

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

SNAP MEDICAL  
INDUSTRIES, LLC, *et al.*,

Plaintiffs,

v.

FOCUS HEALTH GROUP,  
INC., *et al.*,

Defendants.

Case No. 2:20-cv-5557  
Judge Sarah D. Morrison  
Magistrate Judge Chelsey M.  
Vascura

OPINION AND ORDER

This matter is before the Court for consideration of Defendant Beth Cross's Motion to Dismiss for Lack of Personal Jurisdiction. (Mot. to Dismiss, ECF No. 9.) Plaintiffs have responded. (Resp., ECF No. 11.) No reply was filed. For the reasons set forth below, Ms. Cross's Motion is **DENIED**.

**I. BACKGROUND**

The following summary draws from the allegations in the Amended Complaint (Am. Compl., ECF No. 7) and the sworn declaration submitted with Plaintiffs' Response (ECF No. 11-1).

Plaintiff Snap Medical Industries is an Ohio limited liability company located in Dublin, Ohio. (Am. Compl., ¶ 4.) Plaintiff Nancy Stamps, RN founded Snap to produce, market, and sell FDA-registered epinephrine convenience kits. (*Id.*, ¶¶ 10–11.) In late-2015, Snap entered into a nonexclusive Sales Distribution Agreement (“SDA”) with Defendant Focus Health Group, Inc. (*Id.*, ¶ 12.) The relationship

soured three years later when Focus principal, Defendant Fred McBee, sought “a licensing agreement whereby Focus would produce and sell a product that was essentially identical to Snap’s product,” except for an NDC labeler code and product branding. (*Id.*, ¶ 29.) Mr. McBee proposed the idea to Ms. Stamps as an opportunity to “‘play a pricing game’ with [] major wholesalers and government contracts” by offering two identical products at different price points. (*Id.*, ¶ 30.) Ms. Stamps rejected the proposal. (*Id.*, ¶ 31.) A few months later, “Mr. McBee, Ms. Cross [(a Focus employee)], and others at Focus asked Snap to print package cartons with the Focus branding and a Focus NDC labeler code” and “began requesting detailed product information about the Snap products.” (*Id.*, ¶ 35.)

Snap terminated the SDA effective June 1, 2019. (*Id.*, ¶ 40.) “[A]lmost immediately after the termination of the SDA,” Focus began marketing and selling a “copycat” epinephrine convenience kit under the brand name Epinephrine Professional. (*Id.*, ¶¶ 52, 55.) In doing so, Focus allegedly “falsely represented [the Epinephrine Professional kits] as an improvement and replacement to Snap’s products[.]” (*Id.*, ¶ 54.) In one such instance on July 10, 2019, Ms. Cross sent an email to Dublin, Ohio-based Cardinal Health, stating:

Our EpinephrineSnap-V (and ESnap-EMS) have undergone some product enhancements which requires NDC# changes. EpinephrineSnap-V, NDC# 70923-200-20 is now being **replaced** with **Epinephrine Professional, NDC# 24357-011-13** and EpinephrineSnap-EMS, NDC# 70923-100-20 is being replaced with Epinephrine Professional EMS, NDC# 24357-012-12. The Epinephrine Professional sell sheets are attached for your review.

**Epinephrine Professional, NDC# 24357-011-13** (Replacing EpinephrineSnap-V 70912-100-20)

**Epinephrine Professional EMS, NDC#24357-012-12** (Replacing EpinephrineSnap-V 71923-200-20)

- *Epinephrine Professional offers an ‘all-in-one’ needle and syringe to save clinicians’ time during an emergency.*
- *Epinephrine Professional has an easily removeable tamper evident safety seal.*
- *Epinephrine Professional is the same FDA registered medical epinephrine convenience kit for an anaphylaxis emergency, meeting protocols and delivering compliance in a safe, effective, and AFFORDABLE product.*

To continue bringing savings to healthcare, we are **reducing the kit WAC price on Epinephrine Professional, 24357-011-13 Convenience Kit to \$80.00 and Epinephrine Professional EMS, 24357-012-12.** To make the product replacement seamless, we would like to reduce the price of our existing EpinephrineSnap-V, 71923-200-20 and ESnap-EMS, 719823-100-20 (if stocked) to that same \$80.00 price as of July 10th.

What may I provide, or what steps do I need to take to make these needed NDC# change and replacement?

I will be in Dublin July 16<sup>th</sup> and 17<sup>th</sup> and it would be great to meet with you and your team to discuss the best way to proceed. Is this possible?

Thank you so much for your efforts.

(ECF No. 11-1, PAGEID # 105.)

Plaintiffs brought suit against Focus, Mr. McBee, and Ms. Cross, alleging two counts of tortious interference (Counts I and II), unfair competition under state law (Count III), unfair competition under federal law (Count IV), deceptive trade practices (Count V), and unjust enrichment (Count VI). (Am. Compl.) Ms. Cross now moves for dismissal of all claims against her for lack of personal jurisdiction. (Mot. to Dismiss.)

## II. STANDARD OF REVIEW

Rule 12(b)(2) provides for dismissal of a lawsuit for lack of personal jurisdiction. Fed. R. Civ. P. 12(b)(2). The plaintiff bears the burden of proving that jurisdiction exists, *Theunissen v. Matthews*, 935 F.2d 1454, 1458 (6th Cir. 1991), “over each defendant independently.” *Beydown v. Wataniya Rests. Holding, Q.S.C.*, 768 F.3d 499, 504 (6th Cir. 2014) (quoting *Days Inns Worldwide, Inc. v. Patel*, 445 F.3d 899, 904 (6th Cir. 2006)). “[I]n the face of a properly supported motion for dismissal, the plaintiff may not stand on his pleadings but must, by affidavit or otherwise, set forth specific facts showing that the court has jurisdiction.” *Theunissen*, 935 F.2d at 1458. If a court rules on a Rule 12(b)(2) motion prior to trial, “it has the discretion to adopt any of the following courses of action: (1) determine the motions based on affidavits alone; (2) permit discovery, which would aid in resolution of the motion; or (3) conduct an evidentiary hearing on the merits of the motion.” *Intera Corp. v. Henderson*, 428 F.3d 605, 614 n.7 (6th Cir. 2005) (citation omitted). “[T]he decision whether to grant discovery or an evidentiary hearing before ruling on a 12(b)(2) motion is discretionary.” *Burnshire Dev., LLC v. Cliffs Reduced Iron Corp.*, 198 F. App’x 425, 434 (6th Cir. 2006) (citation omitted). Here, no party has requested further discovery or an evidentiary hearing, and the Court concludes that neither is necessary to rule on Ms. Cross’s Motion.

When a court resolves a Rule 12(b)(2) motion based on “written submissions and affidavits . . . , rather than resolving the motion after an evidentiary hearing or limited discovery, the burden on the plaintiff is ‘relatively slight,’ and ‘the plaintiff must make only a *prima facie* showing that personal jurisdiction exists in order to

defeat dismissal.” *Air Prods. & Controls, Inc. v. Safetech Int’l, Inc.*, 503 F.3d 544, 549 (6th Cir. 2007) (quoting *Am. Greetings Corp. v. Cohn*, 839 F.2d 1164, 1169 (6th Cir. 1988); *Theunissen*, 935 F.2d at 1458) (cleaned up). A plaintiff can meet the burden by “establishing with reasonable particularity sufficient contacts between [it] and the forum state to support jurisdiction.” *Neogen Corp. v. Neo Gen Screening, Inc.*, 282 F.3d 883, 887 (6th Cir. 2002) (quoting *Provident Nat’l Bank v. Cal. Fed. Sav. Loan Ass’n*, 819 F.2d 434, 437 (3d Cir. 1987)). In the absence of an evidentiary hearing, courts apply the *prima facie* standard weighing the evidence in the light most favorable to the plaintiff. *Dean v. Motel 6 Operating L.P.*, 134 F.3d 1269, 1272 (6th Cir. 1998). Nonetheless, the court may consider a defendant’s undisputed factual assertions. *Conn v. Zakharov*, 667 F.3d 705, 711 (6th Cir. 2012). If “there does not appear to be any real dispute over the facts relating to jurisdiction, the *prima facie* proposition loses some of its significance.” *Id.* (internal quotations and citation omitted).

In support of their Response, Plaintiffs filed a sworn declaration of Jonathan P. Corwin, counsel for Plaintiffs, and email correspondence between Ms. Cross and Cardinal Health. (ECF No. 11-1.)

### III. ANALYSIS

“Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons.” *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014) (citation omitted). In a diversity action<sup>1</sup>, the law of the forum state is applied to

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<sup>1</sup> Although this Court also has federal question subject matter jurisdiction over Count Four (Unfair Competition — 15 U.S.C. § 1125) and supplemental

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