

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

MHL TEK, LLC,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:07-cv 289-TJW
)	
NISSAN MOTOR CO.; et al.,)	
)	
Defendants.)	
)	

**DEFENDANT BMW MANUFACTURING CO. LLC’S
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND
MEMORANDUM IN SUPPORT**

Defendant BMW Manufacturing Co. LLC (“BMWMC”) files this Motion to Dismiss for Lack of Personal Jurisdiction and Memorandum in Support pursuant to Federal Rule of Civil Procedure 12(b)(2) and would show the Court the following:

I. SUMMARY OF ARGUMENT.

BMWMC and other companies in the BMW family have structured their relations such that BMWMC does not have any contacts with Texas and affirmatively does not avail itself of the benefit of the laws of Texas. Rather, another BMW company, BMW of North America, LLC (“BMWNA”), has such contacts with Texas. BMWNA is a party in this case and does not dispute personal jurisdiction over it. However, there is not a sufficient nexus with this forum to exercise jurisdiction over BMWMC consistent with the requirements of the due process clause of the Constitution.

BMWMC is a Delaware limited liability company with its principal and only place of business in South Carolina. BMWMC has no offices or employees in Texas. BMWMC has no presence in Texas and transacts no business in Texas. BMWMC does not make or sell any goods or services to residents of Texas. BMWMC does not solicit sales, make offers for sale, or

ship products into Texas. BMWMC does not accept phone orders, mail orders, or internet sales from Texas.

BMWMC builds BMW X5 and Z4 model vehicles in an authorized Foreign Trade Zone. For cars destined for the US, BMWMC sells the cars to BMW AG, its ultimate parent. BMWNA, in turn, purchases vehicles from BMW AG and imports and distributes these vehicles for sale in the United States. BMWNA, and not BMWMC, directs and controls the distribution of BMW vehicles in the US, including into Texas.

Due process requires the nonresident defendant's contacts be purposefully directed toward the forum state. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-74 (1985). The due process clause requires that the nonresident defendant has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 158, 90 L. Ed. 95 (1945). It requires a court to determine whether the nonresident defendant has, through its actions, purposefully availed itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of the forum state's law. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

BMWMC acknowledges that the scope of the stream of commerce theory of jurisdiction is expansive. *See, e.g., Beverly Hills Fan Co. v. Royal Sovereign Corp.*, 21 F.3d 1558 (1994); *Jacob Chuck Mfg. Co. v. Shandong Weida Machinery Co., Ltd.*, 2005 U.S. Dist. LEXIS 36211 (2005). Nonetheless, BMWMC respectfully submits that these cases are not controlling here. In this case, BMWMC has not purposefully availed itself of the benefit of conducting business in Texas but, instead, has taken affirmative, purposeful steps not to do so.

Here BMWMC has not availed itself of the laws of Texas and has not put goods into the stream of commerce through a sale to an unrelated, third party with knowledge that the goods were destined to enter Texas. Instead, BMWMC sells the vehicles it makes to its German parent, BMW AG. BMW AG, in turn, sells the vehicles to BMWNA. BMWNA is the entity that takes possession of the vehicles, imports them into the US, and distributes them to dealers in the US.

By this arrangement, BMWMC has purposefully avoided contacts with Texas and hence finding personal jurisdiction in this case would not comport with the due process clause. Accordingly, BMWMC respectfully submits that plaintiff's Complaint should be dismissed.

BMWMC is currently challenging the exercise of jurisdiction over it in a Texas state court in San Antonio. On April 27, 2007, BMWMC made a special appearance pursuant to Rule 120a of the Texas Rules of Civil Procedure in *Jason Wong et al. v. Bavarian Imports, et al.*, No. 2006-CI-16633 ("the *Wong* case"), a case pending in Bear County, Texas, District Court, for the purpose of contesting personal jurisdiction in that matter. The personal jurisdiction issue in the *Wong* case is currently pending. BMWMC contends in the *Wong* case that it has never consented to jurisdiction in a court in Texas.

Finally, this is not a situation where a corporate defendant is attempting to limit or deny a plaintiff's recovery based on technicalities of title. To the contrary, BMWNA, the BMW distributing and marketing entity with the sole authority to conduct business in the US including in the state of Texas, is a party defendant, has appeared and answered, and will not contest personal jurisdiction over it.

II. INTRODUCTION

A. Factual Background

1. BMWMC has no contacts with Texas.

BMWMC is a Delaware limited liability company with its principal (and only) place of business in Spartanburg, South Carolina. Declaration of Linda Archer in Support of Motion of Defendant BMW Manufacturing Co., LLC to Dismiss Plaintiff's Complaint, filed concurrently ("Archer Decl.") at ¶ 3. BMWMC does not do business in Texas. In particular:

- BMWMC has no employees or distributors resident in Texas.
- BMWMC does not have an office or mailing address in Texas, and it does not own or lease any real property in Texas.

- BMWMC has never been registered or otherwise qualified to do business in the State of Texas and did not appoint an agent for service of process in Texas for such purpose.
- BMWMC does not solicit or make any sales in the State of Texas. It has no sales agents or other sales related activities in Texas. BMWMC does not accept orders from Texas by phone, by mail, or over the internet. BMWMC does not have a “web page” or other internet presence that would allow a Texas resident to purchase a vehicle from BMWMC.

Archer Decl. at ¶¶ 6, 8.

2. The Distribution of BMW brand vehicles in Texas.

Co-defendant BMWNA is a Delaware limited liability company with its principal place of business in Woodcliff Lake, New Jersey. *Id.* at ¶ 11. BMWMC and BMWNA are “sister” companies, and both companies are wholly owned by BMW (U.S.) Holdings Corp. *Id.* at ¶ 3. BMWMC and BMWNA are distinct and separate limited liability companies. *Id.* at ¶ 3. Neither company directs or controls the activity of the other.

BMWMC was established specifically to manufacture BMW-brand vehicles. Currently BMWMC assembles X5 and Z4 model BMW vehicles at its South Carolina facility for sale to other BMW affiliated companies around the world. *Id.* at ¶ 4. BMWMC’s South Carolina facility is an established Foreign Trade Zone pursuant to the Federal Trade Zone Act of 1934, 19 U.S.C. §§81a-81u. *Id.* at ¶ 5. Thus, vehicles assembled from the plant destined for the US are subject to formal US customs entry procedures and are assessed the applicable payment of customs duties and excise taxes when they leave the plant, the point of entry to the U.S. market. *Id.*

BMWMC is not a sales and marketing company. It does not sell vehicles to end users or dealers anywhere in the world, and in particular does not sell any vehicles in Texas through any means – no direct sales, phone, internet, or other vehicle is used by BMWMC to sell vehicles to Texas residents. *Id.* at ¶ 8. In contrast, BMWNA is the BMW entity that distributes BMW

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