

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS**

ROBERT STEINBUCH

PLAINTIFF

v.

Case No.: 4-06 CV0000 620WRW

**JESSICA CUTLER; HYPERION BOOKS;
DISNEY PUBLISHING WORLDWIDE;
HOME BOX OFFICE; AND TIME WARNER**

DEFENDANTS

**REPLY IN SUPPORT OF RULE 12(b)(2) MOTION TO DISMISS
FOR LACK OF PERSONAL JURISDICTION
BY SEPARATE DEFENDANT
HYPERION, AN IMPRINT OF BUENA VISTA BOOKS, INC.**

In his Opposition to the Motion to Dismiss for Lack of Personal Jurisdiction filed by separate defendant Hyperion, an imprint of Buena Vista Books, Inc. (“BVB”), Plaintiff has merely repackaged his stream-of-commerce theory in an unsuccessful attempt to establish personal jurisdiction over BVB.¹ The fact that BVB is the publisher of a book that found its way into the State is not enough, as a matter of law, to confer specific personal jurisdiction over BVB for alleged harms resulting from that book. Courts consistently have refused to condone the exercise of personal jurisdiction over manufacturers, producers, and publishers where they were not directly responsible for distribution of the product into the forum state. See *Guinness Import Co. v. Mark VII Distribs., Inc.*, 153

¹ Additionally, plaintiff has set forth numerous incorrect facts throughout his Opposition. In this Reply, Separate Defendant BVB does not address all of these misrepresentations; however this Court should not interpret a lack of response as an admission.

F.3d 607, 614 (8th Cir. 1998); *Dever v. Hentzen Coatings, Inc.*, 380 F.3d 1070, 1073 (8th Cir. 2004); *Gilmer v. Walt Disney, Co.*, 939 F.Supp. 665 (W.D.Ark. 1996); see also, *Christian v. Barricade Books, Inc.*, 2003 U.S. Dist. LEXIS 8555, 31 Media L. Rep. 2303 (Dist. Ct. N.H. 2003) (holding that the court lacked personal jurisdiction over a nonresident nationwide publisher). BVB has established, through uncontroverted exhibits to its motion to dismiss, that it is not the distributor of the book. The Eighth Circuit has rejected the notion that placing goods into the “stream of commerce” is enough to establish personal jurisdiction. *Dever*, 380 F.3d at 1073 (noting that the mere fact that the defendant's products were found in a given state was not enough to establish personal jurisdiction in that state where the defendant merely placed its products in the stream of commerce and did not target that particular region). Unlike in *Barone v. Rich Bros. Interstate Display Fireworks Co.*, BVB has not poured its products into regional distributors. 25 F.3d 610, 615 (8th Cir. 1994)

Furthermore, Plaintiff has failed to rebut BVB’s evidence that BVB lacks sufficient contacts to support general personal jurisdiction. He has produced no evidence to contradict that BVB is a California corporation with its principal place of business in the State of California; that BVB is not licensed to do business in Arkansas; that it does not maintain a bank account in Arkansas; that it does not have a phone number or mailing address in the State; that it owns no property in Arkansas; that it has no employees or agents for service of process here. Plaintiff also has failed to address the fact that BVB does not “transact business” within the

State of Arkansas, as the term is defined in Ark. Code Ann. § 4-27-1501 (the “Act”). That statute states, in pertinent part:

The following activities, among others, do not constitute transacting business within the meaning of subsection (a) of this section:

....

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

....

(10) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature;

(11) Transacting business in interstate commerce.

ARK. CODE ANN. § 4-27-1501 (emphasis added). The most that can be gleaned from Plaintiff’s Opposition is that BVB sells books through an independent distributor who in turn takes orders from bookstores (excepted from the definition of “transacting business” in § 5 of the Act); solicits or obtains orders (excepted from the definition of “transacting business” in § 6 of the Act); conducts isolated transactions (excepted from the definition of “transacting business” in § 10 of the Act); and participates in interstate commerce (excepted from the definition of “transacting business” in § 11 of the Act). There is no evidence that BVB targets or aims books that it publishes specifically toward the State of Arkansas or that it otherwise has conducted its business in a manner so as to anticipate being haled into court in this State.

BVB is not licensed to conduct business in Arkansas because it does *not* conduct business in this State. Plaintiff cannot properly hale BVB into the courts of this State.

The undisputed facts establish, beyond peradventure, that Mr. Steinbuch moved to Arkansas and brought his alleged harm with him. Could he have sued BVB had he not moved to this State? The clear answer is, “No.” The fact that he now lives here has no bearing on BVB’s constitutional right to due process and the required analysis of its contacts with this State.

Respectfully submitted,

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Hyperion, an imprint of Buena Vista Books, Inc.*

CERTIFICATE OF SERVICE

I certify that on this 27th day of October, 2006, I served a copy of the foregoing document via the Court's ECF/Pacer electronic filing system upon the following persons:

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