**UNITED STATES DISTRICT COURT FOR THE**

**WESTERN DISTRICT OF VIRGINIA**

**MARK SPARK, )**

 **)**

 **Plaintiff, )**  **)**

**v. )** Civil Action No. 6:09CV00082

 **)**

**YOSHI SATO d.b.a. JAPAN ROCKET )**

**MANUFACTURERS, )**

 **)**

 **Defendant. )**

**DEFENDANT’S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

**I. INTRODUCTION**

Defendant, Japan Rocket Manufacturers (“JRM”), seeks to dismiss the Complaint for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2). The Supreme Court has long held that courts may not exercise personal jurisdiction over a nonresident defendant when the defendant has insufficient minimum contacts with the forum state. Furthermore, state courts must not offend traditional notions of fair play and substantial justice in violation of the Due Process Clause of the Fourteenth Amendment when exercising personal jurisdiction. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

 When evaluating whether a court may exercise personal jurisdiction over a defendant, the Fourth Circuit Court of Appeals has directed that a three part test will be implemented in which “[they] consider (1) the extent to which the defendant purposefully availed itself of the privilege of conducting activities in the state; (2) whether the plaintiff’s claims arise out of those activities directed at the state; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable.” *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707 (4th Cir. 2002). Here, the uncontroverted testimony reveals that JRM had insufficient contacts with the forum state, much less that it purposefully availed itself to its jurisdiction. Failing to have directed any activities within the forum state, the plaintiff’s claim could not have arisen from contacts that did not exist. Without having even the most minimal contacts with the state, it would be unfair to subjugate JRM to the state’s jurisdiction. Therefore, the court cannot exercise personal jurisdiction over JRM, and the motion to dismiss should be granted.

**II. STATEMENT OF FACTS**

In June 2005, Japan Rocket Manufactures (“JRM”), having a sole place of business in Japan, received an unsolicited e-mail from Ryan Hunter, Marketing Manager for Delaware Distributors Inc. (DDI). (Hunter E-Mail Log 1.) Having placed all previous marketing and business agreements in Japanese along with maintaining a website in Japanese, the e-mail came as a complete surprise to JRM. (Sato Aff. 1.) The e-mail was in regards to a potential business distributorship between JRM and DDI. (Hunter E-Mail Log 1.) Having no previous business relationships with any United States partners in the past, JRM was reluctant to explore any distribution channels within the United States. (Sato Aff. 1.) JRMs’ reluctance was due to that in entering into the relationship, it would prevent it from pairing down its fireworks manufacturing business. JRM was concentrating on producing candle flints exclusively for the Japanese market. (Sato Aff. 1.)

 Over the next two years, DDI maintained aggressive contacts with JRM in order to enter into JRM’s distribution channel. (Sales Contract at 1.2.) After several years of DDI’s consistent attempts, JRM finally relented and entered into an exploratory sales contract with DDI on June 21, 2007. (Sales Contract.) The exploratory sales contract was the result of a total of four emails exchanges between DDI and JRM. (Sato Aff. at 7.) The companies entered into a total of four transactions over the lifetime of their partnership where JRM manufactured fireworks for distribution by DDI. (Sato Aff. at 7.) JRM was never made aware of, let alone knew of any of the distribution channels DDI was using in its re-distribution of fireworks. (Def. Mot. ¶ 4.)

Being always concerned with the quality and performance of its goods, JRM placed provisions in the firework sales contract to guarantee the quality of the goods it furnished to DDI. (Sales Contract at 2.) The contract provided for a seven-business day provision for DDI to verify the goods were free from defect. (Sales Contract at 2.4.) If any defect was to be found, JRM would at no cost to DDI, replace any and all damaged goods. (Sales Contract at 2.5.) This clause was beneficial to DDI as they were distributing the fireworks to Traveling Firework Company (“TFC”), a Maryland based organization who on very rare occasions sold fireworks directly to consumers in Virginia. (Pl. Compl. ¶ 24.)

Mark Spark (“Mark Spark”), a citizen of Virginia purchased fireworks from TFC, which caused the injury for which he now seeks damages. (Pl. Compl. ¶ 29.) The precise firework that caused Mr. Spark’s injury traveled a substantial amount of distance and touched scores of hands before ultimately being purchased by Mr. Spark in Virginia. (Pl. Compl. ¶ 26.) The firework in question traveled from JRM’s manufacturing facility in Japan, to DDI’s facilities in Delaware, after which DDI re-sold the firework to TCF in Maryland, who ultimately ended the firework’s international journey by selling it to Mr. Spark in Virginia. (Pl. Compl. ¶ 12.) JRM had no knowledge and was astounded at the number of miles the firework in question traveled and at its ultimate destination in Virginia. (Def. Mot. ¶ 4.)

**III. MOTION TO DISMISS STANDARD**

 When a court’s personal jurisdiction is properly challenged by motion under Federal Rules of Civil Procedure 12(b)(2), the motion should be granted when the plaintiff fails to prove the existence of jurisdiction over the defendant by a preponderance of the evidence. *Combs v. Baker*, 886 F.2d 673 (4th Cir. 1989). “But when as here, the court addresses the question on the basis only of motion papers, supporting legal memoranda and the relevant allegations of a complaint, the burden on the plaintiff is simply to make a prima facie showing of a sufficient jurisdictional basis to survive the jurisdictional challenge.” *Id*. at 676. “In deciding whether the plaintiff has proved a prima facie case for personal jurisdiction, the district court must draw all reasonable inferences arising from the proof, and resolve all factual disputes, in the plaintiffs favor.” *Id*.; *Wolf v. Richmond County Hosp. Auth.*. 745 F.2d 904 (4th Cir. 1984).

**IV. ARGUMENT**

A state court may not exercise personal jurisdiction over a nonresident defendant when the defendant has insufficient minimum contacts with the forum state. In addition, State courts must not offend traditional notions of fair play and substantial justice when exercising personal jurisdiction in violation of the Due Process Clause of the Fourteenth Amendment. *International Shoe Co. v. Washington,* 326 U.S. 310 (1945). The Supreme Court has long held that the minimum contacts test requires the defendant to purposefully direct his activities at the residents of the forum and that the plaintiff’s cause of action arise out of those activities. *Consulting Engineers Corp. v. Geometric Ltd.*, 561 F.3d 273 (4th Cir. 2009). Furthermore, the court will look to the quality and nature of the contacts in evaluating whether they meet the minimum contacts requirement. *Id.* at 279. The plaintiff’s claims must also arise out of those activities directed at the forum by the defendant. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984).

Exercising personal jurisdiction over the defendant must also meet the traditional notions of fair play and substantial justice. *Shoe, 326 U.S. at 316.* Where a defendant does not reasonably know of its partners conduct towards a forum, courts will preclude the exercise of personal jurisdiction on the basis that would it would be unfair. *Mylan Laboratories, Inc. v. Akzo, NV*, 2 F.3d 56 (4th Cir. 1993). Finally, a defendants conduct or connection with the forum state must be such that he should reasonably anticipate being haled into court there.” *World-Wide Volkswagen v. Woodson*, 444 U.S. 286 (1980).

1. **Defendant’s minimum contacts with the forum state preclude Virginia courts from exercising personal jurisdiction.**

In order to have minimum contacts within a forum state, a defendant must purposefully direct his activities at the residents of the forum state in order for the state to exercise personal jurisdiction. *Consulting Engineers Corp.* 561 F.3d at 278. The plaintiff’s cause of action must also arise out of those activities. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408. Here, RJM failed to have any contacts with the Commonwealth of Virginia, nor did the plaintiff’s claim arise out of any contacts RJM had with any direct partner in the United States.

* 1. JRM did not purposefully direct any activities toward the residents of the Commonwealth of Virginia.

In determining a defendant’s activities toward the residents of a forum state, the court will look at the quality and nature of the contacts. *Consulting Engineers Corp.* 561 F.3d at 279. In *Consulting Engineers Corp.* three companies were involved in a software and structural design project. *Id.* at 275. The defendant reached out to the plaintiff in hopes of entering into an agreement. After a series of twenty-four emails along with a face-to-face meeting, the companies reached an agreement. *Id* at 275. The agreement contained a provision that precluded each company from hiring each other’s employees. *Id.* at 276. The plaintiff in the case, a Virginia based company, filed a claim against both out of state companies. The defendants included one based out of India. The claim arose out of various tort and contract claims arising out of the hiring of an employee of the plaintiffs. *Id.* at 276. Even though the defendant reached out to the plaintiff, including the exchange of all defendants did not have sufficient contacts with the forum state to exercise personal jurisdiction. The court reasoned that the quality and nature of the contacts did not purposefully avail the defendants to the privileges of doing business in Virginia. *Id*. at 279. Even though there was initial contact by the defendant towards the plaintiff, the court focused on the fact that neither defendant had any offices, employees, or on-going business activity in Virginia. *Id*. at 280. Importantly, the court concluded: “[Defendant] owns no property in Virginia. None of [defendant’s] employees work in Virginia; none have even traveled to Virginia.” *Id.* at 282.

 Like the defendants in *Consulting Engineers Corp.*, JRM did not have sufficient minimum contacts with the Commonwealth of Virginia in order to exercise jurisdiction. In fact, JRM had even less contact with the forum state than both defendants in *Consulting Engineers Corp.* Unlike the defendants in *Consulting Engineers Corp.* who actively began to seek a relationship with the plaintiff, JRM did not seek a relationship with any partner in Virginia nor did it initiate any contact within the United States. Furthermore, unlike the twenty-four email exchanges and face-to-face meetings in *Consulting Engineers Corp.*, JRM only exchanged a total of four emails with DDI and never had any face-to-face meetings with any United States company representatives. In addition, like the defendants in *Consulting Engineers Corp.*, who did not have any property, employees, or ever placed foot in forum state, JRM has never had any property, employees, or been in the Commonwealth of Virginia. Thus, JRM’s lack of sufficient minimum contacts with the forum state preclude Virginia courts from exercising personal jurisdiction.

* 1. Plaintiff’s cause of action does not arise out of JRM’s activities within the state. A plaintiff’s cause of action must arise out of a defendant’s activities within the forum.

*Helicopterors Nacionales De Colombia, S.A.* 466 U.S. at 417. In *Helicopterors Nacionales De Colombia, S.A.*, the defendant entered into a contract to provide helicopter transportation to the plaintiff whose business was headquarters in Texas. *Id*. at 409. The defendants chief executive officer flew to Texas to negotiate the terms of the agreement, purchased helicopters, equipment, accepted checks into its bank in New York, and sent company employees to the helicopters manufacturing facility for training. *Id*. After a helicopter crashed killing all Americans on board, the plaintiffs instituted a wrongful-death action in the state of Texas against the defendant. *Id*. In light of the many activities the defendant in *Helicopterors Nacionales De Colombia, S.A.* exercised while in Texas, the Court held that enough sufficient minimum contacts existed between the defendant and the forum. But the court went on to state that the plaintiff’s claim for wrongful death had nothing to do with the activities between the forum state and the defendant. Therefore, the assertion of jurisdiction over the defendant was improper. *Id*. at 409. The court reasoned that none of the contacts by the defendant had anything to do with the helicopter crashing and therefore the Texas court could not exercise jurisdiction over the defendant. *Id*.

 As in *Helicopterors Nacionales De Colombia, S.A.,* the plaintiff’s claim did not arise out of the contacts RJM had with the Commonwealth of Virginia. In fact, the plaintiff’s claim arises out of a business transaction between a party unbeknownst to RJM. Thus, RJM’s contact within the United States had even less to do with the plaintiff’s claim than in *Helicopterors Nacionales De Colombia, S.A.* Here, RJM was far more removed from the plaintiff. The plaintiff asserts that he bought the firework from someone other than RJM. (Pl. Compl. ¶ 12.) Having sufficient minimum contacts within a forum state is not enough to exercise personal jurisdiction over a defendant. The plaintiff’s claim must also arise out of the defendant’s minimum contacts with the forum state. Since the plaintiff’s claim does not arise of RJM’s contacts with the Commonwealth of Virginia, the court is precluded from exercising personal jurisdiction over the defendant.

1. **Personal jurisdiction over the defendant does not meet traditional notions of fair play and substantial justice.**

A court violates traditional notions of fair play and substantial justice when it asserts personal jurisdiction over a foreign company who is not aware of its subsidiaries wrongful acts. *Myland Laboratories, Inc.*, at 61. In order to comply with traditional notions of fair play and substantial justice, a defendant’s conduct or connection with the forum state must be such that he should reasonably anticipate being haled into court there. *World-Wide Volkswagen*, 444 U.S. at 295. Here, JRM did not have any knowledge of the distribution market its sole distribution partner employed in the United States. Furthermore, JMR did not have any indication that it could be subjected to any courts jurisdiction in the United States.

* 1. JRM was not aware of the any potential wrongful acts committed by its sole distribution partner in the United States.

Where a defendant does not reasonably know of its partners conduct towards a forum, courts will preclude the exercise of personal jurisdiction on the basis that it would be unfair. *Myland Laboratories, Inc.*, at 61. In *Myland Laboratories, Inc.*, the plaintiff was a competitor in the pharmaceutical business along with the defendants. *Id*. at 59. Between the years of 1984 and 1988 the plaintiff alleged that the defendants conspired to help themselves in the approval of new drug application for generic drugs by the United States Food and Drug Administrator. *Id*. The defendant was only brought into the case because they were the parent company of the subsidiary the plaintiff was claiming of conspiracy. Although the parent company defendant was a foreign-based company, the plaintiff wanted to the court to exercise personal jurisdiction on the basis of it knowing, or having reason to know, of its subsidiaries business practices. *Id*.

Even though the defendant was in fact the parent company of the subsidiary, the court held that exercising personal jurisdiction over the parent company would violate traditional notions of fair play and substantial justice. *Id*. at 63. The court reasoned that the parent company had no direct control over the subsidiary. Specifically, the court found no sharing of control over the marketing, purchasing, pricing, management, or operating policies between the subsidiary and the parent company. *Id*. at 62. Even though the court recognized the subsidiaries conspiracy actions directly benefited the defendant, the more important factor was the defendant’s lack of knowledge of the subsidiaries crimes at the time they were committed. *Id*. at 63. Absent any direct knowledge of the subsidiaries criminal actions, the court found it would not be fair to hale the defendant into a forum where it maintained no offices, telephone listings, mailing addresses, or bank accounts. *Id*. at 62.

As in *Myland Laboratories, Inc.*, the plaintiff in the present case was not aware of any of the relationships DDI used in re-distributing its product within the United States. JRM’s knowledge must not be viewed in a vacuum, but instead must be viewed in the light of world-wide commercial trade. Like the foreign company in *Myland Laboratories, Inc*., JRM had no knowledge of where its products would end up after being placed into the stream of commerce. Unlike the defendant in *Myland Laboratories, Inc.,* who was the parent company of the subsidiary, RJM does not have any subsidiaries in the United States. Let alone maintain any offices, telephone listings, mailing addresses, or bank accounts in the Commonwealth of Virginia. Furthermore, unlike the defendant in *Myland Laboratories, Inc.*, who stood to benefit from the subsidiaries actions, RJM had no such incentive in any business practices pursued by distributors of its products within the United States. As the court held in *Myland Laboratories, Inc*., it would violate traditional notions of fair play and substantial justice for the court to exercise jurisdiction over JRM.

* 1. JRM had no reason to anticipate being haled into court in any United States court’s jurisdiction.

Traditional notions of fair play and substantial justice are met when a defendant’s conduct with the forum state make him reasonably aware that he could be haled into court in the forum state. *World-Wide Volkswagen*, 444 U.S. at 295. In *World-Wide Volkswagen*, the defendants, having a sole place of business in New York, sold a vehicle to the plaintiffs while they were in the state. The plaintiffs knew they would take the vehicle out of state but did not make the defendant aware of any such plans. *Id*. at 288. While driving through the state of Oklahoma, the plaintiffs were involved in an accident with the vehicle they had purchased from the defendant. The plaintiffs brought an action against the New York based defendant in Oklahoma. During the trial, plaintiff counsel conceded that the plaintiff’s car was the only car ever sold by the defendant to have entered Oklahoma. *Id*. at 291.

Even though the product was within the borders of Oklahoma when the accident occurred, the court held that exercising jurisdiction over the defendant would be improper. *Id.* The court reasoned that it would be unfair to hold a defendant responsible for the actions of others, such as the plaintiffs driving through Oklahoma. Importantly, the court discounted the testimony that the defendant should have been aware of the vehicles primary function was to travel, and therefore should have foreseen the vehicle traveling to other states. However, the court found that what was important was not the foreseeability that a product might travel to a distant forum, but rather the foreseeability that they [defendants] might be haled into court there. *Id.* at 295. The court also considered the states interest in trying the case in Oklahoma, where all the evidence and witnesses were located. In considering the states interest, the court concluded the Due Process rights of the defendant were paramount to the state interest.

Like the unknowing defendant in *World-Wide Volkswagen*, JRM should not be held responsible for the actions of others in transporting products across a multitude of state lines. JRM had no knowledge that their products were going to be transported to a multitude of states by a multitude of distributors within the United States. Unlike the vehicles sold by the defendant in *World-Wide Volkswagen*, JRM’s product’s primary purpose is not to travel across state lines. In fact, JRM had no idea his products were being re-distributed, much less told they were being sold in Virginia. As the court balanced the interests in *World-Wide Volkswagen* between the forum state and the defendant, here the court should do the same analysis in following traditional notions of fair play and substantial justice. In so doing, the court must conclude that JRM’s Due Process rights should outweigh any potential state interests. Finally, JRM had no reasonable anticipation for being haled into court by the plaintiff and therefore the court cannot exercise personal jurisdiction as in doing so, it would violate traditional notions of fair play and substantial justice.

**V. Conclusion**

 JRM having no clients, partners, agents, property, or business contacts within the forum state means it could not have direct any activities towards the residents of the forum state. Having directed no activities towards the forum state, the plaintiff’s claims could not have arisen from contacts that do not exist. Exercising personal jurisdiction over a nonresident defendant without any minimum contacts with the forum state offends traditional notions of fair play and substantial justice. The Due Process Clause of the Fourteenth Amendment does not tolerate the exercise of personal jurisdiction against JRM. Therefore, JRM respectfully requests that this court enter an order affirming the motion to dismiss for lack of personal jurisdiction.

**Signature, Certificate of Service**

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Yoshi Sato d.b.a. Japan Rocket Manufactures

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**Certificate of Service**

I hereby certify that on February 26, 2010, a copy of the foregoing Japan Rocket Manufacturers Motion to Dismiss was hand-delivered to counsel as follows:

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