

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

ECONOMIC SOLUTIONS, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 4:00CV1785-DJS
	)	
INTERNET CORPORATION FOR	)	
ASSIGNED NAMES AND NUMBERS,	)	
	)	
Defendant.	)	

ORDER

This matter is before the Court on defendant's motion to dismiss or transfer, urging that this Court lacks personal jurisdiction over defendant. The Court notes that since the filing of the motion package, plaintiff has filed a first amended complaint. The Court's usual practice in such circumstances is to deny without prejudice a potentially dispositive motion directed to the now-superseded complaint, and leave to the movant to determine whether the motion should be refiled, with or without amendments, in light of the changes made to the pleading it attacks. In this instance, however, the Court has reviewed the two complaints, and finds that the first amended complaint merely omits two of the three original causes of action. Accordingly, the Court is willing to construe the earlier-filed motion as directed to the first amended complaint, and to disregard those portions of the briefing which focus on the claims which have been omitted on amendment.

Defendant Internet Corporation for Assigned Names and Numbers ("ICANN") is a California non-profit corporation with certain administrative responsibilities for technical management of the Internet, derivative of the U.S. Department of Commerce. Plaintiff Economic Solutions, Inc. has entered into a contract with the Central American country of Belize to attempt to commercially market Internet domain names ending with ".bz," Belize's country code top level domain suffix. In the first amended complaint, plaintiff asserts a claim of tortious interference with business expectancy based on its allegations that defendant has refused to take administrative and technical steps authorized by plaintiff's contract with Belize and necessary for plaintiff to begin registering .bz domain names.

The following undisputed facts are pertinent to the personal jurisdiction determination. Defendant, a California not-for-profit corporation, has its sole office in Marina del Rey, California. Defendant has no assets or real estate in Missouri, is not registered to do business in Missouri, does not solicit in Missouri and has no employees in Missouri. Defendant's website at [www.icann.org](http://www.icann.org) is operated from a single web server located in Marina del Rey. The only function of the website which is interactive in any sense is its public comment forum where visitors to the website may "post" comments concerning Internet technical management issues.

In passing on a motion to dismiss for lack of personal jurisdiction in a diversity action, the Court must engage in a two-pronged analysis as to whether there is personal jurisdiction over the non-resident defendant under the state long-arm statute and whether the exercise of personal jurisdiction over the defendant would violate the due process clause of the Fourteenth Amendment. Precision Construction Co. v. J.A. Slattery Co., 756 F.2d 114, 115 (8th Cir. 1985). The party seeking to invoke federal jurisdiction has the burden of establishing that jurisdiction exists. Mountaire Feeds, Inc. v. Agro Impex, S.A., 677 F.2d 651, 653 (8th Cir. 1982).

As to the former inquiry, the Missouri long-arm statute provides in pertinent part:

1. Any person or firm, . . . or any corporation, who in person or through an agent does any of the acts enumerated in this section, thereby submits . . . to the jurisdiction of courts of this state as to any cause of action arising from the doing of any such acts:

- (1) The transaction of any business within this state;
- (2) The making of any contract within this state;
- (3) The commission of a tortious act within this state;. . . .

§506.500 R.S.Mo. With respect to the second inquiry, the due process clause of the Fourteenth Amendment requires that a non-resident defendant have certain minimum contacts with the forum state 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); accord World Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291 (1980). "In judging minimum contacts, a court properly focuses on 'the relationship among the defendant, the forum and the litigation'." Calder v. Helicopteros Nacionales de Colombia S.A. v. Hall, 466 U.S. 408, 414 (1984). The defendant's contacts with the forum state must be purposeful and such that defendant "should reasonably anticipate being haled into court there." World Wide Volkswagen, 444 U.S. at 297. Consistent with these principles, the Court must evaluate: (1) the nature and quality of the contacts with the forum state; (2) the quantity of contacts with the forum state; (3) the relationship of the cause of action to the contacts; (4) the interest of the forum state in providing a forum for its residents; and (5) the convenience of the parties. Aaron Ferer & Sons Co. v. Diversified Metals Corp., 564 F.2d 1211, 1215 (8th Cir. 1977).

The Court finds plaintiff's showing as to personal jurisdiction inadequate on each level of the inquiry. Plaintiff argues that the Missouri long-arm statute is satisfied by defendant's commission of a tortious act within the state of Missouri, citing case law holding that a tortious act committed outside the state which causes harm in Missouri is sufficient. A *prima facie* showing of the commission of the tort is required to support a finding of personal jurisdiction:

A plaintiff seeking to bring a defendant into court under a state long arm statute must state sufficient facts in the complaint to support a reasonable inference that the defendant can be subjected to jurisdiction within the state. Thus, a plaintiff must make a *prima facie* showing that the tort has been committed.

Institutional Food Marketing Associates, Ltd. v. Golden State Strawberries, Inc., 747 F.2d 448, 453 (8th Cir. 1984). The mere allegation that there has been tortious conduct causing in-state harm is inadequate. Id. at 454.

In response to the motion to dismiss plaintiff has not so much as attempted a *prima facie* showing, even after defendant has specifically argued plaintiff's inability to make a showing of one indispensable element of its tortious interference claim -- lack of justification for defendant's refusal to comply with plaintiff's request to change Belize's administrative and technical contacts for the .bz domain. See, e.g., The Vikings, USA Bootheel MO v. Modern Day Veterans, 33 S.W.3d 709, 711 (Mo.App. 2000).

The establishment of a *prima facie* case requires more than the allegation that the defendant acted without justification. In order to state a cause of action, it is necessary that facts be alleged from which it could be found that the interference was not justified.

Institutional Food Marketing, 747 F.2d at 454. The first amended complaint does not allege any such facts. Plaintiff's opposition to the instant motion does not address defendant's assertion that there exists a dispute as to the legitimacy of plaintiff's request to change the contacts, citing the fact that the original technical and administrative contacts for the .bz domain have not signed the

resignation letters plaintiff has provided them. Plaintiff has therefore failed to make a *prima facie* showing of the commission of the tort relied upon for jurisdictional purposes.

Plaintiff contends that defendant's website is a sufficient Missouri contact to satisfy due process standards. The Court disagrees. The bulletin board function of the website is not so fully interactive in the Court's view as to expose defendant to universal personal jurisdiction anywhere from which a posting might be made. Defendant's website does not constitute purposeful contact with Missouri or any particular location. Furthermore, the website in general, and its bulletin board function in particular, bear no relation to the tortious interference claim. In one or more of these respects, the facts at bar are distinguishable from each of the website cases cited by plaintiff in support of personal jurisdiction.

Defendant's contacts with plaintiff have been at the instance of plaintiff, who initiated contact to request that defendant take action to transfer the administrative and technical contacts for the .bz domain. Perhaps in recognition of this fact, plaintiff does not urge that personal jurisdiction can be predicated on the actual contacts between the parties. Having considered all the foregoing, the Court is firmly persuaded that the nature, quality and quantity of defendant's contacts with Missouri fall far short of supporting this Court's exercise of

personal jurisdiction over the defendant under either state law or federal constitutional standards.

Accordingly,

**IT IS HEREBY ORDERED** that defendant's motion to dismiss [Doc. #24-1] is granted, and the motion in the alternative to transfer [Doc. #24-2] is denied as moot.

Dated this \_\_\_\_\_ day of February, 2001.

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United States District Judge