

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DNA GENOTEK INC.,)
)
 Plaintiff,)
)
 v.) Civ. No. 15-661-SLR
)
 SPECTRUM DNA, SPECTRUM)
 SOLUTIONS L.L.C., and SPECTRUM)
 PACKAGING L.L.C.,)
)
 Defendants.)

MEMORANDUM

At Wilmington this 4th day of February, 2016, having reviewed the papers filed in connection with the pending motions, and having heard oral argument on the same, the court issues its decision based on the reasoning that follows:

1. **Background.** Plaintiff DNA Genotek Inc. (“DNAG”) is a Canadian corporation with its principal place of business in Kanata, Ontario. DNAG is a wholly-owned subsidiary of OraSure Technologies, Inc., a Delaware corporation with its principal place of business in Bethlehem, Pennsylvania. Defendants Spectrum DNA, Spectrum Solutions L.L.C., and Spectrum Packaging L.L.C. (collectively “Spectrum”) are Utah limited liability companies with their principal place of business in Draper, Utah.

2. DNAG is a leading provider of products for biological sample collection, such as saliva collection devices (also referred to as saliva test kits) for DNA testing. DNAG is the owner by assignment of U.S. Patent No. 8,221,381 (“the ‘381 patent”), entitled

“Container System for Releasably Storing a Substance,” that issued July 17, 2012. On or about July 31, 2015, Spectrum launched a website offering saliva test kits to the public, which kits are accused of infringing the ‘381 patent in this lawsuit (hereinafter, “the accused product”). In this regard, Spectrum facilitates the production and supply of the accused product to Ancestry.com DNA, LLC (“Ancestry”), a Delaware limited liability company with its principal place of business in Provo, Utah, for sale in interstate commerce, including in Delaware. The court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). There are two pending motions at bar. DNAG has filed a motion seeking to preliminarily enjoin Spectrum’s sale of the accused product. Spectrum has filed a motion to dismiss for lack of personal jurisdiction.

2. **Personal jurisdiction.** Rule 12(b)(2) of the Federal Rules of Civil Procedure directs the court to dismiss a case when the court lacks personal jurisdiction over the defendant. Fed. R. Civ. P. 12(b)(2). When reviewing a motion to dismiss pursuant to Rule 12(b)(2), a court must accept as true all allegations of jurisdictional fact made by the plaintiff and resolve all factual disputes in the plaintiff’s favor. *Traynor v. Liu*, 495 F. Supp. 2d 444, 448 (D. Del. 2007). Once a jurisdictional defense has been raised, the plaintiff bears the burden of establishing, with reasonable particularity, that sufficient minimum contacts have occurred between the defendant and the forum to support jurisdiction. *See Provident Nat’l Bank v. Cal. Fed. Sav. & Loan Ass’n*, 819 F.2d 434, 437 (3d Cir. 1987). To meet this burden, the plaintiff must produce “sworn affidavits or other competent evidence,” since a Rule 12(b)(2) motion “requires resolution of factual issues outside the pleadings.” *Time Share Vacation Club v. Atlantic Resorts, Ltd.*, 735

F.2d 61, 67 n. 9 (3d Cir. 1984).

3. To establish personal jurisdiction, a plaintiff must produce facts sufficient to satisfy two requirements by a preponderance of the evidence, one statutory and one constitutional. *See id.* at 66; *Reach & Assocs. v. Dencer*, 269 F. Supp. 2d 497, 502 (D. Del. 2003). With respect to the statutory requirement, the court must determine whether there is a statutory basis for jurisdiction under the forum state's long-arm statute. *See Reach & Assocs.*, 269 F. Supp. 2d at 502. The constitutional basis requires the court to determine whether the exercise of jurisdiction comports with the defendant's right to due process. *See id.*; *see also Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

4. Pursuant to the relevant portions of Delaware's long-arm statute, 10 Del. C. § 3104(c)(1)-(4), a court may exercise personal jurisdiction over a defendant when the defendant or its agent:

- (1) Transacts any business or performs any character of work or service in the State;
- (2) Contracts to supply services or things in this State;
- (3) Causes tortious injury in the State by an act or omission in this State;
- (4) Causes tortious injury in the State or outside of the State by an act or omission outside the State if the person regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from services, or things used or consumed in the State.

10 Del. C. § 3104(c)(1)-(4). With the exception of (c)(4), the long-arm statute requires a showing of specific jurisdiction. *See Shoemaker v. McConnell*, 556 F. Supp. 2d 351, 354, 355 (D. Del. 2008). Subsection (4) confers general jurisdiction, which requires a

greater number of contacts, but allows the exercise of personal jurisdiction even when the claim is unrelated to the forum contacts. See *Applied Biosystems, Inc. v. Cruachem, Ltd.*, 772 F. Supp. 1458, 1466 (D. Del. 1991).

5. If defendant is found to be within the reach of the long-arm statute, the court then must analyze whether the exercise of personal jurisdiction comports with due process, to wit, whether plaintiff has demonstrated that defendant “purposefully avail[ed] itself of the privilege of conducting activities within the forum State,” so that it should “reasonably anticipate being haled into court there.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (citations omitted). For the court to exercise specific personal jurisdiction consistent with due process, plaintiff’s cause of action must have arisen from the defendant’s activities in the forum State. See *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). For the court to exercise general personal jurisdiction consistent with due process, plaintiff’s cause of action can be unrelated to defendant’s activities in the forum State, so long as defendant has “continuous and systematic contacts with the forum state.” *Applied Biosystems, Inc. v. Cruachem, Ltd.*, 772 F. Supp. 1458, 1470 (D. Del. 1991).

6. Spectrum has moved to dismiss, arguing that it has no contacts with the State of Delaware. The record discloses that Spectrum has no facilities, employees, bank accounts, or other physical presence in Delaware. Spectrum is not registered to do business in Delaware. Aside from its website,¹ available to Delaware residents via the internet, Spectrum has not shipped any product to Delaware. Nevertheless, DNAG

¹www.spectrum-dna.com

asserts that the exercise of personal jurisdiction over Spectrum falls within the scope of the Delaware long-arm statute under the “dual jurisdiction” or “stream of commerce” theory that implicates 10 Del. C. § (c)((1) and (c)(4).

7. I have recognized the “dual jurisdiction” or “stream-of-commerce” analytical framework as a basis for personal jurisdiction under Delaware law. See *Intellectual Ventures I LLC v. Ricoh Co., Ltd.*, 67 F. Supp. 3d 656 (D. Del. 2014); and *Belden Techs., Inc. v. LS Corp.*, 829 F. Supp. 2d 260 (D. Del. 2010). Accord *Robert Bosch LLC v. Albersee Products, Inc.*, 70 F. Supp. 3d 665 (D. Del. 2014). Under this theory, it is DNAG’s burden to demonstrate that: (1) Spectrum has an intent to serve the Delaware market; (2) this intent results in the introduction of the accused product into Delaware; and (3) DNAG’s cause of action arises from injuries caused by sale of the accused product in Delaware. See *Belden*, 829 F. Supp. 2d at 267-68; *Bosch*, 70 F. Supp. 3d at 675.

8. Under the construct discussed in *Boone v. Oy Partek Ab*, 724 A.2d 1150, 1158 (Del. Super. 1997), *aff’d*, 707 A.2d 765 (Del. 1998), “the touchstone of dual jurisdiction analysis is intent and purpose to serve the Delaware market.” *Power Integrations, Inc. v. BCD Semiconductor*, 547 F. Supp.2d 365, 372 (D. Del. 2008); see *Boone*, 724 A.2d at 1158. In this regard, “[a] non-resident firm’s intent to serve the United States market is sufficient to establish an intent to serve the Delaware market, unless there is evidence that the firm intended to exclude from its marketing and distribution efforts some portion of the country that includes Delaware.” *Power Integrations, Inc.*, 547 F. Supp. 2d at 373.

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