

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

JOSEPH JEFFERSON and
CHARLES B. SIMMONS

v.

PRIORITY RECORDS; NO LIMIT
RECORDS; and JOHN DOES p/k/a
MASTER P, PIMP C, and
THE SHOCKER

CIVIL ACTION

NO. 97-6735

M E M O R A N D U M

Broderick, J.

September 30, 1998

Plaintiffs Joseph Jefferson, a resident of New Jersey, and Charles Simmons, a resident of Pennsylvania, bring this action against Priority Records, No Limit Records, Master P (a/k/a Percy Miller, hereinafter "Percy Miller"), Pimp C (a/k/a Chad Butler, hereinafter "Chad Butler"), and The Shocker (a/k/a Vyshon Miller, hereinafter "Vyshon Miller"), alleging unfair competition under § 43(a) of the Lanham Act, as well as unfair competition, conversion and negligence under Pennsylvania law. Plaintiffs claim that they own the copyright to and are the authors of a song entitled "Brandy, I Really Miss You," and Plaintiffs allege that Defendants copied, without permission, Plaintiffs' song directly into a rap song entitled "I Miss My Homies." Defendant Priority Record has answered Plaintiffs' Complaint.

Presently before the Court is a motion brought by Defendants

No Limit Records, Percy Miller, Chad Butler, and Vyshon Miller to dismiss Plaintiffs' Complaint for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2) and improper venue pursuant to Fed. R. Civ. P. 12(b)(3). Plaintiffs filed a response to Defendants' motion in which they requested that Defendants' motion be denied, or, in the alternative, that Plaintiffs be allowed to conduct discovery in order to establish in personam jurisdiction over the Defendants and to establish proper venue in the Eastern District of Pennsylvania. This Court granted Plaintiffs' request to conduct limited discovery into the jurisdictional issues raised in the Defendants' motion to dismiss and ordered Plaintiffs to file a supplemental response to Defendants' motion to dismiss subsequent to that discovery. Jurisdictional discovery having been exchanged, Plaintiffs' supplemental response is now before the Court, as is Defendants' reply.

For the reasons stated below, Defendants' motion to dismiss will be granted as to Defendants Chad Butler and Vyshon Miller in that Plaintiff has failed to demonstrate that either of these Defendants has sufficient contacts with the Commonwealth of Pennsylvania to allow this Court to exercise personal jurisdiction over them. Defendants' motion to dismiss will be denied as to No Limit Records and Percy Miller.

Absent a federal statute to the contrary, District Courts are authorized to exercise personal jurisdiction over non-residents to the extent permissible under the law of the state in which the District Court is located. Fed. R. Civ. P. 4(e)(1). See Pennzoil Products Co. v. Colelli & Assoc., Inc., 149 F.3d 197,200 (3d Cir. 1998). Because the Lanham Act does not provide for national service of process, the Court must look to the laws of Pennsylvania to determine whether it may exercise personal jurisdiction over the non-resident defendants. Hershey Pasta Group v. Vitelli-Elvea Co., Inc., 921 F.Supp. 1344, 1346 (M.D. Pa. 1996). The Pennsylvania long arm statute, 41 Pa. Cons. Stat. Ann. § 5322(b), allows a court to exercise jurisdiction over non-residents "to the fullest extent permitted by 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." The reach of the Pennsylvania long arm statute is thus co-extensive with the due process clause of the federal Constitution. Pennzoil, 149 F.3d at 200; Dollar Savings Bank v. First Security Bank of Utah, N.A., 746 F.2d 208 (3d Cir. 1984). This Court's inquiry into personal jurisdiction is thus an inquiry into the constitutional propriety of the exercise of jurisdiction. Renner v. Lanard Toys Ltd., 33 F.3d 277,279 (3d Cir. 1994); Max Daetwyler Corp. v. Meyer, 762 F.2d 290 (3d Cir. 1985).

With respect to a foreign or out-of-state corporation, the

Third Circuit has emphasized that the Court's exercise of personal jurisdiction must adhere to the standards set forth by the Supreme Court in International Shoe. Dollar Savings Bank v. First Security Bank of Utah, N.A., 746 F.2d 208, 211 (3d Cir. 1984). In International Shoe v. Washington, the Supreme Court held that a federal court may assert personal jurisdiction over a foreign corporation if the corporation has such contacts with the forum state "as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there." 326 U.S. 310, 317 (1945). The Supreme Court made clear that the exercise of personal jurisdiction must conform to "traditional notions of fair play and substantial justice." International Shoe, 326 U.S. at 316. Thus, the Court must undertake a two-step inquiry in the due process analysis: (1) whether the defendant made constitutionally sufficient "minimum contacts" with the forum; and (2) whether exercising jurisdiction over that defendant would comport with "traditional notions of fair play and substantial justice."

In Asahi Metal Industry Co., Ltd. V. Superior Court of California, the United States Supreme Court held that mere awareness on the part of a foreign defendant that its product would reach the forum state in the stream of commerce did not constitute the minimum contacts necessary to establish personal jurisdiction. 480 U.S. 102, 112, 197 S. Ct. 1026, 1032 (1987). Justice O'Connor reasoned that "[t]he placement of a product into

the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State." Id. However, she continued, "[a]dditional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example, designing the product for the market in the forum State, advertising in the forum State, ... or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State." Id.

A Court's exercise of personal jurisdiction over a non-resident defendant may be either general or specific. Dollar Savings Bank, 746 F.2d at 211. "General jurisdiction may be invoked when the claim does not 'arise out of or is unrelated to the defendant's contact with the forum.'" Carteret Savings Bank, FA v. Shushan, 954 F.2d 141 (3d Cir. 1992) citing Dollar Savings Bank, 746 F.2d at 211. To establish general jurisdiction the defendant must have had continuous and substantial contacts with the jurisdiction. Pennzoil, 149 F.3d at 200. Specific jurisdiction, by contrast, is "invoked when the claim is related to or arises out of the defendant's contacts with the forum." Dollar Savings Bank, 746 F.2d at 211. Under the "stream of commerce" theory, "specific jurisdiction is 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' or deriving a substantial benefit from it." Pennzoil, 149 F.3d at 204 citing Max Daetwyler, 762 F.2d at 300.

Although the plaintiff may be able to bring forth evidence to support a finding of general jurisdiction as to Defendant No Limit, it is unnecessary for the Court to make such a finding because the Court finds that the specific jurisdiction exists as to Defendants No Limit Records and Percy Miller.

In Hershey Pasta Group v. Vitelli-Elvea Co., Inc., a case brought under the Lanham Act, the court found that defendants, foreign pasta producers, had engaged in sufficient "additional conduct" to "indicate an intent or purpose to serve the market in the forum state." Hershey Pasta Group, 921 F.Supp. 1344, 1348 (M.D. Pa. 1996) (quoting Asahi, 480 U.S. at 112, 107 S. Ct. At 1032). In that case, the defendants had placed their products in a stream of commerce destined for the United States, and they knew that Pennsylvania bakery licenses had been obtained, which the court found was evidence that defendants knew their products were destined for Pennsylvania. Id. at 1349. Likewise, in Felty v. Conaway Processing, the court held that a Dutch manufacturer of poultry processing equipment had sufficient contacts with Pennsylvania to support assertion of personal jurisdiction. 738 F.Supp. 917, 920 (E.D. Pa. 1990). In that case, the court found that the Dutch manufacturer was aware that its equipment was being sold for use in Pennsylvania. In addition, a Danish corporation which acted as the manufacturer's worldwide distributor placed advertisements in trade publications circulating in Pennsylvania, and the manufacturer dealt directly with an American distributor to improve American sales. Id. 919-

20. Given these facts, the court held that the manufacturer "should reasonably have expected to be haled into court in Pennsylvania." Id. at 920.

A defendant's challenge to a court's personal jurisdiction imposes on the plaintiff the burden of coming forward with facts, by affidavit or otherwise, establishing with reasonable particularity sufficient contacts between the defendant and the forum state to support jurisdiction. Carteret Savings Bank v. Shushan, 954 F.2d 141, 146 (3d Cir. 1991); Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 63 (3d Cir. 1984); Compagnie Des Bauxites de Guinea v. Insurance Company of N. America, et al., 651 F.2d 877, 880 (3d Cir. 1981).

In the instant case, the pleadings and jurisdictional discovery establish the following: Percy Miller, a resident of Louisiana, is the sole owner and CEO of No Limit Records, which is incorporated in California and has its principle place of business in Baton Rouge, Louisiana. The record "Ghetto D," on which the single "I Miss My Homies" appears, was recorded for No Limit Records by the recording artists Percy Miller, Chad Butler, and Vyshon Miller. In April of 1995, Defendants Percy Miller and No Limit Records entered into a distribution agreement with Defendant Priority Records to solely and exclusively distribute all of No Limit's records, including "Ghetto D." This agreement reveals that No Limit Records and Priority Records had a close relationship through which they coordinated the sales,

distribution, advertising and promotion of No Limit's records, including "Ghetto D." According to the deposition testimony of Percy Miller, No Limit Records and Percy Miller sent promotional materials associated with the release of "Ghetto D" from No Limit's warehouse in Louisiana to Pennsylvania. When "Ghetto D" was initially released, Percy Miller spoke several times a week with Priority Records regarding promotion and sales of the record, and his deposition testimony makes clear that he was specifically involved in decisions about whether and to what extent the record would be sold and promoted in the Philadelphia Market. Priority Records employed a sales representative, located in Bensalem, Pennsylvania, for the purposes of distribution in Pennsylvania, and "Ghetto D" and "I Miss My Homies" was directly advertised in Pennsylvania and Philadelphia area retail stores. Over 21,000 copies of "Ghetto D" have been sold in the Philadelphia area.

The distribution agreement between No Limit Records and Priority Records also makes clear that No Limit Records retained complete control and authority regarding merchandising and marketing of its records, including "Ghetto D." Specifically, the agreement provides that all promotional records -- free copies sent to radio stations and other media outlets in the hopes of receiving air play and publicity -- will be mailed by Priority Records only at No Limit's written request, and then to

recipients specified by No Limit Records. According to the deposition testimony of Percy Miller, five records and five CD's of "Ghetto D" were sent to every record station in the state of Pennsylvania.

Clearly, No Limit Records and its owner and CEO Percy Miller engaged in "additional conduct," beyond merely entering their product into the stream of commerce, which indicates an intent or purpose to serve the market in Pennsylvania. See Asahi, 480 U.S. at 111, 107 S. Ct. at 1031. Under these facts, there can be no question that Defendants No Limit Records and Percy Miller have purposefully availed themselves of the economic benefits of conducting business within the Commonwealth, and that they have the requisite minimum contacts within the Commonwealth to warrant this court's exercise of personal jurisdiction over them.

Next, the Court must consider whether the exercise of jurisdiction over Defendants No Limit Records and Percy Miller would offend "traditional notions of fair play and substantial justice." Asahi, 480 U.S. at 113, 107 S. Ct. at 1033 (quoting International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 158.) "[T]he determination of the reasonableness of the exercise of jurisdiction in each case will depend on an evaluation of several factors. A court must consider the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief." Id. Moreover, as

the Court noted, "[w]hen minimum contacts have been established, often the interests of the plaintiff and the forum in the exercise of jurisdiction will justify even the serious burdens placed on the ... defendant." Id. at 114, 107 S. Ct. at 1033. Finally, the burden on a defendant who wishes to show an absence of fairness or lack of substantial justice is heavy. "The defendant 'must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.' " Grand Entertainment Group Ltd. v. Star Media Sales, Inc., 988 F.2d 476, 483 (3d Cir. 1993)(quoting Carteret Savings Bank, 954 F.2d at 150.)

Applying these factors to Defendants No Limit Records and Percy Miller, the Court finds that exercising jurisdiction over these defendants comports with "traditional notions of fair play and substantial justice." Clearly the Plaintiffs, one of whom is a resident of Pennsylvania, have an interest in obtaining relief in a convenient forum of their choice. Likewise, Pennsylvania has an interest in protecting its residents from the sort of conduct which Plaintiffs allege. Most significantly, however, Defendants No Limit Records and Percy Miller have failed to present a compelling argument, or any argument for that matter, that this Court's exercise of jurisdiction would place a substantial burden on them. The Court therefore concludes that Defendants No Limit Records and Percy Miller have not met their burden of showing

that defending themselves in Pennsylvania would be so unreasonable as to deprive them of constitutional notions of fair play and substantial justice. Accordingly, because this Court may exercise personal jurisdiction over No Limit Records and Percy Miller, the Court will deny Defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2) as to these defendants.

As to Defendants Chad Butler and Vyshon Miller, Plaintiffs have made no colorable allegations in their complaint that these defendants have had any contacts with the Commonwealth of Pennsylvania nor does Plaintiffs' supplemental response contain any deposition or other evidence suggesting that Defendants Chad Butler and Vyshon Miller had the necessary contacts with Pennsylvania or engaged in any activities in Pennsylvania. Therefore, the Court finds that Plaintiffs have failed to meet their burden establishing with reasonable particularity sufficient contacts between the defendant and the forum state to support jurisdiction. Accordingly, the Court will grant the motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2) as to Defendants Chad Butler and Vyshon Miller. Having done so, there is no need for the Court to address the motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(3) for improper venue as to Defendant Chad Butler and Vyshon Miller.

Having denied the motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2) as to Defendants No Limit Records and

Percy Miller, the Court must now address the motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(3) for improper venue. Since the Lanham Act does not contain a venue provision, venue is determined according to the general venue provisions of 28 U.S.C. § 1391. See Library Publications, Inc. v. Heartland Samplers, Inc., 825 F. Supp. 701, 704 (E.D. Pa. 1993); Mida Manufacturing Co. v. Femic, Inc., 539 F. Supp. 159, 162 (E.D. Pa. 1982). In this case, Plaintiffs raise claims under both federal and state statutes. A civil action, such as this one, where "jurisdiction is not founded solely on diversity of citizenship" may be brought in (1) the "district where any defendant resides, if all defendants reside in the same state;" (2) a district in which "a substantial part of the events or omissions giving rise to the claim occurred;" or (3) a district where "any defendant may be found, if there is no district in which the action may otherwise be brought." 28 U.S.C. § 1391(b). In order to determine venue for purposes of this case, a corporate defendant is "deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced." 28 U.S.C. § 1391(c).

Based upon the evidence presented to this Court, venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391(b)(2). The Court has specific personal jurisdiction over this action against No Limit Records and Percy

Miller because they have engaged in a course of conduct to sell, through their distributor Priority Records, copies of the album which is alleged to have caused the injury to Plaintiffs.

Because Plaintiffs claims are based upon the sale of the "Ghetto D" album which they allege violate their copyright in the song "Brandy I Really Miss You" and a substantial number of these offending records were sold in the Philadelphia area, the Court finds that a substantial part of the events giving rise to the claim occurred in the Eastern District of Philadelphia.

An appropriate Order follows.

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ORDER

AND NOW, this 30th day of September, 1998; Defendants No Limit Records, Master P (a/k/a Percy Miller, hereinafter "Percy Miller"), Pimp C (a/k/a/ Chad Butler, hereinafter "Chad Butler"), and The Shocker (a/k/a Vyshon Miller, hereinafter "Vyshon Miller") having filed a motion to dismiss Plaintiffs' Complaint for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2) and improper venue pursuant to Fed. R. Civ. P. 12(b)(3); the Court having granted Plaintiffs' request to conduct limited

discovery on jurisdictional matters; Plaintiffs' supplemental response and Defendants' answer thereto now being before the Court; for the reasons stated in the Court's Memorandum of September 30, 1998;

IT IS ORDERED: The motion of Defendants No Limit Records and Percy Miller to dismiss Plaintiffs' Complaint for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2) is **DENIED;**

The motion of Defendants Chad Butler and Vyshon Miller to dismiss Plaintiffs' Complaint for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2) is **GRANTED;**

The motion of Defendants Chad Butler and Vyshon Miller to dismiss Plaintiffs' Complaint for improper venue pursuant to Fed. R. Civ. P. 12(b)(3) is **DISMISSED AS MOOT;**

The motion is Defendants No Limit Records and Percy Miller to dismiss Plaintiffs' Complaint to improper venue pursuant to Fed. R. Civ. P. 12(b)(3) is **DENIED.**

IT IS FURTHER ORDERED: Defendants No Limit Records and Percy Miller shall file an answer to Plaintiffs' Complaint by October 15, 1998.

RAYMOND J. BRODERICK, J.