

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

UNITED AIRLINES, INC., a Delaware)	
corporation,)	
ORBITZ WORLDWIDE, LLC, a limited)	
liability company,)	
ORBITZ, LLC, a limited liability company,)	Case No. 14-CV-9214
)	
Plaintiffs,)	Honorable John Robert Blakey
v.)	
)	Honorable Maria Valdez
AKTARER ZAMAN, individually and)	
d/b/a SKIPLAGGED.COM.)	
)	
Defendant.)	

**PLAINTIFF UNITED AIRLINES, INC.’S RESPONSE TO
DEFENDANT’S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

INTRODUCTION

Defendant Aktarer Zaman (“**Zaman**”) operates a website, Skiplagged.com (“**Skiplagged**”), that encourages customers of Plaintiff United Airlines, Inc. (“**United**”) to breach their contracts of carriage with the airline. More specifically, Skiplagged promotes and makes available to consumers an airline booking ploy called “hidden city” ticketing. “Hidden city” ticketing refers to a travel arrangement where the passenger’s intended final destination is not the final arrival city on his or her itinerary, but rather an intermediate connecting city. Upon arrival at an intermediate or connecting city on the itinerary, the passengers leave the airport and skip the last leg (or legs) of their itineraries. In its simplest form, a passenger purchases a ticket from City A to City C, with a connection in City B, and does not travel past City B. “Hidden city” ticketing is strictly prohibited by most commercial airlines because of the logistical and security issues it creates. With full knowledge of these prohibitions, Zaman has provided, and continues to provide, a search tool that enables consumers

to locate “hidden city” flights on Skiplagged and then purchase tickets for those flights through United’s website and the website of Plaintiff Orbitz (www.orbitz.com).

Plaintiffs filed this lawsuit in November 2014 to bring an end to Zaman’s unlawful conduct. Over the past three months, Zaman has made it very clear that he will do anything to impede this Court from addressing the merits of Plaintiffs’ claims. First, Zaman contested service, despite the fact that he was fully aware of this lawsuit shortly after it was filed and spent much of December using his website to solicit donations to fund his defense and conducting interviews with (and otherwise seeking publicity through) local and national news outlets. Now that the service issue has been resolved (*see* Dkt. # 21), Zaman has filed a motion to dismiss for lack of personal jurisdiction, in yet another gambit to try to delay the examination of the merits of this case.

For more than the past year, however, Zaman’s unlawful conduct been consistently and intentionally directed at Illinois companies and Illinois consumers. As explained above, he has deliberately redirected Skiplagged users to United’s website and to other third-party sites – including www.orbitz.com – to purchase prohibited forms of travel. The damage caused by these actions directed at United and Plaintiffs Orbitz, LLC and Orbitz Worldwide, LLC (collectively, “**Orbitz**”), all of whom maintain their headquarters and do significant business in Illinois, has been – and continues to be – suffered in Illinois. By way of example, United has asserted a Lanham Act unfair competition claim (*see* Count IV of Complaint), alleging that Zaman has intentionally associated the Skiplagged website with United, which has caused, and is likely to continue to cause, confusion and mistake and deceive consumers. United has a major “hub” in Chicago and, on average, has over 1,100 scheduled arrivals and departures and carries more than 80,000 customers per day into and out of O’Hare Airport. Thus, the damage and

impact caused by Zaman's violations of the Lanham Act have been felt, and will continue to be felt, disproportionately by United and its consumers in Illinois, and Zaman cannot dispute that he was aware of the impact he would have in Illinois as he engaged in this conduct.

But these booking-related actions are only the tip of the iceberg. Zaman expressly agreed to jurisdiction in Illinois, through his agreement with Orbitz. Zaman also affirmatively reached out to United personnel in Illinois to propose a business partnership. When United declined and threatened to file suit against him, Zaman made several promises to United regarding the unauthorized use of United's trademarks and flight information, only to then later renege on his promises and sarcastically mock United on his website. Zaman also hid his behavior from United and Orbitz personnel in an attempt to further his unlawful scheme.

Zaman, of course, addresses none of this in his motion to dismiss. Instead, he focuses on his residence in New York and his "passive" operation of a website. As summarized above and explained further below, however, Zaman's unlawful conduct has been closely intertwined with Illinois at every step. The Court should deny his motion accordingly.

STATEMENT OF PERTINENT FACTS

United is a Delaware corporation, with its principal place of business in Chicago, Illinois. (Dkt. #1 ("Compl."), ¶ 8) The Orbitz plaintiffs are each Delaware limited liability companies with their principal places of business in Chicago, Illinois. (*Id.* ¶¶ 9-10) Zaman, founder and CEO of Skiplagged, is a resident of New York, New York. (*See* Dkt. #20, p. 2)

On December 29, 2013, Zaman entered into an agreement with Plaintiff Orbitz, LLC under which Skiplagged became a member of Orbitz's affiliate program (the "**Affiliate Agreement**"). (Compl., ¶ 15) Among other covenants, Zaman agreed that Skiplagged would not use Orbitz's website for illegitimate reservations and bookings (such as bookings on United)

and would not disguise the origin of information transmitted through Orbitz's website. (*Id.* ¶ 23) Furthermore, under the "Miscellaneous" provisions of the Affiliate Agreement, Zaman consented to the exclusive jurisdiction of the state and federal courts located in Cook County, Illinois for "any dispute involving the Affiliate Agreement." (Dkt. #1-1, p. 8 (emphasis added)) Zaman also agreed that the Affiliate Agreement would be governed by Illinois law. (*Id.*) Zaman's affiliate status has since been terminated, but several obligations and covenants in the Affiliate Agreement survived termination. (Compl., ¶ 15)

In August 2014, United personnel discovered that Zaman was promoting an abusive ticketing practice called "hidden city" ticketing on Skiplagged, and had been doing so since at least early 2014. (*See id.* at ¶¶ 3-6, 30, 39) At the time of United's discovery in August 2014, Zaman was redirecting Skiplagged users directly to United's website, www.united.com, for "hidden city" bookings on United flights. (*See* Declaration of Tye Radcliffe ("Radcliffe Dec."), attached hereto as Exhibit A, pp. 1-2) United later discovered that Zaman was redirecting Skiplagged users to Illinois-based Orbitz or other online travel agencies. (Compl., ¶¶ 30, 39)

United sent a cease-and-desist letter to Zaman on September 5, 2014, demanding that Skiplagged refrain from offering "hidden city" ticketing of United flights because this form of travel is expressly prohibited by Section 6(J) of United's Contract of Carriage. (*Id.* ¶ 53) On the same day, Zaman responded to United's Managing Counsel, Mike Henning, outlining his disagreements with the cease-and-desist letter but making the following proposal:

"Skiplagged has been partnering directly with airlines and has several partners already . . . United is not yet a partner and we believe it would be wise to change that. As such, we will greatly appreciate it if you connect us with the appropriate people."

(*See* Exhibit B, p. 6)

Four days later, on September 9, 2014, Zaman participated in a telephone call with Henning and Tye Radcliffe, a United business representative based in the airline's Chicago, Illinois headquarters. (*See* Radcliffe Dec., p. 2) During this phone call, Zaman again pitched a business deal to United, proposing that United should become one of Skiplagged's "partners." (*Id.*) Viewing this as a form of extortion, United declined the offer. (*Id.*) Zaman ultimately agreed during the call to remove all United references, logos, and flight and fare information from Skiplagged. (*Id.*; *see also* Compl., ¶ 55)

Zaman, however, did not live up to that agreement, and instead attempted to smear United's name and goodwill. On September 13, 2014, for example, United discovered that Zaman was still promoting "hidden city" flights on United under a "censored" airline name and logo, but with an explanatory icon that read: "Sorry for the inconvenience, but United Airlines says we can't show you this information." (Radcliffe Dec., p. 2; *see also* Compl., ¶ 56) After Zaman again promised to remove United content from Skiplagged, in another written communication with Mr. Henning on September 15, 2014, Zaman nevertheless proceeded to present United flight offerings on Skiplagged with similar messages referring to United. (*See* Exhibit B, p. 2; *see also* Radcliffe Dec., pp. 2-3) All of these messages on Skiplagged were available to consumers in Illinois. (Dkt. #24, p. 2) Zaman also attempted to conceal certain redirection strategies from United and Orbitz personnel in an attempt to further his scheme. (*See, e.g.*, Compl., ¶¶ 14, 52, 58, 115)

Over the course of the next several months, Zaman continued to invite Skiplagged users to select "hidden city" United flight itineraries on his website and "Book Now," at which point he would then redirect the Skiplagged users to Orbitz's servers located in Illinois. (*Id.* ¶ 58) These acts constituted breaches of the Affiliate Agreement. (*Id.* ¶ 23)

On November 17, 2014, Plaintiffs filed a six-count complaint against Zaman, individually and d/b/a Skiplagged, which Zaman has now moved to dismiss in part. (*See* Dkt. #1, #24) At issue for purposes of Zaman’s motion are United’s claims that Zaman violated the Lanham Act, 15 U.S.C. § 1125; that he tortiously interfered with United’s contracts with its customers; and that he wrongfully misappropriated United’s flight and fare calculation data. (Compl., at pp. 30-34 (Counts IV-VI))¹ As alleged in the Complaint (*see id.* ¶¶ 14-15), and as explained in more detail below, the Court can exercise specific personal jurisdiction over Zaman.

ARGUMENT

I. Legal Standard for a Rule 12(b)(2) Motion to Dismiss

Under Rule 12(b)(2), the plaintiff bears the burden of establishing personal jurisdiction, but when the issue is raised on a motion to dismiss, it need only make a *prima facie* showing of jurisdictional facts. *See Felland v. Clifton*, 682 F.3d 665, 672 (7th Cir. 2012). All well-pleaded facts alleged in the complaint are accepted as true, and any factual disputes found in supporting affidavits must be resolved in favor of the plaintiff. *Id.*; *see also uBID, Inc. v. GoDaddy Grp., Inc.*, 623 F.3d 421, 423-24 (7th Cir. 2010) (“We take the plaintiff’s asserted facts as true and resolve any factual disputes in its favor.”).

II. Zaman Has Consented to Personal Jurisdiction in Illinois

“[T]he requirement of personal jurisdiction represents . . . an individual right, [and] it can, like other such rights, be waived.” *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982). A party may waive the right through “express or implied consent to the personal jurisdiction of the court,” such as by advance agreement in a contract.

¹ Orbitz, LLC has asserted a Lanham Act claim and a breach-of-contract claim relating to the Affiliate Agreement. (Compl., pp. 26-30 (Count I and Count III)) Orbitz Worldwide, LLC has asserted a claim alleging that Zaman tortiously interference with its travel agency contracts with commercial airlines. (*Id.* at pp. 27-29 (Count II))

Id.; see also, e.g., *H-D Michigan, LLC v. Hellenic Duty Free Shops S.A.*, 694 F.3d 827, 841 (7th Cir. 2012) (enforcing provision in contract outlining parties' consent to jurisdiction for all disputes "arising out of or relating to this Agreement").

Here, Zaman has waived his right to object on personal jurisdiction grounds because he consented to jurisdiction in this Court. In the Affiliate Agreement, Zaman consented to the exclusive jurisdiction of this Court for "any dispute involving the Affiliate Agreement." (*See* Dkt. #1-1, p. 8) This litigation is a dispute involving the Affiliate Agreement. Orbitz, LLC has asserted a breach-of-contract claim *arising out of* the Affiliate Agreement, and United's claims all *involve* the Affiliate Agreement because had Zaman complied with the Affiliate Agreement (e.g., with the covenants relating to illegitimate reservations and bookings), United would not have been harmed in the way that it was. Therefore, the Court has personal jurisdiction over Zaman, and Zaman's motion to dismiss should be summarily denied.

III. The Court Has Specific Personal Jurisdiction Over Zaman

Even if Zaman had not consented to this Court's jurisdiction, Zaman would nevertheless be subject to this Court's specific personal jurisdiction. Zaman repeatedly had contact with Illinois businesses and Illinois consumers while he carried out his abusive ticketing scheme. These contacts with the state of Illinois are consistent with federal due process requirements and justify maintenance of the proceedings in this forum.

Illinois permits the exercise of personal jurisdiction if it would be authorized by either the Illinois or United States Constitution, and therefore, the state statutory requirements merge into the federal standard. *See, e.g., uBID, Inc.*, 623 F.3d at 425; *Illinois v. Hemi Grp. LLC*, 622 F.3d 754, 757 (7th Cir. 2010); *see also* 735 ILCS 5/2-209(c). Under the federal standard, "a nonresident's physical presence within the territorial jurisdiction of the Court is not required" so

long as the party has ““certain minimum contacts such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.”” *Walden v. Fiore*, ___ U.S. ___, 134 S. Ct. 1115, 1121 (2014) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

For specific or “case-linked” jurisdiction to apply, the Court will analyze the contacts that the defendant has created with the forum state. *Walden*, 134 S. Ct. at 1121-22 & n.6. Although the plaintiff may not be the only link between the defendant and the forum, “a defendant’s contacts with the forum State may be intertwined with his transactions or interactions with the plaintiff or other parties.” *Id.* at 1123. For instance, jurisdiction may be found where the nonresident defendant has “purposefully reached out beyond their State and into another.” *Id.* at 1122 (quotations omitted); *see, e.g., Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985); *Calder v. Jones*, 465 U.S. 783, 789-90 (1984).

In this case, Zaman purposefully reached out to Illinois in several ways. First, Zaman intentionally facilitated abusive ticketing practices by identifying “hidden city” flights and then redirecting those users to United’s and Orbitz’s websites. These acts were tortious in nature, and Zaman committed them with knowledge that a disproportionate share of the damage to United would be felt in Illinois. *See Tamburo v. Dworkin*, 601 F.3d 693, 706 (7th Cir. 2010) (tortious conduct aimed at Illinois where defendant had knowledge plaintiff would suffer the “brunt of the injury” there). In other words, Zaman is not being accused of “mere untargeted negligence,” but rather of consistently and repeatedly engaging in intentional, tortious actions that were expressly aimed at Illinois. *See Calder*, 465 U.S. at 789. Furthermore, Zaman affirmatively used Illinois businesses to carry out his scheme because he misappropriated United’s fare calculations and data and then encouraged consumers to “Book Now” on United and Orbitz’s websites, effectively inducing breach of their contracts of carriage in the process. Because these tortious

acts were directed at Illinois – rather than simply having an effect on Illinois – they are sufficient to satisfy due process. *See, e.g., Fletcher v. Doig*, No. 13-CV-3270, 2014 WL 4920238, at *7-8 (N.D. Ill. Sept. 30, 2014) (denying motion to dismiss tortious interference claim where defendant’s letter was directed at Illinois with the express goal of inflicting commercial harm there).

Second, to the extent the Court requires “something more” than these transactions, *see Tamburo*, 601 F.3d at 706, Zaman has filled the void by offering to engage in a business partnership to United, publicly mocking United, making false promises to United, and attempting to hide his behavior from Plaintiffs. In *Tamburo*, the Seventh Circuit found “something more” where a group of defendants made tortious statements about the plaintiff and circulated them widely over the Internet with the express goal of inflicting commercial and reputational harm on the Illinois plaintiff. *See id.* at 707. Other courts have held that misleading statements or “lulling communications” directed at Illinois in an attempt to conceal a larger scheme can support the exercise of jurisdiction. *See, e.g., Felland*, 682 F.3d at 675 (holding that correspondence from an Arizona defendant to plaintiff’s home in Wisconsin were part of an ongoing scheme to mislead the plaintiff); *Heritage House Rests., Inc. v. Cont’l Funding Grp., Inc.*, 906 F.2d 276, 282 (7th Cir. 1990) (holding that misrepresentations made by nonresident defendant during telephone conversations, coupled with an intent to defraud and affect Illinois interests, supported the exercise of jurisdiction).

Here, Zaman committed acts similar to those in *Tamburo* by calling United out by name on his website while simultaneously showing United flight information. In doing so, he intentionally tried to confuse consumers and damage United’s goodwill and reputation. Additionally, and similar to the defendants in *Felland* and *Heritage House Restaurants*, Zaman’s

promises to United and subsequent attempts to conceal his activity from Plaintiffs were all made in furtherance of his tortious conduct.

Third, Zaman's business relationship with Orbitz and his unilateral attempts to pitch business deals with United are additional evidence that Zaman purposefully reached beyond New York and into Illinois. Zaman does not dispute that he entered into an Affiliate Agreement containing Illinois choice-of-law and forum selection clauses, which by itself shows Zaman had case-related contacts with Illinois. *See Pumponator Inc. v. Water Sports, LLC*, 868 F. Supp. 2d 742, 749-50 (N.D. Ill. 2012) (defendant's relationship with Illinois businesses and his assent to be bound by Illinois choice-of-law and forum-selection clauses in a contract with a co-defendant supported exercise of jurisdiction). Furthermore, Zaman voluntarily tried to do business with United's personnel on two occasions, by email and by phone. These instances show that Zaman was ready and willing to further Skiplagged's business interests in Illinois, if the opportunity presented itself.² *See Illinois v. Hemi Grp. LLC*, 622 F.3d at 758 (defendant had minimum contacts with Illinois where it stood "ready and willing to do business with Illinois residents"); *see also Elorac, Inc. v. Sanofi-Aventis Canada Inc.*, No. 14-CV-1859, 2014 WL 7261279, at *8 (N.D. Ill. Dec. 19, 2014) ("Even without a physical presence in Illinois, email, mail, and phone communication may establish minimum contacts . . ."). In light of these additional connections, Zaman's contacts with Illinois go well beyond the minimum contacts that are required for specific personal jurisdiction.

² These facts stand in stark contrast to those alleged in two cases cited by Zaman, *Walden* and *Timberstone Management LLC v. Idaho Golf Partners, Inc.*, No. 14-CV-5502, 2014 WL 5821720 (N.D. Ill. Nov. 6, 2014). In *Walden*, the Georgia defendant's challenged conduct had only a tenuous connection to the forum, Nevada, and the defendant had "never contacted anyone in, or sent anything or anyone to Nevada." 134 S. Ct. at 1124-25. And in *Timberstone Management*, not only was there no economic or reputational injury alleged, but also the defendant never initiated any contact with the plaintiff on its own. *See Timberstone Management LLC*, 2014 WL 5821720, at *5. Here, United has suffered economic and reputation damages, and Zaman's business propositions were made without any provocation from United personnel.

Finally, the exercise of jurisdiction over Zaman comports with traditional notions of “fair play and substantial justice.” *See Burger King*, 471 U.S. at 476. Indeed, requiring Zaman to litigate in Illinois should be expected given that he has openly tried to expand his business and find “partners” outside of New York and in Illinois. *See Illinois v. Hemi Grp. LLC*, 622 F.3d at 760 (defendant who wanted the “benefit of a nationwide business model with none of the exposure” could not “have its cake and eat it, too”). Further, the actual burden on the defendant of traveling from New York to Chicago is minimal in today’s world, and therefore, “it usually will not be unfair to subject him to the burdens of litigating in another forum for disputes relating to such activity.” *See Burger King*, 471 U.S. at 474. This is particularly true for a defendant who is the self-proclaimed king of air travel deals. Additionally, the State of Illinois has a “manifest interest” in providing one of its corporations a forum in which to seek effective relief. *Elorac, Inc.*, 2014 WL 7261279, at *10. Because these due process protections weigh in favor of exercising jurisdiction and because Zaman has minimum contacts with Illinois, the Court should deny Zaman’s motion.

IV. Zaman Has Not Rebutted Plaintiffs’ *Prima Facie* Showing of Jurisdiction

The Court should also deny Zaman’s motion because he has not, and cannot, rebut Plaintiffs’ *prima facie* showing of specific personal jurisdiction. Notably, Zaman has consciously avoided discussing many of the allegations relating to personal jurisdiction in Plaintiffs’ complaint. Nowhere in his motion or corresponding affidavit (*see* Dkt. #25-1) does Zaman address his participation in the affiliate program with Orbitz or the effect of his various redirection strategies to the United and Orbitz websites. Nor does he allege a lack of knowledge about United and Orbitz’s headquarters in Illinois. Indeed, given his covenants in the Orbitz

Affiliate Agreement and his attempts to pitch business to United personnel in Illinois, it is unlikely that Zaman could do so without perjuring himself.

Furthermore, Zaman has attempted to cherry-pick “negative” contacts in his favor, but none of those alleged facts are dispositive. For instance, Zaman emphasizes that he is a resident of New York and that he is not registered to do business in Illinois. But physical presence in the forum is not a prerequisite. *See Burger King*, 471 U.S. at 476 (“[W]e have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction”). Additionally, while potential contacts such as advertising, bank accounts, or sales in the forum can support the exercise of jurisdiction, they are not mandatory. Zaman’s reference to the effect of running an interactive website is also red herring, because Plaintiffs do not allege that Zaman’s casual operation of a website is enough to confer jurisdiction. Rather, it is the interwoven relationship between Plaintiffs’ businesses and the Skiplagged website that make jurisdiction proper here.³

Because Zaman has done little to rebut Plaintiffs’ allegations, and any factual disputes must be resolved in United’s favor, *see Felland*, 682 F.3d at 672, Zaman’s motion should be denied accordingly.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendant’s Motion to Dismiss the Claims of Plaintiff United Airlines, Inc. (Dkt. #24), and award such further relief as the Court deems proper and just.

³ It is these facts that distinguish *Advanced Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.*, 751 F.3d 796 (7th Cir. 2014), from the current case. In *Advanced Tactical*, the plaintiff relied primarily on the sheer existence of an interactive website and sales with no connection to the litigation. *Id.* at 801-03. Because those facts did not adequately link the defendant, the litigation, and the forum, the Court did not find the necessary minimum contacts. *Id.* Here, the redirection to Plaintiffs’ websites and the reputational harm, among other things, support the exercise of jurisdiction.

Date: February 10, 2015

Respectfully submitted,
UNITED AIRLINES, INC.,

/s/ John S. Letchinger

One of the Attorneys for Plaintiffs

John S. Letchinger
Matthew J. Caccamo
Frank Blechschmidt
BAKER & HOSTETLER LLP
191 N. Wacker Drive, Suite 3100
Chicago, Illinois 60606
(312) 416-6200
(312) 416-6201 (FAX)

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2015, I electronically filed the foregoing **PLAINTIFF UNITED AIRLINES, INC.'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all Counsel of Record.

By: /s/ Frank Blechschmidt
One of the Attorneys for Plaintiffs

John S. Letchinger (#6207361)
Matthew J. Caccamo (#6282605)
Frank Blechschmidt (#6308606)
BAKER & HOSTETLER LLP
191 North Wacker Drive
Chicago, IL 60606-1901
(312) 416-6200
(312) 416-6201 (FAX)