

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

<b>TRUEPOSITION, INC.</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
	:	
vs.	:	<b>NO. 05-3023</b>
	:	
<b>SUNON, INC. , SUNONWEALTH</b>	:	
<b>ELECTRIC MACHINE INDUSTRY</b>	:	
<b>CO., LTD., and D.A. CROWLEY &amp;</b>	:	
<b>ASSOCIATES (PENNSYLVANIA), INC.,</b>	:	
<b>Defendants.</b>	:	

**ORDER**

**AND NOW**, this 14th day of June, 2006, upon review of Sunonwealth’s Motion to Quash Service of Summons for Improper Service, Motion to Dismiss for Lack of Personal Jurisdiction and Motion to Dismiss on Grounds of Forum Non Conveniens, or in the Alternative, Transfer Venue to Central District of California, Los Angeles Division (Document No. 22, filed January 11, 2006), Plaintiff TruePosition’s Brief in Opposition to Sunonwealth’s Motion to Quash and/or Dismiss (Document No. 32, filed February 10, 2006), Sunonwealth’s Reply in Support of Motion (Document No. 35, filed February 24, 2006), Sur-Reply of Plaintiff TruePosition in Opposition to Motion to Quash and/or Dismiss (Document No. 40, filed March 13, 2006), and all of the related submissions of the parties, **IT IS ORDERED**, for the reasons set forth below, as follows:

1. Sunonwealth’s Motion to Quash Service of Summons for Improper Service is **DENIED**;
2. Sunonwealth’s Motion to Dismiss for Lack of Personal Jurisdiction is **DENIED**;  
and,
3. Sunonwealth’s Motion to Dismiss on Grounds of Forum Non Conveniens, or in

the Alternative, Transfer Venue to Central District of California, Los Angeles Division is **DENIED**.

## **MEMORANDUM**

### **I. INTRODUCTION**

Plaintiff, TruePosition, Inc. (“TruePosition”), commenced this action against Sunonwealth Electric Machine Industry Co., Ltd. (“Sunonwealth”), Sunon, Inc. (“Sunon”), and D.A. Crowley & Associates (Pennsylvania), Inc. (“D.A. Crowley”), alleging breach of contract, breach of warranty, fraudulent inducement, negligent misrepresentation, and violation of California’s Unfair Competition Law (the “UCL”), Cal. Bus. & Prof. Code § 17200 et. seq. Plaintiff’s claims arise out of its purchase of electric cooling fans manufactured by Sunonwealth and marketed and distributed by Sunon and D.A. Crowley.

Presently before the Court are three motions filed by Sunonwealth: (1) Motion to Quash Service of Summons for Improper Service pursuant to Fed. R. Civ. P. 12(b)(5); (2) Motion to Dismiss for Lack of Personal Jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2); and (3) Motion to Dismiss on Grounds of Forum Non Conveniens, or in the Alternative, Transfer Venue to Central District of California pursuant to 28 U.S.C. § 1404(a). For the reasons set forth below, Sunonwealth’s motions are denied.

### **II. BACKGROUND**

The following facts are taken from plaintiff’s Complaint.

#### **A. The Parties**

Plaintiff is a Delaware corporation that maintains its principal place of business in Pennsylvania. Compl. ¶ 2. Plaintiff designs, sells, installs, and maintains Location Measurement

Units (“LMUs”), which enable law enforcement to locate cell phone users who utilize the 911 emergency system. Id. ¶¶ 3, 14-15. The LMUs produce significant amounts of heat as a by-product of their operations and rely on small fans to maintain a steady temperature. Id. ¶ 16.

Sunonwealth is a Taiwanese corporation that maintains its principal place of business in Kaohsiung, Taiwan. Id. ¶ 4. Sunonwealth produces small fans used in the manufacture of larger products, such as plaintiff’s LMUs. Id. ¶ 5. Sunon, a California corporation, is a wholly-owned subsidiary of Sunonwealth. Id. ¶¶ 6-7. The principal function of Sunon is to act as the sales agent in the United States for Sunonwealth.<sup>1</sup> Id. ¶ 8. D.A. Crowley is a company engaged by Sunonwealth and Sunon to sell Sunonwealth’s fans to product manufacturers in several states, including Pennsylvania. Id. ¶¶ 10-11.

**B. The Relevant Facts**

In late 2001, D.A. Crowley employee Mike Shannon (“Shannon”) contacted Dr. Mark Jones (“Jones”) at TruePosition in an effort to sell certain products, including fans designed by Sunonwealth. Id. ¶ 18. Plaintiff subsequently received from D.A. Crowley information on Sunonwealth’s fans, including the L10 Life Test Report for Sunonwealth’s KDE1204PFVX (the “FV” model) and the KDE1204PKVX (the “KV” model) fans. Id. ¶¶ 22, 27. Based on the information contained in these reports, plaintiff decided to incorporate both the FV and KV models of Sunonwealth fans into its 1U-model LMUs, and, between April 2002 and March 2005, plaintiff purchased more than 259,000 Sunonwealth fans. Id. ¶¶ 28, 31.

In February 2003, Jones contacted Shannon and inquired whether Sunonwealth had any

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<sup>1</sup> Plaintiff has also alleged that Sunonwealth and Sunon operate as a single entity or alter egos. Compl. ¶ 9.

fans that would be appropriate for plaintiff's newly-planned 2U model of the LMU. Id. ¶ 32. On March 20, 2003, Shannon faxed to Jones the 2003 Life Test Report regarding Sunonwealth's fan model KDE1206PFV1 (the "V1" model). Id. ¶ 33. Based on the information contained in the 2003 Life Test Report, plaintiff decided to purchase approximately 50,000 Sunonwealth V1 fans. Id. ¶¶ 44, 49, 52. Once the V1 fans were installed and the 2U model LMUs were manufactured, plaintiff's new LMUs were distributed throughout the country. Id. ¶¶ 59-60. By December 2004, approximately eight months after the 2U LMUs were distributed, the V1 fans experienced widespread failure. Id. ¶ 62.

Throughout January 2005, plaintiff's engineers spoke with representatives from Sunonwealth, Sunon, and D.A. Crowley in an effort to determine the cause of the fan failures. Id. ¶ 67. Despite these joint efforts, plaintiff was required to replace the V1 fans in LMUs that were installed in over 6,500 cell phone substations around the country. Id. ¶ 70.

### **C. Plaintiff's Claims**

Plaintiff has alleged five claims against Sunonwealth. Counts I and II, breach of contract and breach of warranty, respectively, pertain to the performance of the V1 fans produced by Sunonwealth. Counts III, IV, and V – fraudulent inducement, negligent misrepresentation, and violation of the UCL – pertain to the marketing of the V1 fans and, specifically, the representations made about the testing of the V1 fans in the 2003 Life Test Report.

### **III. STANDARD OF REVIEW**

In order for a court to exercise jurisdiction over a defendant, a plaintiff must serve that defendant with process pursuant to Fed. R. Civ. P. 4, Conrad v. Potter, 2006 WL 54337, at \*2 (D.N.J. Jan. 10, 2006), and the defendant must be subject to personal jurisdiction "under the law

of the state where the district court sits.” Pennzoil Prods. Co. v. Colelli & Assocs., Inc., 149 F.3d 197, 200 (3d Cir. 1998).

Once a defendant has filed a motion to dismiss for lack of jurisdiction, plaintiff has the burden of proving that jurisdiction exists in the forum state. IMO Industries, Inc. v. Kiekert AG, 155 F.3d 254, 257 (3d Cir. 1998). When considering the motion, the Court accepts the plaintiff’s allegations as true and resolves all doubts in the plaintiff’s favor. Pinker v. Roche Holdings Ltd., 292 F.3d 361, 368 (3d Cir. 2002). The plaintiff, however, may not rest solely on the pleadings to satisfy its burden of proof. Carteret Sav. Bank, F.A. v. Shushan, 954 F.2d 141, 146 (3d Cir. 1992). The plaintiff must present sworn affidavits or other evidence that demonstrates a prima facie case for the exercise of personal jurisdiction. Mellon Bank (East) PSFS, Nat. Ass’n v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992).

In reviewing a motion to dismiss on grounds of forum non conveniens or, in the alternative, transfer venue pursuant to 28 U.S.C. § 1404(a), the Court examines convenience to the parties, convenience to the witnesses, and the interests of justice. Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29 (1988). The moving party has the burden of establishing that these considerations strongly favor transfer. Shutte v. Armco Steel Corp., 431 F.2d 22, 25 (3d Cir. 1970).

#### **IV. DISCUSSION**

The Court will address each of Sunonwealth’s motions in turn.

##### **A. Sunonwealth’s Motion to Quash Service**

Pursuant to Federal Rule of Civil Procedure 12(b)(5), Sunonwealth has moved the Court to dismiss plaintiff’s Complaint for insufficient service of process. For the following reasons, the

Court denies Sunonwealth's motion.

1. Facts Related to Service of Process

Because Sunonwealth's motion requires the resolution of factual issues outside of the pleadings, the Court "may consider all undisputed evidence submitted by the parties." Oeschle v. Pro-Tech Power, Inc., 2006 WL 680908, at \*3 (E.D. Pa. Mar. 15, 2006). Based on the submissions of the parties, the following facts relating to plaintiff's service of process on Sunonwealth are undisputed.<sup>2</sup> On November 9, 2005, plaintiff, through counsel, submitted the Summons and Complaint to the Clerk of this Court and requested that the Clerk send the Summons and Complaint to Sunonwealth via international registered mail, return receipt. McKee Decl. ¶ 5, Pl. Ex. K. On or about November 16, 2005, Sunonwealth received the copy of the Summons and Complaint mailed by the Clerk. Ho Decl. ¶ 3, Document No. 23. After obtaining an extension of time to respond to the Complaint, Sunonwealth filed the three pending motions on January 11, 2006. On January 12, 2006, after reviewing Sunonwealth's motions, plaintiff's counsel sent a certified Chinese translation of the Summons and Complaint by email and first-class mail to counsel for Sunonwealth. McKee Decl. ¶ 7. In addition, on January 20, 2006, plaintiff's counsel sent the Summons, a copy of the Complaint, and certified translations of both to the Clerk of this Court and requested that they be sent to Sunonwealth via international registered mail, return receipt. Id. ¶ 8. In late January 2006, Sunonwealth received both the English version and the Chinese translation of plaintiff's Summons and Complaint from the Clerk. Ho Supp. Decl. ¶ 11.

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<sup>2</sup> Sunonwealth has filed a series of objections to the documents submitted by plaintiff. To the extent that there were any defects in plaintiff's original submissions, those defects were cured by plaintiff's supplemental submissions and, therefore, Sunonwealth's objections are overruled.

2. Effectiveness of Plaintiff's Method of Service

Sunonwealth challenges the effectiveness of plaintiff's service of process on two grounds. First, Sunonwealth declares that the relevant Taiwanese statute governing service of process on Taiwanese corporations expressly prohibits service via international registered mail. Second, Sunonwealth argues service of process was invalid because the original Summons and Complaint were not translated into Chinese, as required by Taiwanese law.

In light of Sunonwealth's contentions, the Court must determine whether plaintiff has made a prima facie showing that service was properly effected. Mylan Labs., Inc v. Akzo, N.V., 2 F.3d 56, 60 (4th Cir. 1993); see also United States v. Ziegler Bolt & Parts Co., 111 F.3d 878, 880 (Fed. Cir. 1997) (stating that where a motion to dismiss under Rule 12(b)(5) is decided without an evidentiary hearing, plaintiff "had only to make a prima facie case of proper service in order to survive the motion").

Sunonwealth is a foreign corporation and was served outside of the United States. Thus, Rule 4(f) governs the effectiveness of service in this case. Fed. R. Civ. P. 4(h)(2); Pennsylvania Orthopedic Ass'n v. Mercedes-Benz A.G., 160 F.R.D. 58, 59 n.1 (E.D. Pa. 1995). Because there is no "internationally agreed means of service" between the United States and Taiwan, Power Integrations, Inc. v. System General Corp., 2004 WL 2806168, at \*1 (N.D. Cal. Dec. 7, 2004), Rule 4(f)(2) offers several alternative methods for effecting service of process so long as the service is "reasonably calculated to give notice." Fed. R. Civ. P. 4(f)(2). These methods include international registered mail "unless prohibited by the law of the foreign country . . . ." Fed. R. Civ. P. 4(f)(2)(C)(ii).

The parties dispute both the interpretation of Rule 4(f)(2)(C)(ii) and whether service of a

corporation by registered mail is prohibited by the law of Taiwan. Sunonwealth argues that, unless expressly permitted by foreign law, service by registered mail should be deemed prohibited under Rule 4(f)(2)(C)(ii). In addition, Sunonwealth contends that service by registered mail is not expressly permitted and, in fact, is prohibited by the law of Taiwan. Plaintiff responds that the provision means that service by registered mail is valid unless expressly prohibited by the foreign country's law and that the law of Taiwan contains no such express prohibition.

The question of the meaning of the "prohibited by" clause in Rule 4(f)(2)(C)(ii) has been considered by a number of courts. Several courts have adopted the approach suggested by Sunonwealth. See, e.g., Procter & Gamble Cellulose Co. v. Viskoza-Loznica, 33 F. Supp. 2d 644, 664-65 (W.D. Tenn. 1998); Graval v. P.T. Bakrie & Bros., 986 F. Supp. 1326 (C.D. Cal. 1996). More courts, however, have interpreted the clause in the manner suggested by plaintiff. See, e.g., Resource Ventures, Inc. v. Resources Management Int'l, Inc., 42 F. Supp. 2d 423 (D. Del. 1999); Emery v. Wood Industries, Inc., 2001 WL 951579, at \*2 (D.N.H. Aug. 20, 2001); Caringal v. Kareria Shipping, Ltd., 2000 WL 1036224, at \*2 (E.D. La. July 25, 2000); Banco Latino S.A.C.A. v. Gomez Lopez, 53 F. Supp. 2d 1273, 1277 (S.D. Fla. 1999); Dee-K Enterprises, Inc. v. Heveafil Sdn., Bhd., 174 F.R.D. 376 (E.D. Va. 1997). These courts have reasoned that the only way to give Rule 4(f)(2)(C) operative effect is to interpret it to mean that service by registered mail is appropriate so long as it is not expressly prohibited, even if it is not expressly prescribed.

The Court agrees with the position advanced by plaintiff because Sunonwealth's reading of Rule 4(f)(2)(C)(ii) renders it superfluous. See Dee-K Enterprises, 174 F.R.D. at 380 ("[I]f all

forms of service not ‘prescribed’ are ‘prohibited’, then the failure to satisfy subsection (f)(2)(A) would preclude the availability of subsection (f)(2)(C) and the latter subsection would have no effect.”). Thus, the Court concludes that plaintiff’s choice of method for service of process is valid under Rule 4(f)(2)(C)(ii) unless it is expressly prohibited by the law of Taiwan.

To rebut Sunonwealth’s assertions that service by registered mail is prohibited in Taiwan, plaintiff references the U.S. State Department’s informational circular on this topic, which explains: “Service of process in Taiwan can be effected by international registered mail/return receipt requested. . . .” State Dept. Circular, Pl. Ex. M. Plaintiff also brings to the Court’s attention Article 124 of the Taiwan Code of Civil Procedure, which states: “Service of process shall be effectuated by an execution officer or post office delegated by the court clerk. In cases of service effectuated by a post office, the relevant postman shall be deemed the person who effects service.” Pl. Supp. Ex. 1A. Also, plaintiff provides the declaration of Jacqueline Fu, a lawyer in Taiwan. Ms. Fu explains that, under the Taiwan Code of Civil Procedure, “[s]ervice . . . is regularly made by registered mail or personal delivery.” Fu Decl. ¶ 8, Pl. Ex. L. Based on plaintiff’s submissions, the Court concludes that plaintiff has met its burden of making a prima facie showing that its method of service of process was proper under Rule 4(f)(2)(C)(ii) because the law of Taiwan does not expressly prohibit such service.<sup>3</sup>

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<sup>3</sup> Sunonwealth attempts to undermine plaintiff’s prima facie showing by pointing to a recent decision by the Taiwan Supreme Court, Micrel, Inc. v. Han Men Industry Corp., Ltd. See Ex. B of Kole Decl., Document No. 38. Sunonwealth asserts that, in Micrel, the Taiwan Supreme Court held that service of process by mail was ineffective where it was accomplished without the assistance of a Taiwanese court, as required by Article 402(2) of the Taiwan Code of Civil Procedure. In response, plaintiff argues that Micrel is not applicable because the Taiwan Supreme Court did not designate the decision as precedential and because the holding in Micrel was that the Taiwanese court may not enforce a foreign judgment if the Taiwanese defendant did not “respond” to the foreign action. Plaintiff also contends that, under Taiwanese law, a

The Court's conclusion follows at least three other district court decisions directly on point. In Emery v. Wood Industries, Inc., the district court noted information from the State Department and an affidavit from counsel in concluding that the plaintiff had made a sufficient showing that service by registered mail was not prohibited by the law of Taiwan. 2001 WL 951579, at \*2. In Power Integrations, the district court relied upon the State Department's website and a letter stating that the courts in Taiwan "will serve litigation documents . . . through the post office" in concluding that the law of Taiwan did not prohibit service by registered mail. 2004 WL 2806168, at \*3. Finally, in Modern Computer Corp. v. Ma, 862 F. Supp. 938 (E.D.N.Y. 1994), the district court concluded that, based on the affidavits of the plaintiff's Taiwanese counsel, the plaintiff had made a prima facie showing that service by registered mail was proper under Taiwanese law.<sup>4</sup> Id. at 946. While these three cases are not decisive because of differences in the evidence presented, they are generally in accord with and support the conclusion reached by this Court.

In addition, under the second requirement of Rule 4(f)(2), the Court concludes that plaintiff's use of international mail, return receipt, was reasonably calculated to give notice to Sunonwealth of the pending action and did in fact provide such notice. See Power Integrations, 2004 WL 2806168, at \*3. The Court also rejects Sunonwealth's contention that plaintiff's

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Taiwanese court would conclude that Sunonwealth had responded to the Complaint in this case by entering its appearance and filing the Motion to Quash Service. The Court declines to resolve this and other disputes relating to the law of Taiwan. The Court need only determine whether plaintiff has made a sufficient showing to establish that service by registered mail, return receipt, is not expressly prohibited by the law of Taiwan.

<sup>4</sup> It should be noted that the decision in Modern Computer Corp. pertained to service on an individual, rather than service on a corporation, in Taiwan. See Modern Computer Corp. v. Ma, 862 F. Supp. 938, 946 (E.D.N.Y. 1994).

alleged failure to include translated copies of the Summons and Complaint in plaintiff's first attempt at service via registered mail renders the method of service improper. Counsel for Sunonwealth has admitted that Sunonwealth received the translated copies of the Summons and Complaint sent by the Clerk of the Court on January 20, 2006. Ho Supp. Decl. ¶ 11. Thus, any initial defect was cured by plaintiff immediately after Sunonwealth filed the Motion to Quash Service.

For all of the foregoing reasons, the Court denies Sunonwealth's Motion to Quash Service.

**B. Motion to Dismiss for Lack of Personal Jurisdiction**

Pursuant to Federal Rule of Civil Procedure 12(b)(2), Sunonwealth has moved the Court to dismiss plaintiff's Complaint for lack of personal jurisdiction. For the following reasons, Sunonwealth's motion is denied.

1. Legal Framework

Personal jurisdiction can be either general or specific. General jurisdiction is established when the defendant has engaged in "systematic and continuous" contacts with the forum state and the exercise of jurisdiction is "reasonable."<sup>5</sup> Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 416 (1984). Specific jurisdiction exists when the claim is related to and arises out of the defendant's "minimum contacts" with the forum such that the defendant should reasonably

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<sup>5</sup> Plaintiff has not provided sufficient evidence to support a finding that Sunonwealth's forum-related contacts are "extensive." Therefore, an analysis of general jurisdiction is not necessary. See Field v. Ramada Inn, Inc., 816 F. Supp. 1033, 1036 (E.D. Pa. 1993) ("A nonresident defendant's forum activities are systematic and continuous only if they are extensive and pervasive.").

anticipate being haled into court there.<sup>6</sup> IMO Industries, 155 F.3d at 259; see also Remick v. Manfredy, 238 F.3d 248, 255 (3d Cir. 2001) (“a conclusion that the District Court has [specific] jurisdiction over [a defendant] as to a particular claim . . . does not necessarily mean that it has [specific] jurisdiction over that same defendant as to [plaintiff’s] other claims.”) (internal citations omitted). Once minimum contacts are established, jurisdiction may be exercised if the court determines that to do so would comport with “traditional notions of fair play and substantial justice.” Vetrotex Certainteed Corp. v. Consolidated Fiber Glass Products Co., 75 F.3d 147, 150-51 (3d Cir. 1996) (quoting International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).

Plaintiff bears the burden of demonstrating that Sunonwealth has sufficient contacts with the forum “to give the court in personam jurisdiction.” Mesalic v. Fiberfloat Corp., 897 F.2d 696, 699 (3d Cir. 1990). These contacts must be shown “with reasonable particularity.” Mellon Bank, 960 F.2d at 1223. If plaintiff is successful in demonstrating that its claims arise out of or relate to sufficient forum contacts, Sunonwealth must “present a compelling case that . . . render[s] jurisdiction unreasonable” in order to defeat jurisdiction based on the fairness inquiry. Miller Yacht Sales, Inc. v. Smith, 384 F.3d 93, 97 (3d Cir. 2004) (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477 (1985)).

For the following reasons, the Court concludes that it can exercise specific jurisdiction over all of plaintiff’s claims against Sunonwealth.

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<sup>6</sup> Because Pennsylvania’s long arm statute permits courts to exercise personal jurisdiction over nonresident defendants “to the constitutional limits of the Due Process Clause of the Fourteenth Amendment,” the Court need only engage in the analysis prescribed by the Constitution to determine whether the Court can exercise personal jurisdiction over Sunonwealth. Pennzoil Prods. Co. v. Colelli & Assocs., Inc., 149 F.3d 197, 200 (3d Cir. 1998).

## 2. Minimum Contacts

Minimum contacts is a “fair warning” requirement of due process that “is satisfied if the defendant has purposefully directed [its] activities at residents of the forum,” Burger King, 471 U.S. at 472 (quotations omitted), and has availed itself of the privilege of doing business in the state. Hanson v. Denckla, 357 U.S. 235, 253 (1958). The Court must “take into account the relationship among the forum, the defendant and the litigation in order to determine whether the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.” Mellon Bank, 960 F.2d at 1221.

Sunonwealth argues that, because it did not solicit or conduct any business in Pennsylvania, it has never sought to avail itself of the benefits and protections of Pennsylvania. Plaintiff responds that Sunonwealth purposefully entered Pennsylvania to do business. Plaintiff points to the volume of sales of Sunonwealth’s fans to plaintiff, Sunonwealth’s advertising on its website, Sunonwealth’s control of its distribution chain, Sunonwealth’s marketing of wares to plaintiff, and Sunonwealth’s investigation of the failure of the V1 fans. The Court concludes that plaintiff has presented sufficient evidence to make a prima facie case of minimum contacts based on plaintiff’s “stream of commerce” argument.

The “stream of commerce” theory of minimum contacts allows specific jurisdiction to be “asserted over a nonresident defendant which injected its goods, albeit indirectly, into the forum state and either derived a substantial benefit from the forum state or had a reasonable expectation of deriving a substantial benefit from it.” Pennzoil Prods. Co., 149 F.3d at 203 (internal quotation omitted). The Supreme Court addressed the “stream of commerce” theory in Asahi Metal Industry Co., Ltd. v. Superior Court, 480 U.S. 102, 112 (1987), and presented “three

different conceptions of purposeful availment through the stream of commerce.” Pennzoil Prods. Co., 149 F.3d at 203. Justice O’Connor, joined by three other Justices, concluded that the “placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State.” Asahi, 480 U.S. at 112. Rather, “[a]dditional conduct of the defendant [that] may indicate an intent or purpose to serve the market in the forum State” is required. Id. Justice Brennan, writing for another plurality of four Justices, explained that the minimum contacts requirement is satisfied so long as there is a “regular and anticipated flow of [the defendant’s] products” into the forum and the defendant “is aware that the final product is being marketed in the forum State.” Id. at 117. Justice Stevens, the ninth vote, wrote that whether a defendant’s conduct satisfies the minimum contacts test “is affected by the volume, the value, and the hazardous character of the components.”<sup>7</sup> Id. at 122.

The Third Circuit has not yet decided whether it follows the reasoning of Justice O’Connor’s plurality or Justice Brennan’s concurrence in Asahi. See H.A.S. Protection, Inc. v. Senju Metal Industry Co., Ltd., 2003 WL 23419852, at \*6 (E.D. Pa. Dec. 12, 2003). Rather, courts in the Third Circuit have generally applied both tests in determining whether personal jurisdiction exists. Id. (citing Pennzoil Prods. Co., 149 F.3d at 205). The Court concludes that plaintiff has provided sufficient evidence to support a finding of purposeful availment under both tests.

First, with respect to Justice Brennan’s concurrence, plaintiff, which is based in Pennsylvania, purchased approximately 300,000 fans produced by Sunonwealth between 2001

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<sup>7</sup> The plurality opinion of Justice O’Connor and the concurrence of Justice Brennan are far more commonly relied upon, because Justice Stevens wrote only for himself on this specific issue.

and 2005. Compl. ¶¶ 31, 49, 52; see also Jones Supp. Decl. ¶ 3, Pl. Supp. Ex. 3. Based on the volume of these sales, Sunonwealth knew or reasonably should have known that hundreds of thousands of its fans ended up in Pennsylvania. See H.A.S. Protection, Inc., 2003 WL 23419852, at \*6 (finding specific jurisdiction over foreign manufacturer that sold 40,000 sprinkler heads through a Pennsylvania distributor) (“[G]iven the number of sales involved, Senju Metal cannot dispute that it was aware of the distribution of its sprinkler heads into Pennsylvania, and of the resulting income it received from the sale of those sprinkler heads.”). Indeed, Sunonwealth has shipped fans directly to plaintiff in Pennsylvania, rather than shipping them through Sunon, its distributor in California. Wu Decl. ¶ 26 (Document No. 25). In addition, Sunonwealth employees participated in conference calls, responded to emails, and exchanged facsimiles with plaintiff after the widespread failures of the V1 fans were reported. Id. ¶¶ 24, 25; Ex. 6 of Jones Decl., Pl. Ex. H. These facts establish a prima facie showing that Sunonwealth was “aware that the final product [was] being marketed in the forum.” Asahi, 480 U.S. at 117 (Brennan, J, concurring).

Second, with respect to Justice O’Connor’s plurality, the direct shipment of fans, the participation in the conference calls, and Sunonwealth’s website are sufficient to demonstrate Sunonwealth’s “intent or purpose to serve the market.” Id. at 112 (O’Connor, J., plurality). The Court notes that “a mix of Internet and non-Internet contacts” can support a showing of purposeful availment. See Toys “R” Us, Inc. v. Step Two, S.A., 318 F.3d 446, 453-54 (3d Cir. 2003). Plaintiff has presented evidence that it used Sunonwealth’s website when deciding to purchase the V1 fans. Jones Decl. ¶¶ 5-6. In addition, there is some evidence that Sunonwealth’s website targets the forum because it is linked to a list of authorized distributors

throughout the United States, including D.A. Crowley in Pennsylvania. Hyperlink Chain, Pl. Ex. E. While the parties dispute whether the information about the distributors is located on Sunonwealth's website or Sunon's website, the Court concludes that the hyperlinks between Sunonwealth's homepage and the page of authorized distributors for Sunonwealth products, wherever that page may be located, are sufficient to demonstrate some involvement by Sunonwealth in the distribution of its products as well as some targeting of the forum state. See Zippo Manufacturing Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119 (W.D. Pa. 1997) (exercising personal jurisdiction over defendant based on website directed at forum state).

Based on the foregoing analysis, the Court concludes that Sunonwealth purposefully availed itself of the benefits and privileges of conducting business in Pennsylvania and that the exercise of jurisdiction over Sunonwealth is not the "result of random, fortuitous, or attenuated contacts." Burger King, 471 U.S. at 475. Thus, Sunonwealth has the requisite minimum contacts with Pennsylvania to satisfy the requirements of due process.

### 3. Arise Out Of/Relate To

Next, the Court must inquire whether plaintiff's claims "arise out of" or "relate to" Sunonwealth's contacts with Pennsylvania. Dollar Sav. Bank. v. First Security Bank of Utah, 746 F.2d 208, 212 (3d Cir. 1984). The Third Circuit has not established a specific rule regarding what level of relationship is necessary under the "arise out of or relate to" requirement. Miller Yacht Sales, 384 F.3d at 99-100. Instead, district courts are directed to "approach . . . each case individually and take . . . a realistic approach to analyzing a defendant's contacts with a forum." Id. (internal quotations omitted); see also Pennzoil Prods. Co., 149 F.3d at 203.

Applying a "realistic approach," the Court concludes that Sunonwealth's contacts with

Pennsylvania are sufficient to support jurisdiction. All of Sunonwealth's contacts with the forum pertain to the sale, marketing, and service of Sunonwealth's fans. Plaintiff's claims relate to its contracts to purchase Sunonwealth fans, the performance of the fans, and the alleged fraud arising from Sunonwealth's marketing of its fans. Therefore, the Court concludes that plaintiff's claims arise out of and relate to Sunonwealth's contacts with the forum.

4. Fair Play and Substantial Justice

Having found the requisite minimum contacts, the Court must consider whether the exercise of specific jurisdiction over Sunonwealth comports with notions of "fair play and substantial justice." Burger King, 471 U.S. at 476 (quoting International Shoe, 326 U.S. at 316). In "addressing the fairness question [courts] may consider 'the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental social policies.'" Miller Yacht Sales, 384 F.3d at 97 (quoting Burger King, 471 U.S. at 477). Applying the factors established in International Shoe and clarified in Burger King, the Court concludes that the exercise of jurisdiction over Sunonwealth comports with traditional notions of fair play and substantial justice.

Sunonwealth argues that it would be unreasonable to exercise personal jurisdiction because it has not "purposefully interjected" itself into the affairs of Pennsylvania and because, as a foreign corporation, it would be substantially burdened by this litigation. As noted above, Sunonwealth has availed itself of the benefits and protections doing business of Pennsylvania. Additionally, in the past, Sunonwealth has sought the aid of federal courts in the Central District of California to defend its patents from infringement. See Pl. Opp. at 37. Based on

Sunonwealth's prior involvement in litigation in the United States, the Court cannot conclude that Sunonwealth would be heavily burdened by defending the instant litigation in Pennsylvania.<sup>8</sup> Also, plaintiff is a Delaware corporation with its principal place of business in Pennsylvania. As a result, Pennsylvania has a strong interest in providing a forum to plaintiff and protecting plaintiff from the type of conduct which plaintiff alleges caused harm in Pennsylvania. Therefore, the Court concludes that Sunonwealth has not met its burden of presenting a "compelling case" that renders the exercise of jurisdiction unreasonable.

For all of the foregoing reasons, the Court will exercise specific jurisdiction over Sunonwealth, and Sunonwealth's Motion to Dismiss for Lack of Personal Jurisdiction is denied.

**C. Motion to Dismiss on Grounds of Forum Non Conveniens or Transfer Venue**

The third motion filed by Sunonwealth is a Motion to Dismiss on Grounds of Forum Non Conveniens or, in the alternative, Transfer Venue to the Central District of California. For the reasons set forth below, the Court denies the motion. The Court will address each part of the motion in turn.

1. Forum Non Conveniens

In federal courts, the common law doctrine of forum non conveniens serves a limited purpose; it allows the district court to dismiss a case when the more convenient forum is in a foreign country. Toll Bros., Inc. v. Nationwide Property & Casualty Ins. Co., 2005 WL 2600207, at \*2 n.1 (E.D. Pa. Oct. 13, 2005) (citing American Dredging Co. v. Miller, 510 U.S. 443, 449

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<sup>8</sup> While ownership of a United States patent, without more, cannot support personal jurisdiction over a foreign patentee in any forum other than the District of Columbia, Telcordia Technologies, Inc. v. Alcatel S.A., 2005 WL 1268061 (D. Del. 2005), the fact that Sunonwealth has utilized federal courts in the United States undermines its argument that the exercise of jurisdiction in this Court would be unreasonable.

n.2 (1994) (“the federal doctrine of forum non conveniens has continuing application only in cases where the alternative forum is abroad”). By contrast, the transfer of venue provision at 28 U.S.C. § 1404(a) authorizes a district court to transfer a case to another district court for the convenience of the parties and witnesses and in the interest of justice. Id.

Although Sunonwealth makes some references to the availability of a forum in Taiwan, it has not presented a compelling argument that the entire case should be dismissed and filed in Taiwan for the convenience of the parties and in the interest of justice. On the other hand, Sunonwealth has explained at some length why the Central District of California would be a more convenient forum for the parties. Because the only alternative forum advocated by Sunonwealth as more convenient for all parties is in the United States, the Court cannot conclude that the ends of justice would be better served by dismissing the entire case so that it can be filed in Taiwan. See Malaysia Intern. Shipping Corp. v. Sinochem Intern. Co. Ltd., 436 F.3d 349, 361 (3d Cir. Feb. 7, 2006). Instead, the Court will analyze this issue under 28 U.S.C. § 1404(a).

2. Transfer of Venue Pursuant to 28 U.S.C. § 1404(a)

Sunonwealth moves, in the alternative, to transfer venue to the Central District of California. Section 1404(a) provides for transfer of a case to another district where it might have been brought “for the convenience of the parties and witnesses” and “in the interest of justice.” 28 U.S.C. § 1404(a). “Although § 1404(a) gives the district courts discretion to decide a motion to transfer based on an individualized, case-by-case consideration of convenience and fairness, such motions are not to be liberally granted.” Dinterman v. Nationwide Mut. Ins. Co., 26 F. Supp. 2d 747, 749 (E.D. Pa. 1998) (citing Stewart Organization, Inc. v. Ricoh Corp., 487 U.S. 22, 29 (1988)).

The party seeking to transfer the case has the burden of establishing the need for transfer. Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995). In the Third Circuit, a plaintiff's choice of forum is a paramount consideration in deciding a motion to transfer venue and should not be lightly disturbed. Endless Pools, Inc. v. Wave Tec Pools, Inc., 362 F. Supp. 2d 578, 586 (E.D. Pa. 2005) (citing Shutte v. Armco Steel Corp., 431 F.2d 22, 25 (3d Cir. 1970)). Moreover, "when a plaintiff chooses his home forum the choice is entitled to great deference." Id. (citing Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255 (1981)).

The parties have identified key witnesses and other evidence located in California, Pennsylvania, and Taiwan. Much of the evidence relevant to why plaintiff selected the V1 fan and the alleged damages is located in Pennsylvania, where plaintiff is headquartered. On the other hand, evidence relating to the design, testing, and manufacturing of the V1 fans is located in California and Taiwan, where Sunonwealth and Sunon are headquartered. Similarly, witnesses for plaintiff are located in Pennsylvania, while witnesses for Sunon and Sunonwealth are in California and Taiwan, respectively. In addition, the parties have noted that, based on plaintiff's allegations, key operative facts occurred in all three jurisdictions. While plaintiff's design and purchase of the component parts of the LMUs occurred in Pennsylvania, Sunonwealth manufactured and tested the V1 fans and created the 2003 Life Test Report in Taiwan. From California, Sunon shipped the V1 fans to plaintiff and provided the 2003 Life Test Report to plaintiff through D.A. Crowley.

Based on the information provided by the parties, the Court declines to disturb plaintiff's choice of forum. Because witnesses and other evidence are located in California, Pennsylvania, and Taiwan and because operative facts allegedly occurred in all three jurisdictions, these factors

are neutral and, thus, Sunonwealth's argument in favor of transfer amounts to a contention that litigating this case in California would be more convenient for defendants. A transfer is not warranted where, as in this case, a defendant simply seeks to shift the inconvenience to the plaintiff. See Johnston v. Exelon Corp., 2005 WL 696896, at \*3 (E.D. Pa. Mar. 23, 2005). Moreover, Pennsylvania has a strong interest in protecting plaintiff, a Delaware corporation with its principal place of business in Pennsylvania, from the alleged misrepresentations and sale of alleged defective products when, as in this case, a substantial part of the events giving rise to plaintiff's claims occurred in Pennsylvania. Therefore, the Court concludes that Sunonwealth has failed to make a sufficient showing to override the deference that this Court must give to plaintiff's choice of its home forum. See Endless Pools, 362 F. Supp. 2d at 586.

For all of the foregoing reasons, Sunonwealth's Motion to Dismiss on Grounds of Forum Non Conveniens or, in the alternative, Transfer Venue to the Central District of California is denied.

#### **IV. CONCLUSION**

Based on the Court's analysis above, Sunonwealth's Motion to Quash Service of Summons for Improper Service is denied; Sunonwealth's Motion to Dismiss for Lack of Personal Jurisdiction is denied; and Sunonwealth's Motion to Dismiss on Grounds of Forum Non Conveniens or, in the alternative, Transfer Venue to the Central District of California is denied.

**BY THE COURT:**

/s/ Honorable Jan E. Dubois  
**JAN E. DUBOIS, J.**