

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

E360INSIGHT, LLC, an Illinois Limited
Liability Company, and DAVID LINHARDT,
and individual,

Plaintiffs,

v.

MARK JAMES FERGUSON, an individual,
SUSAN WILSON A.K.A. SUSAN GUNN, an
individual, ROB SAECKER A.K.A. FUDO, an
individual, RICH TIETJENS A.K.A.
MORELY DOTES, an individual, WILLIAM
SILVERSTEIN, an individual, and TIM
SKORVIN, an individual

Defendants.

Case No. 07 L 004983

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HONORABLE COURT
CLERK OF CIRCUIT COURT
LAW DIVISION

DEFENDANTS' MOTION TO DISMISS PURSUANT TO 735 ILCS §2-619
AND 735 ILCS §2-615

NOW COMES Defendant, MARK JAMES FERGUSON, pro se defendant, and request
this Honorable Court to dismiss Plaintiff's action. In support of this motion, moving party
states as follows:

I.
BACKGROUND AND PROCEEDINGS TO DATE

According to the complaint, on May 11, 2007, Dave Linhardt [Linhardt] and E360Insight
[e360] allege they have been damaged by "repeated postings on internet websites that
Plaintiffs are spammers" by Defendant. Plaintiffs make three claims and make these claims
against all defendants in their complaint: Defamation Per Se; Tortious Interference with a
Prospective Business Advantage; and Tortious Interference with a Contract.

Defendant denies his activity was unlawful or improper and asserts that all his publications to be truthful and accurate.

II.
PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED FOR
LACK OF PERSONAL JURISDICTION

In personam jurisdiction (or personal jurisdiction) is the power of a court to adjudicate the personal legal rights of parties properly brought before it.

Due process of law requires appearance or service of process (notice of pendency of the lawsuit) before the defendant can be personally bound by any judgment and a person is subject to *in personam jurisdiction* on any of the following:

- 1) Presence, i.e., physically present in the forum jurisdiction while being served with a copy of the summons and complaint. (*Pennoyer v. Neff*, 95 U.S. (5 Otto) 714, 24 L.Ed. 565 (1877))
- 2) Residency. (*Milliken v. Meyer*, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278 (1940).)
- 3) Consent to personal jurisdiction.
- 4) Minimum Contacts. (*International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945))

Having sufficient dealings or affiliations with the forum jurisdiction which make it reasonable to require the defendant to defend a lawsuit brought in the forum state. The due process clause does not permit a state to exercise personal jurisdiction over an individual or corporation with which the state has no contacts, ties or relations.

Defendant meets none of the requirements for *in personam jurisdiction* and does not consent to Illinois jurisdiction.

III.
PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED
FOR LACK OF SPECIFIC JURISDICTION

Defendant resides and accesses a computer in Washington through a computer located in Santa Rosa California where Sonic.net has its data center. (Exhibit "1," attached to the Declaration of Mark Ferguson in Support of the Motion.)

Plaintiff uses an Illinois computer to access Google's Usenet tools which are located at Google's data center in California. (Exhibit "2," attached to the Declaration of Mark Ferguson in Support of the Motion.)

None of the alleged acts occurred in Illinois, so Illinois does not have subject matter jurisdiction (*International Shoe Co. supra; Borden Chemicals*, 312 Ill. App. 3d at 41, 726 N.E.2d at 78.)

"when a suit neither arises from nor relates to a defendant's activities within the state where suit has been filed, the court is limited to exercising general jurisdiction over the out-of-state defendant."

Further Plaintiffs have not alleged any third parties in Illinois have viewed alleged posts and simply being accessible in Illinois is not a basis for jurisdiction. (*Howard v. Missouri Bone and Joint Center, Inc.*, No. 05-476, --- N.E.2d---, 2007 WL 1217855 (Ill. App. 5th Dist. (2007).) To require that all Internet posting subjects the writer to every jurisdiction in the world would chill the exercise of free speech on the Internet.

IV.
PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED
FOR LACK OF GENERAL JURISDICTION

For this Court to claim general jurisdiction over any Defendant that Defendant would have to meet at least one of the following legal bases.

- 1) Defendant would have to be conducting or had conducted "systematic and continuous" business in Illinois presently or at the time of the complaint.
- 2) Defendant would have to be conducting or had conducted a large volume of interstate business for Defendant created through agent(s) in Illinois.

3) Defendant and or its agents would have to be receiving or had to have received the protection of the laws of Illinois.

4) Defendant would have to have or had permanent agents established in Illinois.

Defendant meets none of the above requirements for general jurisdiction.

V.

DEFENDANT REQUESTS THAT THIS COURT MAKE A
PRELIMINARY INQUIRY INTO THIS CASE

The presiding judge must perform due diligence within their court prior to making a claim to jurisdiction to avoid doing undue harm to out of state Defendants who contests jurisdiction. This is done to insure that acts or omissions that form the basis of a cause of action are true and accurate or if that complaint is patently without merit.

Defendant respectfully requests this Court make such an inquiry. (*Wiedemann v. Cunard Line Ltd.*, 63 Ill. App. 3d 1023, 1030.)

VI.

ALTERNATIVELY, DEFENDANT ASSERTS THAT VENUE IS IMPROPER

This request to dismiss for improper venue is not a matter of simply being an "inconvenient forum" but a matter of justice. Defendant has no ties to Illinois, resides approximately twenty-four hundred [2,400] miles away and no less than six [6] states away. Being forced to mount a defense from such a distance would be unfair to the Defendant. (*Bell v. Louisville & Nashville R.R. Co.* (1985), 106 Ill. 2d 135)

VII

CONCLUSION

The newsgroup net.admin.net-abuse.email [NANAE] is essentially a public forum much the same as any town hall meeting is a public forum where individuals can offer their

opinions and views and was created for the sole intention of tracking down those that abuse email "for Network Administrators for Network Abuse by Email".

Plaintiffs barged in frequently to this public forum and intentionally posted to it with the sole intent to disrupt the meeting no less than one-hundred and ninety-three [193] times. (Exhibit "3," attached to the Declaration of Mark Ferguson in Support of the Motion.)

When participants finally had enough and reacted, Plaintiffs's response was to file litigation to quell the free speech enjoyed by all participants of NANAE. The Defendant was merely responding to the intentional provocation of Plaintiffs' postings and spams.

The Defendant believes participants of NANAE should be offered the same first amendment rights and protections as any speaker when they attend a public forum intended for the discussion of public interests.

Defendant has identified Plaintiffs' email as "spam". These spams are deceptive, unsolicited and sent in bulk as Plaintiffs' Motion for Expedited Discovery clearly shows.

Plaintiffs in their complaint wrongfully claim spam to be unlawful attempting to justify their first cause of action. Legitimate "spam" conforms to federal and state laws and is not unlawful simply by nature of being spam. However, in this case, Plaintiffs' spam does not conform to legal requirements and therefore is unlawful as defined the Federal Can Spam Statute and the consumer protection act, chapter 19.86 RCW for Washington State.

Allowing this case to continue would provide a real advantage to the Plaintiffs and be unfair to Defendant and the Defendant has the right to comment on the bulk nature of Plaintiffs' spams.

In any case, Plaintiff's spams are unlawful so Defendant's statements were truthful.



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Respectfully submitted,