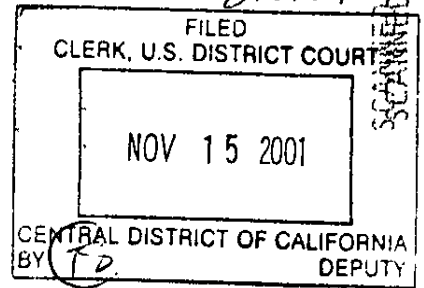


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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

KEVIN SPACEY, an individual, and M. PROFITT PRODUCTIONS, INC., a California Corporation,

Case No. CV 01-3848-GAF

Plaintiffs,

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

v.

JEFFREY BURGAR, an individual, and the KEVIN SPACEY CLUB,

Defendants.

I.

INTRODUCTION

The present case presents complex issues involving the right of a celebrity to bring suit in United States District Court for the alleged misappropriation of his name by a foreign internet website operator. However, in this order, the Court does not reach these issues because Defendants raise a novel threshold question regarding the exercise of personal jurisdiction where the Defendants' "contacts" with the forum have occurred in cyberspace. The Court therefore takes up that issue first.

Kevin Spacey, the well-known movie actor, claims Defendant Jeffrey Burgar misappropriated Spacey's name by registering and using the internet website "kevinspacey.com" without Spacey's authorization. Responding that he

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1 needn't obtain authorization, Burgar admits to having registered the address, and to
2 having used the address from 1996 to the present. The undisputed facts establish
3 that from 1996 to about December 2000, those who attempted to access
4 "kevinspacey.com" were routed to Burgar's "Celebrity 1000" website; since then,
5 those typing "kevinspacey.com" into their web browsers have been directed to the
6 "Unofficial Kevin Spacey Website," also operated by Burgar through one of his
7 companies. According to Spacey, Burgar's unauthorized use of Spacey's name in
8 an internet address falsely implies Spacey's endorsement of Burgar's websites,
9 which causes a likelihood of confusion on the part of the public resulting in harm to
10 Spacey's reputation and goodwill. In the pending complaint, Spacey sets forth
11 several claims against Burgar and Kevin Spacey Club (a dba for one of Burgar's
12 corporations), which assert Spacey's intellectual property rights under federal and
13 state statutes, and common law doctrines.

14 Burgar and Defendant Kevin Spacey Club, now move to dismiss the case
15 under Rule 12(b)(2) of the Federal Rules of Civil Procedure, claiming that this Court
16 lacks personal jurisdiction over him and his company. Burgar contends that he has
17 never purposefully availed himself of the privilege of doing business in California,
18 and that his actions in operating his website were not directed at and caused no
19 "effects" in California. Because such minimum contacts are allegedly missing,
20 Burgar argues that the Court's exercise of jurisdiction in this case would violate the
21 Due Process Clause of the Constitution. Spacey disagrees. He contends that
22 Burgar's website focuses on the entertainment industry, much of which is located in
23 the Los Angeles area, where Spacey spends a substantial amount of time working
24 as a movie actor. Because of his involvement in and connection to the
25 entertainment industry, Spacey argues that Burgar knew or should have known that
26 the harm resulting from the unauthorized use of Spacey's name would occur in
27 California. Finally, Spacey contends that Burgar has purposefully availed himself of
28 the privilege of doing business in California by including "banner ads" on his website

1 that focus on the Los Angeles and Orange County areas. For all of these reasons,
2 Spacey argues that the Court's exercise of personal jurisdiction in this case would
3 comply with the due process requirements of the United States Constitution. SCANNED

4 Having read and considered the moving, opposition and reply papers, the
5 authorities cited therein, the supporting affidavits submitted by each of the parties,
6 and the argument of the parties at the hearing on the present motion, the Court
7 concludes that the Due Process Clause of the Constitution precludes the exercise of
8 personal jurisdiction over both nonresident Defendants in the instant action.

9 Although Burgar's website contains information about the entertainment industry and
10 those who work in it, the site is no more aimed at California than at the remaining 49
11 states, where avid fans seek information regarding their favorite celebrities. The
12 Ninth Circuit's decision in Cybersell, Inc. v. Cybersell, Inc., 130 F.3d 414, 419-20
13 (9th Cir. 1997) teaches that, without more, the use of an allegedly misappropriated
14 domain name, in connection with a website generally accessible to anyone on the
15 internet, will not support the exercise of personal jurisdiction in the name owner's
16 state of residence. The "something more" is not present in this case, in which the
17 evidence negates any claim that Burgar attempted to sell the domain name to
18 Plaintiffs and fails to establish that Burgar engaged in any significant business with
19 California persons or companies. Accordingly, the Court concludes that Defendants'
20 motion should be **GRANTED**.

21 II.

22 STATEMENT OF FACTS

23 **A. SPACEY'S RESIDENCE AND OCCUPATION**

24 Plaintiff Kevin Spacey, whose primary residence is in New York, is a well-
25 known professional actor who has performed in a number of successful motion
26 pictures. (Spacey Decl. ¶¶ 1 and 2; Lee Decl. Ex. N). Spacey claims to have been
27 a California resident in 1999 and 2000, and for approximately half of 1998. (Spacey
28 Decl. ¶ 3). Spacey owns a California corporation, M. Proffit Productions, Inc., which

1 negotiates with movie production companies for his services. As Spacey puts it, "In
2 other words, M. Proffitt is the entity that enters into a contract with the producer of
3 particular film to provide my personal acting services on productions." (Spacey Decl.
4 ¶ 4). M. Proffitt maintains offices on Wilshire Boulevard in the Westwood Village
5 area of Los Angeles.

6 **B. BURGAR'S CORPORATION REGISTERS "KEVINSPACEY.COM"**

7 Defendant Jeffrey Burgar resides in Alberta, Canada, where he is the
8 President and principal shareholder of Defendant 641271 Alberta, Ltd., d/b/a Kevin
9 Spacey Club (referenced herein as "Kevin Spacey Club"), a corporation formed and
10 headquartered in Alberta, Canada. (Burgar Aff. ¶¶ 5 and 7; Burgar Supp. Decl. ¶
11 6). On November 6, 1996, Kevin Spacey Club registered the internet domain name
12 "kevinspacey.com" and has owned the domain name since that date. (Burgar Aff. ¶
13 7). Burgar caused the name to be registered through Network Solutions, Inc., a
14 Virginia corporation, which has since been acquired by Verisign, Inc. (Burgar Aff. ¶
15 14; Burgar Supp. Decl. ¶¶ 17-18).¹ Recently, Kevin Spacey Club changed the
16 registrar/service provider for kevinspacey.com to Mediafusion, a company
17 headquartered in Montreal, Canada. (Burgar Aff. ¶¶ 14 and 41; Burgar Supp. Decl.
18 ¶¶ 17-18).

19 **C. BURGAR LICENSES "KEVINSPACEY.COM" TO A SECOND CORPORATION**

20 Once having registered the domain name, Burgar caused Kevin Spacey Club
21 to enter into a licensing agreement with another of his companies, 831651 Alberta,
22 Ltd., d/b/a Celebrity 1000 (referenced herein as "Celebrity 1000"), under which Kevin
23 Spacey Club authorized Celebrity 1000 to use kevinspacey.com for addressing
24 purposes in its publication of website materials. (Burgar Aff. ¶ 8; Burgar Supp. Decl.
25 ¶ 4). This agreement allowed Celebrity 1000 to divert those attempting to access
26

27 ¹ Kevin Spacy Club is also the present owner of a number of other internet domain names.
28 (Burgar Aff. ¶ 13). Approximately 40 of these other Domain Names comprise the first and last
names of persons, which Mr. Burger states are to be used for the publication of fan appreciation
websites. (Id).

1 kevinpacey.com to its address at "celebrity1000.com." (Fryhling Decl. ¶¶ 2-4 and
2 Ex. K). Under this agreement, Celebrity 1000 diverted "hits" on "kevinpacey.com"
3 to "celebrity1000.com" from 1996 to about December 2000. Beginning in December
4 of 2000, Celebrity 1000 began publishing the "Unofficial Kevin Spacey Website" at
5 the address kevinpacey.com, which is published "under the Celebrity 1000
6 umbrella ... consistent with the schedule of creating individual celebrity biographical
7 pages." (Burgar Supp. Decl. ¶ 48). The unofficial website contains a photograph of
8 Spacey and a brief biographical sketch.

9 **D. THE OPERATION OF THE WEBSITES**

10 As noted, Burgar resides in Alberta, Canada, which is also the location of the
11 host computers for the Celebrity 1000 web page. (Burgar Aff. ¶ 40; Burgar Supp.
12 Decl. ¶ 34). Thus, when one types the address "celebrity1000.com" into his or her
13 web browser, the browser accesses computer files that reside on a server located in
14 Alberta, Canada, and brings up the Celebrity 1000 "home page." (*Id.*)

15 The Celebrity 1000 Website focuses on entertainment industry news, offers
16 on-line fan participation polls and other celebrity-related content, and also contains
17 various kinds of advertising. (Burgar Aff. ¶ 21). When one accesses Celebrity 1000,
18 the "home page" provides links to various categories under the heading "Celebrity
19 Guide," which lists the following: "Celebrity Sites," "Entertainment News," "Online
20 Polls," "Merchandise," and "Contact Us." The site routes a visitor who clicks on
21 "Celebrity Guide" to a page that lists celebrity sites by category, including "Actor." A
22 click on the word "actor" routes the visitor to another page that contains links to
23 further pages designated by the actor's name. Thus, if one wished to obtain further
24 information about Kevin Spacey, one would go to the actor link page and click on
25 Spacey's name. A new page then appears, containing biographical data regarding
26 Spacey. (Gold Decl. ¶¶ 5-7 and Exs. B and C). The Celebrity 1000 Website's
27 homepage also contains a disclaimer which states:
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1 "Information on this site is for information purposes only. Nothing on
2 this site is to be construed as an endorsement by any celebrity or
3 personality, unless expressly so identified, for this site or for any
4 information here."

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(Burgar Aff. ¶ 39).

5 On at least some occasions, the website included so-called "banner"
6 advertisements and hyperlinks to entertainment guides focusing on the Southern
7 California area. One such advertisement acts as a hyperlink that connects the
8 browser to a subscription page for "LAinsider.com," an internet guide to dining
9 establishments, and entertainment and cultural events in the Los Angeles area.
10 (Gold Decl. ¶¶ 10-12 and Exs. D - G). On occasion, the Celebrity 1000 website
11 contained a similar banner advertisement touting "ocnow.com," an internet service
12 similar to LAinsider.com, which serves as an entertainment guide for the Orange
13 County region of Southern California. (Gold Decl. ¶¶ 13-14 and Exs. H and J). No
14 one can reasonably dispute that such banner ads appeared on the Celebrity 1000
15 website, or that those ads were directed at residents of Southern California.
16 However, because of the complexities of internet advertising, that observation is not
17 the end of the inquiry.

18 Burgar notes that he did not place those entertainment guide advertisements
19 on his website. Rather, he presents evidence, in the form of his declaration, that
20 Celebrity 1000 first contracted with VBN, a Canadian internet advertising placement
21 agency, for the placement of banner ads on the Celebrity 1000 website. (Burgar
22 Supp. Decl. ¶ 32). According to Burgar, VBN bought ad space on the website for a
23 fee, after which VBN was free to market the space to any advertiser who was
24 interested in buying the space. Also according to Burgar, VBN entered into
25 contracts with advertisers, but Celebrity 1000 entered into a contractual relationship
26 only with VBN, and never had a direct contractual relationship with any of the
27 advertisers who bought space on the site. (Id.)

1 considered the admissibility of the evidence offered in support and opposition to the
2 motion, and made the findings set forth above. Accordingly, the Court concludes
3 that Plaintiffs bear the burden of establishing the requisite jurisdictional facts to
4 pursue their claim, and must make more than a prima facie showing, which would be
5 the case where a hearing was not held.

6 **B. THE CONSTITUTIONAL REQUIREMENTS FOR EXERCISING PERSONAL JURISDICTION**

7 In deciding whether the Court's exercise of jurisdiction over a defendant is
8 proper, the law of the state in which it sits should be applied. Panavision Int'l, L.P. v.
9 Toeppen, 141 F.3d 1316, 1320 (9th Cir. 1998); Callaway Golf Corp., 125 F.Supp.2d
10 at 1199. The long arm statute of California allows the Court to exercise personal
11 jurisdiction over a nonresident defendant to the same extent as that permitted by the
12 Due Process Clause of the Constitution. Id. The Constitution requires that a
13 defendant have minimum contacts with the forum state such that the exercise of
14 jurisdiction does not violate "traditional notions of fair play and substantial justice."
15 Calder v. Jones, 465 U.S. 783, 788 (1984)(citing International Shoe Co. v.
16 Washington, 326 U.S. 310, 316 (1945)).

17 Personal jurisdiction may be founded on either general or specific jurisdiction.
18 Panavision, 141 F.3d at 1320. Because Plaintiffs concede that the Court has no
19 basis for exercising "general" jurisdiction, this motion focuses entirely on the
20 requirements for exercising "specific jurisdiction." The Ninth Circuit has developed a
21 three part test to apply when determining whether exercise of specific jurisdiction
22 over a particular defendant is proper.

23 (1)The nonresident defendant must do some act or consummate some
24 transaction with the forum or perform some act by which he
25 purposefully avails himself of the privilege of conducting activities in the
26 forum, thereby invoking the benefits and protections of its laws; (2) the
27 claim must be one which arises out of or results from the defendant's
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1 forum-related activities; and (3) exercise of jurisdiction must be
2 reasonable.

3 Panavision, 141 F.3d at 1320; Callaway Golf Corp., 125 F.Supp.2d at 1199-1200.

4 **1. Purposeful Availment**

5 The purposeful availment requirement is satisfied by "deliberate action" on the
6 part of the nonresident defendant toward the forum state. Panavision, 141 F.3d at
7 1320 (citing Ballard, 65 F.3d at 1498). "It is not required that a defendant be
8 physically present within, or have physical contacts with, the forum, provided that his
9 efforts 'are purposefully directed' toward forum residents." Burger King Corp. v.
10 Rudzewicz, 471 U.S. 462, 476 (1985). In the context of tort actions, this element
11 can be satisfied by conduct that "is aimed at or has an effect in the forum state."
12 Panavision, 141 F.3d at 1320 (citing Ziegler v. Indian River County, 64 F.3d 470,
13 473 (9th Cir. 1995)). This variant on "purposeful availment," the so-called "effects
14 test," was established in Calder v. Jones, 465 U.S. 783 (1984). Under that test, a
15 court may properly exercise personal jurisdiction where there is shown to be
16 "(1)intentional actions (2)expressly aimed at the forum state (3)causing harm, the
17 brunt of which is suffered - and which the defendant knows is likely to be suffered -
18 in the forum state." Core-Vent v. Nobel Indus., 11 F.3d 1482, 1486 (9th Cir. 1993).

19 **2. Purposeful Availment and the Internet**

20 Two cases in this circuit have addressed the purposeful availment element in
21 the context of the internet. In Cybersell, Inc. v. Cybersell, Inc., 130 F.3d 414, 419-20
22 (9th Cir. 1997), Cybersell-FL registered and used the domain name "cybersell.com,"
23 which was a service mark owned by Cybersell-AZ. Cybersell-AZ argued both that
24 Cybersell-FL had purposely availed itself of the privilege of doing business in
25 Arizona because of the nature and quality of its contacts with the state, and because
26 of the "effects" the infringement would have in Arizona. The court disagreed. The
27 court held that an exercise of personal jurisdiction over the nonresident defendant
28 was not appropriate where the only contact defendant had with the forum state was

1 the maintenance of a web page generally accessible over the internet, even though
2 the web page solicited business from those who accessed the site. With respect to
3 “effects,” the court concluded that “Cybersell FL’s web page was not aimed
4 intentionally at Arizona knowing that harm was likely to be caused there to Cybersell
5 AZ,” even though it allegedly utilized Cybersell AZ’s service mark as its internet
6 domain name. Id. at 420. For both reasons, the Ninth Circuit concluded that the
7 district court could not exercise personal jurisdiction over the Florida defendant. Id.

8 In Panavision, however, the court affirmed an exercise of personal jurisdiction
9 over a nonresident defendant because defendant’s alleged out of state scheme to
10 register domain names, which incorporated trademarks of California companies,
11 yielded effects primarily felt in the forum state of California. See 141 F.3d at 1318.

12 The court wrote:

13 [T]he present case is akin to a tort case. [Defendant] purposefully
14 registered Panavision’s trademarks as his domain names on the
15 Internet **to force Panavision to pay him money**. The brunt of the
16 harm to Panavision was felt in California. [Defendant] knew Panavision
17 would likely suffer harm there because, although at all relevant times
18 Panavision was a Delaware limited partnership, its principal place of
19 business was in California, and the heart of the theatrical motion
20 picture and television industry is located there.

21 Id. at 1321 (citations omitted)(emphasis added). The Panavision court found that
22 the defendant had registered Panavision’s domain name “for the purpose of
23 extorting money from Panavision,” which was conduct that defendant knew would
24 likely injure Panavision in California, where its business was centered. Thus, the
25 court concluded, “under the ‘effects test,’ the purposeful availment requirement
26 necessary for specific, personal jurisdiction is satisfied.” Id. at 1322.

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1 **3. Analysis of Defendants' Conduct in This Case**

2 **(a) Business Contacts**

3 Plaintiffs argue that Defendants' cyberspace activities constitute purposeful
4 availment of the privilege of conducting activities in the forum because their activities
5 allegedly extend beyond mere registration and use of the internet address
6 kevinspacey.com. According to Plaintiffs, these additional activities include the
7 solicitation of advertisements from California businesses directed toward California
8 consumers, and the negotiation for their placement on the Celebrity 1000 website.
9 Notably, however, Plaintiffs provide only two specific examples of the alleged
10 conduct, the placement of banner ads for "LAinsider.com" and for "ocnow.com."
11 This evidence falls short of establishing "purposeful availment" in several respects.
12 First, Plaintiffs have presented evidence showing only that these specific ads ran for
13 a few days each during a limited period of time, and have not provided any evidence
14 that similar ads were placed and run at any other time. Second, although the ads
15 deal with entertainment in the Southern California area, Plaintiffs present no
16 evidence that California businesses own and operate the two internet-based guides,
17 or that Bugar holds an ownership interest in either the guides or the companies
18 advertised in the guides. Third, Plaintiffs have not presented evidence that the
19 named Defendants in this case arranged for the placement of the "LAinsider.com"
20 and "ocnow.com" banners ads on the Celebrity 1000 website. In contrast,
21 Defendants present a detailed explanation regarding the sale of the banner ad
22 space to a third party, where that third party then negotiated with advertisers for the
23 placement of banner ads. Thus, given the dearth of evidence regarding the volume
24 of advertising business placed on the website, the unknown domicile of the business
25 owners of the two allegedly relevant advertisements, and the attenuated
26 involvement of Defendants with those allegedly relevant ads, the Court concludes
27 that the conduct falls short of "purposeful availment" as that term is used in personal
28 jurisdiction jurisprudence.

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1 In an apparent effort to overcome these deficiencies, Plaintiffs assert that
2 Defendants solicit California advertisers for the Celebrity 1000 website by making
3 public the website's demographic information. (Compl. ¶¶ 31 and Ex. D; Opp. at 9).
4 Based on this information, Plaintiffs contend that Bugar purposefully availed himself
5 of the privilege of doing business in California by deriving a financial benefit from
6 California, even if such benefit occurred by way of an advertising broker. (Compl.
7 ¶¶ 31; Opp at 9). The argument will not withstand analysis.

8 First, the evidence establishes that Engage Media – not Bugar or his
9 companies – publishes the demographic data on which Plaintiffs base the argument
10 that California residents make more use of the site than users in any other state.
11 (See Opp. at 9; Fryhling Decl. ¶¶ 3 and Ex. L). Moreover, the supposed demographic
12 data consists of the briefest of conclusions with no foundational backup. The Court
13 lacks even the most basic information regarding the statistical methodology used to
14 develop that information, and therefore lacks any means of testing the conclusions
15 reached by those who collected the data. Further, the Court finds this lack of
16 foundational information even more troubling given the surveyor's incredible
17 conclusion that 100% of the users who have accessed the website reside in only
18 three states – California, Texas and New York. The Court finds such an assertion
19 inherently unbelievable, particularly when the website, accessible worldwide,
20 supposedly derives 75% of all traffic from the United States. (See Bugar Supp.
21 Decl. ¶¶ 37). While the Court acknowledges that the entertainment industry is a
22 major employer in Southern California, the desire for information about show
23 business celebrities – however frivolous an interest that may be – extends even to
24 the hinterlands where television has been available for going on six decades.
25 Though the site contains information about many who live and work in the media
26 centers of New York and Los Angeles, its appeal undoubtedly extends far beyond
27 those locales. How far may not be known, but certainly any claim that the site is of
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1 no interest to, and has not been accessed by, any resident in 47 of the 50 states
2 must be rejected.

3 Absent any reliable evidence that Defendants were involved in the solicitation
4 and negotiation of advertisement placements, and that such placements included
5 forum-based contracts, conclusory statements on the matter are insufficient. See
6 GTE News Media Servs. Incorp. v. Bellsouth Corp., 199 F.3d 1343, 1349; see also
7 Nissan Motor Co. v. Nissan Computer Corp., 89 F.Supp.2d 1154, 1159-60 (C.D.
8 Cal. 2000)(finding defendant's transaction of business in California satisfied the
9 purposeful availment test where specific evidence existed illustrating defendant's
10 personal involvement in contracts with forum companies to display company
11 advertising banners and links on his website). Therefore, the Court concludes
12 Plaintiffs have failed to meet their burden of demonstrating that Burgar engaged in
13 commerce with California sufficient to warrant the exercise of personal jurisdiction
14 over the Defendants.

15 **(b) "Effects"**

16 Because insufficient evidence has been presented to show that the
17 Defendants entered into advertising contracts with California businesses, or entered
18 into any other kind of contractual arrangement with any California entity, the Court
19 concludes that Defendants have not, in that respect, "purposefully availed"
20 themselves of the privilege of doing business in California. For that reason, the
21 Court next turns to the Calder "effects" doctrine, as applied to the internet context in
22 Cybersell and Panavision.

23 Whether the "effects test" confers jurisdiction on the Court turns on whether
24 this case is more similar to Cybersell or to Panavision.⁴ Cybersell teaches that the

25 _____
26 ⁴The parties argue over the applicability of Pavlovich v. Superior Court, 91 Cal. App. 4th 409 (2001).
27 However, that case involved the theft of a California company's trade secrets, and the repeated re-publication
28 of those trade secrets on the internet, where knowledge of the trade secrets could be used to defeat
encryption based copy protection systems with the ultimate objective of permitting the misappropriation of
copyrighted motion pictures. The defendant admitted that both the computer technology industry and the

(continued...)

1 misappropriation of a service mark, which the misappropriater then uses as a
 2 domain name, does not satisfy the effects test even when the misappropriater
 3 operates a web page accessed through that domain name. Because the website
 4 could be accessed by any person with internet access, the Ninth Circuit concluded
 5 that the website operator's conduct was not expressly aimed at the forum state, and
 6 that its effects could not be said to be felt primarily in that state. 130 F.3d at 419-20.
 7 This Court further notes that the Cybersell court reached this decision even though
 8 the alleged infringer operated a website that solicited business from internet users,
 9 and advertised an e-mail address and a telephone number through which the
 10 website owners could be contacted. Id. at 415-16. Even so, the Ninth Circuit
 11 concluded that, without something more, such conduct failed to satisfy the minimum
 12 contacts required to warrant the exercise of personal jurisdiction over the defendant.
 13 Consistent with that analysis, Panavision advises that the "something more" would
 14 include an attempt to extort money out of a trademark owner who was attempting to
 15 retrieve control over the use of that mark from the misappropriater. 141 F.3d at
 16 1322.

17 Here that additional element is missing. Unlike the cybersquatter in
 18 Panavision, Burgar and the Kevin Spacey Club have never demanded money from
 19 Spacey in exchange for the transfer of the registered domain name, and insist that
 20 they have no intention of doing so. Indeed, when Plaintiffs made an offer to
 21 purchase the name – perhaps seeking to bring themselves within the scope of
 22 Panavision – Defendants never responded. Nevertheless, Plaintiffs insist that
 23 Defendants misappropriated Spacey's name, used it in connection with a website
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25 ⁴(...continued)
 26 motion picture industry had a substantial presence in California; that 73 of the 400 companies licensed to
 27 produce motion picture DVD's were located in California; that the pirating of copyrighted DVD's was illegal;
 28 and that his software promoted such pirating. That defendant's actions were directed toward California
 businesses, and that potentially enormous effects would be felt in California could hardly be debated.
 Whatever one may say about the ethics of Burgar's conduct in this case, it is not remotely similar to
 Pavlovich's concerted assault on a variety of California based businesses.

1 that is "aimed" at the Southern California entertainment industry, and knew that the
2 harm to Spacey's reputation and goodwill would be felt primarily in Southern
3 California. That argument differs little from the unsuccessful argument made by
4 Cybersell-AZ, the owner of a registered mark and a company doing business in
5 Arizona, where the brunt of the harm from the misappropriation of the mark was
6 likely to occur in Arizona. In the Court's view, the likelihood that Spacey would be
7 injured in California is no greater than the likelihood that Cybersell-AZ would suffer
8 injury in Arizona. The Court disagrees with the premise that the site at issue is
9 aimed at Southern California or at the entertainment industry. While the website
10 focuses on celebrities and the entertainment industry as a subject, it appears aimed
11 at fans who live and work all over the world, and who want information regarding
12 even the most banal aspects of the lives of their favorite celebrities. Moreover,
13 unlike the alleged misappropriator in Cybersell, the operator of a related, if not
14 competing, business to that operated by the service mark owner, the offending
15 website in this case promotes the adulation of the listed celebrities, whether or not
16 the celebrity authorized the listing. The Celebrity 1000 website expressly disclaims
17 any endorsement of the site by the listed celebrities, and nothing in the evidence
18 presented, or in anything the Court has found by accessing Bugar's site, contains
19 any derogatory statement about Spacey.

20 For these reasons, the Court concludes that Bugar's conduct does not meet
21 the "effects" test for the exercise of in personam jurisdiction in this case.

22 **4. Forum-Related Activities and Reasonableness**

23 Because the Court concludes that Plaintiffs have failed to show that Bugar
24 purposefully availed himself of the privilege of doing business in California under any
25 version of that test, the Court need not determine whether the basis for the assertion
26 of jurisdiction involved Defendants' forum related activities, or that the exercise of
27 jurisdiction would be reasonable.

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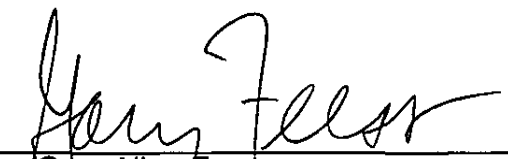
IV.
CONCLUSION

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For the reasons set forth above, Defendants' motion to dismiss for lack of personal jurisdiction is **GRANTED**.

IT IS SO ORDERED.

DATED: November 14, 2001



Gary Allen Feess
United States District Judge