

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

BARRY CRABB and
MATTHEW McBRIDE,
Individually and as Class
Representatives on Behalf of
All Similarly Situated Persons

PLAINTIFFS

VS.

CASE NO. 4:07-CV-4040

GODADDY.COM, INC. and
THE GO DADDY GROUP, INC.

DEFENDANTS

ORDER

Before the Court is a Motion to Dismiss Plaintiffs' First Amended Complaint or For Transfer of Venue, filed on behalf of Defendants GoDaddy.com, Inc. and The Go Daddy Group, Inc. (Doc. 58). Plaintiffs have responded in opposition. (Doc. 63). Defendants have replied to Plaintiffs' response. (Doc. 65).

In the course of briefing the motion, Defendants included and rely upon, among other things, the Declarations of Ben Butler, (Doc.57-3) Nate Curran, (Doc. 57-8) Teri Dhooge, (Doc. 57-10) Pam Bunn, (Doc. 57-11) Larry Hartman, (Doc. 57-12) and Ron Hertz (Doc. 48). Additionally, Defendants include a Parked Page Service Agreement (Doc. 57-7) as an exhibit to the motion. In their response, Plaintiffs request that the Court treat the motion to dismiss as one for summary judgment, giving them an opportunity to present pertinent material in response.

Upon review, the record reveals that Defendants have presented matters outside the pleadings which the Court cannot exclude from consideration. Under Fed. R. Civ. P. 12(d), Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint or For Transfer of Venue must be treated as one for summary judgment under Rule 56. Rule 12(d) further provides that "[a]ll parties must be

