

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JEREMY SCHOEMAKER,	)	
	)	Case No. 8:09cv441
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S OBJECTION TO
	)	DEFENDANT'S MOTION FOR LEAVE
DAVID SULLIVAN, individually and	)	TO FILE THIRD BRIEF IN SUPPORT OF
d/b/a BIG BLUE DOTS,	)	MOTION TO DISMISS
	)	
Defendant.	)	

Plaintiff hereby objects to the relief requested in Defendant's Motion for Leave to File a Response to Plaintiff's Sur-Reply Brief (Filing No. 25). Plaintiff did not raise any new issues in his Sur-Reply Brief (Filing No. 24), which was merely submitted in response to the argument in Defendant's Reply Brief that the Defendant did not submit himself to the jurisdiction of Nebraska courts by directing his scam at victims in multiple states, including Nebraska. (See Defendant's Reply Brief, Filing No. 20). Thus, no new issues were raised in the Sur-Reply Brief, and the filing of a fifth brief in connection with Defendant's Motion to Dismiss is not appropriate.

In addition, Defendant mischaracterizes Plaintiff's argument in Defendant's proposed supplemental brief. Contrary to Defendant's brief, Plaintiff does not argue that a defendant is subject to personal jurisdiction in every state where the defendant directs any of its activities; Plaintiff acknowledges there must be intentional misconduct involved in defendant's activities, with an intent to cause harm in that state, before personal jurisdiction may be proper. If a defendant commits intentional misconduct, such as the

scam promoted by Defendant in this case, and directs that misconduct/scam at consumers in multiple states with knowledge that harm will be caused in each of those states, the Defendant has subjected himself to jurisdiction in those states. There is nothing unfair about holding a defendant accountable in Nebraska when the defendant intended to defraud Nebraska consumers. It is telling that in Defendant's two affidavits and three briefs filed in support of his Motion to Dismiss, Defendant Sullivan has never denied his involvement in the intentional scam directed at consumers in Nebraska and other states. The Defendant asks the Court to ignore the fact that he directed substantial harm at Nebraska consumers, and deny jurisdiction based on the fact that he also intended to harm consumers in other states. Defendant's position is illogical.<sup>1</sup>

It is also worth noting the Defendant's proposed supplemental brief addresses only one of the two bases for personal jurisdiction in this case. The first basis for jurisdiction is that the Defendant knew the Plaintiff and knew he would cause harm to the Plaintiff in Nebraska by using Plaintiff's photograph to promote his scam. Defendant's familiarity with Plaintiff is evident from facts such as their attendance at the same industry events, Defendant's visits to Plaintiff's web sites, Defendant's statement to Ralph Ruckman that he knew exactly who Plaintiff was, and Defendant's e-mails to Plaintiff wherein he referred to Plaintiff by his industry-known nickname. It is also not a mere coincidence that the Defendant was using Plaintiff's photograph, which is well-known in industry circles and commonly associated with making money on the internet, to promote a scam purporting to

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<sup>1</sup> Taking Defendant's argument to its logical conclusion, if a tortfeasor directed its intentional misconduct at the Omaha/Council Bluffs area, the defendant would not be subject to personal jurisdiction in Nebraska *or* Iowa because the misconduct was directed at multiple states and was not aimed at a single state. Adopting this argument would allow tortfeasors to avoid personal jurisdiction everywhere but their home state simply by targeting victims in more than one state. Foreign defendants could avoid jurisdiction everywhere in the United States. Requiring a defendant to respond to a suit in a state where the defendant intended to deceive consumers and cause harm, and intended to induce commercial activity, does not offend traditional notions of "fair play and substantial justice."

enable people to make money on the internet. One industry observer made this point quite well when he posted a copy of Defendant's infringing advertisement and commented on Defendant Sullivan's choice to use Plaintiff's photograph in the advertisement:

**For those in the internet advertising space, the shot on the left should look familiar. It is a smaller version of one of the most widely viewed photos in affiliate marketing, Jeremy Schoemaker holding a check from Google for \$132,994.97. . . At some level, the choice to use ShoeMoney almost makes sense. Here is a man whose life epitomizes the Web Dream. He even runs a conference series where individuals pay hefty sums to spend time with him and a select group of others in order to learn how to make money online. So, if one were to craft a campaign about making money online, why not pay homage to the person who has done it as well as anyone?"**

See Filing No. 18-3, p. 11 (emphasis added). In other words, Defendant Sullivan, who works in the internet advertising industry and has even attended industry events where Plaintiff was a featured speaker, knew exactly what he was doing when he chose to use a photograph of Plaintiff to promote his offer about making money online. Defendant's knowledge that he would be harming Plaintiff by using Plaintiff's photograph to promote the scam is a separate and distinct basis for jurisdiction than the argument raised in Defendant's proposed third brief, *i.e.*, whether Defendant's intentional promotion of a scam in multiple states subjects Defendant to jurisdiction in each of those states, including Nebraska.

For the reasons stated herein and in the multiple briefs previously filed in response to Defendant's Motion to Dismiss, Plaintiff respectfully requests an Order denying Defendant's Motion for Leave and denying Defendant's Motion to Dismiss, and allowing this Nebraska plaintiff to proceed with this action.

Dated this 20th day of March, 2010.

Respectfully submitted,

JEREMY SCHOEMAKER, Plaintiff

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 20, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the counsel listed below:

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