

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**GRAND SLAM CLUB/OVIS, an  
Alabama corporation,**

**Plaintiff,**

**v.**

**Case No.: 2:06-CV-4643-VEH**

**INTERNATIONAL SHEEP  
HUNTERS ASSOCIATION  
FOUNDATION, INC., a former  
California corporation sometimes  
doing business as ISHA; and  
FOUNDATION FOR NORTH  
AMERICAN WILD SHEEP, an  
Iowa corporation sometimes  
doing business as FNAWS,**

**Defendants.**

**ORDER**

**I. INTRODUCTION**

The court has before it Defendants International Sheep Hunters Association Foundation, Inc. and Foundation for North American Wild Sheep's (collectively, the "Foundation") Special Limited Appearance and Motion to Dismiss for Lack of Personal Jurisdiction (Doc. #6) filed on January 11, 2007. Plaintiff Grand Slam Club/Ovis ("Grand Slam") filed its opposition and supporting evidence (Doc. #10; Doc. #11) on January 23, 2007. The Foundation filed its reply (Doc. #12) on January

29, 2007. Because the court concludes that Grand Slam has established specific jurisdiction over the Foundation, the Foundation's Motion to Dismiss for Lack of Personal Jurisdiction is due to be denied.

## II. ANALYSIS

### A. Personal Jurisdiction Generally

Grand Slam has the burden of establishing that personal jurisdiction over the Foundation exists. *See LaSalle Bank N.A. v. Mobile Hotel Properties, LLC*, 274 F. Supp. 2d 1293, 1296 (S.D. Ala. 2003). In *Madara v. Hall*, 916 F.2d 1510, 1514 (11th Cir. 1990), the Eleventh Circuit described the framework for evaluating personal jurisdiction challenges under Rule 12(b)(2) of the Federal Rules of Civil Procedure:

When a district court does not conduct a discretionary evidentiary hearing on a motion to dismiss for lack of jurisdiction, the plaintiff must establish a prima facie case of personal jurisdiction over a nonresident defendant. *Morris v. SSE, Inc.*, 843 F.2d 489, 492 (11th Cir.1988). A prima facie case is established if the plaintiff presents enough evidence to withstand a motion for directed verdict. *Id.* The district court must accept the facts alleged in the complaint as true, to the extent they are uncontroverted by the defendant's affidavits. *Id.* Finally, where the plaintiff's complaint and the defendant's affidavits conflict, the district court must construe all reasonable inferences in favor of the plaintiff. *Id.*

The determination of personal jurisdiction over a nonresident defendant requires a two-part analysis. *Cable/Home Communication Corp. v. Network Productions, Inc.*, 902 F.2d 829, 855 (11th Cir.1990); *Alexander Proudfoot Co.*, 877 F.2d at 919. First, we consider the jurisdictional question under the state long-arm statute. *Cable/Home*

*Communication Corp.*, 902 F.2d at 855; *Alexander Proudfoot Co.*, 877 F.2d at 919. If there is a basis for the assertion of personal jurisdiction under the state statute, we next determine whether sufficient minimum contacts exist to satisfy the Due Process Clause of the Fourteenth Amendment so that “maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’ ”

*Id.* (citations omitted).

Because Alabama’s long-arm provision “authorizes the assertion of personal jurisdiction to the limits of the United States Constitution,” Grand Slam may carry its burden “by demonstrating that personal jurisdiction over the Defendant meets the requirements of federal due process. Due process requires that the Defendant have ‘certain minimum contacts’ with the forum state and, second that the exercise of jurisdiction over the Defendant does not offend ‘traditional notions of fair play and substantial justice.’ ” *LaSalle Bank*, 274 F. Supp. 2d at 1297; *see Consolidated Development Corp. v. Sherritt, Inc.*, 216 F.3d 1286, 1291 (11th Cir. 2000).

A plaintiff can either establish general or specific jurisdiction over the Defendant to show personal jurisdiction exists. *See, e.g., International Shoe Co. v. Washington*, 326 U.S. 310 (1945) (detailing contours of appropriate and inappropriate exercise of personal jurisdiction); *see also Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 nn.8-9 (1984) (acknowledging scholarly distinction made between exercise of “specific” and “general” jurisdiction). To establish general

jurisdiction over a defendant, a plaintiff must demonstrate that the defendant's connection with the forum state is "continuous and systematic." *LaSalle Bank*, 274 F. Supp. 2d at 1297; *see also Sherritt*, 216 F.3d at 1292. To constitute minimum contacts for the purposes of specific jurisdiction:

[A] defendant's contacts with the applicable forum must satisfy three criteria: first, the contacts must be related to the plaintiff's cause of action or have given rise to it; second, the contacts must involve some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum, thus invoking the benefits and protections of its laws; and third, the contacts must be such that the defendant should reasonably anticipate being haled into court in the forum.

*LaSalle Bank*, 274 F. Supp. 2d at 1297; *see also Sherritt*, 216 F.3d at 1291.

**B. The exercise of specific jurisdiction over the Foundation is proper.<sup>1</sup>**

**1. Satisfaction of Minimum Contacts Criteria**

Grand Slam has established specific personal jurisdiction over the Foundation because the record contains sufficient evidence that the Foundation has a series of contacts with Alabama that significantly relate to the nature of the dispute pending before this court. "[W]hile several contacts are present in this case, a single act can

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<sup>1</sup>Having determined that the exercise of specific jurisdiction is appropriate, the court does not address whether Grand Slam has established general personal jurisdiction over the Foundation. *See generally Helicopteros Nacionales*, 466 U.S. 408 (evaluating nature of continuous and systematic contacts or presence and concluding that nonresident corporation's minimal and unrelated contacts with forum state are insufficient to satisfy due process requirements).

be sufficient to satisfy the minimum contacts test, even an act that occurs outside the forum [if the act] . . . bear[s] a significant relationship to the cause of action.” *Delong Equipment Co. v. Washington Mills Abrasive Co.*, 840 F.2d 843, 851 n.10 (11th Cir. 1988).

Moreover, the nature and quality of these direct contacts with the forum state are such that the Foundation reasonably could anticipate being haled into court in this state. *See Alfa Corp v. Alfagress, S.A.*, 385 F. Supp. 2d 1230, 1235-36 (M.D. Ala. 2005) (“[T]he use of a trademark with knowledge of the infringement constitutes intentional tortious wrongdoing such that the alleged infringer could reasonably anticipate being haled into court in the state where the effects of the infringement are felt.”) (citing *Calder v. Jones*, 465 U.S. 783, 790 (1984) (establishing the “effects” jurisdictional test: “An individual injured in California need not go to Florida to seek redress from persons who, though remaining in Florida, knowingly cause the injury in California.”)); *cf. Shaffer v. Heitner*, 433 U.S. 186, 216 (1977) (“Appellants have simply had nothing to do with the State of Delaware. Moreover, appellants had no reason to expect to be haled before a Delaware court.”).

First, the record, taken in a light most favorable to Grand Slam, reflects that, prior to the instigation of this infringement lawsuit, Ray Lee, the President of the Foundation, came to Alabama to “negotiate an agreement regarding use of [Grand

Slam's] trademarks." (Doc. #11 ¶ 9).<sup>2</sup>

Second, after this initial meeting and other subsequent discussions, the Foundation and Grand Slam entered into "An Agreement of Goodwill" (the "Agreement") effective June 13, 2005, which addressed, *inter alia*, Grand Slam's trademark filing number 78-462159,<sup>3</sup> and the creation of a satisfactory license use agreement of it for the Foundation. (Doc. #11 ¶ 9 at Ex. B). The Agreement also acknowledges the "Intellectual Property" rights of the parties and the need "to request permission" for use of the same. (*Id.*) Trademark filing number 78-462159, as well as other intellectual property rights, is at issue in this case. (*See, e.g.*, Doc. #1 ¶ 19).

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<sup>2</sup>In its reply, the Foundation includes a statement of Ron Pomeroy, which while acknowledging that Mr. Lee did meet with Grand Slam in Alabama once under his direction, disagrees that the meeting was related to any disputed marks, and suggests instead that the purpose was to address "other business[.]" (Doc. #12 at Pomeroy Statement ¶ 5). Concerning this statement, the court first notes that it has not been notarized nor sworn to under penalty of perjury. Accordingly, the statement is not in an acceptable format and accordingly is inadmissible. Second, Mr. Pomeroy's statement does not describe what actually took place at the Alabama and outside of Alabama meetings. Instead, it indicates only what he understood the purpose of the various meetings to be. Third, the last paragraph of Mr. Pomeroy's statement is unclear as to the use and meaning of "primarily." Fourth, any contradicted fact, for the purpose of personal jurisdictional analysis, must be construed in favor of the non-movant. Therefore, for a multitude of reasons, the statement fails to support the Foundation's Motion to Dismiss for Lack of Personal Jurisdiction.

<sup>3</sup>According to Grand Slam's complaint, U.S. Trademark Application Serial No. 78-462179 relates to the trademark Grand Slam of North American Wild Sheep. (Doc. #1 ¶ 19).

Third, the Foundation has mailed membership materials and advertisements to residents within Alabama that Grand Slam maintains contain confusing and infringing information. (Doc. #11 ¶ 8; Doc. #11 at Ex. A). In light of these connected categories of contacts (*i.e.*, (1) traveling to Alabama for the purpose of addressing the parties' intellectual property rights; (2) negotiating with an Alabama corporation for the purpose of refining the scope of the parties' intellectual property rights; entering into the Agreement with an Alabama corporation for the purpose of solidifying the parties' understanding as to use and protection of their intellectual property rights; and (4) sending membership materials and advertisements to residents of Alabama that were allegedly in contravention of the Agreement reached between the parties as to the use and protection of intellectual property rights), a sufficient nexus with Alabama and the pending litigation exists such that the minimum contracts criteria are satisfied.

## **2. Satisfaction of the Fair Play and Substantial Justice Requirement**

“In evaluating whether the exercise of jurisdiction comports with fair play and substantial justice, the court must consider such factors as (1) the burden on the defendant, (2) the forum State's interest in adjudicating the dispute, (3) the plaintiff's interest in obtaining convenient and effective relief, (4) the interstate judicial system's

interest in obtaining the most efficient resolution of controversies, and (5) the shared interest of the several States in furthering fundamental substantive social policies.” *Alfa Corp.*, 385 F. Supp. 2d at 1237 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-76 (1985)). “[G]iven that [Grand Slam] has alleged intentional trademark infringement, [the Foundation] must present a ‘compelling case’ that other factors render this court’s exercise of jurisdiction offensive to fair play and substantial justice, notwithstanding minimum contacts.” *Id.*

The bulk of the Foundation’s brief in support of its Motion to Dismiss for Lack of Personal Jurisdiction focuses upon facts which demonstrate its lack of a continuous and systematic presence in Alabama. (*See, e.g.*, Doc. #7 at 12 (“Plaintiffs [sic] are unable to demonstrate facts that would support a conclusion that [the Foundation is] engaged in continuous and systematic business contacts with the state of Alabama such that they are subject to general jurisdiction there.”)). However, the lack of a continuous and systematic presence, even if so established, does not translate into a “compelling case” against the exercise of jurisdiction due to the fair play and substantial justice requirement when specific jurisdiction is at issue.

As it pertains to the fair play and substantial justice requirement more directly, the Foundation discounts the impact that its conduct has had on residents of Alabama because its alleged actions “overwhelmingly affect people living outside of Alabama”

and maintains that “Alabama has no interest in this matter other than the fact that Plaintiff is a resident of the state.” (Doc. #7 at 13). Simply because another state may have a greater number of residents affected by the Foundation’s activities does not render Alabama’s interest in adjudicating the dispute meaningless. Also, the residency of Grand Slam within Alabama is a critical factor for the court to consider as part of the fair play and substantial justice analysis involves Grand Slam’s interest in obtaining convenient and effective relief.

Moreover, the Foundation has failed to show how litigating in Alabama will cause it a substantial burden or undue hardship. To the contrary, the Foundation has already voluntarily traveled to Alabama and entered into the Agreement with Grand Slam prior to the initiation of this lawsuit. “The fact that [the Foundation] is a foreign [or non-Alabama] corporation whose headquarters are in [Cody, Wyoming] does nothing to persuade the court that it would be unfair for it to exercise personal jurisdiction in this case. Holding otherwise would be tantamount to allowing foreign corporations to evade the consequences of committing intentionally wrongful acts in this jurisdiction.” *Alfa Corp.*, 385 F. Supp. 2d at 1237.

Therefore, the Foundation has failed to present a compelling argument that the exercise of specific personal jurisdiction would offend constitutional notions of fair play and substantial justice. Accordingly, the Foundation’s Motion to Dismiss for

Lack of Personal Jurisdiction is due to be denied.

### III. CONCLUSION

As analyzed above, the exercise of specific jurisdiction over the Foundation is consistent with both the minimum contacts criteria and also the fair play and substantial justice requirement. Accordingly, the Foundation's Motion to Dismiss for Lack of Personal Jurisdiction is **HEREBY DENIED**. The Foundation is **ORDERED** to respond to Grand Slam's complaint within ten (10) days from the entry date of this order.

**DONE** and **ORDERED** this 31st day of January, 2007.



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**VIRGINIA EMERSON HOPKINS**  
United States District Judge