

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

NEWBOLD CORPORATION,	)	
	)	Civil Action No. 7:06CV00033
Plaintiff,	)	
	)	<b><u>MEMORANDUM OPINION</u></b>
v.	)	
	)	
DATA SYSTEMS COMPANY, INC.,	)	By: Hon. Glen E. Conrad
and SMITH'S ADDRESSING	)	United States District Judge
MACHINE SERVICES, INC.,	)	
	)	
Defendants.	)	

This matter is presently before the court on the motion to dismiss filed by defendant Data Systems Company, Inc. (“Data Systems”)<sup>1</sup>, which requires the court to determine whether the exercise of personal jurisdiction over defendant Data Systems is appropriate under the relevant provisions of Virginia state law and the U.S. Constitution. For the reasons that follow, the court believes that the allegations in the complaint are sufficient to support personal jurisdiction. However, the court recognizes that many of the facts underlying those allegations are as of yet undeveloped and that further discovery may be required. Therefore, the court will provisionally hold that jurisdiction is proper, subject to further consideration following initial discovery.

**Factual and Procedural Background**

Plaintiff NewBold Corporation (“NewBold”) manufactures, among other products, Addressograph® 2000 Series imprinters for use in the healthcare industry. NewBold is incorporated in Virginia, and its principal place of business is in Rocky Mount, Virginia. Defendant Data Systems manufactures, among other products, Model 585 imprinters for use in the healthcare industry. Data Systems is incorporated in South Carolina, and its principal place

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<sup>1</sup>Since the time of oral argument on the motion to dismiss, plaintiff NewBold Corporation and co-defendant Smith’s Advertising Machine Services, Inc. filed a joint motion for an order of dismissal. This motion was granted.

of business is in Mount Pleasant, South Carolina. NewBold brought this action for relief from violations of the Trademark Act of 1946, 15 U.S.C. § 1051, *et seq.*; Virginia's unfair competition laws; North Carolina's unfair competition laws; common law conspiracy; Virginia's business conspiracy law; and the North Carolina Unfair and Deceptive Trade Practice Act. The basic premise of NewBold's complaint is that Data Systems' manufacture and sale of the Model 585 imprinter is violative of NewBold's protected trade dress for the Addressograph® 2000 Series imprinter.

### **Discussion**

The existence of personal jurisdiction over the defendant is fundamental to the court's authority. The burden of proving that the court has personal jurisdiction over the defendant rests with the plaintiff. See Mylan Labs., Inc. v. Akzo, N.V., 2 F.3d 56, 60 (4th Cir. 1993); 5B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 1351 (2004) (noting that "the standard of proof may vary depending on the procedure used by the court in making its determination and whether the defendant is successful in rebutting the plaintiff's initial showing"). In order to prove personal jurisdiction, the plaintiff must show that either general or specific jurisdiction exists. General jurisdiction exists where the defendant has continuous and systematic contact with the forum state such that the assertion of jurisdiction does not offend "traditional notions of fair play and substantial justice." See, e.g., Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 (1984); Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). Where the controversy arises out of the defendant's contacts with the forum and the defendant's contacts do not otherwise meet the continuity requirements for general jurisdiction, the relationship between the defendant, the forum, and the litigation is the

critical factor in determining whether jurisdiction exists. Shaffer v. Heitner, 433 U.S. 186, 204 (1977).

In the instant case, NewBold has set out sufficient allegations in its complaint and accompanying affidavits to support a finding of personal jurisdiction over Data Systems. Although the factual assertions regarding the existence of a Data Systems agent in Virginia, the extent of the negotiations over Data Systems' purchases of Addressograph® 2000 Series imprinters, and the nature of the website maintained by Data Systems are in dispute, as asserted, the complaint and affidavits require the conclusion that specific jurisdiction is proper under the Virginia long-arm statute, VA. CODE ANN. § 8.01-328.1(A), and the U.S. Constitution.

*1. Specific Jurisdiction and the Long-Arm Statute*

Specific jurisdiction is proper when it is authorized by the relevant state long-arm statute and comports with the due process requirements of the Fourteenth Amendment. See Christian Science Bd. of Dirs. of the First Church of Christ, Scientist v. Nolan, 259 F.3d 209, 215 (4th Cir. 2001). In considering the motion to dismiss, the court must draw all reasonable inferences in favor of the non-moving party. Design88 Ltd. v. Power Uptik Prods., L.L.C., 133 F. Supp. 2d 873, 874-75 (W.D. Va. 2001), *citing Mylan Labs.*, 2 F.3d at 60. In this case, even when all factual disputes are resolved and all reasonable inferences are drawn in the defendant's favor, both facets of specific jurisdiction are satisfied.

In Virginia, the exercise of personal jurisdiction over a non-resident defendant is proper if the defendant

acts directly or by an agent, as to a cause of action arising from [his] ... [t]ransacting any business in this Commonwealth; [or] [c]ausing tortious injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct...in this Commonwealth.

VA. CODE ANN. § 8.01-328.1(A)(1) and (4). The evidence presently before the court indicates that the application of the long-arm statute to Data Systems is appropriate. With respect to subsection (1), the undisputed evidence shows that over the course of four years, Data Systems purchased numerous Addressograph® 2000 Series imprinters from NewBold. Data Systems made the purchases by sending purchase orders to NewBold in Virginia. NewBold alleges that these transactions made it possible for Data Systems to reverse engineer its product and produce the Model 585. Data Systems disputes this allegation as mere conjecture. However, even if the purchases were not made for the purpose of reverse engineering, they establish a foundation for NewBold's complaints of intentional confusion and deception because Data Systems has stated that it purchased them for the purpose of re-sale. See John G. Kolbe, Inc. v. Chromodern Chair Co., 211 Va. 736, 180 S.E. 2d 664 (1971) (holding that personal jurisdiction over a California manufacturer was proper where the purchase order was entered into in Virginia). Inasmuch as Data Systems' sales of Addressograph® 2000 Series imprinters immediately prior to its introduction of the Model 585 may have created confusion, the complaint satisfactorily states that Data Systems transacted business in Virginia.

## *2. In-State and Litigation-Related Contacts*

Data Systems also maintains a website where the company advertises the Model 585 and offers to collect "product information for order" from potential purchasers, who will then be contacted by a Data Systems sales professional. The site directs users to "[c]lick on your state for

a dealer near you,” and lists BEC/Plasticard Solutions and a Virginia telephone number as the relevant contact information for the Virginia dealer, in addition to information for dealers in 44 other states. Data Systems attempts to minimize the importance of its website, arguing that it is merely passive and that it is unrelated to NewBold’s claims. This argument is not well founded, however, because NewBold’s claims of trade dress infringement clearly encompass the targeted advertising of the Model 585 in Virginia through the website.

NewBold alleges that it has suffered damage as a result of Data Systems’ “intentional[] and willful[] trade upon the reputation and goodwill of NewBold and its Addressograph® 2000 Series electric imprinters to the detriment of NewBold.” Complaint, at 9. The combination of the alleged damage outside Virginia and the litigation-related in-state conduct meets the requirements of VA. CODE ANN. § 8.01-328.1(A)(4). In particular, NewBold contends that the advertisements on the website and the maintenance of a dealer in Virginia impacts its in-state sales of the Addressograph® 2000. NewBold also points to the likelihood that Data Systems used at least some of the Addressograph® 2000 Series imprinters that it ordered from Virginia between April 2001 and May 2005 to reverse engineer the Model 585 as a consideration in analyzing the propriety of this court’s exercise of personal jurisdiction over Data Systems. These two factors, as well as the facts that the website is at least partly directed toward Virginia residents and that Data Systems represents itself as having an agent in Virginia, collectively demonstrate the appropriateness of personal jurisdiction in this case.

The connection between Data Systems’ in-state activities and the litigation is well defined. Data Systems’ advertising of the allegedly infringing Model 585 and its dealer, BEC/Plasticard Solutions, on the Internet had the claimed effect of injuring NewBold in Virginia. But for Data Systems’ conduct, this purported injury would not have occurred.

NewBold's claims arise out of Data Systems' Virginia-related activities. Panavision Int'l, L.P. v. Toeppen, 141 F.3d 1316 (9th Cir. 1998).

### 3. *Due Process and the Fourteenth Amendment*

Data Systems' ability to foresee litigation in Virginia is not so low as to offend due process. Regardless of the level of business that Data Systems does in Virginia, Data Systems unequivocally holds out BEC/Plasticard Solutions as its agent and dealer in Virginia. This state of affairs reasonably gives Data Systems cause to anticipate being haled into court in Virginia. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 295 (1980). The information regarding BEC/Plasticard Solutions is targeted to Virginia residents. As the United States Court of Appeals for the Fourth Circuit has stated,

a State may, consistent with due process, exercise judicial power over a person outside of the State when that person (1) directs electronic activity into the State, (2) *with the manifested intent of engaging in business or other interactions within the State*, and (3) that activity creates, in a person within the State, a potential cause of action cognizable in the State's courts.

ALS Scan, Inc. v. Digital Serv. Consultants, Inc., 293 F.3d 707, 714 (4th Cir. 2002) (emphasis added), *accord* Young v. New Haven Advocate, 315 F.3d 256, 262-63 (4th Cir. 2002). This line of case law clearly weighs in favor of the exercise of jurisdiction here. Data Systems directs its website into Virginia with the express intent of engaging in business with respect to its Model 585, and that activity creates in NewBold a potential cause of action for trade dress infringement, unfair competition, and conspiracy. *Id.* Data Systems' alleged in-state activities, including the purchase of Addressograph® 2000 Series imprinters for the purpose of reverse engineering and targeted Internet advertising, have a sufficient nexus to the trade dress infringement claims to warrant the conclusion that the suit is "related to or 'arises out of' [the] defendant's contacts with

the forum.” Helicopteros, 466 U.S. at 414. Thus, the present exercise of personal jurisdiction over Data Systems comports with due process.

### **Conclusion**

The allegations of the complaint and the evidence presented in the affidavits are sufficient to support a finding of specific personal jurisdiction over Data Systems. The actions that Data Systems allegedly undertook in maintaining its website, promoting its agent in Virginia, and purchasing Addressograph® 2000 Series imprinters for the purpose of reverse engineering, are enough to establish jurisdiction, if proven by a preponderance of the evidence at trial. When these alleged actions are considered in conjunction with the claimed impact on sales of Addressograph® 2000 Series imprinters within and outside of Virginia, the elements of the Virginia long-arm statute are satisfied. The requirements of due process are similarly satisfied by the defendant’s purposeful availment of the forum state. Consequently, the exercise of personal jurisdiction over defendant Data Systems is appropriate and will be ordered at this time. The defendant may renew its motion to dismiss in approximately 60 to 90 days, by which point the court contemplates that the parties will have exchanged further discovery illuminating the jurisdictional issue.

DATED this 28th day of February, 2006.

/s/ Glen E. Conrad  
United States District Judge

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MACHINE SERVICES, INC.,	)	
	)	
Defendants.	)	

For the reasons stated in the accompanying Memorandum Opinion filed this day, it is hereby

**ORDERED**

that defendant Data Systems Company, Inc.'s motion to dismiss for lack of personal jurisdiction is hereby DENIED.

The clerk is directed to send certified copies to all counsel of record.

ENTERED this 28th day of February, 2006.

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/s/ Glen E. Conrad  
United States District Judge