

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION

Heartbrand Beef, Inc.,

Plaintiff,

v.

Lobel's of New York, LLC &  
Worldwide Media, Inc.

Defendants.

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CIVIL ACTION NO.  
6:08-cv-00062

**WORLDWIDE MEDIA, INC.'S MOTION TO DISMISS AMENDED  
COMPLAINT FOR FOR LACK OF PERSONAL JURISDICTION  
PURSUANT TO FED. R. CIV. P. 12(B)(2); OR, IN THE ALTERNATIVE,  
MOTION TO DISMISS AMENDED COMPLAINT FOR IMPROPER VENUE  
PURSUANT TO FED. R. CIV. P. 12(B)(3); OR, IN THE ALTERNATIVE,  
MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1406(a)**

Worldwide Media, Inc. ("Worldwide"), Defendant, pursuant to Federal Rule of Civil Procedure 12(b)(2), requests that the Court dismiss the Amended Complaint of Heartbrand Beef, Inc. ("Heartbrand") for lack of personal jurisdiction; or, in the alternative, pursuant to Federal Rule of Civil Procedure 12(b)(3), dismiss Heartland's claim because of improper venue; or, in the alternative, pursuant to 28 U.S.C. § 1406(a), transfer the venue of this lawsuit to the Southern District of Florida.

These Motions are supported by the Affidavit of Michael H. Berkens, which is attached as Exhibit "A," and Worldwide's Memorandum of Law, filed concurrently, both of which are incorporated by reference. A proposed order is attached to these Motions.

Worldwide Media, Inc., Defendant, respectfully requests that this Court dismiss the Amended Complaint of Heartland Beef, Inc., Plaintiff, for lack of personal jurisdiction; or, in the alternative, dismiss the Amended Complaint for improper venue; or, in the alternative, transfer

venue in this lawsuit to the Southern District of Florida; and grant it whatever other and further relief as the Court deems just, equitable and proper.

Respectfully submitted,

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By: /s/ C. David Kinder

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Attorneys for Defendant,  
Worldwide Media, Inc.

### **CERTIFICATE OF CONFERENCE**

I certify that counsel for Worldwide Media, Inc. conferred in good faith with counsel for Heartbrand Beef, Inc. regarding Worldwide Media, Inc.'s Motions. Counsel for Heartbrand Beef, Inc. opposes these Motions. Therefore, these Motions are presented to the Court for determination.

/s/ C. David Kinder

C. David Kinder

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of October, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record:

Ted D. Lee  
Gunn & Lee, P.C.  
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Counsel for Plaintiff

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Counsel for Defendant Thought Convergence, Inc.

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Chicago, Illinois 60611-5599  
Counsel for Defendant Yahoo! Inc.

I certify that a true and correct copy of Worldwide Media, Inc.'s Memorandum in Support of Motion to Dismiss has been delivered to the following counsel of record on the 10th day of October, 2008:

Randolph Wolfe  
Foley & Lardner LLP  
100 North Tampa Street, # 2700  
Tampa, Florida 33602  
Counsel for Defendant Worldwide Media, Inc.

*Via Facsimile #(813) 221-4210 and  
Certified Mail, RRR*

Gregg S. Baker, Attorney-in-Charge  
New York State Bar No. 2223196  
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1311 Mamaroneck Avenue, #215  
White Plains, New York 10605  
Counsel for Defendant Lobel's of New York, LLC

*Via Facsimile #(914) 468-0199 and  
Certified Mail, RRR*

/s/ C. David Kinder

C. David Kinder  
Dan Harkins

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION

HEARTBRAND BEEF, INC.,

Plaintiff,

v.

LOBEL'S OF NEW YORK, LLC,  
WORLDWIDE MEDIA, INC., THOUGHT  
CONVERGENCE, INC. and YAHOO! INC.

Defendants.

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**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS**

On this day came to be considered Defendant, Worldwide Media, Inc.'s, Motion to Dismiss for Lack of Personal Jurisdiction. The Court, having considered the Motion and response thereto, and having reviewed the file herein, is of the opinion that the Motion should be granted.

It is therefore ORDERED, ADJUDGED and DECREED that the Motion to Dismiss for Lack of Personal Jurisdiction is granted.

Signed and entered this \_\_\_\_ day of \_\_\_\_\_, 2008.

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UNITED STATES DISTRICT JUDGE