

James B. Belshe (Utah State Bar No. 9826; E-mail: jbelshe@wnlaw.com)  
Seth W. Black (Utah State Bar No. 12033; E-mail: sblack@wnlaw.com)  
WORKMAN | NYDEGGER A PROFESSIONAL CORPORATION  
1000 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111  
Telephone: (801) 533-9800  
Facsimile: (801) 328-1707

Attorneys for Plaintiff MICHE BAG, LLC

**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

MICHE BAG, LLC., a Utah limited  
liability company,

Plaintiff,

v.

ALLIE COMPTON, an individual,

Defendant.

Civil Case No. 2:09-cv-467 TS

**PLAINTIFF MICHE BAG, LLC'S  
MEMORANDUM IN OPPOSITION TO  
DEFENDANT'S MOTION TO DISMISS  
FOR LACK OF PERSONAL  
JURISDICTION AND IMPROPER  
VENUE**

HONORABLE TED STEWART  
UNITED STATES DISTRICT JUDGE

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Plaintiff Miche Bag, LLC (“Plaintiff”) hereby submits the following memorandum in opposition to defendant Allie Compton’s (“Defendant”) “Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue” (the instant “Motion”).

**OPPOSITION TO MOTION TO DISMISS  
FOR LACK OF PERSONAL JURISDICTION  
AND IMPROPER VENUE**

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## **I. INTRODUCTION**

Plaintiff brought this action based on Defendant's sale of apparently counterfeit goods and the unauthorized use of Plaintiff's registered trademark in connection with the sale of these accused products. The Defendant filed the instant Motion to dismiss this action based on lack of personal jurisdiction and improper venue. The Defendant, however, failed to support this motion with any declaratory or documentary evidence at all. In fact, the instant Motion was not even supported by a memorandum of points and authorities. Accordingly, the Defendant cannot meet its burden for having this case dismissed at this time.

Because the Defendant's actions constitutes sufficient contact with this jurisdiction and because this Court's exercise of jurisdiction over the Defendant will not offend traditional notions of fair play and substantial justice, this case should not be dismissed for lack of personal jurisdiction. Furthermore, because the Defendant has failed to meet its burden of establishing that this venue is improper, and because this venue is in fact not improper, this case should also not be dismissed for being filed in this judicial district.

## **II. STATEMENT OF ISSUES AND FACTS**

### **A. The Instant Motion**

The instant Motion is brought pursuant to Fed. R. Civ. P. 12(b).

The instant Motion is not accompanied by a supporting memorandum as required by DUCivR 7-1(b)(1).

The instant Motion is not supported by any affidavits, exhibits, or any other evidence.

Although the instant Motion was filed by the Defendant Pro Se, the Defendant is represented in this matter by David Slonim, Esq. of The Slonim Law Firm, P.A., 1290 W. Eau Gallie Blvd., Melbourne, FL 32935. (Exh. A).<sup>1</sup>

**B. Plaintiff's Claims Against the Defendant**

Plaintiff is the manufacturer and distributor of handbags, purses, and related products. (Dkt. No. 2 at ¶¶ 1, 12). Plaintiff is also the owner of United States Trademark Registration No. 3,528,628 for the trademark MICHE for use in connection with purses, handbags, straps for purses and handbags, and removable decorative covers for purses and handbags (the "MICHE Mark"). (Dkt. No. 2 at ¶ 11; Dkt. No. 2-2).

Plaintiff monitors the use of its MICHE Mark and the distribution of its products in order to maintain its reputation and the quality of the products associated with Plaintiff and its business. (Belshe Decl. at ¶ 5; Exh. B). Plaintiff has authorized an entity other than the Defendant to distribute its genuine products on eBay. (Belshe Decl. at ¶ 6).

Defendant has sold at least 143 products on eBay using Plaintiff's MICHE Mark and which claim to be genuine Miche products. (Exh. A). Plaintiff purchased one of these products via eBay, but was unable to determine whether or not it was counterfeit. (Exh. C). On information and belief, these products are either counterfeit or are being sold in violation of one or more of the contractual agreements Plaintiffs have entered into with its authorized distributors. Accordingly, Plaintiff sent Defendant cease and desist letters on April 7, 2009 and May 13, 2009. (Exhs. B, D).

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<sup>1</sup> Unless otherwise indicated, all exhibits referred to in this brief are attached to the accompanying Declaration of James B. Belshe in Support of Plaintiff Miche Bag, LLC's Memorandum in Opposition to Defendant's Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue ("Belshe Decl.").

In a correspondence dated May 17, 2009, counsel for Defendant alleged that the at least 143 products that Plaintiff had sold on eBay were genuine Miche products. (Exh. A). To verify this claim, counsel for Plaintiff requested that Defendant identify the source of these allegedly genuine products. (Exh. C). Defendant, however, refused to provide this supposed evidence that its product were genuine until it received a letter indemnifying her for any present or future legal action. (Exh. E). Accordingly, Plaintiff believes on information and belief that the products Defendants have sold and are selling in connection with the MICHE Mark are counterfeit. (Exhs. C, F).

Regardless of whether the products Defendant has sold and is selling are genuine Miche products, Plaintiff alleges that Defendant's distribution of these products via eBay and Defendant's use of Plaintiff's MICHE Mark infringe on Plaintiff's intellectual property and interfere with the distribution agreements Plaintiff has entered into with its authorized distributors.

### **C. Personal Jurisdiction**

Plaintiff is a Utah limited liability company with its principal place of business in Riverton, Utah. (Dkt. No. 2 at ¶¶ 1, 12). Employees of Plaintiff and all attorneys involved in the prosecution of Plaintiff's United States Trademark Registration No. 3,528,628 are located in the State of Utah. (Belshe Decl. at ¶ 13). The contractual agreements Plaintiff enters into with its distributors are executed in the State of Utah. (Belshe Decl. at ¶ 14).

Although Defendant is not a resident of Utah, she sells products using Plaintiff's MICHE Mark via eBay. EBay touts its website as "'The World's Online Marketplace,' enabling trade on a local, national, and international basis." (Exh. G.) eBay has "approximately 84 million active



users worldwide,” and “[i]n 2007, the total value of sold items on eBay’s trading platforms was nearly \$60 billion. This means that eBay users worldwide trade more than \$1,900 worth of goods on the site every second.” (Exh. H.)

Defendant has sold at least some of the accused products to Utah residents and shipped at least some of the accused products to Utah. At least one of the accused products was purchased by a resident of Utah on April 17, 2009 and was received by that resident in Utah on April 23, 2009. (Belshe Decl. at ¶ 15).

**D. Venue**

The instant Motion references 28 U.S.C. § 1400(a), a venue statute stating that “[c]ivil actions, suits, or proceedings arising under any Act of Congress relating to copyrights to exclusive rights in mask works or designs may be instituted in the district in which the defendant or his agent resides or may be found. (Dkt. No. 6 at p. 2). Plaintiff, however, relied on 28 U.S.C. § 1391 as the basis for pleading proper venue in this district. (Dkt. No. 2 at ¶ 9).

### **III. ARGUMENT**

In filing the instant motion, the Defendant failed to support this motion with any declaratory or documentary evidence at all. In fact, the instant Motion was not even supported by a memorandum of points and authorities. The Court may wish to grant some liberties to a Pro Se defendant. However, while the instant Motion was filed by the Defendant Pro Se, it should be noted that Defendant is, indeed, represented by counsel, David Slonim, Esq., in this matter.

Because the Defendant's sale of the accused products in connection with the unauthorized use of Plaintiff's registered trademark constitutes sufficient contact with this jurisdiction in three different ways and because this Court's exercise of jurisdiction over the Defendant will not offend traditional notions of fair play and substantial justice, this case should not be dismissed for lack of personal jurisdiction. Furthermore, because the Defendant has failed to meet its burden of establishing that this venue is improper, and because this venue is in fact not improper, this case should also not be dismissed for being filed in this judicial district.

#### **A. This Court May Exercise Personal Jurisdiction over Defendant**

"In determining whether a federal court has personal jurisdiction over a defendant, the court must determine '(1) whether the applicable statute potentially confers jurisdiction by authorizing service of process on the defendant and (2) whether the exercise of jurisdiction comports with due process.'" *Trujillo v. Williams*, 465 F.3d 1210, 1217 (10th Cir. 2006) (quoting *Peay v. BellSouth Med. Assistance Plan*, 205 F.3d 1206, 1209 (10th Cir.2000)). Because the instant Motion was brought at this early stage in the litigation, Plaintiffs "need[] only make a *prima facie* showing of personal jurisdiction." *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1070 (10th Cir. 2008); *see also Wenz v. Memery Crystal*, 55 F.3d

1503, 1505 (10th Cir. 1995). Furthermore, in considering whether a prima facie showing of personal jurisdiction has been made, “all factual disputes are resolved in plaintiff’s favor.” *Wenz*, 55 F.3d at 1505 (quotation omitted); *see also Dudnikov*, 514 F.3d at 1070.

**1. Utah’s Long-Arm Statute Authorizes the Assertion of the Jurisdiction Over the Defendant**

According to the Utah legislature, Utah’s long-arm statute is to be interpreted “so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the United States Constitution.” Utah Code Ann. §§ 78-27-22. The Utah Supreme Court approved of this interpretation in *SII MegaDiamond, Inc. v. Am. Superabrasives Corp.*, 969 P.2d 430, 433 (Utah 1998). Therefore, as long as personal jurisdiction over the Defendant comports with due process, it is authorized by Utah’s long-arm statute. *Trujillo*, 465 F.3d at 1217. The Due Process Clause of the Fourteenth Amendment is satisfied if the Defendant has had “minimum contacts” with the forum state and if the exercise of jurisdiction does not offend “traditional notions of fair play and substantial justice.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980); *Asahi Metal Indus. Co. v. Superior Court of California*, 480 U.S. 102, 113 (1987).

**2. Defendant’s Activities Create Sufficient Minimum Contacts With the Forum State to Justify Personal Jurisdiction**

“The ‘minimum contacts’ necessary for specific personal jurisdiction are established if the defendant purposefully directed his activities at residents of the forum and the litigation results from alleged injuries that arise out of or relate to those activities.” *Soma Medical International, Inc. v Standard Chartered Bank*, 196 F.3d 1292, 1298 (10th Cir. 1999). In this action, Defendant has established at least three different types of contacts with the state of Utah

which are sufficient for this district to exercise personal jurisdiction. First and most importantly, Defendant sold at least one of the accused products to an individual in the state of Utah and shipped that product directly into Utah. Secondly, Defendant's offering for sale and sale of the accused products interferes with contracts which were entered into and which are enforceable in the state of Utah. Finally, Defendant offers the accused products for sale via the Internet and directs its efforts, at least in part, to Utah and its citizens.

**a) Defendant Sold and Shipped Accused Products Into Utah**

Plaintiff's alleged injuries in this litigation arise from Defendants sale of apparently counterfeit goods in connection with the unauthorized use of Plaintiff's registered trademark. Some of these sales were specifically directed at the forum state. Even after she received a cease and desist letter from the Utah Plaintiff with the return address of Plaintiff's Utah counsel, Plaintiff sold at least one of the accused products to an individual in Utah. (Belshe Decl., ¶ 15). Furthermore, the Defendant herself shipped this product directly into Utah. *Id.* Accordingly, it is undeniable that Defendant purposefully directed her activities at the State of Utah.

**b) Defendant is Interfering With Utah Contracts**

Plaintiff's fourth claim for relief is for the tortious interference with contracts. (Dkt. No. 2, ¶¶ 46-55). Based on Defendant's asking price for the accused products and Defendant's unwillingness to identify its supplier suggests that the accused products are either counterfeit or being sold in interference with contracts existing between Plaintiff and third parties. Generally, these contracts are executed and enforceable in the state of Utah. (Belshe Decl., ¶ 14). Accordingly, Defendant's tortious interference with these contracts is also directed at the state of Utah.

**c) Defendant Sold Accused Products on the Internet**

“Advertising and attempting to sell products through an online store to residents of the forum constitutes purposeful availment.” *A.L. Enterprises, Inc. v. Sebron*, 2008 U.S. Dist. LEXIS 70177, \*6 (D. Utah Sept. 17, 2008); *see also Stomp, Inc. v. NeatO, LLC*, 61 F. Supp.2d 1074, 1078 (C.D. Cal. 1999) (“[P]ersonal jurisdiction is not appropriate when a website is merely [] passive, either as an advertisement or for informational purposes, but is appropriate when an entity is conducting business over the internet.”). Significantly, “[t]he jurisdictional question revolves around the *nature and quality* of the commercial activity, as opposed to the *quantity* of sales.” *Id.* (emphasis in original); *see also Stomp*, 61 F. Supp. 2d at 1078 (*quoting Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997)) (“[T]he constitutionality of exercising jurisdiction [is] ‘directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet.’”). Personal jurisdiction is therefore “proper for a highly commercial site even where there is only *minimal or no evidence* of actual sales into the forum.” *Id.* (emphasis added). Indeed, sellers on the Internet “cannot expect to avail themselves of the benefits of the internet-created world market that they purposefully exploit and profit from without accepting the concomitant legal responsibilities that such an expanded market may bring with it.” *A.L. Enterprises*, 2008 U.S. Dist. LEXIS 70177, at \*6 (*quoting Dedvukaj v. Maloney*, 447 F. Supp. 2d 813, 820 (E.D. Mich. 2006)).

By offering the accused products for sale on eBay, a clearly commercial Internet website with much use and influence in this jurisdiction, Defendant has chosen to direct its activities, in a sufficiently significant part, at the State of Utah. Accordingly, the use of eBay is a contact which justifies personal jurisdiction over the Defendant.

3. **The Exercise of Personal Jurisdiction Over the Defendant Will Not Offend Traditional Notions of Fair Play and Substantial Justice**

When there have been minimum contacts with the forum state, “the burden is on the defendant to ‘present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.’” *Rusakiewicz v. Lowe*, 556 F.3d 1095, 1102 (10th Cir. 2009) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1945)). As the Tenth Circuit has noted, “[s]uch cases are rare.” *Id.* In considering whether the defendant has met its burden, the Court may evaluate: (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. *Rusakiewicz*, 556 F.3d at 1102 (citing *Burger King*, 471 U.S. at 476).

a) **The Exercise of Personal Jurisdiction Will Place a Minimal Burden on the Defendant**

“[M]odern transportation and communications have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.” *TH Agriculture & Nutrition, LLC v. Ace European Group Ltd.*, 488 F.3d 1282, 1293 (10th Cir. 2007) (quoting *Burger King*, 471 U.S. at 474). While Defendant “will have to engage in litigation in another state, traveling a mere five to six hours from [one state to another], where the same federal substantive and procedural law applies, where the same language is spoken, and where there will be no need to pass through customs, the inconvenience created by exercising jurisdiction falls short of being unconstitutional.” *Stomp*, 61 F. Supp. 2d at 1080. Accordingly, the minimal

burden placed on Defendant in litigating in Utah does not render the exercise of jurisdiction in this Action unreasonable.

**b) The State of Utah Has a Significant Interest in Adjudicating This Action**

“States have an important interest in providing a forum in which their residents can seek redress for injuries caused by out-of-state actors.” *Dudnikov*, 514 F.3d at 1081 (*quoting OMI Holdings, Inc. v. Royal Ins. Co. of Canada*, 149 F.3d at 1096 (10<sup>th</sup> Cir. 1998)). Plaintiff is a small Utah limited liability company with its principal place of business in Riverton, Utah, who has been injured by the out-of-state Defendant’s infringing sales activities and interference with its contractual agreements. (Dkt. No. 2). The State of Utah therefore has a significant interest in providing a forum in which Plaintiff may seek redress for Defendant’s infringement of Plaintiff’s intellectual property rights.

**c) The Plaintiff’s Interest in Obtaining Convenient and Effective Relief is Neutral for Purposes Jurisdictional Analysis**

This factor requires an analysis of “whether the plaintiff may receive convenient and effective relief in another forum.” *TH Agriculture*, 488 F.3d at 1294 (*citing OMI Holdings*, 149 F.3d at 1097). Plaintiff’s first two claims for relief arise out of federal trademark law. Therefore Plaintiff’s chances of recovery on these claims will not be greatly diminished by forcing it to litigate in another forum because of that forum’s laws. *See, e.g., id* (*citing OMI Holdings*, 149 F.3d at 1097). Plaintiff’s remaining claims for relief, on the other hand, arise out of common law and are, therefore, more dependant on regional law and should be litigated here in Utah. Furthermore, it is clearly more convenient for Plaintiff, a Utah limited liability company with its principal place of business in Riverton, Utah, to litigate this Action in the State of Utah.

**d) The Interests of Interstate Judicial System Weigh in Favor of Personal Jurisdiction**

“Key to this inquiry are the location of witnesses, where the wrong underlying the lawsuit occurred, what forum’s substantive law governs the case, and whether jurisdiction is necessary to prevent piecemeal litigation.” *TH Agriculture*, 488 F.3d at 1296 (quoting *OMI Holdings*, 149 F.3d at 1096). While Defendant is located in Florida, all other witnesses, including employees of Plaintiff, the attorneys involved in the prosecution of Plaintiff’s trademark application, and the individuals who ordered and received at least one of Defendant’s accused products are all located in the State of Utah. (Belshe Decl., ¶¶ 13-15). Additionally, the wrongs underlying this Action occurred in Utah. Defendant’s infringing use of Plaintiff’s MICHE Mark in selling the accused products over the Internet occurred, in part, in Utah. Furthermore, the sale of those accused products that Defendant shipped to Utah, occurred in Utah. (Belshe Decl., ¶ 15). Finally, the contracts that Defendant is tortiously interfering with are generally entered into and enforceable in Utah. (Belshe Decl., ¶ 14). Accordingly, personal jurisdiction in Utah is favored by the interstate judicial system.

**e) The Shared Interest of the Several States is Neutral for Purposes of the Jurisdictional Analysis**

“The fifth factor of the reasonableness inquiry ‘focuses on whether the exercise of personal jurisdiction by [the forum state] affects the substantive social policy interests of other states or foreign nations.’” *TH Agriculture*, 488 F.3d at 1297 (quoting *OMI Holdings*, 149 F.3d at 1097). It does not appear that any substantive social policy interests of the State of Virginia will be implicated by the exercise of personal jurisdiction by Utah, and this factor therefore appears to be neutral.



Considering the foregoing factors, it is clear that the Defendant has not and cannot “present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.” *Rusakiewicz*, 556 F.3d at 1102 (citing *Burger King*, 471 U.S. at 476). Because the Defendant’s were directed at residents of this forum enough to establish sufficient minimum contacts and because this Court’s jurisdiction over the Defendant is not unreasonable, the instant Motion with respect to jurisdiction should be denied.

**B. This Court is Not an Improper Venue to Adjudicate This Action**

The instant Motion, by its title, requests the dismissal of the above-captioned action on the basis of improper venue. (Dkt. No. 6). The only support Defendant offers is the statement that “Plaintiffs have chosen the most inconvenient forum with the least relationship to the claims in this lawsuit.” (Dkt. No. 6 at p. 2). Not only is this statement completely unsupported and mildly insulting, it is simply untrue. Furthermore, it does not satisfy the Defendant’s burden of showing that this judicial is an improper forum for this litigation to proceed.

**1. The Defendant Has the Burden of Proving That This Judicial District is an Improper Venue**

“When the defendant timely objects to venue, courts should treat the venue question as an affirmative defense. Therefore, the defendant has the burden of establishing that venue is improper.” Moore’s Federal Practice at § 110.01[5][c] (3d 2008); *see also In re Peachtree Lane Assocs., Ltd.*, 150 F.3d 788, 794 (7th Cir. 1998); *Meyers v. American Dental Association*, 695 F.2d 716, 724-25 (3rd Cir. 1982). Although there is some contradictory authority, “[c]ases that hold the burden of establishing venue is upon the plaintiff reach this result without distinguishing

between jurisdiction and venue.” *Meyers*, 695 F.2d at 724. The “correct” view is that the defendant bears the burden of proving improper venue:

Because venue rules involve a personal privilege, the defendant has the burden of putting the venue question into issue either by making a motion to dismiss or by raising the issue in the answer. It makes good sense to require a defendant who seeks dismissal of an action because of this personal privilege to establish the privilege.

Moore’s Federal Practice at § 110.01[5][c] (3d 2008). Defendant’s single, unsupported statement does not satisfy this burden. Accordingly, the instant Motion should be denied with respect to the objection to this venue.

**2. A Substantial Part of the Events Giving Rise to Plaintiff’s Claims Occurred in This Judicial District**

The instant Motion references 28 U.S.C. § 1400(a), a venue statute stating that “[c]ivil actions, suits, or proceedings arising under any Act of Congress relating to copyrights to exclusive rights in mask works or designs may be instituted in the district in which the defendant or his agent resides or may be found. (Dkt. No. 6 at p. 2). Plaintiff, however, relied on 28 U.S.C. § 1391 as the basis for pleading proper venue in this district. (Dkt. No. 2 at ¶ 9). This general venue statute states, in part, that a civil action may be brought in “a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.” 28 U.S.C. § 1391(b)(2). Importantly, this section “does not require the court to determine where the activities of the defendants were most substantial. Rather, the court need only determine if ‘substantial’ activities took place in” the forum state. *Merchants National Bank v. Safrabank*,

776 F. Supp. 538 541 (D. Kan. 1991). “If the selected district’s contacts are ‘substantial’, it should make no difference that another’s are more so, or the most so.” *Id.* (quoting Siegel, Commentary on 1990 Revision of Subdivisions (a), (b) and (e), 29 U.S.C.A. § 1391 (1991)).

In this case, it is clear that a substantial part of the events that gave rise to this claim occurred in this judicial district. As discussed above, Plaintiff’s claims are based on Defendant’s offering for sale and sale of counterfeit products in connection with the unauthorized use of the Plaintiff’s MICHE Mark on eBay. These events give rise not only to Plaintiff’s three trademark infringement claims, but also to Plaintiff’s claim for tortious interference with its contracts.

As most internet retailers do, the Defendant used the commercial website, eBay, in order to reach as many possible customers as possible. Her unauthorized use of Plaintiff’s MICHE Mark and the sale of her counterfeit products were directed at the state of Utah as much as any other state. Although it is uncertain who each and every one of the accused products were sold to and where each and every accused product was shipped, we are certain that at least one of the accused products was sold to a Utah resident and shipped, by the Defendant, directly to Utah. (Belshe Decl., ¶ 15). This internet presence and sale establishes that at least a substantial part of the events leading to this action occurred in this judicial district.

Furthermore, because the Plaintiff is a resident of Utah, the effects of and damage done by the Defendant’s actions are keenly felt in this district. Obviously, the Defendant’s counterfeiting and trademark infringement injure the Plaintiff property and business in this district. In addition, the Defendant’s actions interfere with and cause great damage to contracts which are most likely executed and enforceable in this judicial district.

Even though the Defendant's failure to satisfy its burden of proving that this judicial district is an improper venue is enough to deny the instant Motion, it is clear that a substantial part of the events which give rise to this lawsuit occurred here. Accordingly, the instant Motion should be denied.

**C. Plaintiffs Filing of Notices of Claimed Infringement is Irrelevant to the Instant Motion**

The only case law Defendant offers in the instant Motion is the above cited Tenth Circuit opinion in *Dudnikov v. Chalk & Vermilion Fine Arts*. (Dkt. No. 6 at p. 2). The argument Defendant supports with this case, however, is completely irrelevant to the instant Motion. Before pleading to this Court for relief, Plaintiff explored several other avenues to resolve the current dispute including sending Defendant two cease and desist letters and exchanging several communications with Defendant's attorney. (Exhs. B-F). Plaintiff also filed two separate Notices of Claimed Infringement ("NOCI") with eBay. (Exhs. I-J). The first of these was filed three weeks after Plaintiff send its first cease and desist letter to Defendant and received no response. (Exhs. D, I). Although Defendant's infringing and tortious listings were removed from eBay as a result of this NOCI, Defendant reposted its listings within days. Plaintiff, therefore, filed its second NOCI in connection with sending a second cease and desist letter to Defendant. (Exhs. B, J). Only after the second NOCI was filed and the second cease and desist letter was sent did counsel for Defendant begin corresponding with counsel for Plaintiff.

Importantly, however, Plaintiff's Complaint in this action does not claim any harm resulting from the filing of the NOCI's. (Dkt. No. 2). Therefore, the filing of these NOCI's is

completely irrelevant to the question of question of whether jurisdiction and venue is proper in this judicial district.

**IV. CONCLUSION**

For the reasons set forth above, Plaintiff respectfully asks the Court to deny Defendant's Motion.

DATED this 7th day of July, 2009

Respectfully Submitted,

*/s/ James B. Belshe*

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WORKMAN | NYDEGGER

James B. Belshe

Seth W. Black

Attorneys for Plaintiff MICHE BAG, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing **PLAINTIFF MICHE BAG, LLC'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND IMPROPER VENUE** was mailed via the United States Postal Service on this the 7th day of July, 2009 in an envelope addressed to the following:

Alexandra Nichole Compton  
151 Hurwood Ave.  
Merritt Island, FL 32953

I also hereby certify that a true and correct copy of the above and foregoing **PLAINTIFF MICHE BAG, LLC'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND IMPROPER VENUE** was filed electronically with the Court. Parties may access this filing through the Court's case management electronic filing system. Notice of this filing will be sent to all counsel of record by the Court's electronic filing system on this the 7th day of July, 2009.

By: /s/ James B. Belshe  
James B. Belshe