

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

_____ X
ADWAR CASTING CO., LTD., a New York
Corporation,

Plaintiff,

-against-

STAR GEMS INC., a Georgia Corporation,
ANISH DESAI, an individual, and Does 1-20,

Defendants.
_____ X

MEMORANDUM & ORDER
17-CV-6278(DRH)(SIL)

APPEARANCES:

For Plaintiff:

THE LAW OFFICES OF TEDD S. LEVINE, LLC
1305 Franklin Avenue, Suite 300
Garden City, New York 11530
By: Tedd S. Levine, Esq.

For Defendants

ENNS & ARCHER LLP
939 Burke Street
Winston-Salem, NC 27101
By: Rodrick J. Enns, Esq.

HURLEY, Senior District Judge:

Plaintiff Adwar Casting (“Plaintiff” or “Adwar”) commenced this action against defendants Star Gems Inc. (“Star”) and Anish Desai (“Desai”) (collectively “Defendants”) asserting claims for copyright infringement pursuant to 17 U.S.C. §501, as well as related state law claims. Presently before the Court is Defendants’ motion pursuant to Fed. R. Civ. P. 12(b)(2) to dismiss the complaint for lack of personal jurisdiction. For the reason set forth below, the motion is granted.

BACKGROUND

I. Allegations in the Complaint

The following allegations are taken from the Complaint (“Comp.”)

Adwar is a New York corporation with its principal place of business in Rockville Centre, New York. It creates, manufactures and distributes original jewelry products, which it actively markets and sells throughout the United States. (Comp. ¶¶1, 9.) Star is a Georgia corporation with its principal place of business in Georgia. It is a wholesale manufacturer and seller of jewelry products, which it sells and distributes throughout the United States and internationally. (*Id.* ¶ 2, 10, 11.) Desai is the principal shareholder and chief executive officer of Star and has his principal place of business in Georgia. As such he is responsible for all of Star’s important business decisions, including what artwork is used in connection with the products Star manufactures, markets and sells. (*Id.* ¶¶ 3, 19, 20.)

In or about July 2017, Star, without Adwar’s consent, copied certain of Adwar’s jewelry items, specifically a ring and a pendant (referred to in the complaint and herein as “Artwork”), and began marketing and selling jewelry products using the Artwork (“referred to in the complaint and herein as the “Knock-off Products”). (Comp. ¶ 12.) A substantial similarity exists between the Artworks and the Knock-off Products. (*Id.* ¶ 14.) Prior to Star marketing and selling the Knock-off Products, Adwar, as owner of the Artwork registered it with the United States Copyright office and said registration was in full force and effect at the time of the relevant events. (*Id.* ¶ 13.) Star was not licensed or authorized to use any of the Artwork. (*Id.* ¶¶ 15-17.) Adwar has lost income as a result of Star’s activities using the Artwork. (*Id.* ¶ 18.)

DISCUSSION

I. Standard – Rule 12(b)(2) Motion

On a motion to dismiss under Rule 12(b)(2), the plaintiff bears the burden of establishing jurisdiction over the defendant. *See Metro. Life Ins. Co. v. Robertson–Ceco Corp.*, 84 F.3d 560, 566 (2d Cir. 1996). Courts may rely on additional materials outside the pleading when ruling on a 12(b)(2) motion. *Minnie Rose LLC v. Yu*, 169 F. sup.3d 504, 510 (S.D.N.Y. 2016). Where, as here, the parties have not yet conducted discovery, a plaintiff may defeat a defendant’s Rule 12(b)(2) motion “by making a prima facie showing of jurisdiction by way of the complaint’s allegations, affidavits, and other supporting evidence.” *Mortg. Funding Corp. v. Boyer Lake Pointe, L.C.*, 379 F. Supp. 2d 282, 285 (E.D.N.Y.2005). Moreover, given the early stage of the proceedings here, the Court must view the pleadings in the light most favorable to the plaintiff, *see Sills v. The Ronald Reagan Presidential Found., Inc.*, 2009 WL 1490852, *5 (S.D.N.Y. May 27, 2009), and when evidence is presented, “doubts are resolved in the plaintiff’s favor, notwithstanding a controverting presentation by the moving party,” *A.I. Trade Fin., Inc. v. Petra Bank*, 989 F.2d 76, 80 (2d Cir. 1993). A court need not, however, “draw argumentative inferences in the plaintiff’s favor,” nor “accept as true a legal conclusion couched as a factual allegation.” *In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 659, 673 (2d Cir. 2013) (quoting *Robinson v. Overseas Military Sales Corp.*, 21 F.3d 502, 507 (2d Cir. 1994) and *Jazini v. Nissan Motor Co.*, 148 F.3d 181, 185 (2d Cir. 1998)). Thus, the plaintiff “may not rely on conclusory statements without any supporting facts, as such allegations would ‘lack the factual specificity necessary to confer jurisdiction.’ ” *Art Assure Ltd., LLC v. Artmentum GmbH*, 2014 WL 5757545, at *2 (S.D.N.Y. Nov. 4, 2014) (quoting *Jazini* 148 F.3d at 185); *accord Cont’l Indus. Grp. v. Equate Petrochemical Co.*, 586 F. App’x 768, 769 (2d Cir. 2014) (A plaintiff “must

make allegations establishing jurisdiction with some factual specificity and cannot establish jurisdiction through conclusory assertions alone.”) (internal quotation marks omitted).

II. Personal Jurisdiction Generally

In a diversity case, a federal district court exercises personal jurisdiction over a party in accordance with the law of the forum state, subject to the requirements of due process under the United States Constitution. *See Whitaker v. American Telecasting, Inc.*, 261 F.3d 196, 208 (2d Cir. 2001). Due process requires that the defendant have certain “minimum contacts” with the forum state; such minimum contacts assure that a defendant “will only be subjected to the jurisdiction of a court where the maintenance of a lawsuit does not offend traditional notions of fair play and substantial justice.” *Waldman v. Palestine Liberation Org.*, 835 F.3d 317 (2d Cir. 2016) (internal quotation marks omitted). In assessing a defendant’s contact with the forum state for due process purposes, “the crucial question is whether the defendant has purposefully availed itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws,” and therefore “should reasonably anticipate being haled into court there.” *Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 242-43 (2d Cir. 2007). (internal citations and quotation marks omitted).

In New York, courts may exercise either general or specific jurisdiction over defendants.

A. General Jurisdiction

“In New York, general jurisdiction is governed by N.Y. CPLR § 301. Section 301 preserves the common law notion that a court may exercise general jurisdiction over a nondomiciliary defendant if that defendant is engaged in such a continuous and systematic course of doing business here to warrant a finding of its presence in this jurisdiction.”

Thackurdeen v. Duke Univ., 130 F. Supp. 3d 792, 798 (S.D.N.Y. 2015); *see Sonera Holding B.V.*

v. Cukorova Holding, A.S., 750 F.3d 221, 224 (2d Cir. 2014). “Defendant’s ‘continuous activity of some sort[] within a state ... is not enough to support the demand that the corporation be amendable to suits unrelated to that activity.’ Rather, a corporation’s ‘affiliations with the State’ must be ‘so continuous and systematic’ as to render it essentially at home in the forum State.” *Mali v. British Airways*, 2018 WL 3329858, at *5 (S.D.N.Y., July 6, 2018) (quoting *Goodyear Dunlop Tires Ops. v. Brown*, 564 U.S. 915, 919, 927 (2011)). The Supreme Court has made clear that, consistent with due process, a corporate defendant is subject to general jurisdiction only in its (i) place of incorporation and (ii) principal place of business, unless (iii) the “exceptional case” exists in which the foreign defendant’s contacts with the forum state is “so substantial and of such a nature as to render the corporation ‘at home’ in” the forum state. *SPV OSUS Ltd. v. UBS AG*, 114 F. Supp. 3d 161, 168 (S.D.N.Y. 2015), *aff’d*, 882 F.3d 333 (2d Cir. 2018) (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 134 S. Ct. 746, 761, n.19 (2014)). If general jurisdiction exists, courts in New York can adjudicate *all* claims against an individual or a corporation, even those unrelated to its contacts with the state. *Sonera Holding*, 750 F.3d at 225.

B. Specific Jurisdiction

Specific jurisdiction in New York is governed by CPLR § 302. The existence of specific jurisdiction “depends on an affiliation between the forum [state] and the underlying controversy, principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (internal quotation marks and citations omitted); *see Powell v. Monarch Recovery Management, Inc.*, 2016 WL 8711210, at *6 (E.D.N.Y. 2016) (New York’s long-arm statute requires that the claim asserted arise from the activity asserted). New York’s “long-arm” statute, allows for specific jurisdiction over non-domiciliaries “ who, in person or through an agent . . .

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