
IN THE
APPELLATE COURT OF ILLINOIS
FOR THE THIRD DISTRICT

JOHN F. TAMBURO d/b/a MAN'S BEST
FRIEND SOFTWARE,

Plaintiff-Appellant,

v.

JAMES ANDREWS d/b/a K9PED,

Defendant-Appellee.

) Appeal from the Circuit Court of the
) Twelfth Judicial Circuit,
) Will County, Illinois.

) Case No. 06 L 51

) Honorable Herman S. Haase,
) Presiding Judge.

) Date of Judgment: May 3, 2006

**BRIEF AND ARGUMENT FOR
DEFENDANT/APPELLEE JAMES ANDREWS d/b/a K9PED**

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

| | <u>PAGE</u> |
|--|--------------------|
| INTRODUCTION | 9 |
| STATEMENT OF FACTS | 9 |
| STANDARD OF REVIEW | 10 |
| 735 ILCS 5/2-615 | 10 |
| 735 ILCS 5/2-619 | 10 |
| <u>Ramos v. City of Peru</u> , 333 Ill. App. 3d 75, 775 N.E.2d 184 (3rd Dist. 2002) | 10 |
| <u>Wallace v. Smyth</u> , 203 Ill. 2d 441, 786 N.E.2d 980 (Ill. 2002) | 9 |
| ARGUMENT | 9 |
| I. THE TRIAL COURT’S ORDER GRANTING DEFENDANT’S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION MUST BE AFFIRMED. | 11 |
| A. Plaintiff’s § 2-619.1 and § 2-301 Procedural Arguments Lacks Merit. | 11 |
| 5 ILCS 5/2-301 | 12 |
| 735 ILCS 5/2-615 | 12 |
| 735 ILCS 5/2-619 | 12 |
| 735 ILCS 5/2-619.1 | 12 |
| <u>In re Marriage of Hoover</u> , | |
| 314 Ill. App. 3d 707, 732 N.E.2d 145 (4th Dist. 2000) | 12, 13 |
| <u>KSAC Corp. v. Recycle Free, Inc.</u> , | 12, 13 |
| 364 Ill. App. 3d 593, 846 N.E.2d 1021 (2nd Dist. 2006) | |
| <u>W. Va. Laborers Pension Trust Fund v. Caspersen</u> , | 13 |
| 357 Ill. App. 3d 673, 829 N.E.2d 843 (1st Dist. 2005) | |
| B. The Trial Court Correctly Held That Plaintiff’s Complaint Should Be Dismissed For Lack of Personal Jurisdiction. | 13 |
| <i>1. Standard for Personal Jurisdiction in Illinois.</i> | 14 |
| 735 ILCS 5/2-209 | 14 |

| | |
|---|----|
| 735 ILCS 5/2-619 | 14 |
| <u>Cleary v. Philip Morris,</u> | |
| 312 Ill. App. 3d 406, 726 N.E.2d 770 (1st Dist. 2000) | 15 |
| <u>Keller v. Henderson,</u> | |
| 359 Ill. App. 3d 605, 834 N.E.2d 930 (2d Dist. 2005) | 14 |
| <u>Kostal v. Pinkus Dermatopathology Laboratory, P.C.,</u> | |
| 357 Ill. App. 3d 381, 827 N.E.2d 1031 (1st Dist. 2005) | 14 |
| <u>Morecambe Maritime, Inc. v. National Bank of Greece, S.A.,</u> | |
| 354 Ill. App. 3d 707, 821 N.E.2d 780 (1st Dist. 2004) | 14 |
| 2. <i>Federal Due Process Precludes Personal Jurisdiction</i> | 15 |
| <u>Bombliss v. Cornelsen,</u> | |
| 355 Ill. App. 3d 1107, 824 N.E.2d 1175 (3rd Dist. 2005) | 16 |
| <u>Keller v. Henderson,</u> | |
| 359 Ill. App. 3d 605, 834 N.E.2d 930 (1st Dist. 2005) | 15 |
| a. <u>General Jurisdiction is Inapplicable to Defendant Andrews</u> | 16 |
| 735 ILCS 5/2-209 | 16 |
| <u>Bombliss v. Cornelsen,</u> | |
| 355 Ill. App. 3d 1107, 824 N.E.2d 1175 (1st Dist. 2005) | 17 |
| <u>Haubner v. Abercrombie & Kent International, Inc.,</u> | |
| 351 Ill. App. 3d 112, 812 N.E.2d 704 (1st Dist. 2004) | 18 |
| <u>Hendry v. Ornda Health Corp.,</u> | |
| 318 Ill. App. 3d 851, 742 N.E.2d 746 (2d Dist. 2000) | 18 |
| <u>Infosys Inc. v. Billingnetwork.com, Inc.,</u> | |
| 2003 U.S. Dist. LEXIS 14808, at *9 (N.D. Ill. Aug. 27, 2003) | 19 |
| <u>LaRochelle v. Allamian,</u> | |
| 361 Ill. App. 3d 217, 836 N.E.2d 176 (2d Dist. 2005) | 18 |
| <u>LaSalle National Bank v. Vitro, Sociedad Anonima,</u> | |
| 85 F. Supp. 2d 857 (N.D. Ill. 2000) | 18 |
| <u>Molnlycke Health Care AGB v. Dumex Medical Surgical Products Ltd.,</u> | |
| 64 F. Supp. 2d 448 (E.D. Pa. 1999) | 18 |
| <u>RAR, Inc. v. Turner Diesel, Ltd.,</u> | |

| | |
|--|----|
| 107 F.3d 1272 (7th Cir. 1997) | 16 |
| <u>Watchworks, Inc. v. Total Time,</u> | |
| 2002 U.S. Dist. LEXIS 4491, at *6 (N.D. Ill. Mar. 19, 2002) | 20 |
| <u>Zippo Mfg. Co. v. Zippo Dot Com, Inc.,</u> | |
| 952 F. Supp. 1119 (W.D. Pa. 1997) | 19 |
| b. <u>Specific Jurisdiction is Inapplicable to Defendant Andrews</u> | 20 |
| 735 ILCS 5/2-209 | 21 |
| <u>Birnberg v. Milk St. Residential Assocs. Partnership,</u> | |
| 2003 U.S. Dist. LEXIS 806 *10 (N.D. Ill. January 17, 2003) | 21 |
| <u>Burger King Corp. v. Rudzewicz,</u> | 21 |
| 471 U.S. 462, 105 S.Ct. 2174 (1985) | |
| <u>Heritage House Rests., Inc. v. Cont'l Funding Group, Inc.,</u> | 21 |
| 906 F.2d 276 (7th Cir. 1990) | |
| <u>RAR, Inc. v. Turner Diesel, Ltd.,</u> | |
| 107 F.3d 1272 (7th Cir. 1997) | 21 |
| “Transaction of Business” Inapplicable | 21 |
| 735 ILCS 5/2-209 | 21 |
| <u>Bombliss v. Cornelsen,</u> | 21 |
| 355 Ill. App. 3d 1107, 824 N.E.2d 1175 (1st Dist. 2005) | |
| <u>Kadala v. Cunard Lines, Ltd.,</u> | 22 |
| 226 Ill. App. 3d 302 (1st Dist.1992) | |
| <u>Kostal v. Pinkus Dermatopathology Laboratory, P.C.,</u> | 22 |
| 357 Ill. App. 3d 381, 827 N.E.2d 1031 (1st Dist. 2005) | |
| <u>Swissland Packing Co. v. Cox,</u> | |
| 255 Ill. App. 3d 942, 627 N.E.2d 686 (3d Dist. 1994) | 22 |
| “Tortious Act” Inapplicable | |
| <u>Bailey v. Turbine Design, Inc.,</u> | |
| 86 F. Supp. 2d 790 (W.D. Tenn. 2000) | 24 |
| <u>Barrett v. Catacombs Press,</u> | |
| 44 F. Supp. 2d 717 (E.D. Penn. 1999) | 24 |
| <u>Calder v. Jones,</u> | |

| | |
|--|--------|
| 465 U.S. 783, 104 S.Ct. 1482 (1984) | 24 |
| <u>Keller v. Henderson,</u> | |
| 359 Ill. App. 3d 605, 834 N.E.2d 930 (2d Dist. 2005) | 23 |
| <u>Neogen Corp. v. VICAM,</u> | |
| 1997 U.S. Dist. LEXIS 3331, at 5-7 (W.D. Mich., Feb. 20, 1997) | 25 |
| <u>Ohio-Sealy Mattress Mfg. Co. v. Kaplan,</u> | |
| 429 F. Supp. 139 (N.D. Ill. 1977) | 23 |
| <u>RAR, Inc. v. Turner Diesel, Ltd.,</u> | |
| 107 F.3d 1272 (7th Cir. 1997) | 23, 24 |
| <u>Reynolds v. International Amateur Ath. Fed'n,</u> | |
| 23 F.3d 1110 (6th Cir. 1994) | 25 |
| <u>Spartan Motors, Inc. v. Lube Power, Inc.,</u> | |
| 337 Ill. App. 3d 556, 786 N.E.2d 613 (Ill. App. 2003) | 23 |
| <u>Vlasak v. Rapid Collection Sys., Inc.,</u> | |
| 962 F. Supp. 1096 (N.D. Ill. 1997) | 23 |
| Websites Revisited | |
| <u>Bombliss v. Cornelsen,</u> | |
| 355 Ill. App. 3d 1107, 824 N.E.2d 1175 (1st Dist. 2005) | 25 |
| <u>Haemoscope Corporation v. Pentapharm AG, et al,</u> | |
| 2002 U.S. Dist. LEXIS 23387 (N.D. Illinois December 6, 2002) | 26 |
| <u>LaRochelle v. Allamian,</u> | |
| 361 Ill. App. 3d 217, 836 N.E.2d 176 (2d Dist. 2005) | 25 |
| <u>RAR, Inc. v. Turner Diesel, Ltd.,</u> | |
| 107 F.3d 1272 (7th Cir. 1997) | 26 |
| <u>Zippo Mfg. Co. v. Zippo Dot Com, Inc.,</u> | |
| 952 F. Supp. 1119 (W.D. Pa. 1997) | 25 |
| 3. <i>Illinois Due Process Precludes Personal Jurisdiction</i> | 26 |
| <u>Allied Van Lines, Inc. v. Gulf Shores Moving and Storage, Inc.,</u> | |
| 2005 U.S. Dist. LEXIS 6244 (N.D. Illinois February 23, 2005) | 26 |
| <u>Hyatt Int'l Corp. v. Coco,</u> | |
| 302 F.3d 707 (7th Cir. 2002) | 26 |

| | | |
|------------|--|----|
| | <u>Keller v. Henderson,</u> | |
| | 359 Ill. App. 3d 605, 834 N.E.2d 930 (2d Dist. 2005) | 26 |
| | <u>RAR, Inc. v. Turner Diesel, Ltd.,</u> | |
| | 107 F.3d 1272 (7th Cir. 1997) | 26 |
| | <u>Rollins v. Ellwood,</u> | |
| | 141 Ill.2d 244 (Ill. 1990) | 26 |
| | 4. <i>Defendant Is Not Subject to Jurisdiction in Illinois</i> | 27 |
| II. | PLAINTIFF FAILS TO STATE CLAIMS UPON WHICH RELIEF CAN BE GRANTED. | 27 |
| | A. Plaintiff Was Not Prejudiced by Defendant’s Affirmative Defenses and Introduction of Evidentiary Material. | 28 |
| | 735 ILCS 5/2-615 | 28 |
| | 735 ILCS 5/2-619 | 28 |
| | <u>Advocate Health & Hospitals Corp. v. Bank One, N.A.,</u> | |
| | 348 Ill. App. 3d 755, 810 N.E.2d 500 (1st Dist. 2004) | 28 |
| | <u>Barrett v. Fonorow,</u> | |
| | 343 Ill. App. 3d 1184, 799 N.E.2d 916 (2nd Dist. 2003) | 28 |
| | B. Plaintiff’s Defamation Claims Have No Merit | 29 |
| | 735 ILCS 5/2-619 | 29 |
| | 1. <i>The Illinois Defamation Standard</i> | 29 |
| | <u>Anderson v. Vanden Dorpel,</u> | |
| | 172 Ill.2d 399 (Ill. 1996) | 30 |
| | <u>Cianci v. Pettibone Corp.,</u> | |
| | 298 Ill. App. 3d 419, 698 N.E.2d 674(1st Dist. 1998) | 30 |
| | <u>Lykowski v. Bergman,</u> | |
| | 299 Ill. App. 3d 157, 700 N.E.2d 1064 (1st Dist. 1998) | 31 |
| | <u>Popko v. Continental Casualty Co.,</u> | |
| | 355 Ill. App. 3d 257, 823 N.E.2d 184 (1st Dist. 2005) | 29 |
| | <u>Schivarelli v. CBS, Inc., et al.,</u> | |
| | 333 Ill. App. 3d 755, 776 N.E.2d 693 (1st Dist. 2002) | 30 |
| | <u>Van Home v. Muller,</u> | |

| | |
|--|----|
| 185 Ill.2d 299, 705 N.E.2d 898 (Ill. 1998) | 30 |
| 2. <i>The “Substantial Truth” Defense is Alive, Well, and Applicable</i> | |
| <u>American Int’l Hosp. v. Chicago Tribune Co.,</u> | |
| 136 Ill. App. 3d 1019, 483 N.E.2d 965, 968 (1st Dist. 1985) | 31 |
| <u>Emery v. Kimball Hill, Inc.,</u> | |
| 112 Ill. App. 3d 109, 445 N.E.2d 59 (2d Dist. 1983) | 31 |
| <u>Farnsworth v. Tribune Co.,</u> | |
| 43 Ill.2d 286, 293-94, 253 N.E.2d 408, 412 (Ill. 1969) | 31 |
| <u>Kilbane v. Sabonjian,</u> | |
| 38 Ill. App. 3d 172, 347 N.E.2d 757 (2nd Dist. 1976) | 31 |
| <u>Lemons v. Chronicle Publishing Co.,</u> | |
| 253 Ill. App. 3d 888, 625 N.E.2d 789 (4th Dist. 1993) | 31 |
| <u>Parker v. House O’Lite Corp.,</u> | |
| 324 Ill. App. 3d 1014, 756 N.E.2d 286 (1st Dist. 2001) | 31 |
| a. <u>Count Two and the “First Disparagement”</u> | |
| <u>American Int’l Hosp. v. Chicago Tribune Co.,</u> | |
| 136 Ill. App. 3d 1019, 483 N.E.2d 965, 968 (1st Dist. 1985) | 33 |
| <u>Bryson v. News America Publs., Inc.,</u> | |
| 174 Ill.2d 77, 672 N.E.2d 1207 (Ill. 1996) | 33 |
| <u>Emery v. Kimball Hill, Inc.,</u> | |
| 112 Ill. App. 3d 109, 445 N.E.2d 59 (2d Dist. 1983) | 33 |
| <u>Haynes v. Alfred A. Knopf, Inc.,</u> | |
| 8 F.3d 1222 (7th Cir. 1993) | 33 |
| <u>Horowitz v. Baker,</u> | |
| 168 Ill. App. 3d 603, 523 N.E.2d 179 (3d Dist. 1988) | 33 |
| <u>Kolegas v. Heftel Broad Corp.,</u> | |
| 154 Ill.2d 1, 607 N.E.2d 201 (Ill. 1992) | 34 |
| <u>Republic Tobacco Co. v. N. Atl. Trading Co.,</u> | |
| 381 F.3d 717 (7th Cir. 2004) | 34 |
| <u>Stevens v. Tillman,</u> | |
| 855 F.2d 394 (7th Cir. 1988) | 33 |

| | |
|--|--------|
| <u>Stewart v. Chicago Title Insurance Co.,</u> 151 Ill. App. 3d 888, 503 N.E.2d 580 (4th Dist. 1987) | 33 |
| <u>Sullivan v. Conway,</u> 157 F.3d 1092 (7th Cir. 1998) | 33 |
| <u>Uline, Inc. v. JIT Packaging, Inc.,</u> 437 F.Supp. 2d 793 (N.D. Ill. 2006) | 33, 34 |
| b. <u>Count Count Four and the “Second Disparagement”</u> | 34 |
| <u>American Int’l Hosp. v. Chicago Tribune Co.,</u> 136 Ill. App. 3d 1019, 483 N.E.2d 965, 968 (1st Dist. 1985) | 36 |
| <u>Emery v. Kimball Hill, Inc.,</u> 112 Ill. App. 3d 109, 445 N.E.2d 59 (2d Dist. 1983) | 35 |
| c. <u>Count Five and the “Third Disparagement”</u> | 36 |
| <u>Bryson v. News America Publs., Inc.,</u> 174 Ill.2d 77 (Ill. 1996) | 37 |
| <u>Haynes v. Alfred A. Knopf, Inc.,</u> 8 F.3d 1222 (7th Cir. 1993) | 37 |
| <u>Horowitz v. Baker,</u> 168 Ill. App. 3d 603, 523 N.E.2d 179 (3d Dist. 1988) | 37 |
| <u>Stevens v. Tillman,</u> 855 F.2d 394 (7th Cir. 1988) | 37 |
| <u>Stewart v. Chicago Title Insurance Co.,</u> 151 Ill. App. 3d 888, 503 N.E.2d 580 (4th Dist. 1987) | 37 |
| <u>Sullivan v. Conway,</u> 157 F.3d 1092 (7th Cir. 1998) | 37 |
| <u>Wilkow v. Forbes, Inc.,</u> 231 F.3d 552 (7th Cir. 2001) | 38 |
| d. <u>Count Ten and the “Sixth Disparagement”</u> | 38 |
| <u>American Int’l Hosp. v. Chicago Tribune Co.,</u> 136 Ill. App. 3d 1019, 483 N.E.2d 965, 968 (1st Dist. 1985) | 39 |
| <u>Farnsworth v. Tribune Co.,</u> 43 Ill.2d 286, 293-94, 253 N.E.2d 408, 412 (Ill. 1969) | 39 |

| | | |
|-----------|---|----|
| | <u>Kilbane v. Sabonjian,</u> | |
| | 38 Ill. App. 3d 172, 347 N.E.2d 757 (2d Dist. 1976) | 39 |
| | <u>Lemons v. Chronicle Publishing Co.,</u> | |
| | 253 Ill. App. 3d 888, 625 N.E.2d 789 (4th Dist. 1993) | 39 |
| | 3. <i>Conclusion as to Defamation</i> | 40 |
| C. | Plaintiff Fails To State a Claim for Tortious Interference with Prospective Economic Advantage | 40 |
| | 1. <i>Plaintiff Fails to Properly Allege the Elements</i> | 40 |
| | <u>Anderson v. Vanden Dorpel,</u> | |
| | 172 Ill.2d 399, 667 N.E.2d 1301 (Ill. 1996) | 40 |
| | <u>Cromeens, Holloman, Sibert, Inc. v. AB Volvo,</u> | |
| | 349 F.3d 376 (7th Cir. 2003) | 41 |
| | <u>Dowd & Dowd, Ltd. v. Gleason,</u> | |
| | 181 Ill.2d 460, 693 N.E.2d 358 (Ill. 1998) | 41 |
| | <u>Kempner Mobile Elecs., Inc. v. Southwestern Bell Mobile Sys.,</u> | |
| | 428 F.3d 706 (7th Cir. 2005) | 41 |
| | <u>O'Brien v. State Street Bank & Trust,</u> | |
| | 82 Ill. App. 3d 83, 401 N.E.2d 1356 (4th Dist. 1980) | 41 |
| | <u>Schuler v. Abbott Laboratories,</u> | |
| | 265 Ill. App. 3d 991, 639 N.E.2d 144 (1st Dist. 1993) | 42 |
| | <u>Soderland Bros. v. Carrier Corp.,</u> | |
| | 278 Ill. App. 3d 606, 663 N.E.2d 1 (1st Dist. 1995) | 41 |
| | 2. <i>Defendant Conveyed Truthful Information</i> | 42 |
| | <u>Cromeens, Holloman, Sibert, Inc. v. AB Volvo,</u> | |
| | 349 F.3d 376 (7th Cir. 2003) | 43 |
| | <u>Kempner Mobile Elecs., Inc. v. Southwestern Bell Mobile Sys.,</u> | |
| | 428 F.3d 706 (7th Cir. 2005) | 43 |
| | a. <u>Count One and the First and Fifth Disparagements</u> | 43 |
| | <u>Cromeens, Holloman, Sibert, Inc. v. AB Volvo,</u> | |
| | 349 F.3d 376 (7th Cir. 2003) | 43 |
| | <u>Kempner Mobile Elecs., Inc. v. Southwestern Bell Mobile Sys.,</u> | |

| | |
|--|-------|
| 428 F.3d 706 (7th Cir. 2005) | 43 |
| b. <u>Count Eight and the Fourth Disparagement</u> | 44 |
| <u>Kolegas v. Heftel Broad Corp.,</u> | |
| 154 Ill.2d 1 (Ill. 1992) | 44 |
| <u>Uline, Inc. v. JIT Packaging, Inc.,</u> | |
| 437 F.Supp. 2d 793 (N.D. Ill. 2006) | 44 |
| c. <u>Count Eleven and the Sixth Disparagement</u> | 44 |
| <u>Cromeens, Holloman, Sibert, Inc. v. AB Volvo,</u> | |
| 349 F.3d 376 (7th Cir. 2003) | 44 |
| <u>Kempner Mobile Elecs., Inc. v. Southwestern Bell Mobile Sys.,</u> | |
| 428 F.3d 706 (7th Cir. 2005) | 44 |
| 3. <i>Conclusion as to Tortious Interference</i> | 45 |
| D. Plaintiff's Claims Against Defendant for Unfair Competition are Erroneous and Misguided. | 45 |
| 815 ILCS § 510/1 <i>et seq.</i> | 45 |
| <u>Abbott Laboratories v. Mead Johnson & Co.,</u> | |
| 971 F.2d 6 (7th Cir. 1992) | 47 |
| <u>Abel v. Fox,</u> | 47 |
| 274 Ill. App. 3d 811, 654 N.E.2d 591(4th Dist. 1995) | 47 |
| <u>Custom Business Systems, Inc. v. Boise Cascade Corp.,</u> | |
| 68 Ill. App. 3d 50, 385 N.E.2d 942 (2d Dist.1979) | 46 |
| <u>Mars, Inc. v. Curtiss Candy Co.,</u> | |
| 8 Ill. App. 3d 338, 290 N.E.2d 701 (1st Dist. 1972) | 48 |
| <u>McGraw-Edison Co. v. Walt Disney Productions,</u> | |
| 787 F.2d 1163 (7th Cir. 1986) | 48 |
| <u>MJ & Partners Restaurant Ltd. Pshp. v. Zadikoff,</u> | |
| 10 F. Supp.2d 922 (N.D. Ill. 1998) | 45,48 |
| <u>Vidal Sassoon, Inc. v. Bristol-Myers Co.,</u> | |
| 661 F.2d 272 (2nd Cir. 1981) | 47 |
| RESTATEMENT (3 rd) UNFAIR COMPETITION §§ 2-3 | 48 |

INTRODUCTION

This controversy involves a dispute between competitors of software created for use by pure bred dog, cat and horse breeders. John F. Tamburo d/b/a Man's Best Friend Software ("Plaintiff") brings this action because James Andrews d/b/a K9Ped ("Defendant") conveyed verifiable information about Plaintiff on the Internet. None of the information posted on the Internet was untrue, false or otherwise misleading. The Plaintiff brings this action in Illinois where personal jurisdiction does not exist over Defendant. In essence, the lawsuit underlying this appeal represents nothing more than an outlet for Plaintiff to harass Defendant. For the reasons stated below, the trial court correctly granted Defendant's Motion to Dismiss ("Defendant's Motion"), and this Court should affirm the trial court's order.

STATEMENT OF FACTS¹

1. Defendant is a resident and citizen of Oregon. R. C27 (1st Am. Compl. ¶ 3); R. C157-58 (Andrews' Affidavit ¶¶ 2, 3, 7, 8, 9). He has minimal contacts, if any, with Illinois. Id.
2. In September 2001, Defendant became aware of repeated complaints involving Plaintiff's products and customer service. See R. C31 (1st Am. Compl. ¶¶ 18, 28).
3. In addition, Defendant learned that Plaintiff was involved in bankruptcy proceedings before the United States Bankruptcy Court for the Northern District of Illinois and that Plaintiff had previously filed for bankruptcy five times. See R. C28 (1st Am. Compl. ¶ 10).
4. Based on the information he learned, Defendant posted truthful statements about

¹ Defendant objects to Plaintiff's Statement of Facts as being argumentative, inaccurate, and undeniably subjective. See Appellant's Brief pp. 11-14. However, as many of the facts stated by Plaintiff are irrelevant to the issues on this appeal, Defendant declines to respond to each objectionable statement of fact within its supplemental Statement of Facts. Rather, the Defendant relies on citations to the record contained within the body of his memorandum below.

Plaintiff on the Internet. See R. C28-33 (1st Am. Compl. ¶¶ 10, 17, 18, 28, 30, 37).

5. In fact, none of the information posted on the Internet was untrue, false or otherwise misleading. See R. C28-33 (1st Am. Compl. ¶¶ 10, 17, 18, 28, 30, 37).

6. Plaintiff disliked the publication of the truthful statements and filed the underlying lawsuit against Defendant. R. C.

STANDARD OF REVIEW

A motion to dismiss under section 2-615 of the Illinois Code of Civil Procedure (the “Code”) tests the legal sufficiency of the plaintiff’s claim. 735 ILCS 5/2-615. A motion to dismiss under section 2-619 of the Code admits the legal sufficiency of the plaintiff’s claim, but asserts certain defects or defenses outside the pleading that defeat the claim. 735 ILCS 5/2-619; see also Wallace v. Smyth, 203 Ill. 2d 441, 447, 786 N.E.2d 980, 984 (Ill. 2002).

When reviewing a lower court’s dismissal of claims pursuant to sections 2-615 or 2-619, this Court applies a *de novo* standard. Ramos v. City of Peru, 333 Ill. App. 3d 75, 77, 775 N.E.2d 184, 186 (3rd Dist. 2002).

ARGUMENT

On May 3, 2006, the trial court granted Defendant’s Motion to Dismiss Plaintiff’s First Amended Complaint concluding that the court lacked personal jurisdiction over Defendant. R. C386-87 (Amended Order). Specifically, the trial court held that 1) Defendant lacked sufficient contacts with the State of Illinois for it to exercise personal jurisdiction over him; 2) Defendant’s Motion to Dismiss Plaintiff’s First Amended Complaint is granted upon this basis; 3) Plaintiff’s First Amended Complaint is dismissed in its entirety; and 4) Plaintiff’s request to file his Second Amended Complaint is denied as moot. Id. By this appeal, the Plaintiff seeks reversal of the trial court’s order. Plaintiff also

argues the merits of his substantive claims, though the trial court did not rule upon them. Defendant responds to both of these arguments below. Despite Plaintiff's efforts, the law remains clear that Defendant lacks sufficient contacts with Illinois to be subject to personal jurisdiction under any statutory and due process analysis. Moreover, despite Plaintiff's unsupported assumptions about and its mischaracterization of tortious interference, defamation, and unfair competition law, Plaintiff's substantive claims completely lack any merit. For these reasons, the trial court's order dismissing the Plaintiff's First Amended Complaint must be affirmed.

I. THE TRIAL COURT'S ORDER GRANTING DEFENDANT'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION MUST BE AFFIRMED.

In his brief, Plaintiff raises both procedural and substantive arguments challenging the propriety of the trial court's order dismissing the First Amended Complaint for lack of personal jurisdiction over the Defendant.

A. Plaintiff's § 2-619.1 and § 2-301 Procedural Arguments Lack Merit.

Plaintiff first contends that Defendant's Motion does not comply with Section 2-619.1 of the Illinois Code of Civil Procedure ("Code"). See Appellant's Brief pp. 16-22. Specifically, Plaintiff contends Defendant did not properly combine his arguments on personal jurisdiction grounds with those relating to the deficiency of the underlying common law claims. This argument lacks merit. In his Motion to Dismiss, Defendant identified his arguments and bases for dismissal in three brief, distinct paragraphs. R. C120-21 (Defendant's Motion). The first such paragraph specifically refers to this Court's lack of personal jurisdiction over the Defendant and the corollary basis for dismissal pursuant to § 2-619. Id. The second paragraph identifies additional arguments relating to improper service by the Plaintiff, improper forum, and the expiration of certain claims under the

statute of limitations. Id. The final paragraph refers specifically to Defendant's argument that Plaintiff failed to state any claim upon which relief can be granted under § 2-615. Id. Moreover, the Defendant's Motion specifically incorporates and references the arguments in the accompanying memorandum filed in support thereof. R. C120-21 (Defendant's Motion). Finally, the memorandum and amended memorandum filed in support of Defendant's Motion both contained distinct sections limited to and made under each of §§ 2-615 and 2-619. Id.; R. C132, 147 (Defendant's Mem. in Supp. Mot. to Dismiss). Each section also clearly showed the "grounds relied upon under the Section upon which it is based." Id. Such a construction completely complies with the requirements pursuant to § 2-619.1 relating to combined motions. 735 ILCS 5/2-619.1. Consequently, Plaintiff's argument to the contrary is erroneous. See id.

Next, Plaintiff reverses his argument and contends that a motion to dismiss for lack of personal jurisdiction must be filed separately under § 2-301 of the Code. Consequently, Plaintiff argues that Defendant has waived his jurisdictional argument by purportedly failing to do so. See Appellant's Brief pp. 15-22. As with his prior argument, Plaintiff misunderstands the law. For, a party no longer needs to file a special appearance under § 2-301 to challenge personal jurisdiction. In re Marriage of Hoover, 314 Ill. App. 3d 707, 710, 732 N.E.2d 145, 147 (4th Dist. 2000); see also KSAC Corp. v. Recycle Free, Inc., 364 Ill. App. 3d 593, 595, 846 N.E.2d 1021, 1023 (2nd Dist. 2006). In essence, the 2000 amendments to § 2-301 eliminated the distinction between general and special appearances. Id. In addition, a "defendant [may now] combine a motion challenging jurisdiction with other motions seeking relief on different grounds." KSAC Corp., 364 Ill. App. 3d at 595, 846 N.E.2d at 1023; see also In re Marriage of Hoover, 314 Ill. App. 3d. at 710, 732 N.E.2d

at 147. Indeed, § 2-619.1 specifically provides for such combined motions. 735 ILCS 5/2-619.1. And, despite Plaintiff's contention that personal jurisdiction cannot be raised under 2-619, Illinois courts have consistently addressed motions to dismiss for lack of personal jurisdiction pursuant to Section 2-619.² In re Marriage of Hoover, 314 Ill. App. 3d. at 710, 732 N.E.2d at 147; W. Va. Laborers Pension Trust Fund v. Caspersen, 357 Ill. App. 3d 673, 675, 829 N.E.2d 843, 845 (1st Dist. 2005). Consequently, Defendant properly brought his motion to dismiss for lack of personal jurisdiction pursuant to Section 2-619 in combination with additional bases for dismissal. See KSAC Corp., 364 Ill. App. 3d at 595, 846 N.E.2d at 1023; In re Marriage of Hoover, 314 Ill. App. 3d at 710, 732 N.E.2d at 147; 735 ILCS §§ 5/2-301, 2-619, and 2-619.1. Thus, the trial court did not err in refusing to consider Plaintiff's arguments on this issue below. Id. Therefore, the trial court's ruling should not be reversed on these bases. Id.

B. The Trial Court Correctly Held That Plaintiff's Complaint Should Be Dismissed For Lack of Personal Jurisdiction.

The trial court properly ruled that it did not have personal jurisdiction over Defendant. Defendant lacks sufficient contacts for this Court to exercise either general or specific personal jurisdiction over him. Furthermore, exercising personal jurisdiction over Defendant would not comport with due process under either the federal or Illinois constitutions. For these reasons, this Court should affirm the trial court's order granting Defendant's Motion.

² The same arguments apply to Plaintiff's contention that Defendant has waived improper service of process. See Safeco/American States Ins. Co. v. Hagler, 332 Ill. App. 3d 912, 916, 773 N.E.2d 1255, 1258 (5th Dist. 2002).

1. *Standard for Personal Jurisdiction in Illinois.*

Section 2-619 of the Code provides for the dismissal of actions and claims where the Court lacks personal jurisdiction over the defendant. See 735 ILCS 5/2-619. Whether Illinois can exercise jurisdiction over a nonresident Defendant rests on the applicability of Illinois' long-arm statute. Kostal v. Pinkus Dermatopathology Laboratory, P.C., 357 Ill. App. 3d 381, 384, 827 N.E.2d 1031, 1035 (1st Dist. 2005) (citing 735 ILCS 5/2-209). The Illinois long-arm statute is codified at § 2-609. In 1989, the Illinois legislature amended § 2-609 to include a "catch-all" provision stating that a court "may also exercise jurisdiction on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States." 735 ILCS 5/2-609(c). Consequently, the long-arm statute has become co-extensive with the due process requirements under the federal and Illinois constitutions. Keller v. Henderson, 359 Ill. App. 3d 605, 611-612, 834 N.E.2d 930, 936 (2nd District 2005) (citing Kostal, 357 Ill. App. 3d at 384, 827 N.E.2d at 1035). Thus, the focus of any personal jurisdiction inquiry must begin with whether the plaintiff has shown that federal and Illinois due process requirements have been met. Keller, 359 Ill. App. 3d at 612, 834 N.E.2d at 935. If these requirements have been met, the inquiry ends. See id.

In reviewing personal jurisdiction, the plaintiff bears the burden of establishing a valid basis for asserting jurisdiction over the defendant. See Kostal, 357 Ill. App. 3d at 383, 827 N.E.2d at 1035 (citing Morecambe Maritime, Inc. v. National Bank of Greece, S.A., 354 Ill. App. 3d 707, 710, 821 N.E.2d 780, 784 (1st Dist. 2004)). Although this Court must resolve conflicts between the Parties' affidavits in favor of Plaintiff, this Court must also accept as true any facts averred by Defendant that have not been contradicted by an affidavit submitted by Plaintiff. Cleary v. Philip Morris, 312 Ill. App. 3d 406, 411, 726 N.E.2d 770,

775 (1st Dist. 2000). “If plaintiff has failed to establish a *prima facie* case, the inquiry is at an end and the defendant's motion should be granted.” Id.

2. *Federal Due Process Precludes Personal Jurisdiction.*

The standard with which personal jurisdiction must comport to satisfy federal due process requirements has been well established. As the Keller court explained, the defendant

must have certain ‘minimum contacts’ with the forum state such that maintaining the suit there does not offend ‘traditional notions of fair play and substantial justice.’ In other words, “once it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with ‘fair play and substantial justice.’” The minimum contacts required for personal jurisdiction “must be based on ‘some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.’” The purposeful availment requirement exists so that an ‘alien defendant will not be forced to litigate in a distant or inconvenient forum solely as a result of random, fortuitous, or attenuated contacts or the unilateral act of a consumer or some other third person’.

Keller, 359 Ill. App. 3d at 611-612, 834 N.E.2d at 936. An analysis under the federal due process requirements requires a three-prong inquiry; “whether (1) the nonresident defendant had ‘minimum contacts’ with the forum state such that there was ‘fair warning’ that the nonresident defendant may be haled into court there; (2) the action arose out of or related to

the defendant's contacts with the forum state; and (3) it is reasonable to require the defendant to litigate in the forum state.” Id.

The analysis of these factors further depends upon whether a plaintiff seeks to establish general or specific jurisdiction over the defendant. Id. General jurisdiction is permitted where a defendant has “continuous and systematic general business contacts” with the forum. Where general jurisdiction has been established, a defendant “may be sued in the forum state for suits neither arising out of nor related to the defendant’s contact with the forum state.” Id. Not so with specific jurisdiction. Indeed, the key difference between general and specific jurisdiction is that specific jurisdiction requires that the suit *arise out of* or be *related to* the defendant's contact with the forum. Id. (citing Bombliss v. Cornelsen, 355 Ill. App. 3d 1107, 824 N.E.2d 1175 (3rd Dist. 2005)) (emphasis added).

a. General Jurisdiction is Inapplicable to Defendant Andrews.

The Plaintiff has not established that this Court can exercise general jurisdiction over Defendant. First, Plaintiff does not specifically allege general jurisdiction over Defendant.³ Defendant does not argue anywhere in his brief that general jurisdiction applies to Defendant. See Appellant’s Brief pp. 22-30. In fact, Plaintiff limits his jurisdiction argument to “specific jurisdiction in Illinois.” Id. p. 22. Thus, Plaintiff has waived any general jurisdiction argument. See RAR, Inc. v. Turner Diesel, Ltd., 107 F.3d 1272, 1277 (7th Cir. 1997).

Assuming, *arguendo*, the Plaintiff has not waived a general jurisdiction argument,

³ Plaintiff confuses general jurisdiction and specific jurisdiction, alleging “*general* personal jurisdiction over Defendant pursuant to 735 ILCS 5/2-209(a)(1)”, whereas subsection 209(a)(1) provides for specific, not general, jurisdiction. See R. C34 (1st Am. Compl. ¶ 40) (emphasis added) and Kostal, 357 Ill. App. 3d at 385, 827 N.E.2d at 1035. Thus, it is unclear whether Plaintiff asserts general jurisdiction, specific jurisdiction, or both. Defendant submits that Plaintiff has failed to properly assert general jurisdiction. Thus, Plaintiff has waived any general jurisdiction argument.

the Plaintiff cannot establish general personal jurisdiction over Defendant. In his First Amended Complaint, Plaintiff admits that Defendant resides in North Plains, Oregon and is not an Illinois resident. See R. C27 (1st Am. Compl. ¶ 3). Defendant has not had and does not have systematic, continuous or intense contacts in the State of Illinois. See R. C157 (Andrews Affidavit ¶ 3). To overcome this, Plaintiff alleges that Defendant is subject to Illinois “general personal jurisdiction” because Defendant operates a website which makes Defendant’s software available online. See R. C28, 34 (1st Am. Compl. ¶¶ 8, 40). It is true that Defendant operates a website at www.k9ped.com. See R. C28 (1st Am. Compl. ¶ 8); R. C157 (Andrews’ Affidavit ¶ 5). However, Defendant does not operate the website from Illinois; does not have the website hosted with an Internet server in Illinois; and does not have the website maintained from Illinois. See R. C157 (Andrews’ Affidavit ¶ 8). Apart from counsel retained for this lawsuit, Defendant has not hired Illinois companies to perform services for him, his website or his business. Id. ¶ 9. Also, Defendant does not specifically target his website, including the advertising and marketing thereon, or his software to Illinois citizens. Id. ¶ 7.

Despite Defendant’s lack of contact with Illinois, Plaintiff alleges that Defendant “has used the Web Site to solicit customers from and complete sales in Illinois, and has sold copies of his competing software to Illinois residents.” See R. C28, 34 (1st Am. Compl. ¶¶ 8, 40). In fact, as of March 30, 2006, Defendant had only *one* customer with an Illinois mailing address. See R. C157 (Andrews’ Affidavit ¶ 10). Although Plaintiff calls Defendant “a liar” for saying so without any basis, he does acknowledge that “[t]he truth of this matter is within Andrews’ exclusive control.” R. C252 (Plaintiff’s Affidavit ¶ 4). In any case, merely entering into a contract with a single resident of Illinois is not sufficient by

itself to subject a nonresident to personal jurisdiction in Illinois. Hendry v. Ornda Health Corp., 318 Ill. App. 3d 851, 853, 742 N.E.2d 746, 748 (2nd Dist. 2000). Indeed, the business conducted by the nonresident must be carried on with a fair measure of permanence and continuity, not occasionally or casually. Id. Consequently, such nominal and sporadic contacts do not lend to business that is conducted with “a fair measure of permanence and continuity” sufficient for general jurisdiction. LaRochelle v. Allamian, 361 Ill. App. 3d 217, 226, 836 N.E.2d 176, 185 (2nd Dist. 2005) (citing Hendry v. Ornda Health Corp., 318 Ill. App. 3d 851, 853, 742 N.E.2d 746, 750 (2nd Dist. 2000)). Moreover, the mere possibility of sales to Illinois citizens through Defendant’s website is insufficient to warrant general jurisdiction. See LaSalle National Bank v. Vitro, Sociedad Anonima, 85 F. Supp. 2d 857, 861 (N.D. Ill. 2000) (quoting Molnlycke Health Care AGB v. Dumex Medical Surgical Products Ltd., 64 F. Supp. 2d 448, 451 (E.D. Pa. 1999)).

With respect to Defendant’s website as a whole, it does not warrant exercising general jurisdiction in this instance. Obviously, websites, including Defendant’s, can be accessed by Internet users *worldwide*. Consequently, it becomes even more essential for courts to analyze the question of jurisdiction arising from websites on a case-by-case basis. LaRochelle, 361 Ill. App. 3d at 222, 836 N.E.2d at 184-85 (citing Haubner v. Abercrombie & Kent International, Inc., 351 Ill. App. 3d 112, 119, 812 N.E.2d 704 (1st Dist. 2004)). For this reason, with regard to the Internet and personal jurisdiction, Illinois courts have adopted the “sliding scale” analysis to determine whether Internet activity is sufficient to establish personal jurisdiction. LaRochelle, 361 Ill. App. 3d at 225 (citing Bombliss v. Cornelsen, 355 Ill. App. 3d 1107, 1114, 824 N.E.2d 1175, 1180 (3rd Dist. 2005), for the analysis formulated in Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119, 1123-24 (W.D.

Pa. 1997)). At one end, jurisdiction does not attach where the nonresident maintains a passive website that merely provides information about the defendant's products or services. Id. At the other end, jurisdiction attaches where the defendant transacts business via an active website where contracts are completed online and the defendant derives profits directly from web-related activity. Id. Passive websites do not give rise to general jurisdiction. Fully active, commercial websites can give rise to general jurisdiction. Id.

A third type of interactive hybrid website exists between the “passive” and “active” websites. An “interactive” website allows customers to communicate and interact with a defendant regarding a defendant's products and services. See Infosys Inc. v. Billingnetwork.com, Inc., No. 03 C 2047, 2003 U.S. Dist. LEXIS 14808, at *9 (N.D. Ill. Aug. 27, 2003). The applicability of general jurisdiction to such a website depends on its level of commercial interactivity. However, “commercial” does not necessarily include all features designed to promote a business or product. See id. at *9-10 (comparing interconnectivity of a commercial nature such as “soliciting software resellers, medical sales representatives, and practice management consultants to join its ‘network of qualified Value Added Resellers (VARs)’” to other “interconnectivity features of a lesser commercial nature” such as “an opportunity to subscribe to [the company’s] periodic newsletter, and, on a separate page for investors, the website invites potential investors to fill out a form for more information ‘about investment opportunities’ in the company”). Even still, courts have disagreed on the level of commercial interactivity sufficient to confer general jurisdiction. Id. n2, n3 (citing disagreeing opinions). An analysis of these cases, however, demonstrates that “cases conferring jurisdiction partly on the basis of Internet activity ‘reflect that personal jurisdiction is typically determined based not only on the defendant's

Internet activities but also on its non-Internet activities.” Id. (citing Watchworks, Inc. v. Total Time, No. 01 C 5711, 2002 U.S. Dist. LEXIS 4491, at *6 (N.D. Ill. Mar. 19, 2002) (emphasis added)). Indeed, “there is no case where general jurisdiction was conferred on the basis of an interactive website in the absence of non-website factors evidencing intent for a defendant's product or website to reach a particular state.” Id. Therefore, non-Internet activities must exist apart from a hybrid or interactive website for there to be general jurisdiction over Defendant operator of the website. Id.

Here, Defendant’s website is a “hybrid” or “interactive” -- it provides information about Defendant’s software and is designed to sell Defendant’s products. See R. C157 (Andrews’ Affidavit ¶ 6). As indicated above, the Defendant lacks any non-Internet contacts sufficient to confer general jurisdiction. Consequently, there do not exist sufficient bases to warrant exercising general jurisdiction over Defendant. See Watchworks, Inc., 2002 U.S. Dist. LEXIS 4491, at *6; Infosys, Inc., 2003 U.S. Dist. LEXIS 14808, at *9.

For the reasons above, Plaintiff fails to allege that Defendant has continual and intense business contacts with Illinois companies or residents; and Defendant does not have such contacts. See R. C157-58 (Andrews Affidavit ¶¶ 1-10). Without such contacts with Illinois, the Defendant’s website does not give rise to general personal jurisdiction. Thus, Defendant cannot be subject to personal jurisdiction based on a general jurisdictional analysis.

b. Specific Jurisdiction is Inapplicable to Defendant Andrews.

Similar to that of general jurisdiction, Plaintiff cannot establish that this Court has specific jurisdiction over Defendant. The main factor in specific jurisdiction analysis is foreseeability -- was it reasonably foreseeable to the defendant that its action could result in

litigation in the state in question. Birnberg v. Milk St. Residential Assocs. Partnership, No. 02 C 0978 and 02 C 3436, 2003 U.S. Dist. LEXIS 806, at *10 (N.D. Ill. January 17, 2003) (R. C164-178) (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472-74 (1985)). Contacts that are "random, fortuitous, or attenuated" are not sufficient to establish that a state's exercise of personal jurisdiction over the defendant was foreseeable. Id. (citing Heritage House Rests., Inc. v. Cont'l Funding Group, Inc., 906 F.2d 276, 283 (7th Cir. 1990)). Moreover, in examining the contacts in a specific jurisdiction analysis, the court cannot "simply aggregate all of the defendant's contacts with the state -- no matter how similar in terms of geography, time, or substance." Id. (citing RAR, 107 F.2d at 1277).

Plaintiff alleges specific jurisdiction over Defendant pursuant to 735 ILCS 5/2-209(a)(1) and (a)(2). See R. C33-34 (1st Am. Compl. ¶¶ 38, 40). Sections 209(a)(1) and (a)(2) provide for jurisdiction over a nonresident defendant for a cause of action arising from the "transaction of any business within" Illinois and the "commission of a tortious act within" Illinois, respectively. 735 ILCS 5/2-209(a). Specifically, Plaintiff contends that Defendant transacts business in Illinois, engaged in tortious activity that affected an Illinois citizen, and that his website gives rise to specific personal jurisdiction.

"Transaction of Business" Inapplicable

For specific jurisdiction to be applicable based upon transaction of business, Plaintiff's causes of action must *arise from* Defendant's "transaction of business" in Illinois. See 735 ILCS 5/2-209(a)(1); Kostal, 357 Ill. App. 3d at 385 (emphasis in original) (citing Kadala v. Cunard Lines, Ltd., 226 Ill. App. 3d 302, 314, 589 N.E.2d 802, 810 (1st Dist. 1992)); see also Bombliss, 355 Ill. App. 3d at 1112, 824 N.E.2d at 1179 ("Specific jurisdiction refers to jurisdiction over a defendant in a suit arising out of or related to the

defendant's contacts with the forum"). Plaintiff alleges that Defendant "transacted business" because Defendant's website "is an active web site, [sic] that facilitates the completion of sales transactions wholly online, including sales to Illinois residents." See R. C33 (1st Am. Compl. ¶ 39). Although Defendant has one customer with an Illinois mailing address, any such sales to this customer are irrelevant to the question of *specific* personal jurisdiction over Defendant. For, Plaintiff's claims of libel, unfair competition and tortious interference with prospective economic advantages have no relation to and did not arise out of any such sales. See generally R. C27-46 (1st Am. Compl). Rather, Plaintiff's allegations arise from Defendant's acts of posting alleged "disparagements" or statements about Plaintiff on his website. See generally R. C27-46 (1st Am. Compl.) As such, the instant circumstances differ significantly from Swissland Packing Co. v. Cox, 255 Ill. App. 3d 942, 944, 627 N.E.2d 686, 688 (3rd Dist. 1994) (holding that the defendant's conduct of negotiating the contract with plaintiff by telephone and mailing the contract to plaintiff in Illinois was sufficient to submit the defendant to specific jurisdiction of the Illinois courts) and Kalata, 312 Ill. App. 3d at 768, 728 N.E.2d at 654 (holding that the defendant's telephone and mail communications to negotiate and execute the joint venture agreement with plaintiff satisfied the long arm-statute). Because Plaintiff's allegations of libel, unfair competition and tortious interference do not *arise from* Defendant's alleged sales to Illinois citizens, there cannot be any specific jurisdiction over Defendant based on such alleged conduct under the "transacting business" theory. See Kostal, 357 Ill. App. 3d at 385, 827 N.E.2d at 1035 (emphasis in original) (citing Kadala v. Cunard Lines, Ltd., 226 Ill. App. 3d 302, 314, 589 N.E.2d 802, 810 (1st Dist. 1992)); see also Bombliss, 355 Ill. App. 3d at 1112, 824 N.E.2d at 1179.

“Tortious Act” Inapplicable

Plaintiff next contends that specific jurisdiction arises from Defendant’s alleged tortious acts. As with the “transacting business” specific jurisdiction analysis, the Plaintiff’s claims must relate to or arise from the tortious acts. Keller, 359 Ill. App. 3d at 611-612, 834 N.E.2d at 936; RAR, Inc., 107 F.3d at 1277-78; Spartan Motors v. Lube Power, Inc., 337 Ill. App. 3d 556, 561, 786 N.E.2d 613, 618 (2nd Dist. 2003). For this purpose, Plaintiff alleges two sets of acts he contends give rise to personal jurisdiction: accessing a federal court website and publishing statements about a competitor on one’s own website. Each of these acts fails to give rise to personal jurisdiction in Illinois.

Plaintiff incredulously contends that Defendant entered into Illinois, with no purpose other than to damage Plaintiff, when he accessed a website operated by the federal courts, particularly that of the United States Bankruptcy Court for the Northern District of Illinois. See R. C33 (1st Am. Compl. ¶¶ 37, 38). Although courts have broadly construed the term “tortious act” to include acts beyond those which “create common law liability” such that “any act [constituting] a breach of duty to another imposed by law” committed within the state may give rise to personal jurisdiction, Vlasak v. Rapid Collection Sys., Inc., 962 F. Supp. 1096, 1100 (N.D. Ill. 1997); Ohio-Sealy Mattress Mfg. Co. v. Kaplan, 429 F. Supp. 139, 140 (N.D. Ill. 1977). Not surprisingly, Plaintiff fails to cite any authority supporting his claim that merely accessing a government website to obtain public court documents constitutes a tortious activity. Indeed, Defendant did not breach a duty to Plaintiff or anyone by accessing a federal court website. Additionally, Plaintiff fails to cite any authority supporting his claim that merely accessing a government website to obtain public court documents gives rise to personal jurisdiction. However, even if accessing an Illinois