IP 04-0063-C T/K Speedster Motorcars v Ospeck
Judge John D. Tinder Signed on 10/6/04

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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| SPEEDSTER MOTORCARS OF CENTRAL FLORIDA, INC., SPEEDSTER MOTORCARS, | ) | |
| Plaintiffs, | ) | |
| vs. | ) | NO. 1:04-cv-00063-JDT-TAB |
| MATTHEW OSPECK, | ) | |
| Defendant. | ) | |

UNITED STATES DISTRICT COURT
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| SPEEDSTER MOTORCARS OF CENTRAL FLORIDA, INC., d/b/a SPEEDSTER MOTORCARS, | ) | |
| Plaintiff, | ) | |
| vs. | ) | 1:04-cv-00063-JDT-TAB |
| MATTHEW OSPECK, an individual, | ) | |
| Defendant. | ) | |

**ENTRY ON DEFENDANT OSPECK'S MOTIONS TO DISMISS (DOCKET NO. 18)**[1]

Plaintiff Speedster Motorcars of Central Florida, Inc., doing business as Speedster Motorcars ("Speedster"), brings this declaratory judgment action against Defendant Matthew Ospeck ("Ospeck"), an individual. Speedster seeks a declaration that it has not committed trade dress infringement, trademark infringement, trademark dilution, copyright infringement, or unfair competition, as well as a declaration that certain trademarks allegedly owned by Ospeck are invalid. Ospeck filed Motions to Dismiss for lack of personal jurisdiction (dkt. no. 18) and lack of venue (dkt. no. 20), and also moved in the alternative to have this case transferred to the Northern District of California (dkt. no. 20), where a similar cause of action filed by Ospeck against

[1] This Entry is a matter of public record and may be made available to the public on the court's web site, but it is not intended for commercial publication either electronically or in paper form. Although the ruling or rulings in this Entry will govern the case presently before this court, this court does not consider the discussion in this Entry to be sufficiently novel or instructive to justify commercial publication or the subsequent citation of it in other proceedings.

Speedster is currently pending. This Entry will address Ospeck's Motions to Dismiss (dkt. nos. 18, 20).

## I. Background

In 2001, Defendant Ospeck and several associates founded Build-To-Order, Inc. ("BTO"), a new type of automobile company that hopes to sell built-to-order automobiles directly to consumers. (Ospeck Dep. at 6-8.) Ospeck remains a shareholder of BTO, and has board-of-director privileges as an observer. (*Id*. at 7-8.) In August 2002, BTO purchased an Auburn trademark registration and possibly other alleged rights from Mr. Glen Pray, a classic auto enthusiast who manufactured Auburn automobile replicas. (Compl. ¶¶ 15-19; Ospeck Dep. at 38.) At the same time, Ospeck in his individual capacity purchased or was assigned all of BTO's interests in the Auburn trademark through a simultaneous transaction that left BTO with a license to use the Auburn mark in its automobile manufacturing business. (Ospeck Dep. at 40-41.) As a result, Ospeck is now the licensor and BTO a licensee of the Auburn mark. (*Id*. at 31-33.)

The original Auburn Automobile Company was formed in Auburn, Indiana in 1900. (Compl. Ex. 1.) Starting in 1903, the company thrived for many years and produced thousands of cars before finally ceasing production in 1937. (*Id*.) Then, from the 1970s to the present, the Plaintiff and several other companies began manufacturing Auburn "Speedster" replica automobiles. (Compl. ¶ 12.) Such companies sell and describe their reproduction cars as "replicas," and not as authentic Auburn Automobile Company automobiles. (*Id*. ¶¶ 13, 14.)

Ospeck is a resident of California. (Compl. ¶ 2.) BTO's principal place of business is also located in California. (Ospeck Decl. ¶ 4.) Ospeck has no direct business contacts with Indiana: he has not transacted any business in Indiana, nor has he contracted with anyone on his behalf to market, distribute, or offer to sell any products in Indiana. (*Id*. ¶ 3.)

Speedster is a Florida corporation, having its principal place of business in Clearwater, Florida. (Compl. ¶ 1.) Speedster maintains its corporate headquarters in Indianapolis, Indiana. (Durham Aff. ¶ 2.) From its Indiana headquarters, Speedster executive Tim Durham ("Durham") and others make most of the company's major decisions, including those related to financing, advertising, overall business strategy, and personnel. (*Id*.) Some vehicle sales are conducted in Indianapolis, but Speedster's manufacturing plant and president's office are located in Florida. (*Id*.; Compl. Ex. 8.)

In the fall of 2002, Durham, presently Speedster's sole shareholder, attempted to contact Glen Pray to discuss his Auburn trademark registration. (Durham Aff. ¶ 3.) At the time, Durham was contemplating an investment in Speedster. (Def.'s Reply. Ex. 3.) Pray informed Durham that he had just sold the mark to BTO. (Durham Aff. ¶ 3.) After Durham called BTO to inquire about the Auburn mark, a meeting was arranged between Durham and BTO's president, William Li ("Li"). (*Id*. ¶ 4.) The meeting took place in October 2002 at the Indianapolis airport, at which point the two men discussed whether Durham would be interested in investing in BTO as well as the Auburn trademark registration. (*Id*. ¶ 5.)

The parties dispute the exact nature of the Indianapolis meeting. Durham states that the two men discussed a possible licensing arrangement with respect to the Auburn mark, maintaining that Li gave him the impression that BTO was the owner of the mark. (*Id*.) Durham does not recall Ospeck's name being mentioned, and insists that if the name was mentioned, he would simply have thought it to be that of another member of BTO. (*Id*.)

On the other hand, Li insists that the meeting lasted for only twenty minutes, ninety-eight percent of which he claims pertained solely to BTO's business plan and Durham's possible interest in investing in the company. (Li Dep. at 8-9.) Li states that the Auburn trademark was discussed only briefly, and that after Durham broached the subject he directed him to make all inquiries to Ospeck. (*Id*. at 12.) In sum, Li denies that he made any attempt to secure a licensing arrangement with Durham. (*Id*. at 26-27.)

Following the meeting, in November 2002 Li sent Durham a letter thanking him for his interest in BTO and attempting to solicit an investment in the company. (Def.'s Reply. Ex. 4.) Along with the letter came a BTO stock subscription agreement and BTO business plan. (Pl.'s Resp. Ex. 3.) The BTO business plan and accompanying materials made repeated references to BTO's ownership of the Auburn mark, and did not mention Ospeck's interests. (Durham Aff. ¶ 8.)

Neither Durham nor anyone at Speedster had any contacts with BTO or Ospeck until January 15, 2003. On that date, Ospeck's counsel sent a cease-and-desist letter

to Speedster's Florida office, asserting that Speedster was in violation of Ospeck's intellectual property rights in the Auburn trademark registration and demanding that the company shut down within fourteen days. (Compl. Ex. 8.) Speedster replied through a letter denying any infringement. (Compl. Ex. 9.) Speedster's response was met with a second cease-and-desist letter from Ospeck, this time sent to Speedster's counsel in Indianapolis. (Compl. Ex. 10.) However, in this letter Ospeck's counsel referenced the earlier discussions regarding a possible licensing arrangement between Durham and BTO representatives, and directed all further licensing inquiries to be made solely to Ospeck in order to avoid confusion. (*Id.*) As before, Speedster sent a reply letter in which it denied any infringement. (Compl. Ex. 11.) This response was met by Ospeck's "final" cease-and-desist letter in August 2003, a letter which asserted even more allegedly infringing action on the part of Speedster and implied that Ospeck might bring legal action if Speedster did not cease its operations by September 4, 2003. (Compl. Ex. 12.) Ospeck's deadline eventually came and went with no new developments between the parties.

Approximately one year after receiving the first cease-and desist-letter, Speedster filed this declaratory judgment action on January 12, 2004. The two parties then began a series of settlement negotiations consisting of offers and counteroffers between Speedster's counsel in Indianapolis and Ospeck's counsel in California. (Pl.'s Resp. Ex. 8 (filed under seal).) Talks broke down in April 2004 after Ospeck threatened to bring legal action against Speedster in the Middle District of Florida if Speedster declined to accept his "final offer." (*Id.*) No complaint was ever filed in Florida; rather,

Ospeck eventually brought suit against Speedster in the Northern District of California on May 7, 2004 alleging trademark infringement, trademark dilution, trade dress infringement, unfair competition, and several related causes of action. (*Id*.)

## II. Personal Jurisdiction

### A. Standard of Review

When the issue of personal jurisdiction is determined in the absence of an evidentiary hearing, the plaintiff need only make a *prima facie* showing that the defendant is subject to personal jurisdiction. *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 782 (7th Cir. 2003) (citation omitted). Because Ospeck has raised personal jurisdiction pursuant to a Fed. R. Civ. P. 12(b)(2) motion to dismiss, the allegations in the Plaintiff's complaint must be taken as true unless controverted by the Defendant's affidavits; any conflicts in the affidavits filed by the parties are to be resolved in the Plaintiffs' favor. *Id*.

**B. Discussion**

Jurisdiction exercised on the basis of a federal statute that does not authorize nationwide service of process[2] requires a federal district court to determine if a court of the state in which it sits would have personal jurisdiction. *See ISI Int'l, Inc. v. Borden Ladner Gervais LLP*, 256 F.3d 548, 550 (7th Cir. 2001). Traditionally, this determination would require a two-step inquiry: (1) whether the defendant falls within Indiana's long-arm statute, and (2) whether the exercise of jurisdiction over the defendant comports with the requirements of federal due process. *Purdue Research Found*., 338 F.3d at 779. However, Indiana's long-arm statute, Indiana Trial Rule 4.4(A), now allows state courts to exercise personal jurisdiction to the full extent allowed by the United States and Indiana constitutions.[3] *See id.* at 779 n.9*; see also Richards & O'Neil, LLP v. Conk*,

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[2] None of the federal statutes at issue in this case authorize nationwide service of process. *See* 28 U.S.C. §§ 2201-2202; *ISI Int'l, Inc. v. Borden Ladner Gervais LLP*, 256 F.3d 548, 550 (7th Cir. 2001) (no nationwide service of process under the Lanham Act); *Janmark, Inc. v. Reidy*, 132 F.3d 1200, 1201 (7th Cir. 1997) (no nationwide service of process under the Copyright Act).

[3] Indiana Trial Rule 4.4(a) provides as follows: "Any person or organization that is a nonresident of this state, a resident of this state who has left the state, or a person whose residence is unknown, submits to the jurisdiction of the courts of this state as to any action arising from the following acts committed by him or her or his or her agent:

(1) doing any business in this state;

(2) causing personal injury or property damage by an act or omission done within this state;

(3) causing personal injury or property damage in this state by an occurrence, act or omission done outside this state if he regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue or benefit from goods, materials, or services used, consumed, or rendered in this state;

(4) having supplied or contracted to supply services rendered or to be rendered or

(continued...)

774 N.E.2d 540, 550 n.6 (Ind. Ct. App. 2002) (Najam, J., concurring). As a result, "the first prong of the inquiry collapses into the second prong, and the only issue is whether the exercise of jurisdiction over [the defendant] comports with federal due process." *Litmer v. PDQUSA.com*, 326 F. Supp. 2d 952, 955 (N.D. Ind. 2004), *citing Dainippon Screen Mfg. Co. v. CFMT, Inc*., 142 F.3d 1266, 1270 (Fed. Cir. 1998).

The Federal Circuit, rather than the regional circuits, has appellate jurisdiction over cases that involve a mixture of patent and non-patent counts. 28 U.S.C. § 1295(a) (2000); *see Christianson v. Colt Indus. Operating Corp*., 798 F.2d 1051, 1058 (7th Cir. 1986). As such, the Federal Circuit will apply its own personal jurisdiction law to the patent counts and that of the regional circuit to the non-patent counts. *Silent Drive, Inc. v. Strong Indus., Inc.*, 326 F.3d 1194, 1201 (Fed. Cir. 2003) (citation omitted). Even though the instant case is a declaratory judgment action, this same choice of governing law applies because the Defendant is a patentee. *Red Wing Shoe Co., Inc. v.*

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[3](...continued)
goods or materials furnished or to be furnished in this state;

(5) owning, using, or possessing any real property or an interest in real property within this state;

(6) contracting to insure or act as surety for or on behalf of any person, property or risk located within this state at the time the contract was made;

(7) living in the marital relationship within the state notwithstanding subsequent departure from the state, as to all obligations for alimony, custody, child support, or property settlement, if the other party to the marital relationship continues to reside in the state; or

(8) abusing, harassing, or disturbing the peace of, or violating a protective or restraining order for the protection of, any person within the state by an act or omission done in this state, or outside this state if the act or omission is part of a continuing course of conduct having an effect in this state."

*Hockerson-Halberstadt, Inc*., 148 F.3d 1355, 1358 (Fed. Cir. 1998). Should the Federal Circuit decide under its law that it does not have personal jurisdiction over the Defendant, then this court may nonetheless possess personal jurisdiction over the Defendant as to all counts by virtue of supplemental jurisdiction. *Silent Drive*, 326 F.3d at 1206.

To establish personal jurisdiction, the plaintiff must first demonstrate that there are sufficient "minimum contacts" between the defendant, the current litigation, and Indiana so that it would be "fundamentally fair to require [the defendant] to participate in this litigation and be bound by the judgment of a court sitting in Indiana." *Purdue Research Found*., 338 F.3d at 780. Under this analysis the Plaintiff must show that the Defendant has purposely availed himself of the privilege of conducting activities within the forum state, see *Asahi v. Metal Indus. Co. v. Superior Court of California*, 480 U.S. 102, 108-09 (1987), "such that he should reasonably anticipate being haled into court" in that state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). Such a requirement "ensures that a defendant's amenability to jurisdiction is not based on fortuitous contacts, but on contacts that demonstrate a real relationship with the state with respect to the transaction at issue." *Purdue Research Found*., 338 F.3d at 780 (citation omitted). For the second part of the due process inquiry, the exercise of personal jurisdiction over the defendant must comport with "traditional notions of fair play and substantial justice." *Asahi*, 480 U.S. at 113; *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

When examining the "minimum contacts" element of the due process analysis, the court must look to the number and nature of a defendant's contacts with the forum state. *See Burger King*, 471 U.S. at 472-73; *Red Wing Shoe Co.*, 148 F.3d at 1359. If the "cause of action at issue 'arises out of or relates to' those contacts, a court may properly assert personal jurisdiction, even if those contacts are 'isolated and sporadic.'" *Red Wing Shoe Co.,* 148 F.3d at 1359 (quoting *Burger King*, 471 U.S. at 472-73). Personal jurisdiction in such a case is called "specific jurisdiction," and can be supported by a single act so long as that act creates a substantial connection with the forum. *Id*. Neither "'random,' 'fortuitous,' or 'attenuated'" contacts, nor the unilateral activities of others, are entitled to any weight when determining minimum contacts. *Burger King*, 471 U.S. at 475. Rather, to count, such contacts must be purposefully directed at the forum or its residents. *Id*. at 476.

However, actual "territorial presence" is not essential to this analysis. *Purdue Research Found*., 338 F.3d at 781. Under the so-called "effects doctrine," specific personal jurisdiction over a nonresident defendant will be proper when the defendant's intentional tortious actions aimed at the forum state cause harm to a plaintiff in the forum state, and the defendant knows such harm is likely to be suffered. *Calder v. Jones*, 465 U.S. 783, 788-90 (1984). The Seventh Circuit interprets the effects doctrine broadly. *See Janmark, Inc. v. Reidy*, 132 F.3d 1200, 1202 (7th Cir. 1997); *Indianapolis Colts, Inc. v. Metro. Baltimore Football Club*, 34 F.3d 410, 411 (7th Cir. 1994). The *Janmark* court held that "the state in which the victim of a tort suffers the injury may

entertain a suit against the accused tortfeasor," even if all other relevant conduct took place outside of the forum state. 132 F.3d at 1202 (citation omitted).

In *Janmark*, the plaintiff, a seller of mini shopping carts, brought an action against a competitor and its operator, seeking a declaratory judgment and asserting a claim for tortious interference with prospective economic damage. *See id.* at 1201. Finding that a single phone call from a defendant in California to a customer of the plaintiff in New Jersey could not be a tort "within" Illinois, the district court dismissed the defendant for lack of personal jurisdiction. *See id.* Reversing, the Seventh Circuit reasoned that since without an injury there is no tort and that a wrong does not become a tort until an injury has occurred, the location of the injury is vital to understanding where the tort occurred. *See id.* at 1202. Because the injury took place in Illinois, which resulted when the customer who received the defendants' phone call canceled its order with the plaintiff, the tort occurred in Illinois and was thus actionable in Illinois. *See id*.

At first blush *Janmark* might seem analogous to the instant case. Speedster has brought this action for a declaratory judgment only after receiving several cease-and-desist letters from Ospeck in which the latter has alleged various forms of trademark infringement. Presumably, Speedster now hopes to "clear the air" through this action and go about its normal course of business. *See Red Wing Shoe Co.*, 148 F.3d 1360. Along these lines, the "injury of which a declaratory judgment plaintiff complains, then, is a wrongful restraint on the free exploitation of non-infringing goods. One of those restraints may be the threat of an infringement suit, as communicated in a cease-and-desist letter." *Id*. Therefore, because Speedster received most of Ospeck's cease-and-

desist letters in Indianapolis, and given that Speedster's Indianapolis headquarters is where most of its major business decisions are made, the argument can be entertained that Speedster received an "injury" in Indiana such that under a *Janmark*-type analysis personal jurisdiction could be exercised in that state.

However, such an argument extends beyond *Janmark*'s reach. In that case, the plaintiff did seek a declaration that it had not infringed the defendants' copyright. Yet, the plaintiff also asserted a claim of tortious interference with prospective economic advantage, and that was the claim at the center of the Seventh Circuit's holding:

> The tort of which Janmark complains is interference with prospective economic advantage by making false claims of copyright infringement, and this tort was not complete (because no injury occurred) until Janmark's customer canceled the order; the injury and thus the tort occurred in Illinois.

*Janmark*, 132 F.3d at 1202. In the instant case, Speedster has not alleged any economic injury; rather the only "injury" it might have suffered up to this point relates to the inherent uncertainty created by Ospeck's cease-and-desist letters as to whether it is engaging in any infringing activity.

Even assuming *arguendo* that the "injury" caused by Ospeck's letters would establish minimum contacts, without more cease-and-desist letters are insufficient to satisfy the requirements of due process. *See Red Wing Shoe Co.*, 148 F.3d at 1355. To hold otherwise would be to ignore the second element in the due process inquiry: whether the maintenance of personal jurisdiction would comport with "traditional notions

of fair play and substantial justice." *Asahi*, 480 U.S. at 113; *Int'l Shoe Co.*, 326 U.S. at 316. According to the Federal Circuit:

> Principles of fair play and substantial justice afford a patentee sufficient latitude to inform others of its patent rights without subjecting itself to jurisdiction in a foreign forum. A patentee should not subject itself to personal jurisdiction solely by informing a party who happens to be located there of suspected infringement. Grounding personal jurisdiction on such contacts alone would not comport with principles of fairness.

*Red Wing Shoe Co.*, 148 F.3d at 1360-61 (citation omitted); *see also Softee Mfg., LLC v. Mazner*, No. 03-c-3367, 2003 WL 23521295, at *6 (N.D. Ill. Dec. 18, 2003) (holding that defendants did not avail themselves of Illinois law for the purposes of personal jurisdiction when they mailed cease and desist letters into Illinois).

Speedster's remaining argument with respect to personal jurisdiction relates to contacts in Indiana that it purports should be imputed to Ospeck via his relationship with BTO, and specifically the brief October 2002 meeting between Durham and Li. As Speedster points out, Indiana Trial Rule 4.4(a) refers to actions that arise from the conduct of an individual "or his or her agents" in setting forth what conduct falls within the long-arm statute's reach. With such language in mind, Speedster argues that Li, in his capacity as BTO's president, acted as Ospeck's agent for the purposes of "marketing and exploiting Mr. Ospeck's alleged rights to AUBURN," and "negotiating in Indiana about licensing AUBURN." (Pl.'s Resp. at 16.) Through such actions by BTO, and along with the aforementioned cease-and-desist letters, Speedster alleges that Ospeck "personally injected himself deeply into Speedster's business in Indiana for well over a year." (*Id*. at 18.)

Because there is a conflict among the parties' affidavits as to the nature of Durham and Li's Indianapolis meeting, the court must defer to the Plaintiff's evidence and proceed as though Speedster's version of events is correct. Nevertheless, the court finds that Speedster is overstating the case with respect to personal jurisdiction. Even if such contacts would be enough to establish minimum contacts on the part of Ospeck, the court concludes that exercising personal jurisdiction in this case would not comport with the fair play and substantial justice elements of the due process inquiry. *Burger King*, 471 U.S. at 476; *Int'l Shoe*, 326 U.S. at 320. Several factors compel such a conclusion. At the time of the meeting between Li and Durham, the record reveals that Durham was not yet a part of Speedster's management, and instead was simply contemplating investing in the company. While licensing of the Auburn mark may have been discussed during the Indianapolis meeting, no contract was formed, nor were any preliminary steps taken towards a contract. *See Burger King*, 471 U.S. at 479 ("It is these factors – prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing – that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum."). The two decisions from the Indiana Court of Appeals on which Speedster relies for its assertion of personal jurisdiction are distinguishable from the present action. In both *Freemond v. Somma*, 611 N.E.2d 684, 690 (Ind. Ct. App. 1993), and *Suyemasa v. Myers*, 420 N.E.2d 1334, 1342 (Ind. Ct. App. 1981), the courts found personal jurisdiction under Indiana's long-arm statute because the litigation in both cases arose out of contracts or agreements entered into in Indiana. If the situation was the same for Speedster, and it had entered into a licensing agreement with Ospeck

in Indiana, or even entered into a contract *after* preliminary negotiations in Indiana, this court would find such activity to be within the state's long-arm statute. However, this is not the case. No agreement was reached, and no one at Speedster attempted to secure one after Durham met with Li–that is, after Durham became a shareholder in Speedster.

Moreover, Durham's inquiries into a possible licensing arrangement with BTO during that meeting, even if tangentially related in some capacity to the present declaratory judgment action, have no bearing on the underlying question of whether Ospeck's trademarks have been infringed. Without additional evidence, the activity that resulted in the Auburn mark's entrance into Indiana appears to be solely the unilateral act of a third party–BTO's Li–after he was asked to do so by Durham, a party who was not even a stakeholder in Speedster at the time. The record reveals that BTO was a licensee of the Auburn mark from a licensor, Ospeck, at the time of the brief meeting in Indiana. A licensee's contacts with a forum state are not, standing alone, enough to bring a licensor within the personal jurisdiction of the same state. *Red Wing Shoe Co.*, 148 F.3d at 1361 ("In simple terms, doing business with a company that does business in Minnesota is not the same as doing business in Minnesota."); *see also Meta/Balance, Inc. v. Health Ventures Partners*, No. 03-c-50497, 2004 WL 1345097, at *2 (N.D. Ill. June 14, 2004) (distinguishing between standard licensor/licensee relationship with that of parent corporation's act to create a subsidiary with an exclusive license as means to enter U.S. market); *Highmark, Inc., v. Allcare Health Mgmt. Sys.*, 304 F. Supp. 2d 663, 666 (W.D. Penn. 2003) (holding that residence of non-exclusive

licensee of defendant's patent in state was not enough to confer personal jurisdiction over licensor in that state absent relationship between that license and present cause of action). Despite Ospeck's relationship as equity shareholder in BTO, the present cause of action does not arise out of that relationship, aside from the possible inference that BTO's contacts with Durham in Indianapolis put it on notice that the latter's company may be infringing upon the Auburn mark. Basing personal jurisdiction on such an inference would defeat the *Burger King* court's mandate "that a defendant not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts . . ." 471 U.S. at 475. The court therefore holds that it lacks specific personal jurisdiction over Ospeck.

Finally, the court finds that it lacks the ability to exercise general jurisdiction over Ospeck. As the Seventh Circuit has stated, "general jurisdiction allows a defendant to be sued in the forum regardless of the subject matter of the litigation." *Purdue Research Found*., 338 F.3d at 787. General jurisdiction may be exercised "only where the defendant has 'continuous and systematic general business contacts' with the forum." *Id*., *citing Heliocopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984). Despite alleging in its Complaint that Ospeck "is engaged in substantial, systematic, and ongoing activities" in Indiana, Speedster has presented no facts to support such a statement. (Compl. ¶ 5.) Nothing in the record or briefs would support such a conclusion; in fact, the complete opposite appears to be true. Ospeck has only been to Indiana four or five times in his life, each time simply being to observe a sporting event. (Ospeck Dep. at 15-16.) Ospeck has not transacted any business in

Indiana, nor has he contracted with anyone on his behalf to market, distribute, or offer to sell any products in Indiana. (Ospeck Decl. ¶ 3.) Thus, the court finds that it lacks general jurisdiction over Ospeck.

In ruling that it lacks personal jurisdiction over Ospeck, the court has no need to consider Ospeck's claim of improper venue, nor his alternative Motion to Transfer.

## III. Conclusion

For all the foregoing reasons, Defendant Ospeck's Motion to Dismiss for lack of personal jurisdiction (dkt. no. 18) will be **GRANTED**.

ALL OF WHICH IS ORDERED this 6th day of October 2004.

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John Daniel Tinder, Judge
United States District Court

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