

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 23-21894-CIV-MORENO

WORLD MEDIA ALLIANCE LABEL INC.,

Plaintiff,

vs.

BELIEVE SAS,

Defendant.

**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS FOR LACK OF
PERSONAL JURISDICTION**

THIS CAUSE came before the Court upon Defendant's Motion to Dismiss for Lack of Personal Jurisdiction (**D.E. 22**), filed on **October 30, 2023**. This five-count copyright infringement case initiated as an action between World Media Alliance against Believe SAS, YouTube, and Google. In August 2023, World Media Alliance voluntarily dismissed YouTube and Google, pursuant to a stipulation with the then-Defendants. Remaining in the litigation is Believe, a French digital music company. World Media Alliance is a Sunny Isles Beach-based company that has contractual rights with musical artists and groups, owning the rights to the use of certain materials. At dispute in this case is the content of a Russian music group called Tender May (founded in 1986).

I. Background

A. Tender May

Tender May is a cult Soviet and Russian pop group in Orenburg, Russia. Tender May's genres fall under Eurodisco, tin pop, and synthpop categories. The first teenage musical group in

the Soviet Union had unprecedented popularity in the USSR, then in Russian and other Republics that were previously part of the USSR, with both the young and adult audiences. At its peak in the late 1980s, Tender May was able to gather stadiums of 40,000 – 60,000 people and set records for the number of concerts per day.

Tender May is associated with a singer, composer, manager, and producer named Andrei Razin, who funded the group until it became and self-supporting. Plaintiff World Media Alliance is affiliated with Razin under contracts, and World Media Alliance claims to hold copyright to Tender May's audio and video recordings as a result of its affiliation with Razin. It thus claims that the copyright to the artistic works in question is controlled by the terms of the Digital Millennium Copyright Act, thereby making World Media Alliance the designated copyright agent for Tender May and Razin. Defendant Believe, however, argues that Tender May, as a band, never transferred rights to any of its performances to Razin. In 2022, Russian courts decided that Razin in fact had no ownership rights in any of Tender May's works. In Believe's view, ownership rights to the subject songs are still being litigated in Russian courts and are in direct conflict with World Media Alliance's claims of ownership in the United States.

B. Factual Issues

What lies at the core of the issue in this case is that Believe listed forty-four of Tender May's works on YouTube, which—in World Media Alliance's view—infringed its alleged copyright ownership in the works. World Media Alliance asserts that its intellectual property assets were “infringed, usurped, and attacked” and seeks injunctive relief and damages. World Media Alliance's five-count claim against Believe is for \$11,000,000. The first is an injunction under 17 U.S. Code Chapter 5 for copyright infringement and remedies, claiming it will suffer

irreparable damages.¹ The second is a claim for damages under 17 U.S.C. § 504 based on a precedent in a pending case in New York. The third is a claim for costs and attorney fees under 17 U.S.C. § 505. The fourth claim was stated against previous defendants YouTube and Google only and is, thus, no longer relevant. The fifth claim is for interference with beneficial business relationships, asserting that Believe infringed copyrights, usurped the rights to post recordings, and violated statutes in the United States, thereby interfering with World Media Alliance's beneficial business relationship with Tender May and Razin.

II. Issue

First, Believe argues that the Complaint fails to establish personal jurisdiction under Florida's long-arm statute or Fourteenth Amendment Due Process. Second, it asserts that the Court should dismiss, or in the alternative stay, World Media Alliance's claims pursuant to international abstention doctrine.

III. Analysis re: Personal Jurisdiction

Neither party disputes whether the Court has subject matter jurisdiction over the claims, as they arise under 17 U.S.C. Chapter 5, satisfying "federal question" jurisdiction. There also exists "diversity jurisdiction," as World Media Alliance is a Florida company and Believe is a French corporation. However, the Court must also have *personal* jurisdiction over the parties in the case because "[a] court without personal jurisdiction is powerless to take further action." *Posner v. Essex Ins. Co., Ltd.*, 178 F.3d 1209, 1214 n.6 (11th Cir. 1999); *see also Read v. Ulmer*, 308 F.2d 915, 917 (5th Cir. 1962) ("It would seem elementary that if the court has no jurisdiction over a defendant, the defendant has an unqualified right to have an order entered granting its motion to dismiss."). Because Believe is a nonresident defendant, World Media Alliance must establish a

¹ A disclaimer was made that the links to the videos has been deactivated as though the video material had been removed, but it may have then later been reactivated again.

prima facie case of personal jurisdiction and “present[] enough evidence to withstand a motion for directed verdict.” *See Madara v. Hall*, 916 F.2d 1510, 1514 (11th Cir. 1990).

In the Complaint, World Media Alliance merely states “[j]urisdiction is proper,” while acknowledging that Believe “has no registration in Florida” and is based out of France. Further, it asserts that venue is proper because “WMA, a Florida corporation, has copyright, and infringement of their rights has effect in Florida, where WMA is deprived of a portion of their revenues.” However, this incomplete assertion of personal jurisdiction does not establish the requisite prima facie case of personal jurisdiction over a nonresident defendant.

“A federal court sitting in diversity undertakes a two-step inquiry in determining whether personal jurisdiction exists: the exercise of jurisdiction must (1) be appropriate under the state long-arm statute and (2) not violate the Due Process Clause of the Fourteenth Amendment[.]” *Carmouche v. Tamborlee Mgmt., Inc.*, 789 F.3d 1201, 1203-04 (11th Cir. 2015) (quoting *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1274 (11th Cir. 2009)). A defendant can be subject to personal jurisdiction under Florida’s long-arm statute in two ways. First, Fla. Stat. § 48.193(1)(a) lists acts “that subject a defendant to *specific* personal jurisdiction—that is, jurisdiction over suits that arise out of or relate to a defendant’s contacts with Florida[.]” *Id.* at 1204. Second, Fla. Stat. § 48.193(2) provides that “Florida courts may exercise *general* personal jurisdiction—that is, jurisdiction over any claims against a defendant, whether or not they involve the defendant’s activities in Florida—if the defendant engages in ‘substantial and not isolated activity’ in Florida.” *Id.*

(a) Specific Personal Jurisdiction

Under Florida’s long-arm statute, an entity is subject to personal jurisdiction if it “[c]omit[s] a tortious act within this state.” Fla. Stat. § 48.193(1)(a)(2). Consistent with the state’s

long-arm statute, specific personal jurisdiction “concerns a nonresident defendant’s contacts with Florida *only* as those contacts related to the plaintiff’s cause of action.” *Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339, 1352 (11th Cir. 2013) (emphasis added). In other words, for the Court to find a “tortious act,” the plaintiff must plead sufficient facts to show that a tortious act—copyright infringement, here—was committed in the state of Florida. To do so, at a minimum, World Media Alliance must demonstrate that the material at issue was both accessible in Florida and actually accessed by people in the state. *Internet Solutions Corp. v Marshall*, 39 So. 3d 1201, 1215 (Fla. 2010), an internet-based defamation case, is instructive on this issue. There, the Florida Supreme Court found that “[b]y posting allegedly defamatory material on the Web about a Florida resident, the poster . . . directed the communication about a Florida resident to readers worldwide, including potential readers within Florida.” *Id.* Further, “[w]hen the posting is then accessed by a third party in Florida, the material has been ‘published’ in Florida and the poster has communicated the material ‘into’ Florida,” the tortious act of defamation has occurred within Florida. *Id.*

Here, no specific allegations regarding accessibility or publication within the state of Florida have been plead. Mere access to an infringing work online in a state is not sufficient for personal jurisdiction without more. *See Jackson-Bear Group, Inc. v. Amirjazil*, No. 2:10-CV_332-FTM-20, 2011 WL 1232985, at *6 (M.D. Fla. Mar. 30, 2011) (dismissing a case on jurisdictional grounds because the mere posting of an infringing document on a website without more is not sufficient to demonstrate the . . . defendants purposefully aimed their activity toward Florida). As the Eleventh Circuit has made clear, “[s]pecific jurisdiction under § 48.193(1) ‘requires a connection or connexity between the enumerated activity in Florida and the cause of action.’” *Knepfle v. J-Tech Corporation*, 48 F.4th 1282, 1291 (11th Cir. 2022) (quoting *Aegis Defense Servs., LLC v. Gilbert*, 222 So. 3d 656, 661 (Fla. 5th DCA 2017) (internal quotations omitted)).

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