

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

LOUISIANA COLLEGE d/b/a
“LOUISIANA CHRISTIAN
UNIVERSITY”

Plaintiff,

v.

LUBBOCK CHRISTIAN
UNIVERSITY,

Defendant.

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Civil Action No. 1:23-cv-928-TAD-JPM

Judge Terry A. Doughty

Magistrate Judge Joseph HL Perez-
Montes

**DEFENDANT’S RULE 12(B)(2) MOTION TO DISMISS FOR LACK OF
PERSONAL JURISDICTION**

Pursuant to Federal Rule of Civil Procedure 12(b)(2), Defendant Lubbock Christian University (“Lubbock Christian” or “Defendant”) respectfully moves to dismiss the claims of Plaintiff Louisiana College’s d/b/a “Louisiana Christian University” (“Louisiana College” or “Plaintiff”) for lack of personal jurisdiction.

For the reasons set forth in the accompanying memorandum in support of this motion, this Court lacks personal jurisdiction over Lubbock Christian. Lubbock Christian, therefore, requests that Louisiana College’s claims be dismissed with prejudice under Federal Rule of Civil Procedure 12(b)(2).

WHEREFORE, Lubbock Christian respectfully prays that this motion to dismiss be granted, and that Louisiana College’s claims against Lubbock Christian be dismissed with prejudice.

Dated: August 31, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 31, 2023, I filed and served a true and correct copy of the foregoing on all counsel of record through the Court's electronic filing system and per Federal Rule of Civil Procedure 5.

/s/ Rachel K. O'Neil

Rachel K. O'Neil

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**MEMORANDUM IN SUPPORT OF DEFENDANT’S MOTION TO
DISMISS FOR LACK OF PERSONAL JURISDICTION**

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I. ARGUMENT SUMMARY

Plaintiff Louisiana College’s d/b/a “Louisiana Christian University” (“Louisiana College” or “Plaintiff”) allegations, even if taken as true, fail to establish a prima facie case that Defendant Lubbock Christian University (“Lubbock Christian” or “Defendant”) is subject to the personal jurisdiction of this Court. In a race-to-the-courthouse, Louisiana College files suit for declaratory judgment after Lubbock Christian put Louisiana College on notice of its violations of its trademark, “LCU.” Lubbock Christian is a nonprofit corporation organized and headquartered in Texas with a registered trademark on the acronym, “LCU.” The Complaint does not allege Lubbock Christian owns property, visited, committed a tort, or any other offense in Louisiana. Instead, Louisiana College’s only jurisdictional allegations are (1) “in personam jurisdiction over the Defendant . . . is appropriate because a substantial part of the events and actions giving rise to Defendant’s claim for trademark infringement occur within the State of Louisiana”; (2) “Plaintiff’s activities, which Defendant alleges infringe its Mark, occur primarily in Pineville, Louisiana”; (3) Lubbock Christian is registered to do business in Louisiana; and (4) Lubbock Christian sent Louisiana College communications from Texas. These allegations fail to establish personal jurisdiction.

Louisiana College’s first two allegations are substantially the same, as both pertain *solely to Louisiana College’s* activities in the forum—they do not allege any conduct of Lubbock Christian. Louisiana College states that the “events giving rise to Defendant’s claim for trademark infringement occur within the State of Louisiana.” Lubbock Christian has not filed a claim for trademark infringement. Regardless, the “events giving rise to” Lubbock Christian’s cease-and-desist letters and contacts are Louisiana College’s use of the “LCU”

trademark. Louisiana College’s forum activities are irrelevant for an analysis of this Court’s personal jurisdiction over Lubbock Christian.

Next, as a matter of law, registering to do business does not make Lubbock Christian subject to personal jurisdiction in Louisiana. Louisiana’s registration statute does not require businesses to consent to appear in Louisiana courts. Fifth Circuit precedent is clear that a company does not consent to jurisdiction by registering to do business in a state. Indeed, it is a violation of a defendant’s due process rights to exercise general jurisdiction based solely on the presence of a registered agent.

Lastly, Lubbock Christian’s communications with Louisiana College are insufficient to establish specific jurisdiction. The sending of cease-and-desist letters and other communications to put a company on notice of intellectual property rights, without more, is legally insufficient to confer personal jurisdiction over a non-resident defendant.

II. FACTUAL AND PROCEDURAL BACKGROUND

On July 13, 2023, Louisiana College filed suit, seeking a declaration that its use of “LCU” does not infringe on Lubbock Christian’s registered trademark. (ECF No. 1).

Louisiana College alleges that it, alongside its students, faculty, administrators, and other constituents, commonly refers to itself using the acronym “LCU.” (*Id.* at ¶¶ 15–17). In December 2022, Louisiana College alleges that its President received a letter from Dr. Scott McDowell, President of Lubbock Christian, putting Louisiana College on notice that its “use of ‘LCU’ acronym encroaches on [Lubbock Christian’s] trademark protected property.” (*Id.* at ¶ 23). Louisiana College responded on January 17, 2023, denying that its use of “LCU” constitutes trademark infringement. (*Id.* at ¶ 24). Louisiana College alleges it received two more letters, one on February 27, 2023, from Lubbock Christian’s attorneys, and then another

letter from Dr. McDowell later in 2023—both providing notice that the use of “LCU” violates Lubbock Christian’s intellectual property and the Lanham Act. (*Id.* at ¶¶ 25, 27). The parties allegedly had several “informal” conversations throughout 2023, and then a telephone meeting on July 7, 2023, covering the same topic. (*Id.* at ¶¶ 26, 27).

On these grounds, Louisiana College sued Lubbock Christian to ask for a declaration from this Court regarding its use of Lubbock Christian’s registered trademark “LCU.” Louisiana College does not allege that Lubbock Christian undertook any acts in Louisiana.

III. ARGUMENT

A. Standard of Review

A court must dismiss all claims against a defendant when the court lacks personal jurisdiction over that defendant. Fed. R. Civ. P. 12(b)(2). The plaintiff bears the burden of establishing the court’s jurisdiction over a nonresident. *Stuart v. Spademan*, 772 F.2d 1185, 1192 (5th Cir. 1985); *Bonner v. Triple-S Mgmt. Corp.*, 661 F. App’x 820, 821 (5th Cir. 2016).

A federal court has personal jurisdiction over a nonresident defendant if the forum state’s long-arm statute confers jurisdiction and if the exercise of jurisdiction is consistent with due process under the United States Constitution. *Johnston v. Multidata Sys. Int’l Corp.*, 523 F.3d 602, 609 (5th Cir. 2008). In Louisiana, the long-arm statute permits the exercise of personal jurisdiction to the extent allowed by the Due Process Clause. *Petroleum Helicopters, Inc. v. Avco Corp.*, 834 F.2d 510, 514 (5th Cir. 1987). The Due Process Clause allows the exercise of personal jurisdiction over a nonresident defendant only when (1) that defendant has purposefully availed itself of the benefits and protections of the forum state by establishing minimum contacts with the forum state; and (2) the exercise of jurisdiction over that defendant does not offend “traditional notions of fair play and substantial justice.” *Johnston*,

523 F.3d at 609. The “minimum contacts” prong further divides into contacts that suffice to confer general jurisdiction or specific jurisdiction. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919–20 (2011). General jurisdiction exists when a defendant is “at home” in a forum and can be sued there for all purposes. *Id.* Specific jurisdiction, by contrast, exists when a nonresident defendant has “purposefully directed its activities at the forum state and the litigation results from injuries that arise out of or relate to those activities.” *Panda Brandywine Corp. v. Potomac Elec. Power Co.*, 253 F.3d 865, 868 (5th Cir. 2001). Lubbock Christian’s contacts with Louisiana establish neither general nor specific jurisdiction. Thus, Lubbock Christian’s motion to dismiss should be granted.

B. This Court Lacks General Jurisdiction Over Lubbock Christian.

A court may exercise general jurisdiction only when the defendant’s contacts are “so ‘continuous and systematic’ as to render [it] essentially at home in the forum State.” *Daimler AG v. Bauman*, 571 U.S. 117, 138 (2014) (quoting *Goodyear*, 564 U.S. at 919). A corporation is “fairly regarded as at home” in the corporation’s place of incorporation and principal place of business. *Id.* at 139; *see also BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1559 (2017) (court lacked general jurisdiction over out-of-state railroad defendant even though it had over 2,000 miles of railroad tracks and more than 2,000 employees in the forum state).

Lubbock Christian is not “fairly regarded at home” in Louisiana. Texas, not Louisiana, is Lubbock Christian’s state of incorporation. (ECF No. 1 at ¶ 3). Texas, not Louisiana, is the place where Lubbock Christian is headquartered. (*Id.* at ¶ 10). Louisiana College does not allege Lubbock Christian has offices, employees, property, or any other activities in Louisiana.

Louisiana College’s only grounds for asserting general jurisdiction is Lubbock Christian’s registration to do business in the State of Louisiana on January 22, 2016. (*Id.* at ¶ 8). Fifth Circuit precedent, however, clearly provides that registering to do business, alone, does not confer general jurisdiction over an out-of-state defendant. *Wenche Siemer v. Learjet Acquisition Corp.*, 966 F.2d 179, 183 (5th Cir. 1992); *see also PetroQuest Energy LLC v. Challenger Mins. Inc.*, No. CV 6:19-01000, 2019 WL 12313558, at *4 (W.D. La. Dec. 3, 2019); *Gulf Coast Bank v. Designed Conveyor Sys., LLC*, No. CV 16-412-JJB-RLB, 2017 WL 120645, at *4 (M.D. La. Jan. 12, 2017). The Supreme Court of the United States’ recent decision in *Mallory v. Norfolk Southern Railway Co.* does not change this result. 600 U.S. ----, 143 S. Ct. 2028 (2023).

In *Mallory*, the Court analyzed whether Pennsylvania’s registration statute comports with the Due Process Clause of the Fourteenth Amendment, which requires out-of-state companies to register to do business in the Commonwealth *and* “agree to appear in its courts on ‘any cause of action’ against them.” 143 S. Ct. at 2033. Citing case law dating back to the early 20th Century, the Court held that Pennsylvania’s statute requiring out-of-state companies to agree to the general jurisdiction of the Commonwealth is constitutional. *Id.* at 2045. “After all, personal jurisdiction is a *personal* defense that may be waived or forfeited.” *Id.* at 2043 (emphasis in original). The Court did not hold that registering to do business, alone, constituted consent to general jurisdiction of the state.

Unlike Pennsylvania, Louisiana’s registration statute *does not* require out-of-state defendants to “agree to appear in its courts on ‘any cause of action’ against them.” In full, Louisiana’s registration statute provides:

No foreign corporation or association, except one which has before January 1, 1969, been granted a certificate of authority to do business in this state which is still valid, shall have the right to transact business in this state until it shall have procured a certificate of authority to do so from the secretary of state. No

foreign corporation shall be entitled to procure such a certificate of authority to transact in this state any business which a corporation organized under Chapter 1 or 2 of this Title is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized, governing its organization and internal affairs, differ from the laws of this state.

La. Stat. Ann. § 12:301. Nowhere does the statute require out-of-state companies to consent to the jurisdiction of the State. In fact, the court in *Gulf Coast Bank v. Designed Conveyor Sys., LLC*, likewise determined that Louisiana’s registration statute does not require out-of-state companies to consent to the general jurisdiction of Louisiana. No. CV 16-412-JJB-RLB, 2017 WL 120645, at *3. Therefore, Lubbock Christian’s registration to do business in Louisiana does not confer consent to general jurisdiction.

C. This Court Lacks Specific Jurisdiction Over Lubbock Christian.

Unlike general jurisdiction, specific jurisdiction is a claim-specific analysis that “depends on an affiliatio[n] between the forum 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*, 564 U.S. at 919 (internal quotation omitted); *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1781 (2017). Specific jurisdiction arises when (1) a defendant “purposefully directs” its activities toward the forum, and (2) the litigation must arise out of or relate to the defendant’s contacts. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472–73 (1985). Random, fortuitous, or attenuated contacts, or of the unilateral activity of another party or third person are not enough. *Id.* at 475. Even if a defendant established minimum contacts within a forum, personal jurisdiction must still “comport with fair play and substantial justice.” *Id.* at 476 (internal citations omitted).

1. Louisiana College’s unilateral activity in Louisiana does not establish specific jurisdiction.

Louisiana College alleges that this Court has personal jurisdiction over Lubbock Christian “because a substantial part of the events and actions giving rise to Defendant’s claim for trademark infringement occur within the State of Louisiana; [and] *Plaintiff’s* activities, which Defendant alleges infringe its Mark, occur primarily in Pineville, Louisiana.” (ECF No. 1 at ¶ 7) (emphasis added). Neither allegation is sufficient to establish personal jurisdiction.

“For a State to exercise jurisdiction consistent with due process, the *defendant’s* suit-related conduct must create a substantial connection with the forum State.” *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (emphasis added). Two related aspects of this requirement are relevant. *Id.* “First, the relationship must arise out of contacts that the ‘defendant *himself* creates with the forum State.” *Id.* Second, the “‘minimum contacts’ analysis looks to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.” *Id.* (“the plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant’s conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him.”); *721 Bourbon, Inc. v. House of Auth, LLC*, 140 F. Supp. 3d 586, 595 (E.D. La. 2015) (“[T]he focus of the jurisdictional inquiry is on the defendant’s own conduct, not the unilateral activity of a plaintiff.”).

Louisiana College’s use of the trademark “LCU” are not activities contributable to Lubbock Christian. Rather, Louisiana College must identify contacts *Lubbock Christian* creates in the forum. Because Louisiana College’s use of the trademark “LCU” is its own unilateral activity and not the activity of Lubbock Christian, such activity “is not an appropriate consideration when determining whether [Lubbock Christian] has sufficient contacts with

[Louisiana] to justify an assertion of jurisdiction. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417, 104 S. Ct. 1868, 1873, 80 L. Ed. 2d 404 (1984).

2. Lubbock Christian’s cease and desist letters and phone calls do not establish specific jurisdiction.

Lubbock Christian’s only alleged contacts with Louisiana are the letters and telephone calls to Louisiana College made to protect its intellectual property. The sending of cease-and-desist letters and phone calls to protect intellectual property, however, are insufficient to confer specific jurisdiction over a non-resident defendant. *Sinclair v. StudioCanal, S.A.*, 709 F. Supp. 2d 496, 508 (E.D. La. 2010). “There must be other activities directed at the forum and related to the cause of action besides the letters threatening an infringement suit.” *Id.* (citing *Red Wing Shoe Co. v. Hockerson–Halberstadt, Inc.*, 148 F.3d 1355, 1360–62 (Fed. Cir. 1998)).

The rationale that cease-and-desist letters, without more, fail to confer personal jurisdiction is discussed at length in *Red Wing Shoe Co. v. Hockerson–Halberstadt, Inc.* There, the Federal Circuit explained that cease-and-desist letters do not confer jurisdiction because of the second prong of the traditional Due Process inquiry, which examines whether the maintenance of personal jurisdiction would “comport with ‘fair play and substantial justice.’” 148 F.3d at 1360–61 (citing *Burger King*, 471 U.S. at 476). The court held that principles of fair play and substantial justice afford a patentee “sufficient latitude to inform others of its patent rights without subjecting itself to jurisdiction in a foreign forum.” *Red Wing Shoe Co.*, 148 F.3d at 1360. The same principles apply to trademark owners protecting intellectual property rights. *Sinclair*, 709 F. Supp. 2d at 508. Such contacts are akin to settlement negotiations, and “[g]iving jurisdictional significance to [settlement] activities may work against public policy by hindering the settlement of claims.” *First Am. Bankcard, Inc. v. Smart Bus. Tech., Inc.*, No. CV 15-638, 2016 WL 1089346, at *5 (E.D. La. Mar. 21, 2016) (quoting

Digi-Tel Holdings, Inc. v. Proteq Telecommunications (PTE), Ltd., 89 F.3d 519, 525 (8th Cir. 1996)); see also *Red Wing Shoe Co.*, 148 F.3d at 1361. Thus, “[s]tandards of fairness demand that [a party] be insulated from personal jurisdiction in a distant foreign forum when its only contacts with that forum were efforts to give proper notice of its” intellectual property rights. *Red Wing Shoe Co.*, 148 F.3d at 1361; see also *Sinclair*, 709 F. Supp. 2d at 508.

Louisiana College, therefore, must show that Lubbock performed “other activities” in Louisiana sufficient to confer personal jurisdiction. Examples of “other activities” in patent cases “include initiating judicial or extra-judicial patent enforcement within the forum, or entering into an exclusive license agreement or other undertaking which imposes enforcement obligations with a party residing or regularly doing business in the forum.” *Red Wing Shoe Co.*, 148 F.3d at 1334–35. The Eastern District of Louisiana in *Sinclair* cited these same activities when analyzing “other activities” in a trademark case. 709 F. Supp. 2d at 509. The court in *Sinclair* ultimately held that the plaintiff “failed to make a prima facie showing that [defendant] engages in other activities in Louisiana that would make the exercise of personal jurisdiction reasonable.” *Id.* The same outcome should result here.

Louisiana College fails to allege any “other activities” undertaken by Lubbock Christian other than letters and phone calls to warn about trademark infringement. These limited contacts with Louisiana are insufficient to confer personal jurisdiction. Thus, Lubbock Christian’s motion should be granted.

IV. CONCLUSION

For the reasons set forth above, Defendant Lubbock Christian University respectfully requests the claims against it be dismissed for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2).

Dated: August 31, 2023

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CERTIFICATE OF SERVICE

I certify that on August 31, 2023, I filed and served a true and correct copy of the foregoing on all counsel of record through the Court's electronic filing system and per Federal Rule of Civil Procedure 5.

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