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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 MEYER CORPORATION, U.S.,

Case No. 2:09-cv-297-JAM-JFM

12 Plaintiff,

ORDER GRANTING DEFENDANT
ALFAY'S MOTION TO DISMISS

13 v.
14

15 EVCO INTERNATIONAL, INC., d/b/a
16 CREATIVE HOME, ALFAY DESIGNS,
INC.,

17 Defendants.
18 _____/

19 This matter comes before the Court on Defendant Alfay
20 Designs, Inc.'s ("Alfay's") motion to dismiss, or alternatively,
21 motion to transfer. (Doc. # 35). Plaintiff Meyer Corporation,
22 U.S. (hereinafter "Meyer") opposes the motion (Doc. # 46). For
23 the reasons set forth below¹, Defendant Alfay's motion to dismiss
24 is GRANTED for lack of personal jurisdiction pursuant to Federal
25 Rule of Civil Procedure 12(b)(2).
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28 ¹ Because oral argument will not be of material assistance,
the Court orders this matter submitted on the briefs. E.D. Cal.
L.R. 230(g).

1 I. FACTUAL AND PROCEDURAL BACKGROUND

2 Plaintiff Meyer Corporation, U.S. is a Delaware corporation
3 with its principal place of business in Vallejo, California.

4 Amend. Compl. ¶ 4. Meyer sells cookware and bakeware, including
5 hard-anodized, aluminum, stainless steel with aluminum or copper
6 bottoms, stainless steel clad, and nonstick aluminum cookware.

7 Amend. Compl. ¶ 4. Meyer brought this action against Defendants
8 Farberware Licensing Company, LLC ("FLC"), Alfay Designs, Inc.,
9 and Evco International, Inc. ("Evco") (collectively
10 "Defendants") alleging (1) declaratory judgment against all
11 Defendants (2) tortious interference with the Meyer License
12 Agreement against Alfay and Evco; (3) breach of contract against
13 FLC; (4) fraud against FLC; and (5) violation of Cal. Business
14 and Professions Code Section 17200 against all Defendants.
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16 On June 27, 1996 Meyer Marketing Co., Ltd. ("MMC")
17 (Plaintiff's predecessor in interest), currently an inactive
18 business, and Farberware, Inc., ("Farberware") (Defendant FLC's
19 predecessor in interest) entered into a 200 year contract
20 whereby Farberware sold MMC the exclusive right to use and
21 exploit the Farberware brand name and related trademarks in
22 connection with the sourcing, manufacturing, distribution and
23 sale of specific Farberware-branded "Cookware and Bakeware
24 Products" ("Meyer Agreement"). Krause Decl. at Ex. A. The Meyer
25 Agreement defines the specific products covered by the agreement
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1 by listing numerous types of kitchen utensils and appliances
2 including "kettles (but only those made of stainless steel,
3 regular aluminum or anodized aluminum)..." Krause Decl. at Ex. A.
4

5 In February 2002, FLC, a Delaware corporation with its
6 principal place of business in Massachusetts, acquired the Meyer
7 Agreement, as part of an asset purchase. Ratushney Decl. ¶ 2-3.
8 As part of this acquisition, FLC assumed the obligation to "not
9 license any other party to use the Cookware and Bakeware Product
10 Rights on Cookware." Krause Decl. at Ex. A.
11

12 In 2005, FLC entered into a license agreement with Alfay,
13 whereby FLC granted Alfay, in conjunction with Evco, the license
14 to manufacture, distribute and/or sell enamel tea kettles
15 bearing the Farberware name and trademark (the "Alfay
16 Agreement"). Smaldone Decl. ¶ 3.
17

18 On February 2, 2009 Meyer initiated this action against
19 Alfay and Evco. On March 20, 2009, FLC filed suit against Meyer
20 in the Southern District of New York, alleging violations of
21 Lanham Act and breach of the Meyer Agreement. Sovak Decl., Ex.
22 A. FLC's complaint was served on Meyer four days before Meyer
23 sought to add FLC to the present action. Meyer filed a motion to
24 transfer the New York action to the Eastern District of
25 California. On May 14, 2009, the Southern District of New York
26 denied Meyer's motion to transfer.
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1 On July 23, 2009, this Court stayed this action in the
2 interest of judicial efficiency and economy as many of the
3 issues in this case were to be resolved in the SDNY action.
4 (Doc. # 54). The SDNY jury trial concluded on August 27, 2009.
5 On October 13, 2009, the SDNY court entered an order decreeing
6 that:
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8 (a) "The License Agreement provides that Meyer and its
9 affiliates have the worldwide exclusive right to use and
10 exploit the Farberware name and related trademarks in
11 connection with sourcing, manufacturing and/or
12 distribution of kettles made of stainless steel,
13 irrespective of coating;
14

15 (b) FLC's having entered into an agreement with the
16 otherwise authorized Alfay, or any other entity or person
17 to manufacture, distribute, or sell kettles made of
18 stainless steel bearing the Farberware name and/or
19 trademark in derogation of Meyer's rights under the
20 License Agreement, irrespective of coating; that
21

22 (c) FLC is prohibited from granting a license or otherwise
23 authorizing Alfay, or any other entity or person to
24 manufacture, distribute, or sell kettles made of
25 stainless steel bearing the Farberware name and/or
26 trademark in derogation of Meyer's rights under the
27 License Agreement, irrespective of any coating; that
28

1 (d) Alfay manufactured and sold kettles made of stainless
2 steel, and that

3 (e) the agreement FLC entered into with Alfay was in
4 express violation of the License Agreement between
5 Farberware, Inc. and Meyer." (See Exhibit A to the
6 Declaration of Dean A. Dickie, Doc. # 57).

7
8 On October 21, 2009, Meyer filed a notice of voluntary
9 dismissal of Defendant FLC pursuant to Fed. R. Civ. P.
10 41(a)(1)(A)(i). As such, the current action only proceeds
11 against Defendants Alfay and Evco. This Court granted
12 Plaintiff's motion to lift the stay on December 4, 2009. (Doc. #
13 61). However, discovery in the action is stayed until and after
14 the Court hears and rules on Defendant Alfay's motion to dismiss
15 (Doc. # 61).
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18 Alfay's instant motion seeks the following relief: (1)
19 dismissal of Meyer's action against Alfay pursuant to FRCP
20 12(b)(2) for lack of personal jurisdiction; (2) dismissal of
21 Meyer's claims for declaratory relief, tortious interference
22 with the License Agreement and Violation of Business and
23 Professions Code Section 17200 Unfair Acts or Practice pursuant
24 to FRCP 12(b)(6) for failure to state a claim upon which relief
25 can be granted because of the prohibition in the License
26 Agreement between Meyer and FLC; or (3) alternatively, transfer
27 of this case to the Southern District of New York.
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II. OPINION

A. Legal Standard

Under Rule 12(b)(2) of the Federal Rules of Civil Procedure, a defendant may seek dismissal of an action for lack of personal jurisdiction. "Where, as here, there is no applicable federal statute governing personal jurisdiction, the law of the state in which the district court sits applies." Core-Vent Corp. v. Nobel Indus. AB, 11 F.3d 1482, 1484 (9th Cir. 1993). "California's long-arm statute allows courts to exercise personal jurisdiction over defendants to the extent permitted by the Due Process Clause of the United States Constitution." Id. at 1484. Thus, only constitutional principles constrain the jurisdiction of a federal court in California. Sher v. Johnson, 911 F.2d 1357, 1361 (9th Cir. 1990). "Due process requires that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of suit does not offend traditional notions of fair play and substantial justice." Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd., 328 F.3d 1122, 1129 (9th Cir. 2003) (internal quotations omitted); see Burger King v. Rudzewicz, 471 U.S. 462, 476, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985).

Once a defendant challenges jurisdiction, the burden of proof to show that jurisdiction is appropriate lies with the

1 plaintiff. Sher, 911 F.2d at 1361. When a defendant's motion to
2 dismiss is to be decided on the pleadings, affidavits, and
3 discovery materials, the plaintiff need only make a prima facie
4 showing that personal jurisdiction exists in order for the
5 action to proceed. Id. In deciding whether plaintiff has met
6 this burden, the court accepts plaintiff's allegations as true.
7 Id.

8 9 B. Personal Jurisdiction

10 A court may exercise either general or specific
11 jurisdiction over a non-resident defendant. "General
12 jurisdiction exists when a defendant is domiciled in the forum
13 state or his activities there are 'substantial' or 'continuous
14 and systematic.'" Panavision Int'l, L.P. v. Toeppen, 141 F.3d
15 1316, 1320 (9th Cir. 1998) (quoting Helicopteros Nacionales de
16 Colombia, S.A. v. Hall, 466 U.S. 408, 414-416, 104 S. Ct. 1868,
17 80 L. Ed. 2d 404 (1984)). When a defendant does not reside in
18 the forum state, the contacts must be such that they
19 "approximate physical presence in the forum state."
20 Schwarzenegger v. Fred Martin Co., 374 F.3d 797, 801 (9th Cir.
21 2004) (quoting Bancroft v. Masters, 223 F.3d 1082, 1086 (9th
22 Cir. 2000)). Meyer does not argue and therefore, appears to
23 concede, that Alfay does not have sufficient contact with
24 California to establish general jurisdiction. (Meyer's Opp'n,
25 Doc. # 46 at 4-11).

1 Where general jurisdiction does not exist, the court may
2 still determine whether the defendant has had sufficient minimum
3 contacts with the state, as it relates to the pending litigation
4 against it, in order to justify the exercise of specific
5 jurisdiction. See Omeluk v. Langsten Slip & Batbyggeri A/S, 52
6 F.3d 267, 270 (9th Cir. 1995). In determining whether a
7 district court can exercise specific jurisdiction over a
8 defendant, the Ninth Circuit has articulated the following
9 three-part test: (1) the non-resident defendant must
10 purposefully direct his activities or consummate some
11 transaction with the forum or resident thereof, or perform some
12 act by which he purposefully avails himself of the privilege of
13 conducting activities in the forum, thereby invoking the
14 benefits and protections of its laws; (2) the claim arises out
15 of or relates to defendant's forum-related activities; and (3)
16 the exercise of jurisdiction must comport with fair play and
17 substantial justice, meaning it must be reasonable.
18 Schwarzeneggerr v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th
19 Cir. 2004).

20 1. Purposeful Availment

21 The purposeful availment prong requires a "qualitative
22 evaluation of the defendant's contact with the forum state in
23 order to determine whether the defendant's conduct and
24 connection with the forum state are such that he should

1 reasonably anticipate being haled into court there." Harris, 328
2 F.3d at 1130 (citing World-Wide Volkswagen Corp. v. Woodson, 444
3 U.S. 286, 297, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980); Lake v.
4 Lake, 817 F.2d 1416, 1421 (9th Cir. 1987)) (internal quotations
5 omitted). "The purposeful availment requirement is met if the
6 defendant 'performed some type of affirmative conduct which
7 allows or promotes the transaction of business within the forum
8 state.'" Id. (quoting Sher, 911 F.2d at 1362). However, a
9 defendant may not be haled into a jurisdiction based upon the
10 unilateral acts of third parties. Lake, 817 F.2d at 1421 (citing
11 Burger King, 471 U.S. at 475).

14 Meyer asserts Alfay purposefully availed itself of the
15 privilege of doing business in California under the stream of
16 commerce test. Under the stream of commerce test, "where a
17 defendant delivers its products into the stream of commerce with
18 the expectation that they will reach the forum state, 'the
19 forum's court may assert personal jurisdiction.'" Hedrick v.
20 Diako Shoji Co., Ltd., 715 F.2d 1355, 1358 (9th Cir. 1983)
21 (citing World-Wide Volkswagen v. Woodson, 44 U.S. 286, 297-98
22 (1980)). Meyer argues that Alfay delivered its tea kettles into
23 the stream of commerce with the expectation that the tea kettles
24 would reach California. Meyer asserts Alfay distributed,
25 marketed, and sold the tea kettles in California and authorized
26 Evco to distribute its products in California.
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1 Alfay argues it took no affirmative acts to purposefully
2 avail itself of the privilege of doing business in California.
3 Alfay is not registered or authorized to conduct business in
4 California and does not conduct business in California.
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6 Smaldone Decl. at ¶¶ 9-14, 18-24. Alfay argues it is involved
7 in this suit purely because of its contract with FLC, a Delaware
8 limited liability company. Alfay designed and manufactured
9 enamel tea kettles outside of California and did not direct any
10 advertising or marketing to California. Id. ¶¶ 12, 18-22, 24.
11 Nevertheless, Alfay does not deny that its products are
12 distributed and sold in California or that it authorized Evco to
13 distribute its products in California. Alfay derives a benefit
14 from the sale of its products in California. Accordingly, the
15 Court finds that Alfay authorized Evco to distribute its tea
16 kettles in California and, had or reasonably should have had the
17 expectation that its tea kettles would be distributed and sold
18 in California. As such, the Court finds Alfay has purposefully
19 availed itself of the privilege of conducting activities in
20 California.
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24 2. Forum-Related Activities

25 The Ninth Circuit relies "on a 'but for' test to determine
26 whether a particular claim arises out of forum-related
27 activities and thereby satisfies the second requirement for
28 specific jurisdiction." Ballard v. Savage, 65 F.3d 1495, 1500

1 (9th Cir. 1995)(citation omitted). Here, Plaintiff's claims
2 arise out of Alfay's delivery of tea kettles made of stainless
3 steel into the stream of commerce. All of Meyer's claims
4 against Alfay arise out of and are based on the fact that
5 Alfay's tea kettles, in violation of the Meyer Agreement, are
6 offered for sale in California and throughout the nation in
7 violation of Meyer's exclusive license. But for Alfay's
8 delivering its tea kettles into the stream of commerce, Meyer
9 would not have been injured giving rise to its claims. As such,
10 all of Meyer's claims arise out of or relate to Alfay's forum-
11 related activities.
12

14 3. Reasonableness

15 "Once it has been decided that a defendant purposefully
16 established minimum contacts within the forum State, these
17 contacts may be considered in light of other factors to
18 determine whether the assertion of personal jurisdiction would
19 comport with 'fair play and substantial justice.'" Burger King,
20 471 U.S. at 476 (citation omitted). Defendant has the burden to
21 show that it would not. Sher, 911 F.2d at 1364. Courts in the
22 Ninth Circuit apply this requirement by weighing seven factors:
23 (1) the extent of the defendants' purposeful interjection into
24 the forum state's affairs; (2) the burden on the defendant of
25 defending in the forum; (3) the extent of conflict with the
26 sovereignty of the defendants' state, (4) the forum state's
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1 interest in adjudicating the dispute; (5) the most efficient
2 judicial resolution of the controversy; (6) the importance of
3 the forum to the plaintiff's interest in convenient and
4 effective relief; and (7) the existence of an alternative forum.
5 Core-Vent Corp. v. Nobel Industries, AB, 11 F.3d 1482, 1487-88
6 (9th Cir. 1993).

8 The Court must weigh the extent of Defendants' purposeful
9 interjection into the affairs of the forum state, even if the
10 purposeful availment prong is satisfied. Id. at 1488. In the
11 present case, Alfay's purposeful interjection into the affairs
12 of California is minimal. Alfay is not registered or authorized
13 to conduct business in California and does not conduct business
14 in California. Smaldone Decl. at ¶¶ 9-14, 18-24. Alfay
15 designed and manufactured enamel tea kettles outside of
16 California and did not direct any advertising or marketing to
17 California. Id. ¶¶ 12, 18-22, 24. Alfay has no channels for
18 providing regular advice to customers who purchased their
19 products, including teakettles, in California. Id. ¶ 5. As
20 such, the extent of Alfay's purposeful interjection into
21 California's affairs is minor, and thus this factor weighs in
22 favor of Alfay.

23
24 In order for a defendant to demonstrate that defending a
25 suit in this forum is unreasonable, the defendant must show that
26 jurisdiction in California would make the litigation "so gravely
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1 difficult and inconvenient that a party unfairly is at a severe
2 disadvantage in comparison to his opponent." Sher, 911 F.2d at
3 1365. Alfay argues that as a small corporation, its key
4 employees necessary to the operation of the business are its two
5 owners. Alfay asserts that participation in litigation in
6 California would essentially prevent Alfay from operating. Id.
7 However, in a case where an out-of-state defendant alleged
8 similar hardships, the Ninth Circuit found that jurisdiction in
9 the forum was nonetheless reasonable. Sher, 911 F.2d at 1365. In
10 Sher, defendant, a Florida law firm, asserted that jurisdiction
11 in California would be unreasonable because defendant would be
12 unable to run its law practice if it were required to defend a
13 suit in California. Id. at 1364. The defendant in Sher also
14 argued that all the evidence and most of the witnesses were
15 located in Florida. Id. The Ninth Circuit found that "[i]n this
16 era of fax machines and discount air travel, requiring
17 [defendant] to defend itself in California under the
18 circumstances as it alleges them would not be so unreasonable as
19 to violate due process." Id. at 1365. Thus, although Alfay has
20 demonstrated that the burden of litigating this claim in
21 California would be significant, it has not demonstrated that it
22 would be placed at a severe disadvantage if the case remains in
23 this Court.

1 Both California and New York have an interest in this
2 litigation. The State of California has an interest in
3 protecting the rights of its injured citizens. As Meyer has its
4 principal place of business in California, it is a citizen of
5 California that has allegedly been injured by Alfay's conduct.
6 New York has an interest in this action because the litigation
7 centers on the License Agreement between FLC and Meyer, as well
8 as Alfay's agreement with FLC, which expressly provides that it
9 is to be governed by New York law. As to these factors, the
10 Court cannot say that either forum would necessarily be more
11 reasonable.
12

13
14 The parties' interest in the most efficient judicial
15 resolution of the controversy favors an alternate forum. The
16 United States District Court for the Eastern District of
17 California has the heaviest caseload in the country. Each judge
18 manages a current weighted caseload of approximately 1,097
19 cases, more than double the national weighted caseload average
20 of 480 cases per active judge. Therefore, this factor weighs in
21 Alfay's favor.
22

23
24 Plaintiff's interest in convenient and effective relief
25 also favors an alternate forum. As the busiest district in the
26 country, Plaintiff's interest in a swift resolution of this
27 dispute favors litigating the matter in New York. The Southern
28 District of New York has already concluded a jury trial and

1 issued a written order in the matter of Farberware Licensing
2 Company, LLC v. Meyer Marketing Co., Ltd., et. al, Case No. 09-
3 cv-2570. The assignment of this matter to the same district
4 court and judge is not only likely to affect a substantial
5 savings of judicial effort, but also is likely to serve the most
6 convenient and effective relief for Meyer.

7 Finally, as noted above, an alternative forum does exist.
8 The Southern District of New York is much more likely to try
9 this case on its merits more expeditiously than this district.

10 Considering all of the relevant factors, the Court finds
11 that exercise of personal jurisdiction over Alfay is
12 unreasonable. Alfay's purposeful interjection into the forum is
13 minimal, and thus weighs in favor of not finding jurisdiction.
14 Further, the availability of an alternative forum, New York,
15 favors Alfay's position. New York has an interest in the
16 litigation and is the most efficient and convenient forum. As
17 such, Defendant Alfay has shown that jurisdiction in California
18 would make the litigation unreasonable. Accordingly, Plaintiff
19 has failed to show that jurisdiction is appropriate under the
20 Ninth Circuit's three-part test. Thus, the Court finds that it
21 does not have specific jurisdiction over Alfay.²

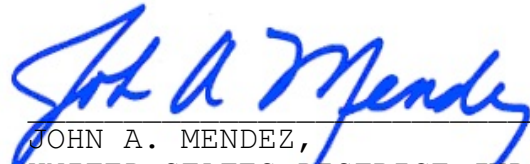
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25 ² Because the Court finds that it lacks personal jurisdiction
26 over Alfay, it need not and declines to reach Alfay's
27 alternative arguments for (1) dismissal of Meyer's claims for
28 declaratory relief, tortious interference with the License
Agreement and Violation of Business and Professions Code Section
17200 Unfair Acts or Practice pursuant to FRCP 12(b)(6) for
failure to state a claim upon which relief can be granted
because of the prohibition in the License Agreement between

1 III. ORDER

2 For the above reasons, Defendant Alfay's motion to dismiss
3 pursuant to FRCP 12(b)(2) for lack of personal jurisdiction is
4 hereby GRANTED.

5 IT IS SO ORDERED.

6 Dated: April 28, 2010

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8 JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE

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28 Meyer and FLC; or (2) alternatively, transfer of this case to
the Southern District of New York.