

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

LOUISIANA TECH UNIVERSITY * CIVIL ACTION NO. 3:21-03539
FOUNDATION, INC. *
 * JUDGE TERRY A. DOUGHTY
V. *
 * MAGISTRATE JUDGE KAYLA
BEL-MAC ROOFING, INC. * D. MCCLUSKY
 *
* * * * *

**MEMORANDUM IN SUPPORT OF MOTION TO
DISMISS FOR LACK OF PERSONAL JURISDICTION AND
IMPROPER VENUE OR, ALTERNATIVELY, TO TRANSFER VENUE**

Defendant Bel-Mac Roofing, Inc. submits this memorandum in support of its Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue or, Alternatively, to Transfer Venue.

I. FACTUAL BACKGROUND

Bel-Mac is a roofing company offering commercial and residential roofing services. Rec. Doc. 1 ¶ 40. Bel-Mac is incorporated under the laws of Florida, with its principal place of business in Florida. *Id.* ¶ 7. It maintains an office in Santa Rosa Beach and Pensacola, Florida. Decl. William Bell ¶ 7. All of its employees are in Florida. *Id.* ¶ 8. Most of its business is conducted in Florida, predominately servicing Santa Rosa Beach, Miramar Beach, Panama City, Destin, and Pensacola. *Id.* ¶ 9. Bel-Mac also conducts business in Alabama, Georgia, and Mississippi. *Id.* ¶ 10.

On October 7, 2021, Louisiana Tech University Foundation, Inc. (“LTF”) filed this lawsuit asserting several claims arising from Bel-Mac’s alleged unauthorized use of LTF’s trademarked and copyrighted Tech Bulldog Mark. Rec. Doc. 1. LTF alleges that Bel-Mac advertises and conducts business in Louisiana. *Id.* It claims that, “on information and belief,” the alleged infringing work appears on billboards, on the internet, and on various accessories. *Id.* ¶¶ 49-51.

Bel-Mac is registered to do business in Louisiana and maintains a contractor’s license in Louisiana. *Id.* ¶¶ 8-9. However, Bel-Mac has never had an office in Louisiana, nor does it have employees in Louisiana. Decl. William Bell ¶¶ 12-13. Contrary to Plaintiffs assertions, Bel-Mac does not advertise in Louisiana. *See id.* ¶¶ 14-15. Most importantly, Bel-Mac has not performed or completed any work associated with its business in Louisiana since 2001. *Id.* ¶ 15.

II. LAW AND ARGUMENT

A. This Court May Not Exercise Personal Jurisdiction Over Bel-Mac Because It Does Not Have Sufficient Contacts with Louisiana.

1. Rule 12(b)(2) Motion to Dismiss Standard

Federal Rule of Civil Procedure 12(b)(2) provides that a defendant can move to dismiss an action against it for lack of personal jurisdiction. FED. R. CIV. P. 12(b)(2). The plaintiff bears the burden of establishing personal jurisdiction over the defendant. *Revell v. Lidov*, 317 F.3d 467, 469 (5th Cir. 2002). The allegations of the complaint, except as controverted by opposing affidavits, are taken as true, and all factual conflicts are resolved in the plaintiff’s favor. *Id.* The court may consider “affidavits, interrogatories, depositions, oral testimony, or any combination of the recognized methods of discovery.” *Id.* (quoting *Stuart v. Spademan*, 772 F.2d 1185, 1192 (5th Cir. 1985)).

A district court may exercise personal jurisdiction over a defendant if “(1) the long-arm statute of the forum state creates personal jurisdiction over the defendant; and (2) the exercise of

personal jurisdiction is consistent with the due process guarantees of the United States Constitution.” *Revell*, 317 F.3d at 469. Because Louisiana’s long-arm statute extends jurisdiction to the limits of due process, the Court need only consider whether the exercise of jurisdiction satisfies federal due process requirements over a nonresident. *Dickson Mar. Inc. v. Panalpina, Inc.*, 179 F.3d 331, 336 (5th Cir. 1999); see LA. REV. STAT. § 13:3201. The exercise of personal jurisdiction over a foreign defendant satisfies due process when “(1) that defendant has purposefully availed himself 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.’” *Latshaw v. Johnston*, 167 F.3d 208, 211 (5th Cir. 1999) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). To comport with due process, “the defendant’s conduct in connection with the forum state must be such that ‘he should reasonably anticipate being hailed into court in the forum state.’” *Id.* (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). Minimum contacts may give rise to either general or specific jurisdiction. *Daimler AG v. Bauman*, 571 U.S. 117, 133 (2014).

“In deciding whether there is personal jurisdiction, the Court should first determine whether the connection between the forum and the circumstances giving rise to the suit can justify the exercise of specific jurisdiction.” *O’Quin v. Fin. Servs. Online, Inc.*, No. 18-36, 2018 WL 5316360 (M.D. La. Oct. 26, 2018). A court may assert specific jurisdiction when the defendant has “minimum contacts with the State such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *In re Depuy Orthopaedics, Inc. v. Pinnacle Hip Implant Prod. Liab. Litig.*, 888 F.3d 753 (5th Cir. 2018) (quoting *Daimler*, 571 U.S. at 126).

Specific jurisdiction requires the lawsuit to relate to the defendant's contacts with the forum. *Roussel v. PBF Consultants, LLC*, No. 18-899, 2019 WL 3364321, at *2 (M.D. La. July 25, 2019).

“A court may assert general jurisdiction over foreign . . . corporations to hear any and all claims against them when their affiliations with the State are so ‘continuous and systematic’ as to render them essentially at home in the forum State.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). The court must first look to the principal place of business and the place of incorporation to determine whether a corporation is “at home” in the forum state. *Daimler*, 571 U.S. at 137. If the defendant has neither affiliation with the forum, the Court can look towards its contacts with the forum. *Id.* at 139 n.20. In measuring whether the corporation's contacts with the forum are sufficient to meet the “at home” standard, the activities must be examined “in their entirety, nationwide and worldwide.” *Id.*

2. This Court May Not Exercise Specific Jurisdiction Over Bel-Mac Because Bel-Mac Does Not Have Sufficient Contacts with Louisiana.

Specific jurisdiction “exists when a nonresident defendant has ‘purposefully directed its activities at the forum state and the litigation results from alleged 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) (quoting *Alpine View Co. v. Atlas Copco A.B.*, 205 F.3d 208, 215 (5th Cir. 2000)). To exercise jurisdiction, the defendant's suit-related conduct must create a substantial connection with the forum state. *Walden v. Fiore*, 571 U.S. 277, 284 (2014). The Fifth Circuit applies a three-step analysis for the specific jurisdiction inquiry:

- (1) whether the defendant has minimum contacts with the forum state, i.e., whether it purposely directed its activities toward the forum state or purposefully availed itself of the privileges of conducting activities there;
- (2) whether the plaintiff's cause of action arises out of or results from the defendant's forum-related contacts;
- and (3) whether the exercise of personal jurisdiction is fair and reasonable.

Monkton Ins. Servs., Ltd. v. Ritter, 768 F.3d 429, 433 (5th Cir. 2014) (quoting *Seiferth v. Helicopteros Atuneros, Inc.*, 472 F.3d 266, 271 (5th Cir. 2006)). The plaintiff must first establish the first two prongs prior to the court reaching the third prong. *See, e.g., Panda Brandywine Corp.*, 253 F.3d at 870.

LTF bears the burden of pleading facts sufficient for this Court to assert personal jurisdiction over Bel-Mac. LTF's allegations do not satisfy this burden. LTF's 23 page Compliant includes 125 paragraphs of allegations. However, only a few allegations are directed to Bel-Mac's alleged conduct in Louisiana. Specifically, LTF alleges:

1. Bel-Mac is licensed to do business in Louisiana and maintains a Louisiana contractor's license, Rec. Doc. 1 ¶¶ 8-9, 68;
2. "Upon information and belief," billboards including the alleged infringing work "have appeared" in Louisiana, *id.* ¶ 49;
3. Bel-Mac has used the alleged infringing work to advertise its business in Louisiana, *id.* ¶ 57;
4. "Upon information and belief," Bel-Mac has been engaged in the manufacture, distribution, provision, advertising, promotion, offering for sale, and sale of goods and services using the alleged infringing mark in Louisiana, *id.* ¶ 62;
5. "Upon information and belief," Bel-Mac has manufactured, distributed, provided, advertised, promoted, offered for sale, and sold its goods and services using the alleged infringing mark to the general public in Louisiana, *id.* ¶ 65;
6. "Upon information and belief," Bel-Mac specifically targeted its marketing efforts to Louisiana, *id.* ¶ 67; and

7. “Upon information and belief,” Bel-Mac has advertised on billboards in Louisiana, driven vehicles including the alleged infringing mark in Louisiana, and provided its online presence to Louisiana residents, *id.* ¶ 68.

However, the Declaration of William Bell directly contradicts all of LTF’s allegations made on “information and belief.” Simply put, Bel-Mac does not target advertising into Louisiana, does not advertise on billboards in Louisiana, has not performed any work in Louisiana since 2001, does not drive its vehicles in Louisiana, and does not (and has never) sold any branded goods into Louisiana. *See* Decl. William Bell. While Bel-Mac is licensed to do business in Louisiana, maintains a Louisiana contractors’ license, and uses a website and social media that may be viewed in Louisiana, none of these activities, alone or in combination, is sufficient to establish specific jurisdiction.

LTF’s allegations are insufficient to establish that Bel-Mac purposely directed its activities toward Louisiana or purposefully availed itself of the privileges of conducting activities in Louisiana. LTF has only offered evidence of Bel-Mac’s advertising efforts, billboards, and various accessories in Florida. *See, e.g.*, Rec. Doc. 1 at 10 (Facebook post tagging Bel-Mac’s Santa Rosa Beach, Florida office location); Rec. Doc 1-2 at 49 (billboard location tagged as Panama City, Florida); *id.* at 51 (Instagram post tagging Bel-Mac’s Florida office location and mentioning use of a Panama City, Florida business); *id.* at 52 (design for billboard in Florida).

Further, the fact that Bel-Mac’s website is accessible in Louisiana is insufficient. The Fifth Circuit has held that “a defendant does not have sufficient minimum contacts with a forum state just because its website is accessible there. The defendant must also target the forum state by purposefully availing itself of the opportunity to do business in that state.” *Admar Int’l, Inc. v. Eastrock, L.L.C.*, 18 F.4th 783 (5th Cir. 2021); *see Pervasive Software Inc. v. Lexware GmbH &*

Co. KG, 688 F.3d 214, 227-28 (5th Cir. 2012); *see also Talbot’s Pharms. Fam. Prod. L.L.C. v. Skanda Grp. Indus. L.L.C.*, No. 3:20-0716, 2021 WL 1940203, at *8 (W.D. La. Apr. 28, 2021) (McClusky, Mag. J.), *report and recommendation adopted*, 2021 WL 1929354 (W.D. La. May 13, 2021) (Doughty, J.).

Because LTF cannot establish the first step—purposeful availment—the court need not address steps two and three. *Admar Int’l, Inc.*, 18 F.4th 783; *see, e.g., Talbot’s Pharms. Fam. Prod. L.L.C.*, 2021 WL 1940203, at *8. Accordingly, this Court may not exercise specific jurisdiction over Bel-Mac.

3. This Court May Not Exercise General Jurisdiction Over Bel-Mac Because Bel-Mac’s Contacts with the Forum Are Attenuated.

General jurisdiction will attach if the defendant has engaged in “continuous and systematic” activities as to render them essentially at home in the forum state. *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017). A corporation is generally only “at home” in the state of its incorporation or its principal place of business. *Id.* But general jurisdiction may also exist in exceptional cases when the corporation’s affiliations with a forum are so substantial and “so continuous and systematic,” in light of its “activities in their entirety, nationwide and worldwide,” as to render the corporation essentially “at home” in the forum. *Daimler*, 571 U.S. at 132-33 n.11, 137; *see BNSF Ry. Co.*, 137 S. Ct. at 1558. “The continuous and systematic contacts test is a difficult one to meet, requiring extensive contacts between a defendant and a forum.” *Bowles v. Ranger Land Sys., Inc.*, 527 F. App’x 319, 321 (5th Cir. 2013); *see also Monkton Ins. Servs., Ltd.*, 768 F.3d at 432 (“It is . . . incredibly difficult to establish general jurisdiction in a forum other than the place of incorporation or principal place of business.”).

LTF has not alleged—and cannot show—that Bel-Mac has the extensive contacts with Louisiana required to establish general jurisdiction over it. Preliminarily, Bel-Mac is incorporated

under the laws of Florida, with its principal place of business in Florida. Rec. Doc. 1 ¶ 7. There can be no dispute that Bel-Mac is “at home” in Florida. Therefore, the Court must find this case to be an exceptional circumstance to assert general jurisdiction over Bel-Mac based on its activities in Louisiana. *See Patterson v. Aker Solutions, Inc.*, 826 F.3d 231, 234 (5th Cir. 2016).

LTF tenuously alleges that Bel-Mac advertises and conducts business in Louisiana. Rec. Doc. 1 ¶¶ 62, 65-68. Based on Plaintiff’s allegations, Bel-Mac’s contacts with Louisiana include: (1) it is registered to do business in the state, (2) it maintains a Louisiana contractor’s license, (3) it may have billboards in the state, (4) it has a website accessible to Louisiana residents, and (5) it advertises on social media accessible to Louisiana residents.

LTF will likely assert that Bel-Mac’s licensing, registration, and appointed agent for service of process in Louisiana are a basis for general jurisdiction. However, these activities are insufficient to establish general jurisdiction. *See Wenche Siemer v. Learjet Acquisition Corp.*, 966 F.2d 179, 181-82 (5th Cir. 1992) (“While . . . being qualified to do business, may on its face appear to be significant, it ‘is of no special weight’ in evaluating general personal jurisdiction.”); *Firefighters’ Retirement Sys. v. Royal Bank of Scotland PLC*, No. 15-482, 2016 WL 1254366, at *4-5 (M.D. La. Mar. 29, 2016) (“Qualifying to do business in a state and appointing an agent for service of process there do not amount a ‘general business presence’ of a corporation that could sustain an assertion of general jurisdiction.” (quoting *DNH, LLC v. In-N-Out Burgers*, 381 F. Supp. 2d 559, 565 (E.D. La. 2005))). For example, *Gamboia v. Great Lakes Dredge & Dock Co., LLC of Louisiana*, the plaintiff argued that because the defendant was registered as a foreign corporation with Louisiana’s Secretary of State and also maintained a Louisiana contractor’s license, it was “reasonable and just to subject the corporation to the jurisdiction of that state.” No. 20-18, 2020 WL 4373111, at *4 (M.D. La. July 30, 2020). The Middle District rejected this argument and

granted the defendant's motion to dismiss for lack of personal jurisdiction. *Id.* at *6; *see also, e.g., Gulf Coast Bank & Tr. Co. v. Designed Conveyor Sys., L.L.C.*, 717 F. App'x 394, 398 (5th Cir. 2017) (finding that registration to do business in Louisiana insufficient to exercise personal jurisdiction in Louisiana); *Young o/b/o T.Y. v. United Rentals, Inc.*, No. 1:17-CV-01489, 2018 WL 7324629, at *3 (W.D. La. Dec. 19, 2018), *report and recommendation adopted*, 2019 WL 614547 (W.D. La. Feb. 13, 2019) (same). Likewise, Bel-Mac's website being accessible to Louisiana residents is insufficient to establish general jurisdiction. *Pervasive Software Inc.*, 688 F.3d at 230 (finding a website accessible worldwide insufficient to exercise personal jurisdiction in Louisiana).

Further, contrary to Plaintiff's assertions, Bel-Mac does not advertise in Louisiana and has not performed any services or completed any work in Louisiana since 2001. Decl. William Bell ¶¶ 12-14. Moreover, Bel-Mac does not maintain an office in Louisiana, nor does it have employees in Louisiana. *Id.* ¶ 10-11. Louisiana courts have consistently held that Bel-Mac's level of contacts with Louisiana are not sufficient to support general jurisdiction. *See, e.g., Galloway v. Ill. Cent. R.R.*, No. 18-14038, 2019 WL 2716947, at *1-2 (E.D. La. June 28, 2019) (finding that a corporation's contacts with the forum, including having 10% of its employees and 14% total investments in the forum, were insufficient to assert general jurisdiction); *Norman v. H&E Equip. Servs., Inc.*, No. 3:14-CV-367, 2015 WL 1281989, at *5 (M.D. La. Mar. 20, 2015) (holding that operating three chemical plants in the forum was insufficient to assert general jurisdiction over the defendant when the corporation was not incorporated in the forum, had its principal place of business outside the forum, and operated plants in more than 90 countries). Accordingly, this Court may not exercise general jurisdiction over Bel-Mac.

B. This Judicial District Is an Improper Venue Because Bel-Mac May Not Be Found nor Resides in This District and the Alleged Events in this District Are Insubstantial.

1. Rule 12(b)(3) Motion to Dismiss Standard

Federal Rule of Civil Procedure 12(b)(3) provides that a defendant can move to dismiss an action against it for improper venue. FED. R. CIV. P. 12(b)(3). The plaintiff bears the burden of establishing venue is proper. *Stafford v. Stanton*, No. 17-0262, 2018 WL 5904495, at *2 (W.D. La. Nov. 9, 2018) (citing *Perez v. Pan Am. Life Ins. Co.*, No. 95-20298, 1995 WL 696803, at *2 (5th Cir. Oct. 20, 1995)). In determining whether venue is proper, a court is “permitted to look at evidence in the record beyond simply those facts alleged in the complaint and its proper attachments.” *Ambraco, Inc. v. Bossclip B.V.*, 570 F.3d 233, 238 (5th Cir. 2009). Venue must be proper for each claim asserted. *Guajardo v. State Bar of Tex.*, 803 F. App’x 750, 755 (5th Cir. 2020). If the Court determines that venue is improper, “the case must be dismissed or transferred under § 1406(a).” *Trois v. Apple Tree Auction Ctr., Inc.*, 882 F.3d 485, 493 (5th Cir. 2018) (quoting *Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Texas*, 571 U.S. 49, 50 (2013)).

2. Venue Is Improper for LTF’s Copyright Claim Because Bel-Mac May Not Be Found in this District.

For copyright cases, 28 U.S.C. § 1400(a) provides that venue is proper in a judicial district “in which the defendant or his agent resides or may be found.” “It is well established that an individual defendant ‘resides’ for venue purposes in the district of his residence or legal domicile.” *Burkitt v. Flawless Records, Inc.*, No. 03-2483, 2005 WL 6225822, at *5 (E.D. La. June 13, 2005). Here, Bel-Mac is a Florida corporation with its principal place of business in Florida. Thus, Bel-Mac resides in Florida.

Many circuits have held that a defendant corporation “may be found” in any district in which it is subject to personal jurisdiction. *Id.* The copyright venue analysis, therefore, reduces to whether Bel-Mac has sufficient contacts with this district to satisfy the requirements for personal

jurisdiction. As articulated above, Bel-Mac lacks sufficient contacts with Louisiana for this court to constitutionally exercise personal jurisdiction over Bel-Mac. Consequently, for Plaintiffs' federal copyright infringement claim, Bel-Mac may not be found in this district, and venue is improper under § 1400(a).

3. Venue Is Improper for the Remaining Claims Because Bel-Mac Does Not Reside in This District and the Alleged Events in this District Are Insubstantial.

Under 28 U.S.C. § 1391, venue is proper only in (1) the judicial district in which the defendant resides; (2) “a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;” or (3) if neither (1) or (2) apply, “any judicial district in which any defendant is subject to the court’s personal jurisdiction with respect to such action.” 28 U.S.C. § 1391(b). When there is a proper venue under § 1391(b)(1) or (b)(2), the court cannot premise venue under § 1391(b)(3). *Talbot’s Pharms. Fam. Prod. L.L.C.*, 2021 WL 1940203, at *11.

For venue purposes, a defendant corporation is deemed to reside in any judicial district in which it is subject to the court’s personal jurisdiction with respect to the civil action. 28 U.S.C. § 1391(c). As stated above, this court may not exercise personal jurisdiction over Bel-Mac. Consequently, under § 1391(b)(1), venue is not proper in this district. Instead, under § 1391(b)(1), venue is proper in the Northern District of Florida, i.e., Bel-Mac’s principal place of business and the place where it resides.

Because there is a proper venue under § 1391(b)(1), § 1391(b)(3) is inapplicable. Consequently, LTF must demonstrate that venue is proper under § 1391(b)(2), i.e., LTF must demonstrate that a substantial part of the events or omissions giving rise to the claims occurred, or a substantial part of property that is the subject of the action is situated in the Western District of Louisiana. To be considered “substantial,” the chosen venue does not have to be the place where

the most relevant events took place. *Jolie Design & Decor, Inc. v. BB Frosch, LLC*, No. 17-5052, 2018 WL 537798, at *3 (E.D. La. Jan. 24, 2018); *Stafford*, 2018 WL 5904495, at *5. “‘Substantiality’ for venue purposes is more a qualitative than a quantitative inquiry, determined by assessing the overall nature of the plaintiff’s claims and the nature of the specific events or omissions in the forum, and not by simply adding up the number of contacts.” *Miller Masonry, Inc. v. EMB Quality Masonry, LLC*, No. 13-6737, 2014 WL 5340747, at *2 (E.D. La. Oct. 20, 2014) (quoting *Univ. Rehab. Hosp., Inc. v. Int’l Co-Op Consultants*, No. 05-1827, 2006 WL 1098905, at *2 (W.D. La. Apr. 24, 2006)). In trademark infringement cases, courts have looked to the use of the trademark in the forum. *See, e.g., Jolie Design & Decor*, 2018 WL 537798, at *4. Courts have also considered the state of incorporation, principal place of business, property owned, location of agents or employees, licenses, and intent to transact business in the state. *See, e.g., id.* at *3-4; *Barnett Outdoors L.L.C. v. Extreme Techs., Inc.*, No. 07-1558, 2008 WL 2682603, at *2 (W.D. La. June 27, 2008).

LTF contends that, “on information and belief,” the alleged infringing work appears on billboards, on the internet, and on various accessories in Louisiana, Texas, Mississippi, Alabama, and Florida. *See* Rec. Doc. 1. However, LTF has only provided evidence of Bel-Mac’s advertising efforts, billboards, and various accessories in Florida. *See, e.g., id.* at 10 (Facebook post tagging Bel-Mac’s Santa Rosa Beach, Florida office location); Rec. Doc 1-2 at 49 (billboard location tagged as Panama City, Florida); *id.* at 51 (Instagram post tagging Bel-Mac’s Florida office location and mentioning use of a Panama City, Florida business); *id.* at 52 (design for billboard in Florida). Further, Bel-Mac does not advertise in Louisiana and has not performed any services or completed any work in Louisiana since 2001. The only use of the mark in the forum is on Bel-

Mac’s website. This is an insubstantial part of the events giving rise to LTF’s claims and insufficient to establish venue.

C. Alternatively, the Court Should Transfer this Action to the Northern District of Florida Because It Is a Clearly More Convenient Forum.

Even when venue is proper, a district court should exercise its “broad discretion” to change the venue of an action for the convenience of parties and witnesses. *Balawajder v. Scott*, 160 F.3d 1066, 1067 (5th Cir. 1998) (per curiam). A defendant seeking to change venue is not required to demonstrate the “heavy burden traditionally imposed upon defendants by the *forum non conveniens* doctrine.” *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 314 (5th Cir. 2008) (en banc) (emphasis omitted) (quoting *Veba–Chemie A.G. v. M/V Getafix*, 711 F.2d 1243, 1247 (5th Cir. 1983)). Rather, § 1404(a) “requires only that the transfer be ‘[f]or the convenience of the parties, in the interest of justice.’” *Id.* (quoting *Veba–Chemie A.G.*, 711 F.2d at 1247). This is a relatively low burden, as the transfer is warranted when the transferee venue is “clearly more convenient” than the transferor district. *Id.* The Fifth Circuit applies private interest and public interest factors for determining whether to transfer. *Extreme Techs., LLC v. Stabil Drill Specialties, L.L.C.*, No. 6:19-CV-00219, 2019 WL 2353168, at *2 (W.D. La. May 30, 2019) (Doughty, J.).

1. This Action Might Have Been Brought in the Northern District of Florida.

“The preliminary question under § 1404(a) is whether a civil action ‘might have been brought’ in the destination venue.” *In re Volkswagen of Am., Inc.*, 545 F.3d at 314. Here, there can be no dispute that this action could—and should—have been brought in the Northern District of Florida.

2. The Private Interest Factors.

The private interest factors are: (1) the relative ease of access of sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) cost of attendance of

willing witnesses; and (4) all other practical problems that make a trial of a case easy, expeditious and inexpensive. *Extreme Techs., LLC*, 2019 WL 2353168, at *3 (citing *In re Volkswagen of Am., Inc.*, 545 F.3d at 315). Courts have also “observed that ‘[i]ntellectual property infringement suits often focus on the activities of the alleged infringer, its employees, and its documents; therefore, the location of the alleged infringer’s principal place of business is often the critical and controlling consideration’ in adjudicating transfer of venue motions.” *Audubon Real Est. Assocs., L.L.C. v. Audubon Realty, L.L.C.*, No. 15-115, 2015 WL 4094235, at *3 (M.D. La. July 7, 2015) (alteration in original) (quoting *Houston Trial Reps., Inc. v. LRP Publ’ns, Inc.*, 85 F. Supp. 2d 663, 668 (S.D. Tex. 1999)).

Here, all four factors weigh in favor of transfer. As indicated above, the majority of the events giving rise this litigation and the evidence are located in the Northern District of Florida. Moreover, a majority of the witnesses will be located in the Northern District of Florida, and it is doubtful that this Court will be able to use compulsory process to secure the attendance of any non-party witnesses at trial. Even if this Court could secure the attendance of witnesses or if witnesses attended voluntarily, the cost of their attendance in this district will be significantly higher than in the Northern District of Florida, where all likely witnesses work and/or reside. Given that the witnesses and documentary evidence is in Florida, transferring this case to the Northern District of Florida will make trial more “easy, expeditious and inexpensive.”

3. The Public Interest Factors.

The public interest factors are: (1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that would govern the case; and (4) the avoidance of unnecessary problems of conflict and laws in the application of foreign law. *Extreme Techs., LLC*, 2019 WL

2353168, at *3 (citing *In re Volkswagen of Am., Inc.*, 545 F.3d at 315); *Tappe v. DIT, LLC*, No. 17-CV-1384, 2018 WL 4402005, at *4 (W.D. La. Aug. 30, 2018), *report and recommendation adopted*, 2018 WL 4390748 (W.D. La. Sept. 14, 2018) (Doughty, J.).

The public interest factors are fairly neutral but weigh in favor of transfer. The Northern District of Florida is less congested than this district. According to the Administrative Office of the United States Courts, for the most recent reporting period, the median time interval for a case to conclude from filing to disposition in this district was 8.6 months, compared to 5.3 months in the Northern District of Florida. *Table C-5—U.S. District Courts—Civil Judicial Business*, U.S. COURTS (Sept. 30, 2021), <https://www.uscourts.gov/statistics/table/c-5/judicial-business/2021/09/30>. To determine which forum has a local interest, courts look to the “relevant factual connection” between each forum and the suit. Here, the key events—the use of the alleged infringing mark—occurred in Florida. Last, this case will be predominantly governed by federal law, leaving the third and fourth factor neutral.

III. CONCLUSION

For the foregoing reasons, Bel-Mac respectfully requests that this Court grant its motion and dismiss LTF’s claims for lack of personal jurisdiction and improper venue. Alternatively, Bel-Mac respectfully requests that the Court grant its motion and transfer this matter to the United States District Court for the Northern District of Florida, pursuant to 28 U.S.C. § 1404(a).

Respectfully submitted,

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