STATE OF IDAHO)
County of Kootenai)ss

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CLERK OF DISTRICT COURT

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Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

DAVID R. NOSS, *Plaintiff*, vs. AVATAR TECHNOLOGY, INC., a California Corporation. *Defendant*.	Case No. **CV 2001-1391** **MEMORANDUM DECISION AND ORDER ON PLAINTIFF'S MOTION TO ASSUME JURISDICTION, DEFENDANT'S MOTION TO QUASH SERVICE OF SUMMONS FOR LACK OF PERSONAL JURISDICTION, AND DEFENDANT'S MOTION TO STRIKE**

I. INTRODUCTION.

Plaintiff David Noss (Noss) has filed a Motion to Assume Jurisdiction. While the Rules of Civil Procedure do not provide for such a motion, the Court views the Motion to Assume Jurisdiction as a vehicle to bring before the Court the Motion to Quash for Lack of Personal Jurisdiction filed by defendant Avatar Technology, Inc. (AT), on May 18, 2001.

II. DISCUSSION OF FACTS.

Noss is an Idaho resident and is the registered owner of the "Avatar" trademark for use on such products as loudspeakers, amplifiers and electronic crossovers." He is in the business of constructing and marketing speakers and related products under the name "Avatar." AT also produces or markets speakers and related products under the name "Avatar", and those products have been advertised and sold through the Fred Meyer store in Coeur d'Alene, Idaho. AT also has a website which offers Avatar products, including speakers, for sale over the internet. Contrary to the

representation of counsel for Noss, this was not attached to Noss' brief. This is of no consequence, as the Court is not relying on internet, or world wide web presence to rule on jurisdiction. Parenthetically, this Court has read Judge Judd's decision on defendant's motion to dismiss for lack of personal jurisdiction in *Cripe v. Spakes,* Kootenai County Case No. CV 1997-5452, and while not factually on point, that decision supports a finding of jurisdiction in the present case over AT.

Ty Byun, an AT employee and vice president of AT personally sold AT products to Fred Meyer, soliciting Fred Meyer at their Oregon offices, and Fred Meyer purchased AT products in 1999, issuing a purchase order from Fred Meyer's Oregon office to AT's California office. Affidavit of Ty Byun, ¶ 1-7. AT, through Byun, knows that Fred Meyer has about 150 stores throughout the pacific northwest. *Id.*¶ 9. Idaho is in the pacific northwest. AT products were delivered from their California office to Fed Meyer's Chehalis, Washington product distribution center. *Id.*¶ 8. AT claims it never had any control or knowledge as to the final destination of the AT products once they were in the hands of Fred Meyer. *Id.*¶ 9. Tim Paltridge, the Computer Category Buyer for Fred Meyer, states that in March 2001, there were nine Fred Meyer stores in Idaho, and prior to March 2, 2001, there were no less than 247 Avatar computers sold in their Idaho stores, and that those computers bore the "Avatar" name either on their packaging or on the products themselves. Tim Paltridge Affidavit, .¶ 1-7. AT has filed a Motion to Strike portions of the Tim Paltridge Affidavit, on the basis that the affidavit is deficient because Paltridge did not swear that he viewed the actual speaker units which bore the name "Avatar" on them. However, Paltridge stated in his affidavit that all 247 of the Avatar computer packages included audio speakers, and all of

those products bore the Avatar name either on the packaging or on the products themselves. AT also in its Motion to Strike, complains that Paltridge did not testify to matters within his "personal knowledge", however, Paltridge stated "I have personal knowledge of all factual assertions contained in this affidavit and I am competent to testify to those assertions if asked to do so." AT's Motion to Strike is DENIED.

Noss' attorney, at oral argument on March 19, 2002, stated Noss could rely on factual allegations since discovery had not taken place. Noss' attorney cited no authority for such proposition, but appears to rely on *Bensusan Restaurant Corp. v. King,* 937 F.Supp 295, 298 (S.D.N.Y. 1996), as cited by Judge Judd in *Cripe v. Spakes*, that "because discovery has not commenced on this issue or others, the plaintiffs are entitled to rely on mere factual allegations to make their *prima facie* showing of jurisdiction." *Bensusan* is buttressed by the fact that it would be unfair, premature, and a violation of I.R.C.P. 56(f), to grant a motion to dismiss/motion for summary judgment, on the issue of personal jurisdiction, without allowing plaintiff to discover facts which may be relevant to that issue.

Idaho Rule of Civil Procedure reads:

> **When affidavits are unavailable in summary judgment proceedings.** Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

In *Doe v. Garcia,* 126 Idaho 1036, 895 P.2d 1229 (Ct.App. 1995), the plaintiffs should have been allowed to complete discovery before being required to respond to the defendant's summary

judgment motion. *Insurance Corporation of Ireland, Lt. et al. v. Compagnie Des Bauxites de Guinee,* 456 U.S. 694, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982), discussed below, certainly indicates that a party should be allowed discovery, before a court rules on a motion to dismiss/summary judgment based on personal jurisdiction.

In *Crane v. Carr,* 259 U.S.App.D.C. 229, 814 F.2d 758,760 (D.C. Cir. 1987), the District of Columbia Circuit Court of Appeal reversed a plaintiff's case when it was dismissed "with no opportunity for discovery on the issue of jurisdiction." The Court held the plaintiff was "entitled a fair opportunity to inquire into [the defendant]'s affiliation with the District." 814 F.2d at 764. The same Court held in *El-Fadl v. Central Bank of Jordan,* 316 U.S.App.D.C. 86, 75 F.3d 668, 677 (D.C.Cir 1996) that: "A plaintiff faced with a motion to dismiss for lack of personal jurisdiction is entitled to reasonable discovery, lest the defendant defeat the jurisdiction of a federal court by withholding information on its contacts within the forum."

"Sufficient time for discovery is considered especially important when the relevant facts are exclusively in the control of the opposing party." 10B WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE, §2740, p. 419, n. 7; p. 409, n. 26.

III. DISCUSSION OF THE LAW.

Whether the State of Idaho has jurisdiction over a nonresident defendant is a question of law. *State Dept. of Finance v. Tenney,* 124 Idaho 243, 247, 858 P.2d 782, 786 (Ct.App. 1993). In order for personal jurisdiction to be obtained over a nonresident defendant, two conditions must be

satisfied. *Tenney,* 124 Idaho at 246, 858 P.2d at 785. First, a statutory basis must be established under I.C. § 5-514, Idaho's long-arm statute." *Id.* (footnote omitted). Second, the "constitutional requirements of the due process clause of the fourteenth amendment of the United States Constitution must be met." *Id., citing Schneider v. Sverdsten Logging Co.,* 104 Idaho 210, 211, 657 P.2d 1078, 1079 (1983).

A. Idaho's Long-Arm Statute.

To properly assert personal jurisdiction over an individual not subject to "general" jurisdiction in Idaho, there must be a legal basis for the assertion of extraterritorial jurisdiction. *Mann v. Coonrod,* 125 Idaho 357, 359, 870 P.2d 1316, 1318 (1994). Idaho Code § 5-514 provides for the assertion of extraterritorial jurisdiction over an individual or business. *Mann*, 125 Idaho at 359, 870 P.2d at 1318 (citing *Saint Alphonsus v. Washington,* 123 Idaho 739, 743, 852 P.2d 491, 495 (1993). In order for an Idaho court to assert extraterritorial jurisdiction over a nonresident defendant, the acts giving rise to assert jurisdiction must fall within the scope of Idaho Code § 5-514. *Mann*, 125 Idaho at 359, 870 P.2d at 131 (citing *Saint Alphonsus,* 123 Idaho at 742, 852 P.2d at 494. Idaho Code § 5-514 states:

> Any person,…or corporation, whether or not a citizen or resident of this state, who in person on through an agent does any of the acts hereinafter enumerated, thereby submits said person,…or corporation,…to the jurisdiction of the courts of this state as to any cause of action arising from the doing of said acts:
> (a) The transaction of any business within this state….;
> (b) The commission of a tortuous act within this state;

The exercise of jurisdiction under Idaho Code § 5-514 is "specific" as distinguished from "general"

and extends "only as to any cause of action arising from the doing of any of said acts." *Houghland Farms, Inc. v. Johnson,* 119 Idaho 72, 75, 803 P.2d 978, 981 (1990). In analyzing whether sufficient contacts exist to exercise specific jurisdiction over a nonresident defendant, only the defendants' contacts out of which the suit arises or those that relate to the suit shall be considered." *Id.* Noss alleges jurisdiction is appropriate under Idaho Code § 5-514(a) as AT has done business in the state of Idaho, and under § 5-514(b) as it committed the tort of trademark infringement. This Court finds that AT has both transacted business in the State of Idaho (the factual analysis is more fully set forth below) and has allegedly committed a tort in the State of Idaho.

B. Due Process Under the 14th Amendment.

Having found jurisdiction under Idaho Code § 5-514 (a) and (b), the Court must now address whether the assertion of jurisdiction by an Idaho Court is permissible under the Due Process Clause of the United States Constitution. *Saint Alphonsus,* 123 Idaho at 743, 852 P.2d at 495. Due process does not require that the defendant be physically present in Idaho. *Id.* Due process, however, prohibits an Idaho court from exerting jurisdiction over a nonresident defendant "unless that defendant has certain minimum contacts with Idaho such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Id.*

While AT may not have directly injected its product into the State of Idaho, AT certainly purposely injected its product into the State of Washington via the Fred Meyer distribution center, knowing full well that AT's product would then be distributed by Fred Meyer to its stores at various locations. While AT may not have known how many stores Fred Meyer had in Idaho, or the exact

towns they were in, AT must certainly have known the extent of Fred Meyer's distribution. That distribution included nine stores in the State of Idaho in March 2001. AT also knew that Fred Meyer's stores were not solely located in Chehalis, Washington and the State of Oregon.

Each party cited several cases nearly a year ago when the motion to quash service for lack of jurisdiction was briefed. Neither party cited the seminal Idaho cases dealing with facts similar to those that we have here, *Doggett v. Electronics Corp. of America,* 93 Idaho 26, 454 P.2d 63 (1969) and the subsequent case *Duignan v. A.H. Robins Co.,* 98 Idaho 134, 559 P.2d 750 (1977). The present jurisdictional question is answered by *Doggett* and *Duignan*. *Doggett* says:

> On the basis of the United States Supreme Court Cases, we conclude that under these circumstances the one contact with Idaho, resulting as it did in injury to an Idaho resident, was sufficient to give Idaho jurisdiction over the respondents in a tort action. In placing their goods in the flow of interstate commerce, the respondents must have had the reasonable expectation that such items would be shipped indiscriminately throughout the United States. If dangerously defective goods are placed in the interstate flow of commerce, those whose negligence created the defect should be prepared to defend themselves wherever the injury should occur.

93 Idaho at 33-32. In *Doggett,* a boiler manufacturer sold one boiler in Idaho, and two manufacturers of faulty components to that boiler contested Idaho jurisdiction in a litigation over an explosion of that boiler in Idaho. The manufacturers of the faulty components had sold nothing directly to anyone in Idaho, but the boiler for which they supplied components wound up in Idaho. The Idaho Supreme Court held that personal jurisdiction existed. In the present case, AT sold computers to Fred Meyer, who then sold at least 247 such computers in Idaho. Just as in *Doggett,* "In placing their goods in the flow of interstate commerce, the respondents must

have had the reasonable expectation that such items would be shipped indiscriminately throughout the United States." 93 Idaho at 33-32. Indeed that would be the plan of AT, that these computers be distributed from the distribution center to Fred Meyer stores, and in turn sold, in hopes that more AT computers would be purchased by Fred Meyer. The facts in the present case are even more indicative that this Court should exercise jurisdiciton, since Idaho borders Washington. In *Duignan v. A.H. Robins Co.,* 98 Idaho 134, 559 P.2d 750 (1977), the Supreme Court held that Idaho District Courts do have jurisdiction over a Virginia corporation which manufactured an intrauterine device known as a Dalkon Shield, placed in a California woman who later moved to Idaho. The Idaho Supreme Court in *Doggett,* held a trial court should consider the following factors in determining whether it is fair to exercise long-arm jurisdiction over a non-resident manufacturer whose product has allegedly injured a resident plaintiff:

> First, the court should consider the nature and size of the manufacturer's business. As the probability of the product entering interstate commerce and the size or the volume of the business increase, the fairness of making the manufacturer defend in the plaintiff's forum increases. Second, the court should consider the economic independence of the plaintiff. A poor man...may not be able to afford a trip to another jurisdiction to institute suit... Third, the court should consider the nature of the cause of action including the applicable law and the practical matters of trial. As the number of local witnesses increases and the availability to travel decreases, it seems fair to make the manufacturer defend in the plaintiff's forum. These factors discussed above are guidelines to assist the trial court. They are not exclusive and the court should consider all other matters it deems relevant.

98 Idaho at 137-38, citing *Phillips v. Anchor Hocking Glass,* 100 Ariz. 251, 413 P.2d 732 (1966). Looking at those criteria, the nature and size of AT is not completely known, but

obviously is not a small company. If the size is not known, we need only look at *Doe v. Garcia.* Next, "the probability of the product entering interstate commerce" is beyond a probability, it is a certainty, and the facts per Ty Byun and Tim Paltridge bear that out. The computers went from California to Chehalis, Washington, then at least 247 of them to Idaho. AT isn't selling a boiler that doesn't move once it is installed. AT is selling a motor vehicle that be definition will travel interstate once it reaches Fred Meyer. As the Supreme Court noted in *Duignan,* "Ours is an age of great mobility, both of people and of products." 98 Idaho at 138. That was true 25 years ago, and is more so today. Next, as to the "economic independence of the plaintiff", there is no evidence of that, but again we go back to *Doe v. Garcia*. The courts are concerned with "fundamental fairness". In *Duignan,* the Idaho Supreme Court stated:

> It would seem consonant with fairness to subject the manufacturer to jurisdiction whenever his product gave rise to the cause of action within the foreign state, even though the manufacturer had no other contact in the state. As far as the manufacturer's economic objectives are concerned, his overriding purpose is to have his product consumed. Where this consumption occurs is relatively insignificant to him. This observation supports the position that the manufacturer can be summoned to defend a cause of action arising out of the use of his product wherever it may be located. Any inconvenience that may be asserted is more than balanced by his interest in defending the integrity of his product, the maintenance of which may ultimately determine his economic success. There can be no unfairness in forbidding the manufacturer to disassociate himself from his product.

98 Idaho at 138. Just as in *Duignan*, the "overriding purpose [of AT] was to have his product consumed...where this consumption process occurs is relatively insignificant to [them]." The Supreme Court then concluded by stating:

> We therefore repeat the conclusion of *Doggett* that, "If dangerously defective goods are placed in the interstate flow of commerce, those whose negligence

> created the defect should be prepared to defend themselves wherever injury should occur."

Id.

A general discussion of the Idaho cases on jurisdiction is in order. Under *Smalley v. Kaiser,* 130 Idaho 909, 913, 950 P.2d 1248 (1997), the district court must consider the facts asserted in the light most favorable to the plaintiff, the non-moving party. See also *Western States Equip. v. American Amex,* 125 Idaho 155, 157, 868 P.2d 483 (1994).

Under *Smalley v. Kaiser,* 130 Idaho 909, 912, 950 P.2d 1248 (1997), there is a three step analysis:

1) Are there sufficient allegations to subject the defendant to personal jurisdiction under our long arm statute? It seems that this criteria is fairly easily met under *Smalley,* and in *St. Alphonsus v. State of Washington,* 123 Idaho 739, 852 P.2d 491 (1993), the Idaho Supreme Court noted that this statute (I.C. § 5-514) is "designed to provide a forum for Idaho residents, is remedial legislation of the most fundamental nature and should be liberally construed." 123 Idaho at 743. An injury occurring in Idaho in a tortious manner is sufficient to invoke the tortious act language of I.C. § 5-514(b), citing among others, *Doggett v. Electronics Corp. of America,* 93 Idaho 26, 454 P.2d 63 (1969). *Doggett,* held that the "state where the injury occurred and the cause of action thus accrued is generally the most logical state for adjustment of rights" (93 Idaho at 28-29), and thus the negligent act need not occur in Idaho. In the present case, the allegation is not negligence or tortious in the product liability sense of a product causing injury, but the Complaint alleges trademark infringement, certainly akin to both a breach

of contract and a tort, but in any event, an act which has allegedly caused harm. The injury to Noss apparantly occurred in Idaho when Noss discovered this alleged violation. Idaho's long arm statute is to be interpreted broadly, the legislature "intended to exercise all the jurisdiction available to the State of Idaho under the due process clause of the United States Constitution." 93 Idaho at 30.

2) Are there sufficient minimum contacts to support the exercise of personal jurisdiction over the defendant? In *Smalley,* the Idaho Supreme Court held that the Missouri Child Support Enforcement Department's conduct of sending a report to a credit bureau, was a sufficient minimum contact. In *Doggett,* one contact was sufficient for the manufacturer, and just supplying a component part to the manufacturer was sufficient to have jurisdiction over the makers of the component parts. "Minimum contacts" are discussed in further detail below.

3) **Whether those contacts, in light of other factors, show assertion of personal jurisdiction would comport with "traditional notions of fair play and substantial justice."** This permits the court to consider:

[1] "the burden on the defendant,"

[2] "the forum State's interest in adjudicating the dispute,"

[3] "the plaintiff's interest in obtaining convenient and effective relief,"

[4] "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and

[5] the "shared interest of the several States in furthering fundamental substantive social policies."

Smalley, citing Western States Equip. Co. v. American Amex Inc., 125 Idaho 155, 158-59, 868 P.2d 483, 486-87 (1994). In the dissenting opinion of Justice Schroeder, there is a good discussion of how these how these five factors applied to the *Smalley* facts. These *Smalley* factors are similar to the factors discussed in *Duignan* above, they all deal with what is "fundamentally fair."

The United States Supreme Court decision *World-Wide Volkswagen v. Woodsen,* 100 S.Ct. 21228, 357 U.S. 235, 2 L.Ed.2d 223 (1980), involved a suit by owners of a car against the dealer from whom they had bought the car in New York, which was later driven to Oklahoma by New York citizens, and involved in an accident in Oklahoma. The Court emphasized the notion of sovereignty as a limitation on jurisdiction, and rejected the argument that jurisdiction could rest on the fact that it was foreseeable that an automobile sold in New York might be involved in an accident in Oklahoma. 100 S.Ct. at 566-67, 444 U.S. at 295-96. The court agreed that foreseeability is not wholly irrelevant, but thought that the foreseeability that is critical is not the mere likelihood that a product will find its way into the forum state, but that the defendant's conduct and connection with the forum state must be such that he should reasonably anticipate being haled into court there. 100 S.Ct. at 567, 444 U.S. at 297. In the present case, an owner who rolls the odometer back while in its possession, must surely anticipate being haled into court <u>wherever</u> that owner's fraud is subsequently discovered.

Keep in mind that *World-Wide Volkswagen* dealt with a New York auto dealer and New York auto distributor whose market was confined to New York, New Jersey and Connecticut. The Court in *World-Wide Volkswagen* was not directly confronted with the question of whether jurisdiction was proper over the international and national distributors of the car involved in the Oklahoma accident as those parties did not contest jurisdiction. In dictum, the Court contrasted the situation of such national distributors with that of the local sellers, and made it clear that jurisdiction would be asserted over these national distributors, explaining:

> If the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those states if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state. *Gray v. American Radiator & Standard Sanitary Corp.,* 22 Ill.2d 432, 176 N.E.2d 761 (1961).

444 U.S. at 297-98. In the present case, AT is much more like an interstate distributor rather than a local seller.

All indications are that AT is in the business of manufacturing and selling these computers. We know they advertise on the world wide web and can assume they sell them on a national basis through others than Fred Meyer. It would be very surprising if an Idaho citizen called up AT wanting to buy a computer, and the response was "I am sorry, we are not selling in Idaho as we want to avoid having a presence for purposes of personal jurisdiction."

In *Violet v. Picillo,* 613 F.Supp. 1563 (D.RI 1985), Rutgers University and two other entities were held to have submitted to personal jurisdiction in Rhode Island, when a hazardous waste company picked up their hazardous waste and delivered it to a site in Rhode Island. The generators of the waste (Rutgers, etc.) claimed they didn't know where the waste would be taken, so how could they have submitted to jurisdiction. The Court held the facts "strongly indicate that each defendant should have known, if it did not, in fact know, that it was dispatching its hazardous chemical wastes into a stream of commerce broad enough to include '*any* or *all* states,' *Rockwell Intern. Corp. v. Costruzioni Aeronautiche, supra,* 553 F.Supp [328] at 333 (emphasis in original)." 613 F.Supp. at 1577. That Court then discussed facts that are very similar to those in the present case even if Mr. Schneider is telling the truth, that Moturis, Inc. only sells to wholesalers and brokers:

> In substance, what each defendant did was to place its wastes in the hands of an intermediary -- on who, according to the record, quite literally operated in more than one state -- **with no reasonable expectation as to where these materials were destined for disposal, and with no attempt to specify the location, or even the state, in which its wastes were to be disposed**. * * * When so viewed, each defendant's decision to send its toxic wastes on a virtual one-way journey to anywhere represents **a decision to avail itself of the benefits of a potentially boundless national disposal market**.

Id. Certainly, Ty Byun's affidavit tracks this language:

> After gaining possession of the purchased AVATAR product in the State of Washington, Fred Meyers had the exclusive decision making power regarding the final retail destination of the AVATAR porduct. Once it receives the products, Fred Meyers ships AVATAR products to any of its 150 stores as it saw fit. AVATAR has never had any control (or direct knowledge) concerning the final destination of these products.

Byun Affidavit, ¶ 9. The court in *Violet* then stated that had defendants chosen a certain cite, they could have limited their jurisdictional exposure to one state, and that by choosing an "open ended course" they did not "take steps, as they could have, so as to 'be reasonably certain that [they] would not be haled into court in an undesired forum.'" *Id.* Rutgers did not do that in *Violet,* AT did not do that in the present case.

In *Insurance Corporation of Ireland, Lt. et al. v. Compagnie Des Bauxites de Guinee,* 456 U.S. 694, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982), the United States Supreme Court watered down *World Wide Volkswagen,* and made it easier for courts to find minimum contacts. This was based on the defendant's intentional conduct in failing to comply with discovery requests directed to the issue of discovering "minimum contacts". Basically, the Supreme Court held that personal jurisdiction and minimum contacts are based on fairness, and if a party will not produce that which is directed at discovering what "minimum contacts" that party has, it is not unfair to hail that party into court.

Then along came *Asahi Metal Industry Co., LTD. v. Superior Court of California,* 480 U.S. 102; 107 S.Ct. 1026; 94 L.Ed.2d 92 (1987), which seems to have tightened up on the minimum contacts requirement, holding that at least in a products liability component parts action (the Japanese manufacturer of a defective valve later used in a motorcycle tire), the Due Process clause requires "something more than that the defendant was aware of its products entry into the forum State through the stream of commerce in order for the State to exert jurisdiction over the defendant." 480 U.S. at 111, 107 S.Ct. at 1031. In the present case, AT is selling "the

whole thing", not just a component part. Additionally, the "something more" discussed in *Asahi*, is its own decision to allegedly violate trademark protection.

In *Cole v. The Tobacco Institute, et al.,* 47 F.Supp.2d 812 (E.D.Tex. 1999), an English corporation was held subject to jurisdiction in Texas federal court in a suit brought by smokers, for deceptive marketing and withholding research showing the carcinogenity of cigarettes. The district court held:

> That contributing to the marketing, research and design of a product qualifies a corporation as a manufacturer under the stream of commerce theory is supported by the United States Supreme Court decision is *Asahi Metal Indus. Co. v. Superior Ct.,* 480 U.S. 102, 111, 107 S.Ct. 1026, 1031, 94 L.Ed.2d 92.

47 F.Supp.2d at 815. So it doesn't take much to be a "manufacturer" under the stream of commerce theory. In addition to the stream of commerce theory, the Court in *Cole* also discussed fraud as a basis for personal jurisdiction, as well as the "Calder" theory of jurisdiction. While fraud might not apply here, violation of the trademark protection would seem to be an intentional illegal act. Discussing *Calder,* the Court held:

> In *Calder [v. Jones,* 465 U.S. 783, 788-90, 79 L.Ed.2d 804, 104 S.Ct. 1482 (1984)], the United States Supreme Court held that a defendant should reasonably anticipate being hauled into court where the **effects of his conduct have been intentionally caused** through the purposeful direction of activity toward the forum state, even if the defendant never physically enters the state.

47 F.Supp.2d at 815. (emphasis added). The British corporation then argued that its intentional wrongdoing was aimed at more than one state, not any specific plaintiff in any specific state. *Id.* The Court then found that such an argument "goes against common sense" as it "implies a party can avoid liability by multiplying its wrongdoing", then it held:

> "Where the wrongdoer is committing an intentional tort, and knows where the effects of that intentional tort will be felt, it does not offend due process to hale that wrongdoer into court in the places where he knew his wrongdoing would cause injury." And:
>
> > the fact that the alleged intentional wrong was directed at many states instead of just one should not have the result that B.A.T. Industries p.l.c. can not be sued anywhere in the United States. Calder does not suggest such a result. Rather, under Calder, the fact that B.A.T. Industries p.l.c. aimed its alleged wrongdoing at the entire United States gives it the requisite "minimum contacts" with each state where that alleged wrongdoing caused injury.

47 F.Supp.2d at 815-16. (underlining added, citation omitted). Just like the British Corporation not caring where its cigarettes were sold, AT probably didn't care where its computers were sold.

III. CONCLUSION

Defendant AT's Motion to Quash Service of Summons for Lack of Personal Jurisdiction is DENIED, Plaintiff AT's Motion to Assume Jurisdiction is GRANTED. AT's Motion to Strike is DENIED.

Entered this _____2nd_____ day of November, 2002.

_____
John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of November, 2002, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	Fax #	Lawyer	Fax #
Cameron Phillips	208.664.2114	Randall R. Adams	208.664.5380
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_____
Secretary