

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

---

CONSOLIDATED STAFFING, INC.,	)	
	)	
Plaintiff,	)	
	)	No. 2:19-cv-02483-TLP-cgc
v.	)	
	)	
CONSOLIDATED STAFFING	)	
SOLUTIONS, INC. and JOSE NUNOS	)	
LOPES,	)	
	)	
Defendants.	)	

---

**ORDER DENYING MOTION TO DISMISS FOR LACK OF JURISDICTION AND  
IMPROPER VENUE OR, IN THE ALTERNATIVE, MOTION TO TRANSFER  
TO THE CENTRAL DISTRICT OF CALIFORNIA**

Plaintiff Consolidated Staffing, Inc. sues Defendants Consolidated Staffing Solutions, Inc. (“CSS”) and Jose Nunos Lopes (“Lopes”) claiming several trademark-related violations. (ECF No. 1.) Defendants move to dismiss Plaintiff’s claims for lack of personal jurisdiction and improper venue or, in the alternative, for transfer to the Central District of California. (ECF No. 18.) Plaintiff has responded. (ECF No. 20.) And Defendants have replied. (ECF No. 21.) For the reasons below, the Court **DENIES** Defendants’ motion.

**FACTUAL BACKGROUND**

According to the complaint, Plaintiff Consolidated Staffing, Inc. is a company based in Memphis, Tennessee, that provides “temporary agency services” throughout the nation. (ECF No. 1 at PageID 3.) Plaintiff claims that, since its inception in 2009, it “has acquired a reputation for being a reliable and dependable provider of such services utilizing the trademark Consolidated Staffing.” (*Id.*)

Plaintiff applied “to register its trademark” in 2016 “[t]o ensure the retention of good will.” (*Id.*) But, shortly after the filing, Defendants CSS and Lopes allegedly sent Plaintiff a letter “requesting that [Plaintiff] cease and desist utilizing the mark Consolidated Staffing.” (*Id.*) CSS is allegedly also a company that provides temporary agency services—but located in California—and Lopes is the company’s top executive. (*Id.* at PageID 1–2.)

Plaintiff replied to the letter, seeking to know why Defendants sent it in the first place. (*Id.* at PageID 3.) An answer never came. (*Id.*) And yet, after sending the letter to Plaintiff, Defendants allegedly “modified their servicemark of Consolidated Staffing Solutions to directly mimic [Plaintiff’s] trademark Consolidated Staffing.” (*Id.*)

While these events unfolded, the United States Patent and Trademark Office (“USPTO”) approved Plaintiff’s application and published it for opposition. (*Id.* at PageID 3–4.) In this way, Plaintiff claims that “Defendants had an opportunity to file an opposition identifying why [Plaintiff] should not receive the mark Consolidated Staffing.” (*Id.* at PageID 4.) But they never did. (*Id.*) So the USPTO granted the trademark without any resistance from Defendants. (*Id.*)

Plaintiff alleges that, “after being aware of [Plaintiff’s] federal trademark application . . . , Defendants intentionally started modifying their prior mark of Consolidated Solutions to be identical to [Plaintiff’s] federal registered mark.” (*Id.* at PageID 5.) In effect, Defendants started using “the counterfeit mark advertising identical services as a temporary employment agency on its website”—the same mark “prominently displayed” on Plaintiff’s website. (*Id.* at PageID 4–5.)

Plaintiff claims that their trademark “serves as a source-identifier for genuine temporary employment services.” (*Id.* at PageID 6.) It says that it “has invested significant time, energy,

and money advertising, promoting, and selling services featuring” their registered trademark.

(*Id.*)

As a result of these developments, Plaintiff alleges that, by having appropriated its trademark for marketing and other commercial purposes, Defendants “have and continue to irreparably harm [Plaintiff] and dilute the distinctive quality of the” Consolidated Staffing trademark. (*Id.* at PageID 7.) This allegation is the focus of Plaintiff’s lawsuit against Defendants.

Defendants, for now, do not dispute the merits of Plaintiff’s contentions. Rather, they move to dismiss Plaintiff’s complaint because they claim that the Court lacks personal jurisdiction over them, and that the Western District of Tennessee is an improper venue. (ECF No. 18.) And even if the Court does find that it has personal jurisdiction over Defendants and that this district is appropriate, Defendants claim that the Court should transfer this case to the Central District of California rather than keep it in this district. (*Id.*)

The issues before the Court are thus straightforward. Should this case remain here? Or should the Court transfer it to California? The answer is that the case should remain here. The Court thus **DENIES** Defendants’ motion to dismiss for lack of personal jurisdiction and improper venue or, in the alternative, for transfer to the Central District of California.

### **LEGAL STANDARD**

#### **I. Motion to Dismiss for Lack of Personal Jurisdiction**

A party may move to dismiss claims for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2). When a party challenges personal jurisdiction, the plaintiff bears the burden of showing that personal jurisdiction exists. *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936). If the defendant supports its motion with properly

documented factual assertions, the plaintiff “may not stand on his pleadings but must, by affidavit or otherwise, set forth specific facts showing that the court has [personal] jurisdiction.” *Weller v. Cromwell Oil Co.*, 504 F.2d 927, 930 (6th Cir. 1974).

In such cases, the trial court has options. The Court may choose to decide the motion based solely on the affidavits, allow discovery of additional jurisdictional facts, or hold an evidentiary hearing to resolve any lingering factual disputes. *Theunissen v. Matthews*, 935 3 F.2d 1454, 1458 (6th Cir. 1991). If the Court chooses to hold an evidentiary hearing, the plaintiff must show that personal jurisdiction exists by a preponderance of the evidence. *Id.* at 1465. Otherwise, the plaintiff need only present a prima facie case for personal jurisdiction, and the court views the submissions in light most favorable to the plaintiff. *Id.* at 1458.

## ANALYSIS

### **I. The Court Has Personal Jurisdiction Over Defendants**

#### **A. Personal Jurisdiction Standard**

When a federal question justifies a court’s subject matter jurisdiction, “personal jurisdiction over a defendant exists if the defendant is amenable to service of process under the [forum] state’s long-arm statute and if the exercise of personal jurisdiction would not deny the defendant[’s] due process.” *Cnty. Trust Bancorp, Inc. v. Cnty. Trust Fin. Corp.*, 692 F.3d 469, 471 (6th Cir. 2012) (quoting *Bird v. Parsons*, 289 F.3d 865, 871 (6th Cir. 2002)).

The Tennessee long-arm statute provides:

(a) Persons who are nonresidents of this state and residents of this state who are outside the state and cannot be personally served with process within this state are subject to the jurisdiction of the courts of this state as to any action or claim for relief arising from:

...

(6) Any basis not inconsistent with the constitution of this state or of the United States[.]

Tenn. Code Ann. §20-2-214. “The jurisdictional limits of the Tennessee long-arm statute . . . have been interpreted as identical to those imposed by the Due Process Clause.” *Bailey v. Turbine Design, Inc.*, 86 F. Supp. 2d 790, 792–93 (W.D. Tenn. 2000) (citing *Payne v. Motorists' Mut. Ins. Cos.*, 4 F.3d 452, 455 (6th Cir. 1993)). As such, the Tennessee long-arm statute and Due Process Clause “inquiries merge and the court ‘need only determine whether the assertion of personal jurisdiction . . . violates constitutional due process.’” *Aristech Chem. Int'l Ltd. v. Acrylic Fabricators Ltd.*, 138 F.3d 624, 627 (6th Cir. 1998) (quoting *Nationwide Mut. Ins. Co. v. Tryg Int'l Ins. Co., Ltd.*, 91 F.3d 790, 793 (6th Cir. 1996)). “Thus, as the only limitations placed on a Tennessee court's exercise of personal jurisdiction over the defendants in this case are those imposed by due process considerations, the court may confine its inquiry to whether the exercise of personal jurisdiction passes constitutional muster.” *Bailey*, 86 F. Supp. 2d at 793.

Under the U.S. Constitution, “personal jurisdiction over a defendant stems from ‘certain minimum contacts with [the forum] such that maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Id.* (quoting *Reynolds v. Int'l Amateur Athletic Fed'n*, 23 F.3d 1110, 1116 (6th Cir. 1994), *cert. denied*, 513 U.S. 962 (1994)). “Personal jurisdiction may be general or specific, depending on the type of minimum contacts present in the case.” *Id.* (citing *Reynolds*, 23 F.3d at 1116).

### **1. General Jurisdiction**

General jurisdiction permits a court to assert jurisdiction over a defendant based on a forum connection unrelated to the suit. It requires a defendant’s contacts to be so “continuous and systematic” as to render the defendant “at home” in the forum state. *Goodyear Dunlop*

*Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). For an individual, “the paradigm forum for the exercise of general jurisdiction is the individual’s domicile.” *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014).

The parties agree that this Court lacks general jurisdiction over Defendants. (ECF No. 18-1 at PageID 44–45; ECF No. 20 at PageID 67.) But the parties disagree about whether the Court has specific jurisdiction over Defendants. The Court thus turns to this issue next.

## 2. Specific Jurisdiction

Specific personal jurisdiction is proper where the claims in the lawsuit arise from or relate to the defendant’s contacts with the forum state. *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). The Sixth Circuit has put forward a three-element test that guides whether the Court has specific jurisdiction over Defendants.

First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant’s activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.

*Southern Mach. Co., Inc. v. Mohasco Indus., Inc.*, 401 F.2d 374, 381 (6th Cir. 1968); *see also Reynolds*, 23 F.3d at 1116.

### a. Purposeful Availment

The “purposeful availment” element is present when—

[T]he defendant’s contacts with the forum state “proximately result from actions by the defendant himself that create a ‘substantial connection’ with the forum State,” and when the defendant’s conduct and connection with the forum are such that he “should reasonably anticipate being haled into court there.”

*CompuServe, Inc. v. Patterson*, 89 F.3d 1257, 1263 (6th Cir.1996) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474–75 (1985)). Purposeful availment is analogous “to a deliberate

undertaking to do or cause an act or thing to be done in [the forum state] or conduct which can be properly regarded as a prime generating cause of the effects resulting in [the forum state], something more than a passive availment of [the forum state's] opportunities.” *Neogen Corp. v. Neo Gen Screening, Inc.*, 282 F.3d 883, 891 (6th Cir. 2002) (quoting *Khalaf v. Bankers & Shippers Ins. Co.*, 273 N.W.2d 811, 819 (Mich. 1976)).

For a Court to have personal jurisdiction over a defendant, the defendant need not be “physically present in the forum state.” *CompuServe, Inc.*, 89 F.3d at 1264. ““So long as a commercial actor's efforts are ‘purposefully directed’ toward residents of another State, [the Supreme Court has] consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there.”” *Id.* (citing *Burger King Corp.*, 471 U.S. at 476).

#### **i. The “Interactivity” Test**

Defendants argue that this Court should focus on their website when deciding whether they purposely availed themselves of Tennessee. According to them, “to determine whether an operator of a website purposefully availed itself of the forum state, the Court looks at the website’s level of interactivity.” (ECF No. 18-1 at PageID 47) (citing *See, Inc. v. Imago Eyewear Pty, Ltd.*, 167 F. App'x 518, 522 (6th Cir. 2006)).

“There are generally three levels of interactivity of websites, including: (1) passive sites that only offer information for the user to access; (2) active sites that clearly transact business and/or form contracts; and (3) hybrid or interactive sites that allow users to “exchange information with the host computer.” *See, Inc.*, 167 F. App'x at 522 (citing *Zippo Mfg. Co. v. Zippo Dot Com*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997)). A website operator shows purposeful availment ““if the website is interactive to a degree that reveals specifically intended interaction with residents of the state.”” *Id.* (quoting *Neogen Corp.*, 282 F.3d at 890).

Relying on the “interactivity” test, Defendants argue that “CSS’s website . . . does not target advertising to Tennessee residents in any way. In addition, Tennessee residents cannot contract or buy staffing services from the website.” (ECF No. 18-1 at PageID 47.) Defendants also allege that “[t]he website is . . . geographically restricted. If a visitor to the website wishes to apply for services, the user must enter the branch nearest them, none of which are in Tennessee. Indeed, Defendants do not conduct any business in Tennessee and have never provided staffing to any Tennessee customers.” (*Id.*)

The Court finds that, on the face of these allegations, Defendants make a compelling case. Much like in *Bailey*, where the Court declined to exercise personal jurisdiction, no clear evidence suggests “that any effort was made [by Defendants] to reach out to Tennessee residents any more than to persons residing elsewhere.” *Bailey*, 86 F. Supp. 2d 790 at 795. What is more, nowhere in Plaintiff’s complaint does it allege that Defendants have leveraged its website to attract business from Tennessee residents. *Compare First Tennessee Nat. Corp. v. Horizon Nat. Bank*, 225 F. Supp. 2d 816, 821 (W.D. Tenn. 2002) (“[T]he defendant’s alleged maintenance of a highly interactive website that solicits Tennessee customers is a sufficient basis to find that the defendant has purposefully availed itself of acting in the forum state.”)

But Plaintiff has responded that Defendants’ evocation of the interactivity test is a red herring under these facts. According to Plaintiff, the personal jurisdiction analysis should not hinge on whether Defendants have ever conducted business in Tennessee. (ECF No. 20 at PageID 69.) Nor should it focus on whether Tennessee residents can transact—or somehow communicate—with Defendants through their website. (*Id.*) Rather, to analyze the question of personal jurisdiction, the focus should be on whether Defendants deliberately acted in ways

harmful to Plaintiff, evoking a theory analogous to a traditional intentional tort claim. (*Id.*) The Court takes on this argument in its full colors in the next section.

## ii. The “Effects” Test

Plaintiff argues that, because “Defendants’ actions are intentionally and specifically directed toward Plaintiff, the more accurate test in the current scenario is the ‘effect doctrine’ jurisprudence established by *Calder v. Jones*, 465 U.S. 783 (1984).” (ECF No. 20 at PageID 69.)

In *Calder*, a California-based actress sued a Florida-based reporter and his Florida-based editor and newspaper alleging that an article they published libeled her. *Calder* 465 U.S. at 784–86. As the Sixth Circuit recently explained, “[w]hile the Florida defendants worked out of State, ‘their intentional, and allegedly tortious, actions were expressly aimed at California.’” *Power Investments, LLC v. SL EC, LLC*, 927 F.3d 914, 918 (6th Cir. 2019) (citing *Calder*, 465 U.S. at 789). “‘In sum,’ the Court said, ‘California is the focal point both of the story and of the harm suffered.’” *Power Investments, LLC*, 927 F.3d at 918 (citing *Calder*, 465 U.S. at 789).

Thus, under the “effects” test first crafted in *Calder*, Plaintiff must make the following showings to make a prima facie case for personal jurisdiction: (1) the “brunt of the injury was felt” in the State of Tennessee; (2) Defendants’ use of the Consolidated Staffing trademark was “intentional or deliberate”; and (3) Defendants’ acts “were expressly aimed” at the State of Tennessee. *Ford Motor Co. v. Great Domains, Inc.*, 141 F. Supp. 2d 763, 774 (E.D. Mich. 2001) (citing *Calder*, 465 U.S. at 789–90).

Plaintiff argues that its allegations satisfy the “effects” test because “Defendants have engaged in numerous intentional activities specifically directed to usurping the identity of Plaintiff such that Plaintiff not only has its reputation tarnished but is also prevented from

utilizing common web-based platforms associated with job placements for temporary staffing agencies such as Indeed and Career Builder.” (ECF No. 20 at PageID 70.) What is more, Plaintiff claims “Defendants [sic] numerous efforts in specifically targeting Plaintiff is [sic] sufficient to show that Defendants have purposefully availed themselves to this forum.” (*Id.*) Finally, they claim that, “in utilizing Plaintiff’s trademarked name Consolidated Staffing as its registered name and the name used for public view on common job boards, negative reviews written against Defendants also directly impact the good will of Plaintiff in Tennessee and impact Plaintiff’s ability to attract applicants in Tennessee.” (*Id.*)

The Court finds that these allegations, as well as others contained in affidavits provided by Plaintiff, satisfy the “effects” test in *Calder*. The Court turns to a fuller explanation of this finding next.

### iii. Application of the “Effects” Test

#### (1) *Brunt of the Injury*

First, the Court finds that Plaintiff has alleged enough to show that the “brunt of the injury was felt” in Tennessee. *Ford Motor Co.*, 141 F. Supp. 2d at 774. In its complaint, Plaintiff explains that the websites of both Plaintiff and Defendants are “accessible by residents of Tennessee and negative reviews pertaining to Defendants [sic] services stain the reputation of [Plaintiff] within this state.” (ECF No. 1 at PageID 3.) According to the affidavit of Mr. Josh Sturgill, who is Plaintiff’s chief executive officer, “Defendants’ negative reviews in association with the illegal use of [the] registered trademark are significantly impacting the good will of [his] business in Tennessee.” (ECF No. 20-1 at PageID 92.) Mr. Sturgill adds that “Defendants [sic] utilization of [the] servicemark and direct attempt at usurping [their] identity on the internet has caused [Plaintiff] damage within its home state of Tennessee.” (*Id.* at PageID 92.)

Given these allegations, the Court finds that Plaintiff has satisfied the first element of the “effects” test expressed in *Ford Motor Co.* and derived from *Calder*. *Ford Motor Co.*, 141 F. Supp. 2d at 774; *cf. Calder*, 465 U.S. at 790 (finding that “the brunt of the injury would be felt” where the plaintiff lived and worked); *Panavision Int’l, L.P. v. Toeppen*, 141 F.3d 1316, 1321 (9th Cir. 1998), *holding modified by Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199 (9th Cir. 2006) (finding that the defendant likely knew that the plaintiff would suffer harm in its home state because plaintiff’s principal place of business was there).

(2) *Defendants’ Deliberate Use of the Consolidated Staffing Trademark*

Second, the Court finds that Plaintiff has sufficiently shown that Defendants’ use of Plaintiff’s registered trademark was “intentional or deliberate.” *Ford Motor Co.*, 141 F. Supp. 2d at 774. Plaintiff makes this showing mainly through the affidavits it submitted to the Court (ECF No. 20-1; ECF No. 20-2), which the Court may consider to determine whether it has personal jurisdiction over Defendants. *See Theunissen*, 935 3 F.2d at 1458.

By affidavit, Mr. Sturgill states that, “[a]t some time after being aware of Consolidated Staffing’s federal trademark application for Consolidated Staffing, Defendants intentionally modified their prior mark of Consolidated Staffing Solutions to be identical to the federally registered mark Consolidated Staffing.” (ECF No. 20-1 at PageID 88.) Defendants then “modified the code utilized for depicting their web page [www.consolidatedstaff.com](http://www.consolidatedstaff.com) to identify their webpage as ‘Consolidated Staffing.’” (*Id.* at PageID 89–90.)

Mr. Casey Whitcher, who oversees and manages Plaintiff’s website, echoes Mr. Sturgill’s sentiments. (*See* ECF No. 20-2.) He alleges in detail how Defendants have intentionally used certain coding in their website “such that when the general public is searching for Plaintiff’s

company Consolidated Staffing, a link to Defendants' website consolidatedstaff.com is prominently displayed as the first non-advertising link . . . , and upon activating [sic] the associated link, the public is brought to the home page of consolidatedstaff.com which prominently displays [Plaintiff's] servicemark." (*Id.* at PageID 116–17.)

Mr. Witcher explains that, since Plaintiff formally registered their trademark, Defendants have modified their website coding "to replace 'Consolidated Staffing Solutions' with 'Consolidated Staffing.'"<sup>1</sup> (*Id.* at PageID 115.) In this way, Mr. Witcher makes the following observation, which the Court finds compelling:

Of primary importance is the relevant H1 tag. An H1 tag is the tag used to show the most important headline on webpage that the author considers "important". Google will consider what you think are the most important headers when evaluating your website. Listing anything as an H1, does not mean that google will think it's important, but it tells google that you think it's important. Typically headlines on a web page are listed with tags in order of importance from H1 to H6 the most important being the former with less and less weight as the numbers get larger so an H6 is not a very important tag.

The H1 tag for the archived consolidatedstaff.com owned by Defendants in 2016 was "Consolidated Staffing Solutions". The H1 tag for the current consolidatedstaff.com website is "Consolidated Staffing." As mentioned, this H1 tag is the phrase which the Author is trying the hardest to rank for when that phrase is searched for on any search engine. Also, the TITLE tag for the archived consolidatedstaff.com owned by Defendants in 2016 was "consolidatedstaff". The TITLE tag for the current consolidatedstaff.com website is "Consolidated Staffing". As mentioned, this TITLE tag is the tag which the public is shown when the website is identified. For example, an internet search for "Consolidated Staffing" in 2016 would have returned the consolidatedstaff.com website but under the search result title "consolidatedstaff". A current internet search for "Consolidated Staffing" returns the consolidatedstaff.com website under the search result title "Consolidated Staffing".

(*Id.* at PageID 115–16.)

---

<sup>1</sup> Mr. Witcher explained that he could track how the code used on Plaintiff's website has changed over time by using a website called "waybackmachine." (ECF No. 20-2 at PageID 114.)

The Court finds that these allegations show intentionality by Defendants. To find otherwise would disregard evidence revealing that Defendants modified their website only after learning of Plaintiff's application to register its trademark. And the submitted affidavits show that Defendants' decisions were calculated—the timing of their website changes tracks with Plaintiff's registration of their trademark. The Court can thus infer that the historical development of Defendants' website was not coincidental—or somehow a fluke. Rather, it shows, as Mr. Witcher suggests, that Defendants have sought to mimic their website language with that of Plaintiff. To the Court, these facts suggest deliberateness.

Because the Court must interpret Plaintiff's allegations as true, the conclusion that follows seems incontrovertible. Mr. Sturgill and Mr. Witcher's affidavits have sufficiently shown that Defendants "are primary participants in an alleged wrongdoing intentionally directed at a [Tennessee] resident." *Calder*, 465 U.S. at 790; compare *See, Inc.*, No. 03-74761, 2004 WL 5569067, at \*6 (E.D. Mich. Oct. 12, 2004), *aff'd*, 167 F. App'x 518 (6th Cir. 2006) (denying personal jurisdiction because "Plaintiff cannot show that the use of its trademarks was intentional or deliberate."). The Court thus finds that Plaintiff has satisfied the second element of the "effects" test expressed under *Ford Motor Co.*, 141 F. Supp. 2d at 774.

*(3) Defendants' Acts Expressly Aimed at Tennessee*

Finally, The Court finds that Defendants' acts "were expressly aimed" at the State of Tennessee. *Ford Motor Co.*, 141 F. Supp. 2d 763 at 774.

"Courts have struggled to define precisely what satisfies this prong." *Am. Pie Pizz, Inc. v. Holton Holdings, Inc.*, No. 2:10-CV-13106, 2011 WL 334272, at \*8 (E.D. Mich. Jan. 31, 2011) (citing *Ford Motor Co.*, 141 F. Supp. 2d at 774). "Nevertheless, the [C]ourt is guided by Supreme Court's consistent rejection of 'mechanical' tests on which personal jurisdiction might

turn . . . and recognizes the need instead ‘for a “highly realistic” approach’ that looks to the ‘real object[ives]’ of the acts in each individual case.” *Ford Motor Co.*, 141 F. Supp. 2d 763 at 776 (quoting *Burger King*, 471 U.S. at 478–79). “Injury to a forum resident, standing alone, however, is not enough.” *Id.* (citing *Weather Underground, Inc. v. Navigation Catalyst Sys., Inc.*, 688 F.Supp. 2d 693, 700). “There must be ‘something more’ to demonstrate the defendant directed his activity toward the forum state.” *Id.* (quoting *Panavision Int’l, L.P.*, 141 F.3d at 1321).

In *Ford Motor Co.*, a prototypical cybersquatting case where plaintiffs sued “over eighty persons and entities who [had] registered Internet domain names that incorporate . . . trademarks . . . in which [the plaintiffs had] a proprietary interest,” Judge Robert H. Cleland laid out a framework that is useful in this case. 141 F. Supp. 2d at 770. Judge Cleland considered “two factors in determining whether registering a domain name is an act ‘expressly aimed’ at a trademark owner: (1) the likelihood of confusion as to who controls the domain that is created by the domain name itself and (2) the level of individualized targeting at the trademark owner.” *Id.* at 776. He explained that “[t]hese factors are inversely proportionate to each other. Thus, if the likelihood of confusion created by the domain name is high, a low-level showing of individual targeting will be required. If the likelihood of confusion is low, the level of individual targeting required will be high.” *Id.*

As to the confusion component of the analysis, *Ford Motor Co.* considered two factors: “(1) the existence of other legitimate uses for the exact mark and (2) the lexical context of the mark within the domain name.” 141 F. Supp. 2d at 776.

When considering these factors here, this Court first emphasizes that the allegations against Defendants here go beyond mere registration of domain names. As explained above,

Plaintiff alleged that “Defendants intentionally modified their prior mark of Consolidated Staffing Solutions to be identical to [Plaintiff’s] federally registered mark” in their website coding. (ECF No. 1 at PageID 5; ECF No. 20-2.) And they allegedly did so not only to reap commercial benefit from Plaintiff’s brand (ECF No. 1 at PageID 6), but also to deliberately trick Internet users to go to their website as opposed to Plaintiff’s. (ECF No. 20-2.)

These facts, on their own, suggest that Defendants have locked their eyes on Plaintiff—and have attempted surreptitiously to piggyback on and benefit from Plaintiff’s alleged commercial success. In this way, Plaintiff’s allegations show that Defendants “directed their activity toward” Tennessee by deliberately using Plaintiff’s registered trademark. *Panavision Int’l, L.P.*, 141 F.3d at 1321. These facts also explain why, on online recruiting and marketplaces for job hunters like Indeed, “there was confusion from current employees and prospective employees on who they were posting the review for in relation to [Plaintiff] and [Defendant].” (ECF No. 20-1 at PageID 91.) Candidates for employment refer to such reviews in deciding whether to seek employment. They have allegedly had much difficulty differentiating between Plaintiff and Defendants when critiquing their experience as employees for the companies, which has allegedly “impacted [Plaintiff’s] ability to recruit and find talent in [their] offices.” (*Id.*)

Coming back to the framework laid out by Judge Cleland, this Court also finds that Defendants have not shown “legitimate uses for the exact mark” used by Plaintiff other than to drive more traffic to their website. *Ford Motor Co.*, 141 F. Supp. 2d at 776. By way of example, words like “Lincoln,” as *Ford Motor Co.* explains, has multiple meanings, including the 16th President of the United States and the famous American automaker. “Consolidated

Staffing” denotes nothing but a brand. *Id.* at 777. Its use online and on the marketplace serves to drive business—nothing else.

Thus, because this case goes beyond mere registration of a domain name, and because the Court need look no further than the above allegations to find that “the likelihood of confusion created by” Defendants’ online presence is high, Plaintiff has made “a prima facie case of personal jurisdiction.”<sup>2</sup> *Id.* at 776–77. The Court thus finds that Plaintiff has satisfied the third and final element the “effects” test. *Id.* at 774. And, as such, the Court finds that Defendants have purposefully availed themselves in Tennessee.

**b. Arises Out Of**

The next question is whether this case “arise[s] from” Defendants’ “activities” in Tennessee. *Southern Mach. Co.*, 401 F.2d at 381. The answer is, once again, “yes.”

When an improper use of a trademark is “expressly aimed” at the forum state, the ‘arising out of’ requirement is satisfied.” *Ford Motor Co.*, 141 F. Supp. 2d at 778 (quoting *Theunissen*, 935 3 F.2d at 1461). Accordingly, because Plaintiff has shown that Defendants expressly aimed their actions toward Tennessee, Plaintiff has met its burden of proving the “arising out of” element. *Theunissen*, 935 F.2d at 1461 (6th Cir. 1991).

---

<sup>2</sup> The Court declines to venture into an analysis of “the lexical context of the mark within the domain name” used by Plaintiff and Defendants. *Ford Motor Co.*, 141 F. Supp. 2d at 776. Doing so is unnecessary. As explained above, Plaintiff has alleged more than mere cybersquatting. This case involves an intentional attempt at modifying website coding to reflect Plaintiff’s trademark and mimicking Plaintiff’s online presence. The Court interprets Judge Cleland’s useful guidance as denoting the idea that, if a defendant deliberately creates confusion between their online activity and that of a plaintiff, this showing is sufficient to create a presumption that the defendant directed their actions toward the plaintiff’s forum state. Plaintiff’s allegations suggest that Defendants’ deliberate actions created such confusion, which is sufficient to find that these actions were expressly aimed at Tennessee.

**c. Reasonableness**

Finally, the Court must decide whether “the acts of [Defendants] . . . have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.” *Southern Mach. Co.*, 401 F.2d at 381.

Here, Defendants have to make a showing. “[W]here a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.” *Burger King*, 471 U.S. at 477. “A compelling case is not made out if the defendant’s concerns ‘may be accommodated through means short of finding jurisdiction unconstitutional,’ such as application of choice-of-law rules or changing venue.” *Ford Motor Co.*, 141 F. Supp. 2d at 778 (quoting *Burger King*, 471 U.S. at 477).

Other than alleging that litigating this case in Tennessee would be inconvenient, Defendants do not argue that an exercise of personal jurisdiction here would lead to unfair results. Rather, they argue that the Court should transfer the case to the Central District of California because “the ease and access to proof favors litigating in California.” (ECF No. 18-1 at PageID 50.) Defendants have thus not demonstrated that the exercise of personal jurisdiction here would lead to unreasonable or unfair results. *Burger King*, 471 U.S. at 477.

Thus, because the Court finds that Plaintiff has satisfied all three of the elements under the specific jurisdiction test in *Southern Mach. Co.*, 401 F.2d at 381, the Court finds that it can exercise personal jurisdiction over Defendants. The only remaining personal jurisdiction issue that the Court need decide relates to Defendants’ argument that Tennessee’s fiduciary shield doctrine precludes jurisdiction over Lopes. The Court takes on this straightforward issue in the next section.

**d. Fiduciary Shield Doctrine**

Defendants argue that, “[u]nder Tennessee law, the fiduciary shield doctrine precludes jurisdiction over an individual acting exclusively as a corporate officer on behalf of a corporation.” (ECF No. 18-1 at PageID 47–48) (citing *Jowers v. Beck*, No. 1:09-cv-1131, 2010 WL 455280 at \*6 (W.D. Tenn. Feb. 2, 2010)). In this way, they argue that “exercising personal jurisdiction in Tennessee would impose an unfair and undue burden on Defendants.” (*Id.* at PageID 48.)

In response, Plaintiff argues that the premise of using the fiduciary shield doctrine to bar personal jurisdiction over a corporate officer “has been specifically denounced by the Tennessee Federal Courts.” (ECF No. 20 at PageID 76) (citing *Simplex Healthcare, Inc. v. Marketlinkx Direct, Inc.*, 761 F.Supp. 2d 726 at 731 (M.D. Tenn. 2011)). Plaintiff claims that “Defendant Lopes’ reliance on the Fiduciary Shield Doctrine is unfounded.” (*Id.* at PageID 79.)

The Court agrees with Plaintiff. The fiduciary shield doctrine does not preclude personal jurisdiction over Lopes.

“The ‘fiduciary shield doctrine’ provides that ‘when an individual defendant is an officer of a corporation, a court may not exercise personal jurisdiction over the defendant based on actions taken in his or her corporate capacity.’” *Sledge v. Indico Sys. Res., Inc.*, 68 F. Supp. 3d 834, 841 (W.D. Tenn. 2014) (quoting *Simplex Healthcare, Inc. v. Marketlinkx Direct, Inc.*, 761 F.Supp. 2d 726, 730–31 (M.D. Tenn. 2011)). That said, “[a]n officer of a corporation who is ‘actively and personally involved in the conduct giving rise to the claim’ is subject to personal jurisdiction in the forum state because he has purposely availed himself of the forum, just as the corporation has.” *Id.* (quoting *Balance Dynamics Corp. v. Schmitt Indus.*, 204 F.3d 683, 698 (6th Cir. 2000)).

The Court has no difficulty finding that Lopes was allegedly “actively and personally involved in the conduct giving rise” to claims here. *Balance Dynamics Corp.*, 204 F.3d at 698. Plaintiff alleges that Lopes “is the registered CEO, Secretary, CFO of Consolidated Staffing Solutions, Inc. and is listed as the sole director of Consolidated Staffing Solutions, Inc.” (ECF No. 1 at PageID 2.) And because the Court must interpret Plaintiff’s pleadings in its favor, the Court infers that Lopes must have played an instrumental role in CSS’s allegedly improper actions. *See Theunissen*, 935 3 F.2d at 1458. After all, Lopes allegedly heads CSS’s operations. CSS presumably cannot proceed with business maneuvers, like modifying the company’s website, without Lopes’s approval or involvement. And no allegations by Defendants appear to suggest otherwise.

The Court thus finds that the fiduciary shield doctrine does not apply here. The Court thus **DENIES** Defendants’ motion to dismiss Plaintiff’s complaint for lack of personal jurisdiction.

## **II. The Western District of Tennessee Is a Proper Venue**

Defendants argue that venue is improper for three reasons. (ECF No. 18-1 at PageID 49.) First, “[n]either Defendant resides” in the Western District of Tennessee. (*Id.*) Second, “a substantial part of the events giving rise to Plaintiff’s claims is not located within the District . . . and neither Defendant is subject to personal jurisdiction in Tennessee.” (*Id.*) Third, “both Defendants reside in California and the action could have been brought there.” (*Id.*)

Plaintiff claims that venue “is proper . . . because a substantial part of the events giving rise to the claims occurred in this District.” (ECF No. 1. at PageID 3.)

The Court finds Plaintiff’s position well-taken. The Court thus **DENIES** Defendants’ motion to dismiss Plaintiff’s complaint for improper venue.

Federal Rule of Civil Procedure 12(b)(3) allows a defendant to move to dismiss a plaintiff's complaint for improper venue. "On a 12(b)(3) motion to dismiss, 'the plaintiff bears the burden of proving that venue is proper. The Court may examine facts outside the complaint but must draw all reasonable inferences and resolve factual conflicts in favor of the plaintiff.'" *Gone To The Beach, LLC v. Choicepoint Servs., Inc.*, 434 F. Supp. 2d 534, 536–37 (W.D. Tenn. 2006) (citation omitted).

Twenty-eight U.S.C. § 1391 governs venue issues for all federal civil actions. It provides:

(b) Venue in general.—A civil action may be brought in—

(1) a judicial district in which any defendant resides, if all defendants are resident of the State in which the district is located;

(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or

(3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

28 U.S.C. § 1391(b). Under 28 U.S.C. § 1391(c)-(d), "[i]f the defendant is a corporation, venue will lie in the district where the corporation would be 'subject to the court's personal jurisdiction,' and if more than one such district exists, the corporation will be deemed to reside in any district 'within which its contacts would be sufficient to subject it to personal jurisdiction.'" *Coffey v. Coffey*, No. 2:14-cv-2912-SHL-dkv, 2015 WL 686246, at \*2 (W.D. Tenn. Feb. 18, 2015) (adopting report and recommendation).

Here, the Court need look no further than U.S.C. § 1391(b)(3) to find that venue in the Western District of Tennessee is proper. As explained above, the Court has personal jurisdiction over CSS under the "effects" test first laid out in *Calder*, 465 U.S. 783. And the

Court has personal jurisdiction over Lopes because he was allegedly “actively and personally involved in the conduct giving rise to the claim.” *Balance Dynamics Corp.*, 204 F.3d at 698. The Court thus **DENIES** Defendants’ motion to dismiss Plaintiff’s complaint for improper venue because it has personal jurisdiction over both CSS and Lopes. *See* 28 U.S.C. § 1391(b)(3).

### **III. The Court Will Not Transfer the Case to the Central District of California**

Defendants argue that, “[i]f the Court determines that some claims should not be dismissed, the interests of justice clearly require transfer of those claims to the Central District of California.” (ECF No. 18-1 at PageID 50.) They also claim that, “[b]ecause venue is improper in this District, and this Court has no personal jurisdiction over Defendants, Plaintiff’s choice of forum should not be given weight.” (*Id.*)

Plaintiff responds that Defendants have presented no “striking reason” why a California federal court is better suited than this Court to preside over this lawsuit. (ECF No. 20 at PageID 80.) It argues that “[n]o witnesses have been identified as being inconvenienced by being haled into Tennessee to defend against Plaintiff’s claims.” (*Id.* at PageID 82.) And it claims that “Tennessee law should be applied to some claims presented.” (*Id.* at PageID 83.) In this way, Plaintiff says that its “choice of forum is entitled to substantial deference,” and that the Court should deny Defendants’ motion to transfer. (*Id.*)

The Court agrees with Plaintiff. The Court thus **DENIES** Defendants’ motion to transfer the case to the Central District of California. The case will remain in the Western District of Tennessee.

“For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought

or to any district or division to which all parties have consented.” 28 U.S.C. § 1404(a). “[I]n ruling on a motion to transfer under Section 1404(a), a district court should consider the private interests of the parties, including their convenience and the convenience of potential witnesses, as well as other public-interest concerns, such as systemic integrity and fairness, which come under the rubric of “interests of justice.”” *Scepter, Inc. v. Nolan Transp. Grp., LLC*, 352 F. Supp. 3d 825, 832 (M.D. Tenn. 2018) (quoting *Moore v. Rohm & Haas Co.*, 446 F.3d 643, 647 (6th Cir. 2006)).

The Court does not doubt that this case could have belonged in the Central District of California. Both Defendants reside there. But the issue is whether “public-interest concerns” render this district unsuitable. The Court thinks not.

First, Defendants argue that their “witnesses, business records and other evidence necessary to support its claims are located in California.” (ECF No. 18-1 at PageID 50.) But the Court agrees with Plaintiff that “Defendants’ statements equally apply to Plaintiff.” (ECF No. 20 at PageID 80.) “Plaintiff, its officers . . . , records, witnesses and other evidence to support their claims are in Tennessee.” (*Id.*)

Second, Defendants claim that “it will be much less expensive and burdensome for Plaintiff to fly to California than requiring both Defendants’ and their employees and witnesses, to travel to Tennessee.” (ECF No. 18-1 at PageID 50.) But, once again, this statement applies to Plaintiff as well. As Mr. Sturgill said in his affidavit, “[i]t would be inconvenient and would add expense for [Plaintiff] to litigate this case in California.” (ECF No. 20-1 at PageID 92–3.)

Third, Defendants claim that “the Central District of California, a federal court, will be familiar with applying the Lanham Act governing Plaintiff’s claims.” (ECF No. 18-1 at PageID 50.) Plaintiff argues in response that the Court “will be as equally competent in applying the

Lanham Act as well as the state law claims of Tennessee which are presented if not more so than the California federal court.” (ECF No. 20 at PageID 81.) The Court finds no grounding in Defendants’ argument. District courts—whether in California, Tennessee, or anywhere else in the nation, for that matter—will be able to adjudicate Lanham Act claims. Such is the role of district courts: to decide cases.

The Court thus finds that Defendants have not met their burden in showing that the Court should transfer the case to the Central District of California. *See Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947) (“[U]nless the balance is strongly in favor of the defendant, the plaintiff’s choice of forum should rarely be disturbed.”). The Court thus **DENIES** Defendants’ motion to transfer the case to the Central District of California.

### **CONCLUSION**

For the reasons stated above, the Court **DENIES** Defendant’s motion to dismiss for lack of jurisdiction and improper venue or, in the alternative, for transfer to the Central District of California. (ECF No. 18.)

**SO ORDERED**, this 8th day of January, 2020.

s/Thomas L. Parker  
\_\_\_\_\_  
THOMAS L. PARKER  
UNITED STATES DISTRICT JUDGE