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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
FEB - 8 2005
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

GEORGE S. MAY INTERNATIONAL)
COMPANY,)

Plaintiffs,)

v.)

Case No. 04 C 6018

XCENTRIC VENTURES, LLC, RI-POFF)
REPORT.COM, BADBUSINESSBUREAU.COM,)
ED MAGEDSON, VARIOUS JOHN DOES, JANE)
DOES AND ABC COMPANIES,)

Honorable Judge Norgle

Defendants.

XCENTRIC VENTURES' MOTION TO DISMISS FOR LACK OF JURISDICTION

Defendant, Xcentric Ventures, LLC requests that the Court dismiss this action pursuant to Fed.R.Civ.P. 12(b)(2) as this Court lacks personal jurisdiction over it. This motion is supported by the following Memorandum of Points and Authorities and by the Court's file in this matter. Xcentric incorporates by reference its arguments related to jurisdiction contained in its responses to the requests for injunction relief.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant, Xcentric Ventures, LLC operates a website known as Rip-off Report upon which consumers post complaints about companies with whom they have done business. Plaintiff George S. May International Company asserts that complaints were posted on the Rip-off Report website regarding Plaintiff that were false and injured Plaintiff. Xcentric has no minimum contacts with the State of Illinois and took no actions directed at Illinois.

II. RELEVANT FACTS

Xcentric is a limited liability company organized and existing under the laws of Arizona. (Affidavit of Ed Magedson, Exhibit "A"). Its place of business is Arizona. (Exhibit "A"). Xcentric does not own any assets in Illinois, or have any offices or employees in the state. (Exhibit "A"). Xcentric does not do business with or within the State of Illinois. Xcentric operates a website, "The Rip-Off Report," located at www.badbusinessbureau.com and at www.ripoffreport.com. (Exhibit "A"). The website is hosted by Sterling Network Services, LLC. (Exhibit "A"). Sterling is an Arizona company whose servers are located in Arizona. (Exhibit "A"). No agent of Xcentric authored the reports posted about George S. May International Company (Exhibit "A").

III. THE CONTRACTUAL AGREEMENT OF THE PARTIES CALLS FOR JURISDICTION IN ARIZONA

As set forth in Defendant's previous pleading, Plaintiff's agent agreed in a binding contract that claims arising out of the posting of his report are subject to jurisdiction in Arizona. Such contracts are valid and binding. *DeJohn v. The TV Corp. Intern.*, 245 F.Supp.2d 913 (C.D. Ill. 2003) (forum selection clauses are presumptively valid and the fact that the contract is electronic does not affect this conclusion). In previous pleadings, Plaintiffs have asserted that that Mr. Lang, who entered into the contract did not have the authorization to bind the company and that the right to rebut falsehoods should not be tied to waiving jurisdiction. First, Mr. Lang represented himself to be a "consultant" with George S. May and a "staff executive." He surely had apparent authority to bind his company. Further, Plaintiffs offer no support for their argument that the right to rebut falsehoods should not be tied to waiving jurisdiction. Plaintiffs' agent availed himself of Defendants services and in doing so, executed a binding contract limiting jurisdiction to Arizona. The contract should be enforced.

IV. THIS COURT LACKS JURISDICTION EVEN ABSENT THE CONTRACT

A. Standard For Asserting Jurisdiction

On a motion to dismiss for lack of personal jurisdiction under Fed.R.Civ.P. 12(b)(2), the burden of proof rests on the party asserting jurisdiction. *Mellon Bank (East) PSFS, N.A. v. Farino*, 960 F.2d 1217, 1223 (3d Cir.1992), citing *Carteret Savings Bank v. Shushan*, 954 F.2d 141 (3d Cir.1992), cert. denied 506 U.S. 817, 113 S.Ct. 61, 121 L.Ed.2d 29 (1992). To meet this burden, the plaintiff must make a prima facie showing of “sufficient contacts between the defendant and the forum state.” *Mellon East*, 960 F.2d at 1223, citing *Provident Nat. Bank v. California Fed. Sav. & Loan Assoc.*, 819 F.2d 434 (3d Cir. 1987).

Due process requires that a nonresident 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, 66 S.Ct. 154, 90 L.Ed. 95 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S.Ct. 339, 85 L.Ed. 278 (1940)). The contacts between the defendant and the forum state may not be “random, isolated, or fortuitous.” *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774, 104 S.Ct. 1473, 79 L.Ed.2d 790 (1984). Instead, “the sufficiency of the contacts is measured by the defendant’s purposeful acts.” *NUCOR Corp. v. Aceros Y Maquilas de Occidente, S.A. de C.V.*, 28 F.3d 572, 580 (7th Cir.1994). The minimum contacts with the forum state must be the result of the defendant’s purposefully availing itself of the privilege of conducting business in the forum state, thereby invoking the protections and benefits of the forum state’s law. *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958); *International Medical Group, Inc. v. American Arbitration Ass’n, Inc.*, 312 F.3d 833, 846 (7th Cir.2002). The minimum contacts requirement serves two objectives: “[i]t protects against the burdens of litigation in a distant or

inconvenient forum” unless the defendant’s contacts make it just to force him or her to defend there, and “it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as co-equal sovereigns in a federal system.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980).

Depending on the nature of the contacts, a court may exercise general or specific jurisdiction. When the defendant’s contacts with the state are sufficiently continuous, systematic and general, the court may exercise jurisdiction over the defendant in any suit based on any controversy. *International Medical Group*, 312 F.3d at 846. When a defendant’s contacts with the state are more limited, but are related to or give rise to the specific controversy in issue, a court may exercise specific jurisdiction over the defendant with respect to that controversy. Because the implications are far greater, the constitutional standard for general jurisdiction is considerably more stringent than the standard for specific jurisdiction.

V. JURISDICTION OVER THE INTERNET

The most often-cited case in analyzing jurisdiction based on Internet activities is *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D.Pa. 1997), which established the sliding scale test for jurisdiction arising out of Internet activities.

The *Zippo* Court recognized that the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet. (*Id.*)

At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. At the opposite end are situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions. A passive Web site that does little more than make

information available to those who are interested in it is not grounds for the exercise personal jurisdiction. The middle ground is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site. (citations omitted).

Here, all Xcentric did was host a website upon which third parties posted their opinions and complaints about their experience with George S. May. The postings were free. Xcentric did not engage in any commercial transaction at all. Its purpose is to make information available. This case should be analyzed the same as a passive web site because the claims arise out of Xcentric's passive activity of merely making information available. In addition, even if the Court analyzes this case under the test for an interactive web site, the level of interactivity here is simply that the author posted a complaint on the website and there was no commercial nature to the exchange of information because there was no money exchanged. Rather, the posting was a classic exercise of non-commercial free speech.

Plaintiffs assert that Defendants transact business over the Internet and are interactive. Defendants do not transact business over the Internet. The Rip-off Revenge Guide is owned and sold by Creative Media Publishing, L.L.C., which has an advertising agreement with Xcentric Ventures, L.L.C.¹ Thus, while Xcentric Ventures, L.L.C. advertises the Rip-off Revenge guide on its website, it does not sell the guide. Further, even if Xcentric did sell the guide to residents of Illinois, that would only subject it to jurisdiction for claims arising out of the sale of that book. Similarly, Xcentric's solicitation of donations is irrelevant because there is no claim here that arose out of a donation.

Plaintiffs also allege that Defendants use metatags of the George S. May trademark knowing that it will have impact of searches performed in Illinois. That is an inaccurate factual

¹Xcentric and Consumer Media have a license to use the Rip-off Report and Rip-off Revenge trademarks.

description and does not establish that Defendants targeted their actions toward Illinois. Searches performed in Illinois will be the same as searches performed anywhere else in the United States, as well as the world. That argument is essentially the same as the argument that has been rejected by the courts that having an internet presence subjects one to jurisdiction everywhere that the website can be accessed.

VI. GENERAL JURISDICTION IS LACKING

Xcentric expects that Plaintiff will concede that general jurisdiction is lacking. To meet the constitutional requirement for general jurisdiction, the defendant must have “continuous and systematic general business contacts” with the forum state. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984). The defendant’s contacts with the forum “must be so extensive to be tantamount” to the defendant’s “being constructively present in the state to such a degree that it would be fundamentally fair to require it to answer in an [Illinois] court in *any* litigation arising out of *any* transaction or occurrence taking place *anywhere* in the world.” *Purdue Research Foundation*, 338 F.3d at 787. Here, there is nothing even approaching that requisite test. Xcentric has no contacts with Illinois at all except that its website can be accessed in Illinois (as well as anywhere else in the world). The Illinois Court of Appeals has rejected the contention that Internet activities alone are a sufficient basis for general jurisdiction. *Forrester v. Seven Seventeen HB S. Louis*, 336 Ill.App.3d 572, 784 N.E.2d 834 (4th Dist. 2002).

VII. SPECIFIC JURISDICTION IS LACKING

In order to exercise specific jurisdiction, a court must find that the defendant has purposefully established minimum contacts with the forum state, that the cause of action arises out of or relates to those contacts and that the exercise of jurisdiction is constitutionally

reasonable. *RAR, Inc. v. Turner Diesel, Ltd.*, 107 F.3d 1272, 1277 (7th Cir.1997). The first and second parts of this analysis require the court to evaluate the relationship among the defendant, the forum state and the cause of action. *Calder v. Jones*, 465 U.S. 783, 788, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984), citing *Shaffer v. Heitner*, 433 U.S. 186, 204, 97 S.Ct. 2569, 53 L.Ed.2d 683 (1977). The Court has identified two ways in which minimum contacts may be established for the purpose of specific jurisdiction: (1) purposeful availment by the defendant of the benefits and protections of the forum state's laws, *Asahi Metal Indus. Co., Ltd. v. Superior Court of California*, 480 U.S. 102, 109, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987); or (2) harm to an individual within the state caused by the defendant when the harm is both intentional and aimed at the forum state, *Calder*, 465 at 788-90, 104 S.Ct. 1482.

The purposeful availment requirement is satisfied when the defendant purposefully establishes sufficient minimum contacts with the forum state to create a "substantial connection" between the defendant and the forum state. *Burger King Corp.*, 471 U.S. 462 at 475-76, 105 S.Ct. 2174. A substantial connection is created when the defendant "purposefully avails itself of the privilege of conducting activities" in the forum. *Hanson*, 357 U.S. at 253, 78 S.Ct. 1228. The objective of the purposeful availment requirement is to provide predictability and give notice to the defendant that it is subject to suit in the forum state, so that the company "can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State." *World-Wide Volkswagen*, 444 U.S. at 297, 100 S.Ct. 559.

Xcentric operates a website. Xcentric's agents did not author the complaints that are claimed to be false. Nothing that Xcentric has done could be deemed to be a purposeful availment of the benefits of Illinois' laws that it could reasonably anticipate being haled into

court in this state. “[S]pecific jurisdiction is not appropriate ‘merely because a plaintiff’s cause of action arose out of the general relationship between the parties; rather, the action must *directly arise* out of the specific contacts between the defendant and the forum state.’” *Id.*, quoting *Sawtelle v. Farrell*, 70 F.3d 1381, 1389 (1st Cir.1995).

Plaintiff has previously asserted that jurisdiction should be found under the effects test. Plaintiff has admitted that it must prove defendant’s intentional tortious actions were expressly aimed at the forum state and caused harm to the Plaintiff in the forum state, of which the defendant knows is likely to be suffered. It is undisputed that Defendant did not author any of the purportedly false reports. Defendant’s only intentional conduct was to operate a website which is a forum for others to post their experiences and opinions about companies. The effects test, set forth by the United States Supreme Court in *Calder v. Jones*, 104 S.Ct. 1482 (1984), requires something more than just causing injury to someone harming someone in the forum state. The effects test is satisfied when the plaintiff alleges that the defendant committed an intentional tort expressly aimed at the forum state; the actions caused harm, the brunt of which was suffered in the forum state; and the defendant knew that the effects of its actions would be suffered primarily in the forum state. *Calder*, 465 U.S. at 788-90, 104 S.Ct. 1482. Here, Defendant, Xcentric operated a website upon which others posted allegedly defamatory reports. That conduct cannot rise to the level of knowing that the effects of its actions would be suffered primarily in Illinois. *See Young v. New Haven Advocate*, 315 F.3d 256 (4th Cir. 2002)(dismissing for lack of jurisdiction in case arising out of posting of defamatory article even though injury would be felt in forum state).

In *Calder* the Court emphasized that the defendants had aimed their actions expressly at California and actually knew that the “potentially devastating” effects of their article would be

felt primarily in the state. *Id.* at 789-90, 104 S.Ct. 1482. Here, because Defendants did not author the allegedly defamatory matter, they could not have aimed their activities at Illinois.

As set forth in Defendants' previous pleadings, Plaintiffs have not shown that they suffered the brunt of their injury in Illinois. George S. May has offices in Nevada, New York, San Francisco, Canada, and Europe. They boast that their clients are located "in virtually every corner of America as well as Canada." Thus, Plaintiff's alleged injury is not suffered solely in Illinois.

VIII. COURTS HAVE REFUSED TO SUBMIT RIP-OFF REPORT OPERATORS TO JURISDICTION IN IDENTICAL CIRCUMSTANCES

Rip-off Report is a popular website that has been in existence for approximately five years. There are over 120,000 reports posted on Rip-off Report. The website is a forum for complaining about unfair business practices. As a result, other courts have had occasion to look at the issue of jurisdiction in this very same context.

In a virtually identical factual context where the previous operator of this very website was accused of defamation and extortion in Wisconsin, the United States District Court published a decision in which it dismissed the action pursuant to the due process clause.² *Hy Cite Corporation v. badbusinessbureau.com, LLC.*, 297 F. Supp.2d 1154 (W.D. Wis. 2002). In *Hy Cite*, as here, the Plaintiff claimed that Xcentric's predecessor published defamatory statements on the website. The *Hy Cite* Court noted that for jurisdiction to attach, the contacts between the defendant and the forum state may not be "random, isolated, or fortuitous." *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774, 104 S.Ct. 1473, 79 L.Ed.2d 790 (1984). Instead, "the sufficiency of the contacts is measured by the defendant's purposeful acts." *NUCOR Corp.*

²This website is the subject of multiple lawsuits because it is a forum in which consumers complain about deceptive business practices, prompting businesses to threaten and file lawsuits to try to force the removal of negative information. This is an additional reason that this matter should be dismissed. If Xcentric is subject to jurisdiction in every state where the website is viewed, the financial hardship would be extreme.

v. Aceros Y Maquilas de Occidente, S.A. de C.V., 28 F.3d 572, 580 (7th Cir. 1994). The minimum contacts with the forum state must be the result of the defendant's purposefully availing itself of the privilege of conducting business in the forum state, thereby invoking the protections and benefits of the forum state's law. *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958); *International Medical Group, Inc. v. American Arbitration Ass'n, Inc.*, 312 F.3d 833, 846 (7th Cir.2002). The *Hy Cite* court held:

Plaintiff fails to allege any facts demonstrating that defendant expressly aimed its activities at Wisconsin. The facts of record do not indicate that defendant creates the text of the consumer complaints. It is the *consumers* that are using plaintiff's name and making allegedly defamatory statements. If defendant is not creating the text, then defendant is not purposefully directing its activities toward any particular company or state.

297 F.Supp.2d at 1165-1166.

Here, as in *Hy Cite*, the evidence is that consumers wrote the complaints on the website, not Xcentric. Thus, Xcentric is not purposefully directing its activities toward any particular company or state.

The *Hy Cite* court further noted that the Plaintiff failed to show that it suffered the brunt of its injury in Wisconsin. The court rejected the contention that just because Plaintiff has its principal place of business in a state, its injury is in that state:

When an injured party is an individual, it is reasonable to infer that the brunt of the injury will be felt in the state in which he or she resides. This is not necessarily the case when the injured party is a corporation. "A corporation does not suffer harm in a particular geographic location in the same sense that an individual does." *Core-Vent Corp. v. Nobel Industries AB*, 11 F.3d 1482, 1486 (9th Cir.1993). *Calder*, 465 U.S. at 789, 104 S. Ct. 1482, still requires that the harm be particularized to the forum state, *see Janmark* 132 F.3d at 1202. Even if a corporation has its principal place of business in the forum state, it does not follow necessarily that it makes more sales in that state than any other or that harm to its reputation will be felt more strongly in that state.

297 F.Supp.2d at 1167.

Here, as in *Hy Cite*, Plaintiff must make a showing that it suffered the brunt of its injury in Florida. Plaintiff's own Complaint, however, states that it has had "nationwide success." (Complaint, page 4). It cannot show that it suffered the brunt of its injury in Illinois.

Further, the Illinois state court in *Steven G. English v. Mary Zwiefelhofer, Xcentric Ventures, et al.*, Case No. 04 LA 190 (McHenry County, Illinois) recently ruled that there is no jurisdiction in Illinois over Xcentric Ventures, LLC in a matter in which an Illinois lawyer sued for defamation as a result of a complaint posted on the Rip-off Report about the doctor. (See Exhibit B).

Additionally, Ohio and Florida courts have declined to exercise jurisdiction over the operator of Rip-off Report in unpublished decisions.

IV. CONCLUSION

For all of the foregoing reasons, Defendants request that this case be dismissed because this Court lacks jurisdiction over the Defendants.

XCENTRIC VENTURES, LLC

By: 

One of Its Attorneys

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**GEORGE S. MAY INTERNATIONAL
COMPANY,**

Plaintiffs,

CASE NO. 04C 6018

**(Assigned to the Honorable
Judge Norgle)**

vs.

**XCENTRIC VENTURES, LLC,
RI-POFF REPORT.COM,
BADBUSINESSBUREAU.COM,
ED MAGEDSON, VARIOUS
JOHN DOES, JANE DOES AND ABC
COMPANIES,**

Defendants.

DECLARATION OF ED MAGEDSON

I, Edward Magedson, declare the following to be true under penalty of perjury:

1. I am personally familiar with the day to day operations of Xcentric Ventures, LLC.
2. Xcentric is a limited liability company organized and existing under the laws of Arizona.
3. Xcentric's place of business is Arizona.
4. Xcentric does not own any assets in Illinois, or have any offices or employees in the state.



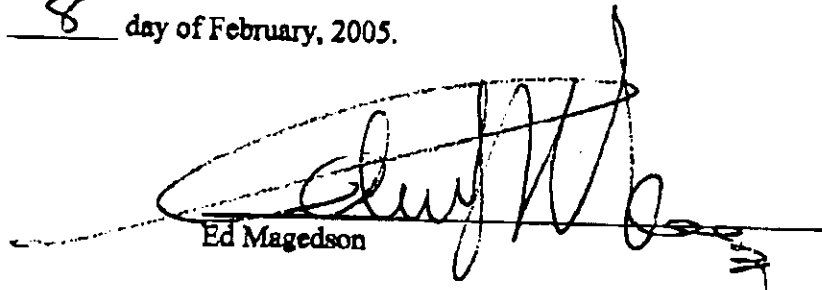
5. Xcentric does not do business with or within the State of Illinois. Xcentric operates a website, "The Rip-Off Report," located at www.badbusinessbureau.com and at www.ripoffreport.com.

6. The website is hosted by Sterling Network Services, LLC.

7. Sterling is an Arizona company whose servers are located in Arizona.

8. No agent of Xcentric authored the reports posted about George S. May International Company on the Rip-Off Report.

DATED this 8 day of February, 2005.



Ed Magedson

1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF McHENRY)

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4 IN THE NINETEENTH JUDICIAL CIRCUIT
5 McHENRY COUNTY, ILLINOIS

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6 Steven G. English,)
 Plaintiff;)

7

vs.)

04 LA 190

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8 Mary Zwiefelhofer, et. al.,)
9 Defendants.)

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11 EXCERPT OF REPORT OF ELECTRONICALLY
12 RECORDED PROCEEDINGS had at the hearing
13 of the above-entitled cause, before the Honorable
14 Michael T. Caldwell, Judge of said Court, on
15 Wednesday, the 2nd day of February, A.D. 2005.

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17 APPEARANCES:

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Baudin & Baudin,
By: Mr. W. Randal Baudin,
representing the Plaintiff;

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Ms. Sara Cook,
representing the defendant,
Mary Zwiefelhofer;

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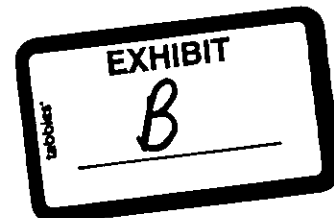
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Ms. Katherine Haennicke,
appearance (Unintelligible).

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Sandra K. Gardner, C.S.R., 084-001984
Official Court Reporter
2200 North Seminary Avenue
Woodstock, IL 60098



1 RESUMING:

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3 THE COURT: The motion of Xcentric Ventures,
4 L.L.C., to dismiss for lack of personal jurisdiction
5 is allowed.

6 The court finds there are not the requisite
7 minimum contacts with the State of Illinois to
8 (Unintelligible) jurisdiction and that Internet
9 access in and of itself alone is not sufficient to do
10 that (Unintelligible) specific finding I want in the
11 order.

12 Second amended complaint is stricken.

13 I notice that when you repleaded the
14 complaint, you repleaded also a cause of action
15 alleging or requesting a preliminary injunction and a
16 permanent injunction. I've already ruled on that;
17 haven't I?

18 MR. BAUDIN: At the time we were going to have
19 one but we were going to notice it up for
20 (Unintelligible) --

21 THE COURT: Didn't I deny that on its merits?

22 MR. BAUDIN: Yeah, we asked for a temporary
23 restraining order hearing --

24 THE COURT: And I denied that on its merits.

1 MR. BAUDIN: Yes.

2 THE COURT: The reason I denied it was?

3 MR. BAUDIN: Well, I don't --

4 THE COURT: Because money isn't (Unintelligible)
5 -- you have an adequate remedy at law. I'm not going
6 to let you refile that.

7 MR. BAUDIN: Okay.

8 THE COURT: I'll let you refile it, say a third
9 amended complaint.

10 I'm going to deny your motion, Ms. Cook, as
11 to the allegations with respect to -- let me be
12 specific about this -- ripoff, dishonest and
13 unethical behavior.

14 It is allowed as to the allegations -- you
15 already contest that -- it's allowed as to the
16 allegations regarding complaints to the A.R.D.C.,
17 which, of course -- they're exempt, they're
18 privilege, and complaint to the Better Business
19 Bureau, which, likewise, falls in the same category.

20 I believe, however, whether or not those
21 can be read -- even read innocently is a sole
22 question of fact.

23 You will be required then to answer that
24 complaint within twenty-eight days after it's filed.

1 Now, where are we with the rest of this
2 case?

3 MR. BAUDIN: Basically that's where we are.
4 We've had some communications with both
5 (Unintelligible).

6 THE COURT: Set it then for a sixty-day status.
7 Make it on April 6.

8 MR. BAUDIN: Judge, would it be appropriate,
9 because you read very precise words here, we don't
10 want to get it wrong. Maybe we should order the
11 transcript of that, which won't be very expensive.
12 Take maybe, you know, a week or something to get it.
13 Then we can have our orders comply with that. Would
14 that be possible?

15 THE COURT: That's fine.

16 MR. BAUDIN: If I come back, if that helps enter
17 it --

18 MS. HAENNICKE: I would also just like for
19 clarification, we represent (Unintelligible) and Ed
20 Magedson.

21 THE COURT: That's right. That's allowed as to
22 both of them.

23 MS. HAENNICKE: Thank you.

24 MS. COOK: Your Honor, I have one clarifying

1 question. You identified specific comments in this
2 complaint that you are not going to grant my motion.
3 What about the balance of the comments? Are they all
4 still in or --

5 THE COURT: They're all still in and they're all
6 going to have to be in because they're going to have
7 to be in simply because you're using the balance of
8 the comments as a defense.

9 MS. COOK: Okay. That's fine. I just wanted to
10 make sure we were --

11 MR. BAUDIN: May we ask --

12 THE COURT: You want a finding?

13 MS. COOK: Pardon?

14 THE COURT: Do you want a finding?

15 MS. COOK: Do I want a finding --

16 THE COURT: Do you want an appealable finding?

17 MS. COOK: Yes, why don't we put that in there.
18 That would be good.

19 THE COURT: At this juncture because I'm
20 essentially (Unintelligible) the Internet provider.

21 MR. BAUDIN: May I ask one other thing? If
22 maybe we could come back in ten days or fourteen
23 days, I'll --

24 THE COURT: Prepare an order.

1 MR. BAUDIN: To prepare an order. Then we'll
2 get the transcript.

3 THE COURT: All right. Continue the case then
4 -- put in the status date of April 6 but also
5 continue it to the 16th.

6 MS. COOK: Okay. Great.

7 MR. BAUDIN: Both at nine?

8 THE COURT: Yes.

9 MR. BAUDIN: Thank you.

10 MS. COOK: Thank you, Judge.

11 MS. HAENNICKE: Thank you.

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13 (Which was and is a partial
14 Report of Electronically
15 Recorded Proceedings had at
16 the hearing of said cause.)

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1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF McHENRY)

3 IN THE NINETEENTH JUDICIAL CIRCUIT
4 McHENRY COUNTY, ILLINOIS

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6 I, Sandra Gardner, an Official Court
7 Reporter for the Circuit Court of McHenry County,
8 Nineteenth Judicial Circuit of Illinois, do hereby
9 certify that, to the best of my ability, the
10 foregoing is a true and accurate transcript prepared
11 by me of the electronically recorded testimony and
12 proceedings in the above-entitled cause, which
13 recording contained a certification in accordance
14 with rule or administrative order.

11
12 Sandra Gardner CSR
13 Sandra Gardner, C.S.R.
14 Official Court Reporter
084-001984

15 Dated this 3 day
16 of Feb, 2005.

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1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF MCHENRY)

3 IN THE NINETEENTH JUDICIAL CIRCUIT
4 MCHENRY COUNTY, ILLINOIS

5 AND, FORASMUCH, THEREFORE, as the matters
6 and things herein before set forth do not otherwise
7 appear on the record, the petitioner tenders this,
8 Report of Proceedings, and prays that the same may
9 be signed and sealed by the Judge of this Court
before whom said cause was heard.

10 WHICH IS, ACCORDINGLY, DONE on the day and
11 date of the entry of the Decree herein.

12 _____
Judge of the 19th Judicial
Circuit of Illinois

13 Dated this _____ day
14 of _____, 20____.

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