05-3008
 :
 MTS PRODUCTS, INC. :

MEMORANDUM AND ORDER

Juan R. Sánchez, J

April 6, 2006

MTS Products, Inc. asks this Court to dismiss a seven-count complaint, which alleges it breached a contract and express and implied warranties by supplying Plaintiff Simplicity, Inc. with defective merchandise. MTS contends it has no minimum contacts with Pennsylvania to subject it to personal jurisdiction in this forum. I agree and will grant the motion in part. In lieu of dismissal, the interest of justice permits a transfer to a district court where the case could have been brought.

FACTS¹

Simplicity, a Pennsylvania corporation with its principal place of business in Reading, Pennsylvania, is a wholesaler and distributor of children's furniture. Simplicity markets its products both in its own registered tradename and under tradenames utilized under various licensing agreements. MTS is a California corporation in the business of manufacturing and selling children's furniture, which its customers re-brand for sale under various tradenames. Among the products MTS manufactures and sells are an infant's crib sold as the Aspen Crib and children's travel swings.

In 2004 and 2005, Simplicity contracted to buy MTS's infant's cribs and travel swings. The

¹The facts reflect the allegations in the Complaint, which this Court must accept as true in deciding a motion to dismiss for lack of personal jurisdiction. *Dayhoff Inc. v. H.J. Heinz Co.*, 86 F.3d 1287, 1302 (3d Cir. 1996).

terms of the sales agreement permitted Simplicity to reject shipment of the furniture if testing revealed the products exceeded a 2% defective tolerance limit or otherwise failed to comply with applicable federal, state and local requirements. Simplicity subsequently notified MTS it rejected the furniture because the products did not meet the 2% defective tolerance limit. Simplicity alleges MTS has refused to refund, or otherwise provide credit, for the defective products.

DISCUSSION

A federal court sitting in diversity must apply the law of the forum state to determine whether it has personal jurisdiction over a non-resident defendant. Fed. R. Civ. P. 4(e). Pennsylvania's long arm statute authorizes Pennsylvania courts to exercise personal jurisdiction over non-residents to the "fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States." 42 Pa. C.S. § 5322(b). The statute thus "is coextensive with the due process clause of the United States Constitution," *Time Share Vacation Club v. Atlanta Resorts Ltd.*, 735 F.2d 61, 63 (3d Cir. 1984), and permits personal jurisdiction so long as the nonresident defendant has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice,'" *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

Once a defendant has raised a jurisdictional defense under Federal Rule of Civil Procedure 12(b)(2), the burden shifts to the plaintiff, here Simplicity, to establish the district court has personal jurisdiction over the non-resident defendant. *Provident Nat'l Bank v. Cal. Fed. Sav. & Loan Ass'n*, 819 F.2d 434, 437 (3d Cir. 1987). To establish these jurisdictional facts, Simplicity must rely on sworn affidavits, depositions or other competent evidence; depending on bare allegations in the

complaint is insufficient. *Dayhoff Inc. v. H.J. Heinz Co.*, 86 F.3d 1287, 1302 (3d Cir. 1996); *Time Share Vacation Club*, 735 F.2d at 66 n.9. “All inferences must be drawn in favor of the non-moving party, all doubts must be resolved against the moving party, and all allegations of the non-moving party that conflict with those of the movant must be taken as true.” *McKinney v. West End Voluntary Ambulance Ass’n*, 821 F. Supp. 1013, 1017 (E.D. Pa. 1992) (citations omitted).

This Court may assert either general or specific jurisdiction over a non-resident defendant. General jurisdiction exists when the non-resident party has continuous and systematic contacts with the forum state. *Provident*, 819 F.2d at 437. Where no such contacts exist, the court may assert specific jurisdiction provided the cause of action arose from or is related to the defendant’s forum-related activities. *Id.* Simplicity contends MTS is amenable to suit in this jurisdiction because it “maintains systematic and continuous contacts with Pennsylvania.” (Pl.’s Memo. Opp’n Mot. Dismiss 10.) Simplicity does not assert specific jurisdiction, and there is no evidence to suggest the claim arose out of MTS’s activities within Pennsylvania. Therefore, I only consider whether I can exercise general jurisdiction over MTS.

“To obtain general jurisdiction over a corporation in Pennsylvania, the corporation must either: (1) be incorporated in Pennsylvania or licensed as a foreign corporation in the Commonwealth, (2) consent to jurisdiction, or (3) carry on a ‘continuous and systematic part of its general business’ within the Commonwealth.” *Endless Pools, Inc. v. Wave Tec Pools, Inc.*, 362 F. Supp. 2d 578, 581 (E.D. Pa. 2005) (citing 42 Pa. C.S. § 5301(a)(2)). The only basis for this Court to exercise jurisdiction is if MTS maintains “continuous and systematic” contacts here because MTS

is neither incorporated nor licensed in Pennsylvania and has not consented to jurisdiction.²

As an initial matter, the parties disagree as to the relevant time period for which this Court should determine whether MTS had sufficient contacts with Pennsylvania. Simplicity focuses on MTS's contacts with Pennsylvania between 2000 and 2005, whereas MTS limited its personal jurisdiction analysis to the years 2004 and 2005 – the same period during which MTS and Simplicity conducted business. Although sufficient contacts must exist at the time the action arose, a district court need not limit its jurisdiction analysis only to those contacts coterminous with activities giving rise to a lawsuit. *Modern Mailers, Inc. v. Johnson & Quin, Inc.*, 844 F. Supp. 1048, 1052 (E.D. Pa. 1994). In *Modern Mailers*, the plaintiff sought a declaratory judgment it did not infringe defendant's patent between December, 1992 and the summer of 1993. Although the accusations occurred over a few months, the district court found three years a reasonable time frame in which to assess jurisdiction over the defendant. The court rejected the defendant's position the relevant time period was only the time in which the activities giving rise to the action occurred because such limited time frame "would often make it impossible for a court to determine whether sufficient contacts exist." *Id.* Instead, a "court must examine the contacts over a reasonable period of time to determine whether general jurisdiction existed when the action arose." *Id.* at 1052.

While MTS concurs a reasonable time period should apply, it reads *Modern Mailers* as inapposite to the current action because "none of the concerns raised by the court in *Modern Mailers* apply here." (Def.'s Letter Br. 2.) Specifically, Simplicity's claims involve a long-term commercial

²"[I]f the court determines that there are sufficient minimum contacts with the forum state, the court may then determine 'whether the assertion of personal jurisdiction accords with the notions of fair play and substantial justice.'" *Lehigh Coal & Navigation Co. v. Geko-Mayo, GmbH*, 56 F. Supp. 2d 559, 570 (E.D. Pa. 1999). I need not address this issue because I find MTS does not have sufficient contacts with this forum.

relationship, not a patent infringement case as in *Modern Mailers*, and the alleged activities in *Modern Mailers* occurred over a shorter period of time relative to the two-year business relationship between Simplicity and MTS. I find this reading of *Modern Mailers* erroneous. The court viewed neither the nature of the case relevant to its determination of the pertinent time period nor the length of time associated with the accusations giving rise to the claim. What the court found essential to determining “whether a defendant conducted a *continuous and systematic* part of its business in the forum state” was an examination of “the defendant’s activities within the state over a period of time.” *Id.* (emphasis added)

The Second Circuit in *Metropolitan Life Insurance Company v. Robertson-Ceco Corporation*, 84 F.3d 560, 569 (2d Cir. 1996), consistently found the “continuous and systematic” requirement for general jurisdiction justifies evaluating the defendant’s contact with the forum state over time. The court went a step further, though, and reviewed general jurisdiction cases to determine the appropriate time frame. Although few cases discuss explicitly what constitutes a relevant time period, the Second Circuit’s review of general jurisdiction cases revealed “contacts are commonly assessed over a period of years prior to the plaintiff’s filing of the complaint.” *Id.* The court crafted some general guidance for district courts, which I find persuasive:

The minimum contacts inquiry is fact-intensive, and the appropriate period for evaluating a defendant’s contacts will vary in individual cases. In general jurisdiction cases, district courts should examine a defendant’s contacts with the forum state over a period that is reasonable under the circumstances--up to and including the date the suit was filed--to assess whether they satisfy the “continuous and systematic” standard. The determination of what period is reasonable in the context of each case should be left to the court’s discretion.

Id. at 569-70.

I find a five-year time frame for determining whether I have general jurisdiction over MTS

is reasonable. Limiting the analysis to calendar years 2004 and 2005 simply would represent the time period related to the activities giving rise to the claim, which can neither bind this Court nor provide sufficient time to assess MTS's contacts. Accordingly, I will consider MTS's contacts with Pennsylvania from January 1, 2000 to June 23, 2005 to determine whether they constitute a continuous and systematic course of conduct in the Commonwealth.

Continuous and systematic contacts exist when the non-resident defendant's forum activities are "extensive and persuasive," *Fields v. Ramada Inn, Inc.*, 816 F. Supp. 1033, 1036 (E.D. Pa. 1993), and "a continuous and central part of defendant's business," *Endless Pools*, 362 F. Supp. 2d at 581. Such contact would permit the defendant to "purposefully avail[] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protection of its laws," *Bucks County Playhouse v. Bradshaw*, 577 F. Supp. 1203, 1207 (E.D. Pa. 1983) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). It is undisputed MTS lacks a general business presence in this forum. MTS is not registered to conduct business in Pennsylvania, has maintained no offices or facilities here, and has designated no agent for service of process in Pennsylvania. It neither owns nor leases property, and does not have a telephone or post office box in the Commonwealth. MTS has never paid taxes or filed any tax returns in this forum and has no assets or bank accounts. Simplicity, nevertheless, argues MTS's contacts are sufficient to assert general jurisdiction based on "MTS's product sales, product distribution, and other business activities in and directed to Pennsylvania." (Pl.'s Memo. Opp'n Mot. Dismiss 1.) This Court has stated general jurisdiction is usually found "where a non-resident defendant makes a substantial number of direct sales in the forum, solicits business regularly and advertises in a way specifically targeted at the forum market." *Modern Mailers*, 844 F. Supp. at 1054. Applying this general rule to the present case reveals MTS's

Pennsylvania contacts were not continuous and systematic.

Simplicity contends MTS directly ships a substantial amount of products directly into Pennsylvania equal to approximately 5% of MTS's total sales from 2000 to 2005. (Pl.'s Memo. Opp'n Mot. Dismiss 6.) Sales invoicing and quantity reports produced by MTS support this proposition. (Pl.'s Memo. Opp'n Mot. Dismiss Ex. K). The reports represent all MTS products sold or shipped to Pennsylvania customers, but overstate MTS's contacts with the forum in the general jurisdiction context because the reports include sales to Simplicity and some large retailers for whom MTS did not directly ship the purchased products into this forum. Specifically, I cannot consider sales to Simplicity because the transactions between MTS and Simplicity occurred exclusively in California. (Def.'s Reply Memo. 3.) The subject goods were manufactured in China and shipped to California where they were delivered to Simplicity's agent. (Def.'s Reply Memo. 3.) Simplicity does not dispute these facts.

The 5% figure further inflates MTS's contacts with Pennsylvania by including sales to non-Pennsylvania customers who later shipped goods into the Commonwealth. Specifically, the majority of MTS's sales are with large retail stores, such as Wal-Mart, Target and Kmart. MTS solicits sales from these retailers at their offices in Arkansas, Minnesota and Michigan, respectively, and sends invoices to offices located in those states. (Def.'s Reply Memo. Ex. 1, Vargas-Lee Aff. ¶ 7.) The retailers determine where the purchased MTS products will be distributed. (Def.'s Reply Memo. Ex. 1, Vargas-Lee Aff. ¶ 6.) For instance, for Wal-Mart and Target, MTS shipped the products to the retailers' distribution center located in California, but created bills of lading which allowed the retailers to re-ship the purchased products to various distribution centers in the United States,

including those in Pennsylvania.³ (Pl.’s Memo. Opp’n Mot. Dismiss Ex. A., Michelle Vargas-Lee Dep. 26-27, 47-48, 52, Nov. 10, 2005; Def.’s Reply Memo. Ex. 1, Vargas-Lee Aff. ¶ 6.) I cannot consider any sales transactions with Wal-Mart, Target and Kmart when determining whether this Court has general jurisdiction over MTS because sales to these retailers did not occur in Pennsylvania, and MTS did not directly ship goods sold to these retailers into Pennsylvania.⁴

The only sales or shipments into this forum which this Court shall consider are MTS sales to “Mom and Pop” stores.⁵ In 2004 and 2005,⁶ MTS completed approximately thirty-four sales and

³Some confusion arises regarding the shipping arrangements for MTS products sold to Kmart. During her deposition, Michelle Vargas, the Accounting Manager for MTS, explained MTS shipped goods sold to Kmart directly to Pennsylvania. (Pl.’s Memo. Opp’n Mot. Dismiss Ex. A., Vargas-Lee Dep. 52-55.) She explained, however, she was not certain as to this fact and had to verify this information with MTS representatives. (Pl.’s Memo. Opp’n Mot. Dismiss Ex. A., Vargas-Lee Dep. 53.) In a later affidavit, she avers MTS has no direct dealings with a Kmart store, distribution center or employee in Pennsylvania. (Def.’s Reply Memo. Ex. 1, Vargas-Lee Aff. ¶ 7.) While this may represent a possible conflict, it also could reflect a correction to her prior statement. The invoices and shipping documents produced as to Kmart sales are virtually identical to those related to Target and Wal-Mart, suggesting MTS did not deviate from its billing and shipping procedures used with its large retail customers. (Pl.’s Memo. Opp’n Mot. Dismiss Ex. F, G, H; Def.’s Reply Memo. Ex. 4.) Even if this Court were to consider sales to Kmart, Simplicity’s 5% figure remains flawed – MTS’s sales to other retailers, including its largest customer Wal-Mart (Pl.’s Memo. Opp’n Mot. Dismiss Ex. A., Vargas-Lee Dep. 29), do not qualify as contacts with Pennsylvania.

⁴Evidence a non-resident defendant benefitted from placing its goods, albeit indirectly, into a forum may be sufficient to establish a stream of commerce theory of personal jurisdiction. *See generally Pennzoil Prods. Co. v. Colelli & Assocs., Inc.*, 149 F.3d 197 (3d Cir. 1998) (reviewing stream of commerce theory as defined in *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102 (1987) and applying the three articulated tests). The stream of commerce theory, however, is “relevant only to the exercise of specific jurisdiction; it provides no basis for exercising general jurisdiction over a nonresident defendant.” *Simeone v. Bombardier-Rotax GMBH*, 360 F. Supp. 2d 665, 673 (E.D. Pa. 2005) (quotation omitted).

⁵“Mom and Pop” stores are independently-owned retailers who do less than \$5,000 a year in annual sales with MTS. (Pl.’s Memo. Opp’n Mot. Dismiss Ex. A., Vargas-Lee Dep. 66.)

⁶Other than the sales invoicing and quantity reports, which I find incorporates sales and shipments unrelated to MTS’s contacts with Pennsylvania, the parties rely on documentary evidence

issued thirteen credits to eleven independently-owned retailers located in Pennsylvania, most of whom engaged in multiple transactions.⁷ (Pl.’s Memo. Opp’n Mot. Dismiss Ex. I, M.) MTS concedes the Court can consider its sales to these “Mom and Pop” stores, which amounted to less than 1.5% of MTS business in the last two calendar years (1.3% in 2004 based on \$449,328 in total sales and .0002% in 2004 based on \$10,735 in total sales). (Def.’s Reply Memo. 2, 3; Def.’s Reply Memo. Ex. 1, Vargas-Lee Aff. ¶ 11.) MTS further transacted with fourteen retailers located outside Pennsylvania between 2004 and 2005 and directly shipped the purchased products to approximately thirty-one Pennsylvania customers.⁸ (Pl.’s Memo. Opp’n Mot. Dismiss Ex. J.) Consequently, MTS sales and shipments into this forum represents less than 5% of its total sales over the relevant time period. Such a figure falls substantially below the “continuous and systematic” contacts required by the *in personam* jurisdiction standard. In fact, courts have found similarly small percentages of sales into this forum insubstantial for general jurisdiction purposes. *See, e.g., Modern Mailer*, 844 F. Supp. at 1054 (defendant’s sales of less than .5% to Pennsylvania deemed not substantial); *Romann v. Geissenberger Manuf. Corp.*, 865 F. Supp. 255, 261 (E.D. Pa. 1994) (same as to 2-4% of sales); *Allied Leather Corp. v. Altama Delta Corp.*, 785 F. Supp. 494, 499-500 (M.D. Pa. 1992) (same as to 1% of sales); *Derman v. Wilair Servs., Inc.*, 590 A.2d 317, 324 (Pa. Super. Ct.), *appeal*

related only to calendar years 2004 and 2005.

⁷Three records were excluded: (1) a sales order transacted in September 2005, (2) a credit memo related to a Simplicity transaction, and (3) a credit memo noting only a Pennsylvania store had bad debt.

⁸The record also includes documents evidencing MTS issued credit to or arranged to replace warrantied products for twenty-eight Pennsylvania customers. (Pl.’s Memo. Opp’n Mot. Dismiss Ex. J.) Most of these documents, however, do not specify when or if products were eventually shipped to the Pennsylvania customer. Additionally, some credit memos reflect items returned by the consumer to MTS, with no reference to subsequent activity by MTS.

denied 600 A.2d 537 (Pa. 1991) (same as to 1.5% of sales).

This Court is mindful, however, that “[i]t is the overall nature of the activity, rather than its quantitative character, that determines whether a Court may have general personal jurisdiction.” *Romann*, 865 F. Supp. at 261. For instance, in *Provident*, the Third Circuit extended jurisdiction over a California bank which only had .066% of its depositors in Pennsylvania, received .071% of its deposits from Pennsylvanians, and extended .083% of its outstanding loans to Pennsylvania residents. Though the defendant’s number of Pennsylvania transactions were insufficient for the exercise of general jurisdiction, the Third Circuit focused on the defendant’s maintenance and daily use of a continuous “controlled disbursement” account with a Pennsylvania bank. Unlike *Provident*, there is no evidence MTS engaged in daily contact with Pennsylvania. At best the records related to the “Mom and Pop” sales evidence less than one hundred sales and/or shipments into this forum, with four months of no activity.⁹

Simplicity argues this Court should exercise jurisdiction over MTS because the shipment of goods into a forum, in and of itself, meets the minimum contacts requirement. Simplicity relies on *White-Evans Manufacturers, Inc. v. Elevator Sales and Service*, 543 F. Supp. 398 (E.D. Pa. 1982), in which the court extended jurisdiction over a New York business that shipped its goods into Pennsylvania after receiving orders at its New York office.¹⁰ I find this case inapposite for two

⁹Sales to Kmart would not significantly alter this figure. Simplicity erroneously estimates the shipments at approximately seventy. My review of the documents uncovered only forty-five shipments after excluding multiple copies of the same bills of lading and accounting for multiple bills of lading covered by a single shipment. Additionally, I did not consider four shipments because the bills of lading, unlike the rest, lacked notations they actually were shipped to Pennsylvania (e.g., signature and date by carrier and/or shipper, trailer or seal numbers).

¹⁰Simplicity also relies on *AMP Inc. v. Methode Electronics, Inc.*, 823 F. Supp. 259 (E.D. Pa. 1993), in which the court granted jurisdiction over a defendant who cultivated ties with the forum

reasons. First, *White-Evans* provides limited guidance to this Court because, unlike MTS, the defendant conceded and did not dispute allegations its contacts with the forum were systematic, substantial and continuous, and it was these admissions which formed the basis of the court's conclusions. 543 F. Supp. at 400-01. Second, in the absence of these limiting facts, *White-Evans* does not support Simplicity's contention. In deciding to extend jurisdiction over the non-resident defendant, the court stated shipping goods into Pennsylvania reflects "a systematic method of conducting business, in that it follows a system or orderly procedure in distributing goods." *Id.* at 401. That may be true, but shipping alone should not automatically relegate a defendant's contacts to the personal jurisdiction threshold without considering whether the shipments were extensive and pervasive enough to meet the continuous and systematic requirement. In fact, the *White-Evans* court focused not only on the systematic nature of shipping, but further found the defendant "engages in 'continuous' and 'substantial' dealings with a Pennsylvania corporation." *Id.* If shipping itself were sufficient for a finding of personal jurisdiction, the court need not have relied on the defendant's continuous and substantial admissions.

Not only do I find MTS engaged in an insubstantial amount of direct sales and shipments to the Commonwealth (and the nature of this activity does little to undermine this conclusion), but I

over a period of years by selling goods to a number of Pennsylvania customers through "house accounts." When Pennsylvania customers requested products directly, the defendant referred them to an agent or distributor to complete the sale and ship the purchased products. The court found these contacts were substantial and made on a regular basis despite the defendant's sales to Pennsylvania customers accounting for a small percentage of its business. I find the *AMP* decision does not support Simplicity's shipping argument because the opinion focuses less on the shipment of goods and more on the defendant's established contacts with the forum through its distribution network. Additionally, the *AMP* decision is factually distinct from the present case. There is no evidence MTS established a special relationship with Pennsylvania customers, such as direct referrals to agents or distributor, or created a different method of billing or payment peculiar to customers in Pennsylvania, such as with house accounts.

also find limited evidence of regular business solicitation by MTS in this forum. MTS admits it historically cultivated its relationships with “Mom and Pop” retailers at an annual trade show MTS attends in Dallas, Texas and through commissioned agents. (Pl.’s Memo. Opp’n Mot. Dismiss Ex. A., Vargas-Lee Dep. 66-67; Def.’s Reply Memo. Ex. 1, Vargas-Lee Aff. ¶¶ 4, 8.) The trade show provides no support for general jurisdiction in Pennsylvania because the event occurred outside the forum and there is no evidence MTS attended the event solely to develop Pennsylvania business.

Nor does MTS’s use of commissioned agents to solicit business support a finding of general jurisdiction. Simplicity focuses on three former MTS sales representatives – Dean Schearer, Spain Sales & Marketing (Spain) and Kenneth Sears.¹¹ None of MTS’s commissioned agents were assigned exclusively to Pennsylvania. (Def.’s Reply Memo. Ex. 1, Vargas-Lee Aff. ¶ 4.) Spain and Sears covered portions of Pennsylvania, but both also served as a MTS representative to five or six other states. (Pl.’s Memo. Opp’n Mot. Dismiss Ex. B.) Schearer’s sales area included specific customers such as Target, which is located in Minnesota, and covered eleven states other than

¹¹It is unclear from the record whether Schearer, Spain and Sears were employees of MTS or independent contractors. There was no written contract between MTS and these three representatives, only an understanding each would receive a commission for each sale. (Def.’s Reply Memo. Ex. 1, Vargas-Lee Aff. ¶ 4.) They were not obligated to sell or market MTS products exclusively and actually sold and marketed products for MTS’s competitors. (Def.’s Reply Memo. Ex. 1, Vargas-Lee Aff. ¶ 4.) Nor is there any evidence MTS instructed or otherwise controlled the manner in which the representative solicited sales. The employee-independent contractor distinction is an important one because several circuit courts refuse to attribute the activities of independent contractors in a forum state to a foreign defendant in the absence of an agency relationship. *See Guinness Imp. Co. v. Mark VII Distribs., Inc.*, 153 F.3d 607, 614-15 (8th Cir. 1998); *Kuenzle v. HTM Sport-Und Freizeitgerate AG*, 102 F.3d 453, 458-59 (10th Cir. 1996); *R.L. Lipton Distrib. Co. v. Dribeck Imps., Inc.*, 811 F.2d 967, 969 (6th Cir. 1987). Pennsylvania courts also have expressed reluctance at imputing the acts of independent contractors to a corporation for personal jurisdiction purposes. *See Meench v. Raymond Corp.*, 283 F. Supp. 68, 71 (E.D. Pa. 1968); *Cecere v. Ohringer Home Furniture Co.*, 220 A.2d 350, 354 (Pa. Super. Ct. 1966). I need not address this issue because viewing the facts most favorably towards the plaintiff, thereby assuming the sales representatives are agents for MTS, the evidence does not support a finding of regular business solicitation.

Pennsylvania. (Pl.’s Memo. Opp’n Mot. Dismiss Ex. B.) Although all three representatives had Pennsylvania addresses (Pl.’s Memo. Opp’n Mot. Dismiss Ex. B), there is no evidence MTS required their presence here. The sales representatives residences in this forum are not relevant to the jurisdiction analysis because a unilateral decision to live in the forum “does not constitute purposeful contacts by the foreign defendant, and cannot serve as a basis for the exercise of personal jurisdiction” *Romann*, 865 F. Supp. at 261-62.

Simplicity avers minimum contacts are met because Spain and Sears received thousands of dollars in sales commission, thereby establishing they solicited and generated substantial business in Pennsylvania on MTS’s behalf. I disagree for two reasons. First, like the 5% sales figure, Simplicity reaches a flawed conclusion by relying on MTS’s commission reports. The reports itemize sales commissions for Spain and Sears but do not indicate in which state the sales were made. (Pl.’s Memo. Opp’n Mot. Dismiss Ex. C.) Simplicity has provided no means by which this Court can distinguish which sales by Spain and Sears were directed to Pennsylvania. Second, Spain and Sears likely contributed to an insignificant amount of Pennsylvania sales because commissioned agents typically focused on sales with “Mom and Pop” retailers (Def.’s Reply Memo. Ex. 1, *Vargas-Lee Aff.* ¶ 8), which I previously deemed not substantial. Additionally, less than twenty credit memos identify Spain or Sears as sales representatives related to specific transactions. (Pl.’s Memo. Opp’n Mot. Dismiss Ex. I, J.)

The final factor *Modern Mailer* identifies as relevant to a general jurisdiction analysis is whether the non-resident defendant advertises in a way specifically targeted at the forum market. MTS does not advertise in any newspapers, magazines or other publications sold or distributed in Pennsylvania. Instead, MTS markets its products in a catalog and via the Internet, neither of which

creates the constitutionally required minimum contacts for personal jurisdiction purposes. MTS distributes its catalog only at the annual trade show in Texas. (Pl.'s Memo. Opp'n Mot. Dismiss Ex. A., Vargas-Lee Dep. 82; Def.'s Reply Memo. 2, 3; Def.'s Reply Memo. Ex. 1, Vargas-Lee Aff. ¶ 11.) There is no evidence MTS mailed the catalog to Pennsylvania customers or designed the catalog to target Pennsylvania customers.

Likewise, MTS's Internet site, located at <http://www.jason.com>, advertises MTS's products but can offer no support for this Court's exercise of jurisdiction over MTS. The mere existence of a website is insufficient to establish personal jurisdiction anywhere the site is viewed. *Blackburn v. Walker Oriental Rug Galleries*, 999 F. Supp. 636, 639 (E.D. Pa. 1998) ("Creating a Web Site may be felt nation or even world wide, but without more, it is not an act purposefully directed toward the forum."). This district has adopted a "sliding scale" approach for establishing jurisdiction based largely on the degree and type of interactivity on the website and the nature and quality of activity the entity conducts over the Internet. *Zippo Mfg. Co. v. Zippo DOT Com*, 952 F. Supp. 1119, 1124 (E.D. Pa. 1997). At one end of the sliding scale are commercially interactive websites that permit defendants to conduct business over the Internet. *Id.* The other end comprises passive websites that merely post information. *Id.* "The middle ground is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site." *Id.* MTS's website falls short of a commercially interactive site for which personal jurisdiction is proper because it does not allow customers to purchase products online – it merely provides the names and website links to retailers, etailers and specialty stores which sell its products. The website primarily is passive as it overviews MTS's

products, provides contact and company information, details warranty and safety information, and addresses frequently asked questions. The only arguably interactive feature of the website is a contact for MTS's customer service, accounting and sales departments through an email link. Email links alone, though, do not rise to the level of interactivity required to justify general jurisdiction. *Blackburn*, 999 F. Supp. at 639. Even if this feature renders the website sufficiently interactive so as to fall in the middle of the sliding scale spectrum, it would remain an inappropriate basis upon which to exercise general jurisdiction because the Internet site does not specifically target customers in Pennsylvania. See *Molnlycke Health Care AB v. Dumex Med. Surgical Prods. Ltd.*, 64 F. Supp. 2d 448, 452 (E.D. Pa. 1999) (refusing to exercise general jurisdiction because “[p]laintiff has made no showing that defendant’s websites targeted Pennsylvania”).

Simplicity also relies on three other business activities by MTS in this forum: (1) MTS's presence as a defendant in a pending state court lawsuit, (2) MTS's filing “Stuffed Toy Registration Certificates” with the Pennsylvania Department of Labor and Industry from 2001 to 2004, and (3) MTS's payment of expenses associated with a trip by MTS's president to Pennsylvania in 2004. I find all these activities represent random and fortuitous contacts which do little to alleviate the barrier against haling MTS into court in this forum. First, MTS is a party to a pending state court lawsuit in which it did not contest jurisdiction. (Pl.'s Memo. Opp'n Mot. Dismiss Ex. N, O.) It does not follow, though, that this Court can exercise personal jurisdiction over MTS in this action simply because it did not contest jurisdiction in a prior lawsuit involving unrelated claims. See *Bowers v. NETI Techs., Inc.*, 690 F. Supp. 349, 356 (E.D. Pa. 1988) (rejecting defendants' presence as parties in prior lawsuit sufficient to exercise personal jurisdiction). Nor does MTS's compliance with the Stuffed Toy Act, 35 Pa. C.S. § 5201 *et seq.*, and registration with the Department of Labor and

Industry establish the substantial and continuous contacts necessary for this Court to exercise jurisdiction over MTS. The Stuffed Toy Act requires manufacturers, distributors and sellers of stuffed toys to certify the toys “sold, distributed or given away” in Pennsylvania are free from dangerous and harmful substances. 35 Pa. C.S. § 5206. Registration does not equate to registering to do business in Pennsylvania, and Simplicity has cited no case law interpreting compliance with the Stuffed Toy Act as conferring jurisdiction. Finally, MTS’s president had his expenses paid for a single trip to Philadelphia, Pennsylvania in 2004. (Pl.’s Memo. Opp’n Mot. Dismiss Ex. A., Vargas-Lee Dep. 43-45.) “Regular business trips or personal visits to the forum by an entity’s employees or agents” may be sufficient for the exercise specific jurisdiction, *In re Auto. Refinishing Paint Antitrust Litig.*, 229 F.R.D. 482, 492 (E.D. Pa. 2005), but Simplicity has not asserted a specific jurisdiction argument and a lone business trip is inadequate to meet the more strenuous “continuous and systematic” burden general jurisdiction requires.

Based on all the evidence presented regarding MTS’s contacts with this forum, I find MTS did not carry on a “continuous and systematic part of its general business” within Pennsylvania. Therefore, the defendant may not be subject to the general jurisdiction of this Court. Plaintiff asks the Court to transfer rather than dismiss the case should it conclude it lacks personal jurisdiction over MTS.¹² A district court finding jurisdiction is lacking “shall, if it is in the interest of justice, transfer [the action] to any other such court in which the action . . . could have been brought at the time it was filed.” 28 U.S.C. § 1631. Both parties agree this action could have been brought in the Central

¹²This Court’s Order of January 30, 2006 directed the parties to state their position on transfer in lieu of dismissal in case personal jurisdiction did not exist. The plaintiff supported transfer, whereas the defendant believed a transfer was not warranted relying on an unpublished, non-precedential opinion.

District of California. (Pl.’s Letter Br. 7; Def.’s Letter Br. 4.) The Central District can exert personal jurisdiction and venue over MTS because MTS resides there. Venue also is proper because all of the alleged conduct giving rise to this suit was undertaken by MTS and Simplicity’s agent in California. As to the interest of justice, dismissal undermines “principles of sound judicial administration” and would be “time-consuming and justice defeating.” *Lawman Armor Corp. v. Simon*, 319 F. Supp. 2d 499, 507 (E.D. Pa. 2004) (finding interest of justice permitted transfer) (citations and quotation omitted). Therefore, I will transfer this case in the interest of justice to the Central District of California.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SIMPLICITY, INC.	:	CIVIL ACTION
	:	
v.	:	NO. 05-3008
	:	
MTS PRODUCTS, INC.	:	

ORDER

AND NOW this 6th day of April, 2006, Defendant's Motion to Dismiss (Document 11) is GRANTED IN PART and DENIED IN PART. This Court finds it lacks personal jurisdiction over the defendant, but denies defendant's request for dismissal. This case is hereby transferred in the interests of justice to the United States District Court for the Central District of California.

BY THE COURT:

/s/ Juan R. Sánchez
Juan R. Sánchez, J.