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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 14-0100 AG (RNBx)	Date	October 8, 2014
Title	LANG VAN, INC. v. VNG CORPORATION, et al.		

Present: The Honorable	ANDREW J. GUILFORD	
Lisa Bredahl	Not Present	
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiff:	Attorneys Present for Defendant:	

Proceedings: **[IN CHAMBERS] ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS**

Plaintiff Lang Van, Inc. ("Plaintiff") brings this copyright infringement action against Defendants VNG Corporation ("VNG") and International Data Group, Inc. ("IDG"). There are now four motions to dismiss before the Court: (1) Defendants' joint Motion to Dismiss for Lack of Personal Jurisdiction (Dkt. No. 14), (2) VNG's first Motion to Dismiss for Lack of Proper Service and Lack of Personal Jurisdiction (Dkt. No. 37), (3) VNG's second Motion to Dismiss for Lack of Jurisdiction ("VNG's Motion", Dkt. No. 42), and (4) IDG's Amended Motion to Dismiss for Lack of Personal Jurisdiction and Failure to State a Claim ("IDG's Motion," Dkt. No. 44).

Motions (1) and (2) are largely redundant with Motions (3) and (4). Thus the Court focuses on the latter motions, which are GRANTED.

PRELIMINARY MATTERS

VNG raised several objections to evidence presented by Plaintiff in opposition to VNG's Motion. None of this evidence would have a material effect on the Court's ruling, but

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nevertheless, only admissible evidence is considered in deciding the Motion.

BACKGROUND

Headquartered in Westminster, California, Lang Van is a leading producer and distributor of Vietnamese music and entertainment. (FAC ¶¶ 12-13.) It has the "largest library of content of any Vietnamese production company, owning the copyrights to more that 12,000 songs and 600 original programs." (*Id.* ¶ 17.) Lang Van also has contracts with "various Vietnam-based production companies to distribute their titles internationally." (*Id.* ¶ 16.)

VNG is a Vietnam corporation with its principal place of business in Ho Chi Minh City, Vietnam. (*Id.* ¶ 6.) While it began in 2004 as a gaming company, VNG launched the Zing Music Website (Zing.vn) in 2007 to make "massive amounts of music available for download to site visitors." (*Id.* ¶¶ 18-20.) This content includes thousands of Lang Van's copyrighted works, offered to site visitors for free. (*Id.* ¶¶ 91-92, 97.) The website has approximately 20 million users and is one of the most popular sites in Vietnam. (*Id.* ¶¶ 25, 27.) Lang Van has received no compensation from VNG for the use of its copyrighted works. (*Id.* ¶ 93.)

IDG is a Massachusetts corporation and a limited partner in IDG Ventures. (*Id.* ¶¶ 7, 41.) When VNG began as a small underfunded start-up, IDG Ventures invested $500,000 in the company on behalf of its limited partners. (*Id.* ¶¶ 35, 41, 46.) IDG's wholly-owned subsidiary, IDG Ventures Vietnam, "install[ed]" employee Bryan Pelz "to run VNG" and Managing General Partner Nguyen Bao Hoang to sit on VNG's board of directors. (*Id.* ¶¶ 47-56.) The IDG entities helped establish "VNG's playbook for success, which included growth by rampant copyright infringement," and they "directed and supervised the willful copyright infringement." (*Id.* ¶¶ 57-58.) Today, IDG Ventures Vietnam lists VNG as one of its portfolio companies. (*Id.* ¶ 59.)

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PERSONAL JURISDICTION

VNG and IDG both ask the Court to dismiss the case against them for lack of personal jurisdiction. Plaintiff argues that the Court has specific jurisdiction over VNG and general jurisdiction over IDG. The Court finds that jurisdiction over both defendants is lacking.

1. Legal Standard

A district court has personal jurisdiction over an out-of-state defendant if two things are true: (1) jurisdiction exists under the forum state's long-arm statute, and (2) the assertion of personal jurisdiction is consistent with the limitations of the due process clause. *Pac. Atl. Trading Co. v. M/V Main Express*, 758 F.2d 1325, 1327 (9th Cir.1985). "Because California's long-arm jurisdictional statute is coextensive with federal due process requirements, the jurisdictional analyses under state law and federal due process are the same." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800-01 (9th Cir. 2004). "For a court to exercise personal jurisdiction over a nonresident defendant consistent with due process, that defendant must have 'certain minimum contacts' with the relevant forum 'such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.' " *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th Cir.2011) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1954)). Jurisdiction can exist in a given forum under a theory of general or specific jurisdiction. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-16 (1984).

2. Specific Jurisdiction Over VNG

Plaintiff argues that the Court has specific jurisdiction over VNG because its claims relate to VNG's contacts with California. The Court disagrees. Specific jurisdiction exists where the following three-prong test is satisfied:

(1) The non-resident defendant must purposefully direct his activities or

> consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
>
> (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and
>
> (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir. 2004). "If the plaintiff succeeds in satisfying both of the first two prongs, the burden then shifts to the defendant to present a compelling case that the exercise of jurisdiction would not be reasonable." *Id.* (internal quotations omitted).

2.1 Purposeful Direction

Plaintiff argues that the first prong of the specific jurisdiction test, requiring the defendant's purposeful direction of activities to the forum state, is satisfied under the "effects test" established by the Supreme Court in *Calder v. Jones*, 465 U.S. 783 (1984), and applied by the Ninth Circuit in various cases. VNG argues that the Supreme Court's recent decision in *Walden v. Fiore*, 134 S.Ct. 1115 (2014) clarifies the rule and counsels the Court against exercising jurisdiction based on the "effects test." The Court agrees with VNG.

2.1.1 The Effects Test

The effects test arises from *Calder v. Jones*, where the Supreme Court held that a California court properly asserted jurisdiction in a libel case concerning an article written in Florida. 465 U.S. at 791. The defendants were employees of the National Enquirer, a newspaper

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publisher incorporated in Florida that enjoyed its highest circulation in California. *Id.* at 785. Aside from their article that circulated in California, the defendants had few contacts with the state. The plaintiff, on the other hand, lived and worked in California, and suffered harm when the article was distributed there. *Id.* at 786, 789-90. In deciding that jurisdiction was proper, the Supreme Court reasoned that the defendants "knew that the brunt of [plaintiff's] injury would be felt . . . in the state in which she lives and works and in which the National Enquirer has its largest circulation." *Id.* at 789-90.

Relying on *Calder*, the Ninth Circuit has applied a three-part effects test to similar cases, requiring that "(1) [the defendant] committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *Washington Shoe*, 704 F.3d at 673 (internal quotations omitted). This test has been applied to numerous copyright cases, with varying results. *Compare Washington Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668 (9th Cir. 2012) (upholding jurisdiction); *Mavrix Photo, Inc. v. Brand Technologies, Inc.*, 647 F.3d 1218 (9th Cir. 2011) (same); *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124 (9th Cir. 2010) (same); *Columbia Pictures Television v. Krypton Broad. of Birmingham, Inc.*, 106 F.3d 284 (9th Cir. 1997) (same), *rev'd on other grounds sub nom., Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340 (1998); *with Pebble Beach Co. v. Caddy*, 453 F.3d 1151 (9th Cir. 2006) (no jurisdiction); *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797 (9th Cir. 2004) (same).

Plaintiff relies heavily on *Washington Shoe*—an infringement action by a Washington shoe manufacturer against an Arkansas retailer—where a Ninth Circuit panel held that the three-prong effects test was satisfied where an out-of-state defendant willfully infringed on the copyright of an in-state corporation. In that case, the first and third prongs were easily met because it was a willful infringement action where the defendant knew the plaintiff would suffer harm in Washington, the forum state. After extended discussion, the panel held that the "express aiming" prong was satisfied as well, basing its decision primarily on defendant's knowledge that its infringement would harm the plaintiff in Washington. *Id* at 678 ("Because the harm caused by an infringement of the copyright laws must be felt at least where the

copyright is held, we think the impact of a *willful* infringement is necessarily directed there as well.") Plaintiff argues that *Washington Shoe* controls this case because VNG willfully infringed on copyrights it knew were held by a California corporation. (Opp. to VNG's Motion, Dkt. No. 45, 14:3-19.) Because the Supreme Court recently clarified the effects test, the Court disagrees.

2.1.2 *Walden v. Fiore*

In *Walden v. Fiore*, the Supreme Court reversed the Ninth Circuit's holding that personal jurisdiction could be exercised in Nevada over a DEA agent who allegedly harmed the plaintiffs—Nevada residents—by intentionally filing a false affidavit against them in Georgia. *Walden v. Fiore*, 134 S.Ct. 1115, 1124 (2014). The agent had no connections of his own to Nevada, but the Ninth Circuit panel thought it sufficient that he knew of the plaintiffs' connection to that forum. *Id.* In reversing, the Supreme Court emphasized that "[t]he proper question is not where the plaintiff experienced a particular injury or effect, but whether the defendant's conduct connects him to the forum in a meaningful way." *Id.* at 1125. Furthermore, it stated, "it is the defendant, not the plaintiff or third parties, who must create contacts with the forum State." *Id.* at 1126. The Supreme Court found insufficient contacts between the defendant and Nevada, and so reversed the Ninth Circuit.

The Supreme Court distinguished *Walden* from *Calder*—the libel case concerning the National Enquirer article—by noting that the defendants in *Calder* actually had meaningful contacts with the forum state concerning the events that gave rise to the claims. In *Calder*, "the reputational injury caused by the defendants' story would not have occurred but for the fact that the defendants wrote an article for publication in California that was read by a large number of California citizens." *Id.* at 1124. Moreover, "because publication to third persons is a necessary element of libel, . . . the defendants' intentional tort actually occurred *in* California." *Id.* Thus, the grounds for jurisdiction in *Calder* were not defendants' knowledge that they were harming a plaintiff who happened to live in California, but rather their intentional act of writing a libelous article for broad publication in California. In other words, jurisdiction was based on their own contacts with California.

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2.1.3 Application to VNG

While Plaintiff acknowledges in its Opposition that jurisdiction under the effects test "requires something more" than a link between the harmed plaintiff and the forum, it offers only tenuous connections between VNG and California. Plaintiff points to (1) VNG's knowledge that it was infringing the copyrights of a California company; (2) VNG's "interactive" website, which is accessible in California; and (3) various communications between VNG and Lang Van discussing the infringement issues. (Opposition to VNG's Motion, Dkt. No. 45, 19:5-13.) But these facts do not show that VNG expressly aimed its conduct at California.

Concerning point (1), this is precisely the sort of argument rejected by the Supreme Court in *Walden*. The Supreme Court made clear in *Walden* that jurisdiction is not conferred by defendant's mere knowledge that the party harmed by its acts resides in a certain forum. In *Walden*, the defendant intentionally filed a false affidavit against the forum's resident. Here, VNG allegedly infringed upon the copyright of the forum's resident. In both cases, the defendant knew of the plaintiff's connections to the forum. There is little relevant difference between the cases, and thus, without more, the Court is bound to follow *Walden*.

VNG's interactive website is also insufficient to establish that VNG expressly aimed its conduct at California. VNG's website has a Vietnam address on Vietnam servers and is in the Vietnamese language. It cannot serve as a jurisdictional hook in California simply because it is interactive and accessible from the state. *DFSB Kollective Co. v. Bourne*, 897 F. Supp. 2d 871, 881 (N.D. Cal. 2012) ("If the defendant merely operates a website, even a highly interactive website, that is accessible from, but does not target, the forum state, then the defendant may not be haled into court in that state without offending the Constitution.") (quoting *be2LLC v. Ivanov*, 642 F.3d 555, 559 (7th Cir. 2011)). Plaintiff must show, in addition to the website's existence, that it targets the forum state. Plaintiff fails to do that.

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Finally, the alleged communications between VNG and Lang Van are insufficient to establish jurisdiction over this action. Plaintiff points to various meetings and emails between the parties, ostensibly aimed at resolving this copyright dispute. But Plaintiff cites no authority showing that such contacts give rise to jurisdiction. Instead, Plaintiff cites cases stating only the uncontroversial proposition that emails give rise to jurisdiction where they directly lead to the harm caused. *See Global Acquisitions Network v. Bank of Am. Corp.*, CV 12-8758 DDP, 2013 WL 3450402 (C.D.Cal. July 9, 2013) (emails used to perpetrate fraud); *SeQual Techs., Inc. v. Stern*, 10-cv-2655 DMS, 2011 WL 1303653, at *2 (S.D. Cal. Apr. 4, 2011) (emails used to market product at center of dispute); *Roberts v. Synergistic Int'l, LLC*, 676 F.Supp.2d 934 (E.D. Cal. 2009) (emails and phone calls used to initiate fraud). Plaintiff points to no cases where discussions intended to resolve a dispute later give rise to specific jurisdiction in a case concerning that dispute. Thus the Court finds that the contacts in this case are insufficient. *Cf. Digit-Tel Holdings, Inc. v. Proteq Telecomms. (PTE), Ltd.*, 89 F.3d 519, 524 (8th Cir. 1996) ("Courts have hesitated to use unsuccessful settlement discussions as 'contacts' for jurisdictional purposes.").

Therefore, Plaintiff has failed to meet the first prong of the Ninth Circuit's specific jurisdiction test, the "purposeful direction" prong. Because all three prongs must be satisfied in order to establish jurisdiction, this failure alone warrants dismissal. Nevertheless, the Court will briefly address the second and third prongs.

2.2 Relatedness

To satisfy the second prong of the specific jurisdiction test, Plaintiff must show that the claim arises out of, or relates to, the defendant's forum-related activities. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). Plaintiff has failed to show that its claims arise from Defendant's very limited contacts with California. To the contrary, it appears that the claims arise primarily from Defendant's activities targeting Vietnam.

2.3 Fair Play and Substantial Justice

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Finally, under the third prong of the specific jurisdiction test, the Court considers whether exercising jurisdiction would "comport with fair play and substantial justice." *Id.* The Court understands the difficulty of Plaintiff's position. Plaintiff has a strong interest in protecting its copyrights and legitimate concerns that effective relief cannot be found in Vietnam. But the Court cannot say that it is reasonable to exercise jurisdiction over a foreign entity for acts that occur in, and target, a separate sovereign nation.

2.4 Conclusion

In sum, Plaintiff has failed to show that VNG has enough contacts with California for the Court to exercise jurisdiction on these claims. Most importantly, VNG never purposely directed its activities toward California. Therefore, VNG's Motion to Dismiss is GRANTED.

3. General Jurisdiction Over IDG

General jurisdiction arises when a defendants' "affiliations with the State . . . are so constant and pervasive 'as to render [it] essentially at home in the state.'" *Daimler AG v. Bauman*, 134 S.Ct. 746, 751 (2014) (quoting *Goodyear Dunlop Tires Operations. S.A. v. Brown*, 131 S.Ct. 2846, 2851 (2011)). Only in an "exceptional case" will a court have general jurisdiction over a corporation in a state other than the corporation's state of incorporation or principal place of business. *Id.* at 761 n.19. "This is an exacting standard, as it should be, because a finding of general jurisdiction permits a defendant to be haled into court in the forum state to answer for any of its activities anywhere in the world." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004).

Plaintiff argues that the Court has general jurisdiction over IDG, but Plaintiff's arguments fall far short of the demanding standard. After acknowledging that IDG's state of incorporation and principal place of business is Massachusetts, Plaintiff points only to scarce contacts between IDG and California. For example, Plaintiff asserts that some officers and

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employees temporarily lived in the state eight years ago, that some "high-level executives" occasionally travel to California, that the corporation leases several properties in California, and that it "holds meetings in California." (Pl.'s Opp. to Motion to Dismiss, Dkt. No. 46, at 10:17-11:19.) These are the types of forum-related activities that might support specific jurisdiction in a different case, but they do not approach the high standard for general jurisdiction.

Neither is Plaintiff's alter-ego theory persuasive. Plaintiff cites no evidence indicating that IDG has anything more than a usual parent-subsidiary relationship with its California-based subsidiaries. *See Doe v. Unocal Corp.*, 248 F.3d 915, 925 (9th Cir. 2001) ("The existence of a relationship between a parent company and its subsidiaries is not sufficient to establish personal jurisdiction over the parent on the basis of the subsidiaries' minimum contacts with the forum."). Having directors in common and sharing a trademark does not make a subsidiary an alter-ego of the parent. Nor does sharing some office space. Plaintiff alleges no commingling of funds, failure to follow corporate formalities, undercapitalization, or other hallmarks indicating that IDG's control over its subsidiaries "render[s] the latter the mere instrumentality of the former." *Id.* at 926; *See also Assoc. Vendors, Inc. v. Oakland Meat Co.*, 210 Cal.App.2d 825, 838-40 (Cal. Ct. App. 1962) (listing various factors considered in alter ego cases).

Therefore, this Court lacks personal jurisdiction over IDG. IDG's Motion to Dismiss for Lack of Personal Jurisdiction is GRANTED.

OTHER GROUNDS FOR DISMISSAL

VNG and IDG both argue that there other grounds for dismissal. VNG contends it was improperly served, while IDG asserts a 12(b)(6) failure to state a claim. Because the Court has already decided it lacks jurisdiction over the defendants, these arguments will not be considered.

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DISPOSITION

VNG's Motion to Dismiss and IDG's Motion to Dismiss are GRANTED.

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