

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

JOHN F. TAMBURRO,	)	
D/B/A MAN’S BEST FRIEND SOFTWARE	)	DEFENDANTS’ MOTION
and VERSITY CORPORATION,	)	TO DISMISS PLAINTIFFS’
	)	FIFTH AMENDED COMPLAINT
Plaintiffs,	)	
	)	
v.	)	
	)	
STEVEN DWORKIN, KRISTEN HENRY,	)	Case No. 04 C 3317
ROXANNE HAYES, KAREN MILLS,	)	
WILD SYSTEMS PTY. LTD., an AUSTRALIAN	)	
CORPORATION,	)	Hon. Joan B. Gottschall
	)	
Defendants.	)	

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**DEFENDANTS’ JOINT MOTION TO  
DISMISS PLAINTIFFS’ FIFTH AMENDED COMPLAINT**

NOW COME Defendants Steven Dworkin, Kristen Henry, Roxanne Hays, Karen Mills, and Wild Systems Pty. Ltd, an Australian Corporation, (collectively, the “Defendants”) pursuant to Rule 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure and move this Court to dismiss all counts of the Plaintiffs’ Fifth Amended Complaint against all Defendants. In support of his motion, Defendants incorporate the accompanying memorandum and state as follows:

This Court does not have personal jurisdiction over any of the Defendants. The Defendants do not have sufficient minimum contacts to bring them within the jurisdiction of Illinois courts or the federal courts located in Illinois. Not one of the Defendants is domiciled in Illinois or has continuous and general business contacts with Illinois. Consequently, there cannot be general personal jurisdiction over any of the Defendants. See Euromarket Designs, Inc. v. Crate & Barrel Ltd., 96 F.Supp.2d 824, 833 (N.D. Ill. 2000) and RAR, Inc. v. Turner Diesel,

Ltd., 107 F.3d 1272, 1276 (7th Cir. 1997). The Plaintiffs' claims revolve around statements alleged to have been made and published by some of the Defendants in an online environment. The statements at issue appeared in fora that did not specifically target residents of Illinois. The mere making or publication of statements in an online environment is insufficient to give rise to specific personal jurisdiction. See Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119 (W.D. Pa. 1997); Aero Products International, Inc. v. Intex Corp., 2002 WL 31109386 (N.D. Ill. Sep.20, 2002); Euromarket Designs, Inc. v. Crate & Barrel, Ltd., 96 F.Supp.2d 824, 833 (N.D. Ill. 2000). Moreover, even if there were sufficient minimum contacts, any exercise of personal jurisdiction over the Defendants in this action would not comport with the due process clause or notions of fair play and substantial justice. Consequently, there cannot be specific personal jurisdiction over any of the Defendants. As the this Court does not have general or specific jurisdiction over any of the Defendants, this Court must dismiss the Fifth Amended Complaint in its entirety with respect to each Defendant pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure.

Should the Court find that it has personal jurisdiction over the Defendants, the Defendants move this Court to dismiss the Plaintiffs Fifth Amended Complaint on the grounds that the Plaintiffs have failed to state claims upon which relief may be granted. Consequently, the Fifth Amended Complaint should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 12(b)(6). Finally, with respect to some of the claims against the Defendants, particularly Defendant Wild Systems Pty., Ltd., the Defendants enjoy immunity pursuant to 48 U.S.C. § 230. See 48 U.S.C. § 230. Consequently, these claims should be dismissed. Based upon these reasons (more fully developed in the accompanying memorandum), the Court should dismiss all of the claims in the Plaintiffs' Fifth Amended

Complaint as to all of the Defendants pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and 48 U.S.C. § 230.

### **CONCLUSION**

For the foregoing reasons and those in the accompanying memorandum, Defendants respectfully move this Court to dismiss Plaintiffs' Fifth Amended Complaint in its entirety as to each of the Defendants.

Dated: Chicago, IL

November 30, 2005

Respectfully submitted,

DEFENDANTS,  
STEVEN DWORKIN  
KRISTEN HENRY  
ROXANNE HAYES  
KAREN MILLS  
WILD SYSTEMS PTY, INC.

By: /s/Charles Lee Mudd Jr.  
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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing MOTION TO DISMISS shall be sent by First Class Mail, postage prepaid, this 30th day of November 2005, to counsel for Plaintiffs, to wit:

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/s/Charles Lee Mudd Jr.  
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Dated: November 30, 2005  
Chicago, Illinois