

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 07-60983-CIV-SEITZ/MCALILEY**

NATIONWIDE RELOCATION SERVICES, INC.,

Plaintiff,

v.

TIM WALKER, an individual, et al.,

Defendants.

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**ORDER DENYING DEFENDANTS' MOTION TO DISMISS FIRST AMENDED  
COMPLAINT FOR LACK OF PERSONAL JURISDICTION**

THIS CAUSE is before the Court on Defendants Tim Walker and Consumer First Corp.'s Motion to Dismiss the First Amended Complaint for Lack of Personal Jurisdiction [DE 43]. Defendants Tim Walker and Consumers First Corp. claim that they are not amenable to jurisdiction in Florida. Plaintiff, on the other hand, argues that the Defendants, through the website "movingscam.com," have targeted Florida residents such that the assertion of personal jurisdiction is appropriate. Having reviewed the motion, the response and the reply thereto, the entire factual record and the relevant legal authorities, the motion is denied because Defendants specifically targeted Florida residents.

**I. Background**

This action arises out of a dispute between Plaintiff, a relocation broker, and Defendants, operators and contributors to the website movingscam.com. Plaintiff brings federal claims for false advertising under 15 U.S.C. § 1125(a)(1)(B) and unauthorized use and service mark infringement under 15 U.S.C. § 1125(a)(1)(A), and Florida common law claims for defamation and tortious interference with advantageous business relationships, relating to the content of the movingscam.com website. (First Amended Complaint ("FAC") ¶ 1.) The sole issue to resolve on this motion is whether this Court has

jurisdiction over Defendants Tim Walker (“Walker”) and Consumers First Corp. (“Consumers”).<sup>1</sup>

Plaintiff, a Florida corporation with its principal office in Ft. Lauderdale, Florida, claims to be the largest residential moving and corporate relocation broker in the country. (Joint Statement ¶ 5.) Walker, who resides in Warsaw, Illinois, is the president and sole shareholder of Consumers, which operates the movingscam.com website, and oversees the day-to-day operations of the website.<sup>2</sup> (*Id.* ¶¶ 1, 9-10.) Walker is also the principal content provider of the website and has published more than 3,300 opinions, comments and criticisms on the site. (*Id.* ¶ 10.) Consumers is a Delaware corporation with its principal place of business in Des Moines, Iowa. (*Id.* ¶ 2.) The computer servers hosting the movingscam.com website are located in Chicago, Illinois. (*Id.* ¶ 55.) Defendants Bayolo, Wanner and “Diane” are all contributors/moderators to the website, but are not parties to this motion to dismiss. (*Id.* ¶¶ 3, 8.)

**(a) Website Revenues**

Prior to 2003, Walker bore the costs of running the website himself, with the assistance of voluntary donations from contributors. (*Id.* ¶ 30.) Consumers currently generates revenues on the website from certain third party companies, through referral and flat fee agreements,<sup>3</sup> by incorporating links to companies it endorses.<sup>4</sup> (*Id.* ¶¶ 14, 16-17.) The website also incorporates a shopping cart

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<sup>1</sup> At the November 1, 2007 hearing, the Court required the parties to submit a statement of undisputed facts. Therefore, the relevant jurisdictional facts are taken from the parties’ submission, hereinafter, the “Joint Statement.”

<sup>2</sup> Before the formation of Consumers in 2005, Walker owned and operated the website individually. (*Id.* ¶ 10).

<sup>3</sup> In a referral fee agreement, the endorsed company pays a percentage of sales generated when customers purchase products or services via the movingscam.com website. Flat fee agreements involve payments to Defendants on a flat monthly fee for portraying the company’s link on the website. (*Id.* ¶ 17.)

<sup>4</sup> None of the endorsed companies are incorporated in Florida. (*Id.* ¶ 16.)

feature wherein customers can purchase moving supplies. (*Id.* ¶ 19.) While it appears that the customer is on the movingscam.com website, the shopping cart feature is actually operated by third parties such as Smart Pack Solutions, LLC (“Smart Pack”) or Virtual Focus, Inc. (*Id.* ¶¶ 20-21.) For example, Smart Pack would create and operate the shopping cart interface on the movingscam.com website and ship the products. (*Id.* ¶ 22.) Smart Pack then pays a referral fee to movingscam.com based on the amount of products purchased by visitors to the website. (*Id.* ¶ 28.) Additionally, the website marketed a “movingscam.com” coffee mug on its website whereby a user desiring to purchase a mug could click on a link and be taken to the website cafepress.com where they can purchase the mug. (*Id.* ¶ 32.)

**(b) The “Blacklist” and the Message Board**

The movingscam.com website contains a “Blacklist” which lists hundreds of moving companies that purportedly engaged in unethical business practices.<sup>5</sup> (*Id.* ¶ 32.) Plaintiff’s name appears on the Blacklist which contains a link to a report regarding the Plaintiff. (*Id.* ¶ 38, 40.) Additionally, the website contains a message board on which it publishes consumer evaluations and complaints and allows users to have discussions with other users and moderators to the website. (*Id.* ¶ 41.) When asked by consumers on the message board, Walker and other moderators will specifically respond to inquiries regarding different moving companies.<sup>6</sup> (*Id.* ¶ 43.) The moderators to the website, other than Walker, are unpaid volunteers and are not officers or directors of Consumers. (*Id.* ¶ 47.) The moderators have the ability to edit or delete consumers’ posts to the website, end discussions on a topic, and split a discussion into different discussion topics. (*Id.* ¶ 49.) The Terms of Service that must be

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<sup>5</sup> From March 26, 2003 until June, 2005, the Blacklist stated that “the following companies have repeatedly practice[d] the same scams against consumers.” (*Id.* ¶ 34.) However, as of July 2007, the Blacklist states that “the following companies have repeatedly used unethical business practices against consumers.” (*Id.* ¶ 35.)

<sup>6</sup> Walker posted messages on the boards under the name TWalker. (*Id.* ¶ 42.)

agreed to before a user can access the message board, state that “[t]he views expressed in messages posted on the Message Board are the opinions of the posters only and do not necessarily reflect the opinions of [m]ovingscam.com or its owners, agents, or affiliates.” (*Id.* ¶¶ 77-78.) The website also has a “Superlist” feature which allows users to search individual states for information on companies. (*Id.* ¶ 64.)

**(c) Contacts with Florida**

Plaintiff alleges that through the movingscam.com website, Walker and Consumers had sufficient contacts with the state of Florida for the Court to assert personal jurisdiction over them. While neither Walker nor Consumers reside in Florida, Defendant Wanner, who is one of the moderators, is a resident of Tallahassee, Florida. (*Id.* ¶¶ 48, 79.) Wanner engaged in regular communication with the other moderators of the website and the message board, made at least 3,100 postings on the website and wrote comments on the message board on behalf of Consumers. (*Id.* ¶¶ 81, 84.)

Additionally, Smart Pack, which sold products through the movingscam.com website and paid Consumers a referral fee, has a warehouse in Florida and has the ability to ship products to movingscam.com customers, including those in Florida. (*Id.* ¶ 22.) The website also received revenue by advertising on the Blacklist pages which included listings of Florida moving companies. (*Id.* ¶ 31.)

Furthermore, Walker and the moderators responded to inquiries regarding moving companies in Florida, including those made by Florida residents or people moving to Florida. (*Id.* ¶¶ 41, 43.) Additionally, Walker and the moderators encouraged customers to use companies not on the Blacklist, including Florida companies and discouraged customers from using companies identified on the Blacklist, which also includes Florida companies. (*Id.* ¶¶ 44, 45.) Indeed, Walker has specifically expressed opinions, comments and criticisms about several Florida moving companies. (*Id.* ¶ 46.)

Moreover, on several occasions, in addressing customers who had questions about moving into or out of Florida, Walker and Wanner have made negative comments about Plaintiff, specifically recommending that customers not use it. (*Id.* ¶¶ 51, 93.) In fact, Plaintiff has lost several moving contracts with Florida customers as a result of the postings on the movingscam.com website. (*Id.* ¶ 73.)

## **II. Analysis**

### **(a) Personal Jurisdiction**

In order to establish personal jurisdiction, Plaintiff's FAC must pass the two-pronged test used in the Eleventh Circuit. *See Meier v. Sun Int'l Hotels, Ltd.*, 288 F.3d 1264, 1269 (11th Cir. 2002). First, Florida's long-arm statute must provide a basis for personal jurisdiction. *See id.* If this requirement is met, the second prong necessitates sufficient minimum contacts between Defendants and Florida so as to satisfy "traditional notions of fair play and substantial justice" under the Due Process Clause of the Fourteenth Amendment. *See id.*; *see also Madara v. Hall*, 916 F.2d 1510, 1515-16 (11th Cir. 1990) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310 (1945)). In undertaking this analysis, this Court looks first at the well-pled allegations in the FAC. Defendants may challenge these allegations by affidavit. If Defendants contradict the allegations in the FAC by competent evidence, then the burden shifts back to Plaintiff to prove jurisdiction by affidavit or other documentary proof. *See Jet Charter Services, Inc. v. Koeck*, 907 F.2d 1110, 1112 (11th Cir. 1990); *Vacation Ventures, Inc. v. Holiday Promotions, Inc.*, 687 So.2d 286, 289 (Fla. 5th DCA 1997).

In this case, Defendants concede that Plaintiff's allegations have met the requirements of Florida's long arm statute, and instead travel under the theory that the exercise of personal jurisdiction does not comport with due process.<sup>7</sup> (*See Defendants' Motion to Dismiss at 4, n.2.*) In the Eleventh

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<sup>7</sup> Defendants concede that under Fla. Stat. § 48.193(1)(b), commission of a tort outside of Florida that causes injury within Florida subjects the tortfeasor to personal jurisdiction, and that Plaintiffs have alleged such an injury.

Circuit, a court, when determining if the due process clause has been satisfied for personal jurisdiction, should consider whether: (1) the defendant purposefully availed himself or herself of the privilege of conducting activities within Florida; (2) the defendant's contacts with the forum state give rise to the cause of action; and (3) the defendant reasonably anticipated being subject to jurisdiction in Florida. *See Future Tech. Today, Inc. v. OSF Healthcare Systems*, 218 F.3d 1247,1250-51 (11th Cir.2000).

The Middle District of Florida recently addressed the issue of subject matter jurisdiction a factually similar case. *See Whitney Information Network, Inc. v. Xcentric Ventures, LLC*, 347 F. Supp. 2d 1242 (M.D. Fla. 2004) (“*Whitney*”). In *Whitney*, the plaintiffs created several websites to promote their educational and training products. The plaintiffs' websites could be accessed by searching for the plaintiffs' marks in any Internet search engine, however, this search, also yielded results in the defendants' website, ripoffreport.com. The purpose of the defendants' website was to publish consumer complaints inferring that the complained about companies were “ripping off” customers.<sup>8</sup> Plaintiffs sued for trademark infringement and defamation because the defendants had published more than a dozen stories about the plaintiffs. The district court held that there was jurisdiction under the due process clause because the website had the following characteristics: (1) it focused on various companies from different states and allowed consumers to target their search to a specific state, including Florida; (2) it solicited funds from consumers to support the defendants and sold products to assist consumers in prevailing in their disputes with companies. *Id.* at 1246. Moreover, as an example, the court recited one of the comments on the message board that criticized the Florida based plaintiffs and stated that “these comments targeted a Florida resident and a Florida corporation, and concerned a Florida community,” and therefore, the defendants “should anticipate being sued for defamatory statements published on their websites.”

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<sup>8</sup> The website also advertised items for sale.

Here, based on Defendants' contacts with the state of Florida through the movingscam.com website, the due process clause does not preclude the assertion of jurisdiction over Defendants. As discussed below, Defendants purposefully availed themselves of the privilege of conducting business in Florida by targeting Florida consumers through the website postings, these postings gave rise to the causes of action in the FAC and the Defendant could reasonably anticipate being hailed into Florida as a result of such actions.

First, as in *Whitney*, the content of the website provides information about companies from many different states and allows consumers to direct specific questions about relocation services based on both the state of origin and the state of destination, including Florida. In fact, using the "Superlist" feature of the website, customers can specifically search for information on Florida companies, including the Plaintiff.

Second, either Walker or one of the moderators affiliated with the site responds to questions and provides information on a state by state basis, including to Florida residents and about Florida moving companies. Indeed, Walker himself has advised customers specifically about Florida, including: (1) general recommendations about Florida moves;<sup>9</sup> (2) advice about Florida moving companies;<sup>10</sup> and (3) recommendations to not use Plaintiff's services.<sup>11</sup> Moreover, Defendant Wanner, who is affiliated with

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<sup>9</sup> Walker advised a customer to contact the Florida Movers & Warehousemen's Association for information about a move. (*Id.* ¶ 52(c).) Walker also posted a message about how to file a complaint in the state of Florida. (*Id.* ¶ 52(e).) Finally, in one posting, Walker stated that one of the other moderators has put together a list of companies with positive reviews to help people that need to hire a moving company in Florida. (*Id.* ¶ 54(f).)

<sup>10</sup> Walker advised one individual on whether to use "Bekins," a Florida mover. (*Id.* ¶ 46(a).) In another posting, Walker advised a customer about North Star Van Lines out of Davie, Florida, saying: "[t]here have been several serious complaints against North Star out of Florida and they don't seem to be slowing down." (*Id.* ¶ 51(a).)

<sup>11</sup> Walker stated in a posting that Nationwide Relocation Services would increase the price of moves through "very creative tactics" in response to an inquiry about a move from Fort Lauderdale to Central Florida. (*Id.* ¶ 51(a).) In other postings to Florida movers and others, Walker refers to Plaintiff's moving brokerage business as a scam. (*Id.* ¶¶ 51(b&c).) Finally, in reference to Plaintiff and other moving brokers, Walker states that "[t]hey form little networks of scam artists similar to gypsy camps." (*Id.* ¶ 54(b).)

the website as a moderator, has made at least 3100 postings to the website. Not only does Wanner reside in Florida, but many of her posts are directed at people moving from or to Florida and about Florida moving companies.<sup>12</sup>

Lastly, as in *Whitney*, the fact that Defendants generate revenue from Florida residents also weighs in favor of personal jurisdiction. It is clear that Defendants receive referral and flat fees based on the products they help to sell to consumers on the Internet, and as expressed above, Defendants specifically direct their postings to consumers who are Florida residents. Thus, based on these contacts, which are almost identical to those in *Whitney*, the assertion of personal jurisdiction over Walker and Consumers is appropriate in this action.

Defendants' argument relies on the holding in another Florida case, *Instabook Corporation v. Instantpublisher.com*, 469 F. Supp. 2d 1120 (M.D. Fla. 2006) ("*Instabook*"). In *Instabook*, the plaintiff brought suit alleging infringement by the defendant of two patents pertaining to a method of producing books on demand. The complaint alleged that defendant was a Tennessee corporation that published two books from Florida residents that were transmitted to the defendant in Tennessee through its interactive website and then published and sent to the Florida residents through the mail after receiving payment. In determining if these Internet based contacts were sufficient for personal jurisdiction, the court discussed the interactivity sliding scale of websites first analyzed in *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997) ("*Zippo*").<sup>13</sup> The plaintiff argued that because

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<sup>12</sup> Wanner advised customers moving from Florida to Sydney, Miami to San Francisco, and other moves originating in Florida. (*Id.* ¶ 90.) Additionally, Wanner has commented on many other Florida moving companies, including: (1) Sebastian Moving in Orlando; (2) All My Sons Moving & Storage of Fort Lauderdale; (3) Team USA; and (4) Sunset Movers. (*Id.* ¶ 90.) Wanner has also provided lists of reviews for moving companies in Florida. (*Id.* ¶ 90.)

<sup>13</sup> In *Zippo*, the court held that the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of the commercial activity that an entity conducts over the Internet. *Id.* at 1124. The court stated that at one end of the spectrum are situations where a defendant clearly does business



the defendant's website was "active" and allowed the placing of orders through the internet, the defendants were amenable to jurisdiction in Florida. The district court, however, deviated from *Zippo's* "interactivity" criteria and analyzed the facts under the traditional parameters of personal jurisdiction. Based on this analysis, the court concluded that the exercise of jurisdiction over the defendant would violate the due process clause because the defendant could not reasonably anticipate being haled into Florida courts based on its contacts with the two Florida residents. *Instabook*, 469 F. Supp. 2d at 1127.<sup>14</sup> The court expressly stated that there was "no indication of targeting or solicitation of Florida residents."<sup>15</sup> *Id.*

*Instabook* is significantly different from the case at bar. First, as discussed above, the website does target Florida residents by allowing customers to search for moving information by state. Moreover, Walker and the other affiliates of the website directly addressed Florida customers and provided advice about Florida moving companies. These contacts distinguish this case from *Instabook* and render the assertion of personal jurisdiction over Defendants consistent with the principles of due process.

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over the Internet and at the opposite end is where a defendant simply posts information on the Internet which is accessible to users in foreign jurisdictions. *Id.* The middle ground is occupied by interactive websites where a user can exchange information with the host computer. *Id.*

<sup>14</sup> The *Instabook* court specifically enumerated the multitude of contacts that defendant did not have with Florida, which included that the defendant: (1) never had agents in Florida; (2) never administered, operated or moderated a newsgroup accessible in Florida; (3) never provided links to websites active within Florida; (4) never participated in Internet chat with Florida residents; and (5) never transmitted products or services over the Internet to Florida residents. *Id.* at 1121-22. In this case, however, Defendants *do have* these contacts, or a similar type of contact, with the state of Florida.

<sup>15</sup> The court also based its holding on the fact that the defendant's website requires users to execute a "click-wrap" agreement that mandated venue in a state other than Florida. *Id.* at 1126-27. However, the court expressly stated that because the plaintiff was not a "user" of the website, the provision was not dispositive of the due process issue, only relevant to it. Here, even though the movingscam.com website includes a choice of venue provision, because Defendants are not "users" of the website and have many more contacts with the state of Florida than the defendant in *Instabook*, the venue provision is not sufficient to strip the Court of personal jurisdiction over Defendants.

**III. Conclusion**

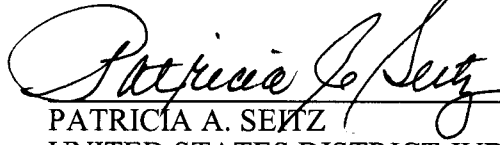
For the reasons set forth herein, it is hereby

ORDERED that

(1) Defendants Tim Walker and Consumer First Corp.'s Motion to Dismiss the First Amended Complaint for Lack of Personal Jurisdiction [DE 43] is DENIED.

(2) Defendant Tim Walker's Motion for Protective Order Regarding Merits Discovery Sought By Plaintiff [DE 109] is DENIED AS MOOT.

DONE and ORDERED in Miami, Florida, this 30<sup>th</sup> day of January, 2008.

  
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PATRICIA A. SEITZ  
UNITED STATES DISTRICT JUDGE

cc:  
Counsel of Record

Sharon Bayolo, *pro se*