

**IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY,
MARYLAND**

**BLUE BIRD, LLC.,
t/a MissNowMrs.com,**

Plaintiff,

v.

AMBER NOLAN, et al.

Defendants.

:
:
:
:
:
:
:
:
:
:
:
:

Case No. 302920-V

MEMORANDUM OPINION

On October 23, 2008, plaintiff, Blue Bird, LLC (“Blue Bird”), a Maryland limited liability company, sued defendants, Amber Nolan, Brian Nolan, and HJN Group, LLC (“HJN Group”), asserting causes of action for breach of contract, violation of the Maryland Uniform Trade Secrets Act, deceit and civil conspiracy (DE #1). Blue Bird also filed a motion for temporary restraining order and preliminary injunction (DE #3). On December 12, 2008, defendants filed a motion to dismiss for lack of personal jurisdiction (DE #19). On April 2, 2009, plaintiff filed a supplemental opposition to motion to dismiss (DE #47), and defendants, Brian Nolan and HJN Group, filed a Response on April 10, 2009 (DE #58).

On December 17, 2008, the court held a hearing on both motions. The court denied the defendants’ motion to dismiss as to Amber Nolan and took the motion under advisement as to Brian Nolan and HJN Group. At the conclusion of the hearing, the court permitted discovery to proceed on the issues of personal jurisdiction; all other discovery was stayed. On April 15, 2009, the court held a further hearing on the motion

to dismiss for lack of personal jurisdiction and denied the motion as to defendants, Brian Nolan and HJN Group. The reasons for the court's rulings are set forth below.

Plaintiff filed a first amended complaint on February 11, 2009, which added additional facts as to personal jurisdiction and included an additional defendant, Antony Radbod. (DE #34). The amended complaint alleges five causes of action: Count I, breach of fiduciary duty; Count II, violations of the Maryland Uniform Trade Secrets Act; Count III, deceit; Count IV, unfair competition; and Count V, civil conspiracy.

I. THE PARTIES' CONTENTIONS

According to the amended complaint, the plaintiff operates an internet business that facilitates changing customer's names on state and federal licenses and records. (Am. Complaint, ¶ 7). The plaintiff developed proprietary forms, processes, and instructions to enable an efficient name change process. This information is located in a secure area of the website and can only be accessed by clients who pay the required fee and electronically accept an agreement titled Terms of Use ("Agreement"). (Am. Complaint, ¶¶ 8, 9). The Agreement provides that the customer may not copy, reproduce, distribute, or create derivative works from any information, content, software or material provided through the secure area of the Website. (Am. Complaint, ¶ 10). The Agreement also explicitly states that the laws of the State of Maryland shall govern the Agreement, and that the parties to the Agreement consent to jurisdiction and venue exclusively in the State of Maryland. (Am. Complaint, ¶ 10).

The plaintiff alleged that on August 16, 2007, defendant, Amber Nolan, purchased Blue Bird's services, accepted the Agreement, and thereafter, conspired with defendants, Brian Nolan and Antony Radbod to misappropriate information from the

secure area of the plaintiff's Website and use that information to create a competing website. (Am. Complaint ¶ 13). The plaintiff also alleged that on October 25, 2007, defendants, Antony Radbod or Brian Nolan, purchased Blue Bird's services with the intent to acquire confidential and proprietary forms, instructions, processes and programs created and owned by the plaintiff. Using the two accounts, the defendants accessed driver's license forms and information for all 50 states plus the District of Columbia. (Am. Complaint, ¶¶ 18, 20, 21). Further, the plaintiff alleged that the defendant, Brian Nolan, acted in furtherance of the alleged conspiracy, by designing and implementing an internet business that would directly compete with plaintiff using plaintiff's propriety information, property and marks. (Am. Complaint, ¶ 25).

Defendants contend that the court may not lawfully exercise personal jurisdiction over either of them because neither has or had sufficient contacts with Maryland. (DE #19, 58). Further, defendants assert that the plaintiff failed to establish that Antony Radbod purchased Blue Bird's services, and even if Antony Radbod did purchase the services, plaintiff failed to establish a connection or partnership between Antony Radbod and Brian Nolan or HJN Group.¹ Additionally, defendants contend that plaintiff failed to prove the alleged conspiratorial actions between Amber Nolan, Brian Nolan, and HJN Group, therefore, making the exercise of personal jurisdiction under the conspiracy theory of jurisdiction improper. In response to the motion to dismiss, plaintiff proposed three different theories of personal jurisdiction with regard to defendants, Brian Nolan and HJN Group. First, plaintiff contends that each of the defendants is bound by the consent to jurisdiction in the terms of use agreement under both the agency theory of

¹ Antony Radbod has not filed a Motion to Dismiss for Lack of Personal Jurisdiction, and as such, the court will make no finding as to the exercise of personal jurisdiction over him.

jurisdiction and the conspiracy theory of jurisdiction. Next, plaintiff argues that defendants are subject to personal jurisdiction pursuant to two separate provisions of the Maryland Long Arm Statute, sections 6-103(b)(1) and (b)(3) of the Courts and Judicial Proceedings Article.

II. DISCUSSION

Without a doubt, the internet has changed the face of business; it allows individuals to communicate, conduct business, or casually browse across state lines and international borders without leaving their desk. *See e.g., Cole-Tuve, Inc. v. Am. Machine Tools Corp.*, 342 F. Supp. 2d 362 (D. Md. 2004); *Premedics, Inc. v. Zoll Medical Corp. et al.*, 2007 U.S. Dist. LEXIS 75433, *10-11(M.D.Tenn. 2007).² Often parties to an internet contract never meet; much less physically enter the state that governs the contract. *See Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000) (“Engaging in commerce with residents of the forum state is not in and of itself the kind of activity that approximates physical presence within the state’s borders.”). The law surrounding personal jurisdiction and the internet is evolving, and internet businesses are being treated in almost the same fashion as brick and mortar establishments. For example, the Court of Appeals has held that “conducting business in Maryland that involves supplying computer programs or information to Maryland residents will be treated in the same manner as if the programs and information were tangible goods or services provided by a business.” *Beyond Systems*, 388 Md. at 25-26.

² *See generally* A. Benjamin Spencer, *Jurisdiction and the Internet: Returning to Traditional Principles to Analyze Network-Mediated Contacts*, 2006 U. Ill. L. Rev. 71 (2006). For a general discussion on the advancements of technology and the impact on the law *see* Stacy M. Chaffin, Comment, *The New Playground Bullies of Cyberspace: Online Peer Sexual Harassment*, 51 How.L.J. 773 (2008).

In this case, the court must decide whether it can exercise personal jurisdiction over defendants whose only contact with the forum state occurred over the internet.

A. Governing Legal Standards

On a motion to dismiss for lack of personal jurisdiction, the court may receive evidence without converting the motion to one for summary judgment under Rule 2-501. *Bond v. Messerman*, 391 Md. 706, 718 (2006). “If facts are necessary in deciding the motion, the court may consider affidavits or other evidence adduced during an evidentiary hearing.” *Beyond Systems, Inc. v. Realtime Gaming Holding Co.*, 388 Md. 1, 12 (2005)(footnote omitted).

The court engages in the now familiar two-part analysis when a defendant moves to dismiss for lack of personal jurisdiction. First, the court must determine whether the allegations of the complaint fairly invoke any of the provisions of the long-arm statute. *Beyond Sys. v. Realtime*, 388 Md. 1, 15 (2005); *Geelhoed v. Jensen*, 277 Md. 220, 224 (1976). Second, the court must determine, even so, whether the exercise of personal jurisdiction in the forum state would comport with Due Process. *See Republic Properties Corp. v. Mission West Properties, LP*, 391 Md. 732, 760-61 (2006); *Taylor v. CSR Limited*, 181 Md. App. 363, 374-76 (2008), cert granted, 2008 Md. LEXIS 740 (Md. Dec. 19, 2008). With regard to the two-part test, Maryland courts “have consistently held that the purview of the long arm statute is coextensive with the limits of personal jurisdiction set by the *due process clause of the Federal Constitution*,” thus “our statutory inquiry merges with our constitutional examination.” *Beyond Sys.*, 388 Md. at 15, 22. Once challenged, the plaintiff bears the burden of demonstrating the existence of sufficient

facts so that the court may lawfully exercise personal jurisdiction. *Craig v. General Finance Corp. of Illinois*, 504 F. Supp. 1033, 1034 (D. Md. 1980).

In order to pass constitutional muster under the Due Process Clause, the defendant must have “minimum contacts” with Maryland such that the exercise of jurisdiction “does not offend ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (citation omitted). The court must consider not only the “nature” of the defendants’ contacts with Maryland, *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 416-17 (1984), but also “the relationship among the defendant, the forum, and the litigation,” *Shafer v. Heitner*, 433 U.S. 186, 204 (1977), to determine whether the defendants “should reasonably anticipate being haled into court” in the State of Maryland. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

B. Validity of Click-Wrap Agreement

When the defendants created accounts with plaintiff’s web-based service, they consented to a Terms of Use Agreement, better known as a click-wrap agreement. A click-wrap agreement is “a contract to which a user manifests his or her assent by clicking on an icon.” *ESL Worldwide.com, Inc. v. Interland, Inc.*, 2006 U.S. Dist. LEXIS 41935, at *5 (S.D.N.Y. June 21, 2006). Maryland courts have yet to determine the validity of click-wrap agreements, but, as observed by the Southern District of New York, “the few courts that have had occasion to consider click-wrap contracts have held them to be valid and enforceable.” *Specht et al. v. Netscape Communications Corp. et al.*, 150 F.Supp. 2d 585, 594 (S.D.N.Y. 2001), *aff’d*, 306 F.3d 17, 35 (2d Cir. 2002) (rejecting validity of click-wrap agreement pursuant to California common law and a lack

of notice to defendants); *see also I.Lan Sys., Inc v. Netscout Serv. Level Corp.*, 183 F. Supp.2d, 328, 338 (D.Mass.2002); *Forrest v. Verizon Communications, Inv.*, 805 A.2d 1007 (D.C.2002); *Caspi v. Microsoft Network, LLC*, 323 N.J. Super. 118 (N.J.App.Div.1999).

A contract is defined as a promise or set of promises for breach of which the law gives a remedy or the performance of which the law in some way recognizes as a duty. *Kiley v. First Nat. Bank of Maryland*, 102 Md. App. 317, 333 (1994). “It is universally accepted that a manifestation of mutual assent is an essential prerequisite to the creation or formation of a contract.” *Cochran v. Norkunas*, 398 Md. 1 (2007). “Manifestation of mutual assent includes two issues: (1) intent to be bound, and (2) definiteness of terms.” *Id.*

Maryland adheres to the objective rule of contract interpretation, giving effect to the terms of the parties’ agreement. *See, e.g., Myers v. Kayhoe*, 391 Md. 188, 198 (2006); *Tomran, Inc. v. Passano*, 391 Md. 1, 13 (2006); *General Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 261 (1985). “A court will presume that the parties meant what they said in an unambiguous contract, without regard to what the parties to the contract personally thought it meant or intended it to mean.” *Maslow v. Vanguri*, 168 Md. App. 298, 318 (2006). Also, absent proof of fraud, a party has a duty to read the contract before signing it, and even if the party signs it without reading it, the party remains bound by its terms regardless if later they are dissatisfied with the bargain. *See, e.g., Holloman v. Circuit City*, 391 Md. 580, 595 (2006); *Canaras v. Lift Truck Services*, 272 Md. 337, 344-45 (1974).

A manifestation of assent to be bound need not be in writing. It has long been settled that “an acceptance may be indicated by acts as well as words.” *Duplex Envelope Co. v. Baltimore Post Co.*, 163 Md. 596, 605 (1933). In Maryland, “a party’s conduct sufficient to manifest acceptance of the terms of a written contract will bind that party to the written contract.” *Porter v. General Boiler Casing Co.*, 284 Md. 402, 411 (1979); *see also Cochran v. Norkunas*, 398 Md. 1, 23 (2007)(distinguishing between manifestation of acceptance by conduct from acceptance by silence). “Acceptance of an offer can be accomplished by acts as well as words; no formal acceptance is required.” *Prince George’s County v. Silverman*, 58 Md. App. 41, 57 (1984).

Maryland applies the objective standard as to the formation of contracts. *Ray v. Eurice*, 201 Md. 115, 127 (1952); *National Fire Ins. Co. v. Tongue, Brooks & Co.*, 81 Md. App. 217, 225 (1985). In this case, the court finds that defendants accepted the terms of the Agreement when they clicked on the “I Accept” button. *See Moore v. Microsoft Corp.*, 741 N.Y.S.2d 91, 92 (N.Y. App. Div. 2002) (holding that that the software license was accepted when the user clicked on the “I Agree” icon); *Motise v. America Online, Inc.*, 346 F. Supp. 2d 563 (S.D.N.Y. 2004) (holding that the plaintiff was contractually bound to the terms of his father’s AOL account by accessing the account as a sub-licensee); *see also Prod, Inc. v. Zeidenberg*, 86 F.3d 1447 (7th Cir. 1996) (upholding validity of a shrink-wrap license).

Some courts have invalidated click-wrap agreements as contracts of adhesion. *See Comb v. Paypal, Inc.* 218 F. Supp.2d 1165, 1169 (N.D.Cal.2002). In Maryland, a contract of adhesion is not void per se. *See Walther v. Sovereign Bank*, 386 Md. 412, 430 (2005). Generally, a court will only find that a contract of adhesion is unenforceable if it

is unconscionable. *Id.* An unconscionable contract involves extreme unfairness, "made evident by (1) one party's lack of meaningful choice, and (2) contractual terms that unreasonably favor the other party." *Id.* at 426. (internal citations and quotations omitted). Here, the click wrap agreement was neither a contract of adhesion nor unconscionable. *See DeJohn v. TV Corp. Int'l*, 245 F.Supp.2d 913, 919 (E.D. Ill. 2003).

Defendants were not forced to sign up for plaintiff's services. Plaintiff's website merely provides a more efficient way to change one's name. The forms needed to effectuate a name change are publically available and can, in many cases, be accessed over the internet. Additionally, when the defendants created the second, fictitious "Mary Jensen" account, they did so for their own benefit – to acquire access to the plaintiff's proprietary information. Therefore, this court concludes that the click-wrap agreement between the defendants and the plaintiff is an enforceable contract because by clicking on the "I Agree" button, the defendants manifested their assent to its terms. *See Moore v. Microsoft Corp.*, 741 N.Y.S.2d 91 at 92.

C. Forum Selection Clause of the Agreement

The plaintiff's click-wrap agreement contained a forum selection clause, which the plaintiff contends demonstrates that the defendants knowingly and voluntarily selected Maryland law to govern their disputes under the Agreement. Section L of the Agreement provided that: "This Agreement and the rights and obligations of the parties with respect to the Site and the Service will be subject to and construed in accordance with the laws of the State of Maryland, excluding conflict of law principles. You consent to jurisdiction and venue exclusively in the State of Maryland." (Plaintiff Exhibit 6).

Consequently, Blue Bird argues that Maryland should give effect to the parties' choice of jurisdiction and venue. This court agrees.³

The Court of Appeals has held that it is “generally accepted that the parties to a contract may agree as to the law which will govern their transaction, even as to issues going to the validity of the contract.” *Kronovet v. Lipchin*, 288 Md. 30, 43 (1980). *See also National Glass, Inc. v. J.C. Penny Properties, Inc.*, 336 Md. 606, 610 (1994). Nevertheless, the Court of Appeals has held that the parties' choice is subject to the limitations set forth in RESTATEMENT (SECOND) CONFLICT OF LAWS § 187(2). *See National Glass*, 336 Md. at 610-11; *Kronovet*, 288 Md. at 43 – 47. *See also General Insurance v. Interstate Service Co., Inc.*, 118 Md. App. 126, 137-141 (1997); *Labor Ready, Inc. v. Abis*, 137 Md. App. 116, 126-27 (2001); *Lamb v. Northwestern Nat. Life Ins., Co.*, 56 Md. App. 125, 128 (1983); *MCS Services, Inc., v. Coronel*, 2008 MDBT 3, 6-13 (March 4, 2008), 2008 Md. Cir. Ct. LEXIS 3.

In this case, Section 187(1) of the RESTATEMENT (SECOND) OF CONFLICT OF LAWS also is applicable because it provides that “the law of the state chosen by the parties to govern their contractual rights and duties will be applied if the particular issue is one which the parties could have resolved by an explicit provision in their agreement directed to that issue.” The Comments to Subsection (1) of Section 187 explain that “the rule of this Subsection is a rule providing for incorporation by reference and is not a rule of choice of law. The parties, generally speaking, have power to determine the terms of their contractual engagements.” RESTATEMENT (SECOND) OF CONFLICT OF LAW (1988 Revisions), § 187 (1) cmt. C.

³ Maryland adheres to the *lex loci contractus* rule. *Kramer v. Bally's Park Place*, 311 Md. 387, 390 (1988). *See also Erie Ins. Exchange v. Heffernan*, 399 Md. 598, 630-31 (2007).

The parties have not cited, and the court's research has not disclosed, any Maryland appellate decision declining to give effect to a contractual choice of law clause electing that Maryland law govern the parties' rights under the contract. The court concludes that the forum selection clause in the Agreement is valid.

D. Consent to Personal Jurisdiction

Plaintiff contends that defendants, Brian Nolan and HJN Group, personally, or through the acts of an agent, consented to jurisdiction in the Terms of Use Agreement. The court agrees.

A partnership is "the unincorporated association of two or more persons to carry on as co-owners a business for profit . . . whether or not the persons intend to form a partnership and whether or not the association is called 'partnership,' 'joint venture,' or any other name." Corps. & Assn's Code Ann. § 9A-202(a). *See also Seaboard Surety Co. v. Richard F. Kline, Inc.*, 91 Md. App. 236 (1992); *Herring v. Offutt*, 266 Md. 593 (1972). Each partner is an agent of the partnership, and each partner has the authority to bind the principal as to matters within the scope of the partnership. Corps. & Assn's Code Ann. § 9A-301(1); RESTATEMENT (THIRD) OF AGENCY § 2.02 (2006); *Lister v. Allen*, 31 Md. 543 (1869); *Garfinkel v. Schwartzman*, 253 Md. 710 (1969).

The court finds that before October 15, 2007, defendants, Brian Nolan and Antony Radbod, formed a partnership for the purpose of creating an internet name-change service. (Opp. Motion to Dismiss, Pl. Ex. 1; Brian Nolan Depo. 20-28). On October 17, 2007, the court finds that in furtherance of creating the new internet name change service, either Amber Nolan or Brian Nolan, logged onto the secure areas of the

plaintiff's website and accessed the driver's license forms for all 50 states and the District of Columbia. (Pl. Ex. 1).

The court also finds that on October 25, 2007, either Brian Nolan or Antony Radbod, acting in furtherance of their joint effort to collect name change forms and instructions, purchased plaintiff's service and consented to the Agreement of terms and conditions. (Pl. Ex. 2). The fictitious account of "Mary Jensen" was created using Brian Nolan's email address and Brian Nolan's computer. (Opp. Motion to Dismiss, Pl. Ex. 2).⁴ Thereafter, defendants used the account to access the secure area of the plaintiff's website, including the name change forms and instructions for 24 states. (Opp. Motion to Dismiss, Pl. Ex. 3).

Additionally, Brian Nolan used several of the forms and instructions accessed by the defendants, *verbatim*, on defendant, HJN Group's website, www.namebirdie.com. For example, Blue Bird's website contained a mistake regarding the fee for changing both the Minnesota State Driver's License (Pl. Ex. 7) and the Ohio State Driver's License (Pl. ex. 9), as well as an outdated form for the Virginia Driver's License (Pl. Ex. 8); defendant, HJN Group's website, www.namebirdie.com contained the exact same mistakes. Additionally, Brian Nolan copied plaintiff's Terms of Use Agreement, word for word (except for the jurisdictional provision) for use on the HJN website, the exact Agreement which he now claims can not bind him to adjudication in Maryland.

The court finds that after business relations between Brian Nolan and Antony Radbod soured, Brian Nolan, along with two additional investors, created HJN Group,

⁴ Exhibit 2 is a screen shot of the acknowledgment of the purchase which would display after a subscriber has signed up for the service and accepted the terms and use agreement. The screen shot was produced by Defendant, Brian Nolan, who testified at his deposition that he printed the acknowledgement from his computer and kept it among his records. (Brian Nolan Dep. 29-30).

LLC, which in turn produced the website www.namebirdie.com. The Court of Appeals has stated that:

In a case involving a partnership, the contract of partnership constitutes all of its members as agents of each other and each partner acts both as a principal and as the agent of the others in regard to acts done within the apparent scope of the business, purpose and agreement of the partnership or *for its benefit*.

Kay v. Gitomer, 253 Md. 32, 38 (1969) (citing *Phillips v. Cook*, 239 Md. 215, 219-20 (1965)) (emphasis added). HJN Group directly benefited from the improper retrieval and subsequent misuse of information from the plaintiff's website. Accordingly, Brian Nolan and HJN Group are bound by the consent to jurisdiction terms of the Agreement.

Plaintiff also contends that the court may properly exercise personal jurisdiction over defendants, Brian Nolan and HJN Group, pursuant to the conspiracy theory of jurisdiction; this court agrees. Maryland recognizes the conspiracy theory of jurisdiction as articulated in *Cawley v. Bloch*, 544 F. Supp. 133 (D. Md. 1982). *Mackey v. Compass Marketing, Inc.*, 391 Md. 117, 121 (2006).

The conspiracy theory of jurisdiction is based on two principles: "(1) that the acts of one co-conspirator are attributable to all co-conspirators, and (2) that the constitutional requirement of minimum contacts between non-resident defendants and the forum can be met if there is a substantial connection between the forum and a conspiracy entered into by the defendants." *Id.* at 129 (citing *Cawley*, 544 F. Supp. at 135).

It is well established that a conspirator can be liable for the conduct of a co-conspirator. A civil conspiracy has been defined in Maryland as "a combination of two or more persons by an agreement or understanding to accomplish an unlawful act or to use unlawful means to accomplish an act not in itself illegal, with the further requirement

that the act of the means employed must result in damages to the plaintiff.” *Id.* at 128 (citing *Hoffman v. Stamper*, 385 Md. 1, 24 (2005) (quoting *Green v. Wash. Sub. San. Comm’n*, 259 Md. 206, 221 (1970))).

Under the conspiracy theory of jurisdiction, a co-conspirator can become subject to personal jurisdiction in the forum state, even if they have no direct contacts, when “(1) two or more individuals conspire to do something (2) that they could reasonably expect to lead to consequences in a particular forum, if (3) one co-conspirator commits overt acts in furtherance of the conspiracy, and (4) those acts are of a type which, if committed by a non-resident to personal jurisdiction under the long-arm statute of the forum state” *Id.* at 129.

In this case, the facts show that defendants, Antony Radbod and Brian Nolan, in his personal capacity and as an executive member of HJN Group, conspired to access secure areas of plaintiff’s website to misappropriate plaintiff’s trade secrets and compete unfairly by using the information on a commercially competing website. The court finds that the conduct undertaken either directly by the individual defendants or through their agents was intentionally targeted and focused on plaintiff, a Maryland limited liability company with its principal place of business in Maryland. This purposeful targeting of a Maryland company put defendants on actual and constructive notice that their actions could lead to consequences in the state of Maryland. Therefore, pursuant to the alternative grounds of the conspiracy theory of jurisdiction, the court may properly exercise personal jurisdiction over the defendants, Brian Nolan and HJN Group.

E. Jurisdiction Pursuant to Maryland’s Long Arm Statute

As additional means of exercising personal jurisdiction over the defendants, plaintiff contends that Brian Nolan and HJN Group are subject to the personal jurisdiction of Maryland courts pursuant to section 6-103(b)(1) and (3) of the Maryland Long Arm State; this court agrees. The relevant sections provide that “a court may exercise personal jurisdiction over a person, who directly or by an agent transacts any business or performs any character of work or service in the State.” § 6-103(b)(1) of the Courts and Judicial Proceedings Article (2002). Maryland courts have interpreted the phrase “transacts any business” to refer to any “purposeful activity” within the state. *See Novack v. National Hot Rod Assoc.*, 247 Md. 350 (1967); *Van Wagenberg v. Van Wagenberg*, 241 Md. 154, 166 (1966) (“the phrase ‘transaction of any business’ includes, but is not limited to, contracts of any kind made within the state, and ‘purposeful activity’ of any kind, within the state.”); *see also Snyder v. Hampton Industries, Inc.*, 521 F. Supp. 130, 141 (D. Md. 1981), *aff’d*, 758 F.2d 649 (4th Cir. 1985).⁵ Section 6-103(b)(3) provides that “a court may exercise personal jurisdiction over a person, who directly or by an agent causes tortuous injury in the State by an act or omission in the State.” § 6-103(b)(3).

Both statutes apply to computer information in the same manner as they apply to goods and services. § 6-103(c)(2). Computer information is “information in electronic form which is obtained from or through the use of a computer or which is in a form capable of being processed by a computer.” § 22-102(a)(10) of the Commercial Law Article (2002).

⁵ The Court of Special Appeals has accepted *Snyder’s* view that a non-resident may transact business in Maryland even if he never entered the state, either personally or through an agent. *Sleph v. Radke*, 76 Md. App. 418, 427, *cert. denied*, 314 Md. 193 (1986); *see also Capital Source Finance, LLC v. Delco Oil Co.*, 520 F. Supp.2d 684, 691 (D. Md. 2007).

Because the defendants' contacts with Maryland form the basis for the suit, plaintiff has elected to pursue jurisdiction on the grounds of specific jurisdiction.⁶ The Court of Appeals, adopting the Fourth Circuit's three-part test for determining whether specific jurisdiction exists, held that:

In determining whether specific jurisdiction exists, we consider (1) the extent to which the defendant has purposefully availed itself of the privilege of conducting activities in the State; (2) whether the plaintiffs' claims arise out of those activities directed at the State; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable.

Beyond Sys., 388 Md. at 26 (citing *Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 397 (4th Cir. 2003)).

With regard to the first requirement, purposeful availment, the Court of Appeals, relying on *World-Wide Volkswagen*, held that "if a defendant's activities are such that the defendant can reasonably anticipate being subject to suit in a forum by virtue of his or her intentional acts, the defendant has purposefully availed itself of privilege of conducting activities within the forum." *Mackey*, 391 Md. at 135; *see also World-Wide Volkswagen*, 444 U.S. at 297. The purposeful availment hurdle also is overcome when the defendant's contacts with the forum state are such that "he should reasonably anticipate being haled into court there." *Taylor v. CSR, Ltd.* 181 Md. App. at 378 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)).

⁶ Many of defendants' arguments as to why personal jurisdiction is not proper rely on the premise that jurisdiction would be exercised solely on the basis of defendants' own internet business transactions with Maryland residents. For example, Brian Nolan stated that namebirdie.com provided name change services to approximately five (5) Maryland residents. (Brian Nolan Depo. 60). Namebirdie.com has recently ceased providing name change services to Maryland residents, even though the website still boasts the capability to help brides in all 50 states plus the District of Columbia. Because the facts of this case provide a variety of reasons why personal jurisdiction is proper, a discussion of the defendants' own attempts to direct business into Maryland seems to be unnecessary and excessive.

The Court of Special Appeals has held that “where the case involves torts that create causes of action in a forum state . . . the threshold for purposeful availment is lower. The defendant allegedly causing harm in the state may understandably have sought no privileges there; instead the defendant’s purpose may be said to be the targeting of the forum state and its residents.” *Marycle, LLC et al. v. First Choice Internet, Inc.*, 166 Md. App. 481, 509 (2006) (citing *Digital Equip. Corp. v. AltaVista Tech., Inc.*, 960 F.Supp. 456, 469 (D. Mass. 1997)).

Plaintiff contends that because the defendants knew that they (1) fraudulently entered the secure areas of plaintiff’s Maryland website; (2) stole proprietary information from the Maryland company; (3) used the improperly obtained information in furtherance of a conspiracy to unfairly compete with plaintiff; and (4) caused harm to the plaintiff by redirecting plaintiff’s customers from the Maryland based website to defendants’ website, then defendants have effectively purposely availed themselves of conducting business activities in Maryland. The court agrees.

The court finds that there is no significant difference between misappropriating proprietary information on the internet and misappropriating proprietary information from a brick and mortar establishment. Maryland courts will not allow defendants to hide behind their computer screens when they knowingly transact business with a Maryland company or cause tortious injury in the state of Maryland, as did the defendants in this case. “Whether the entry to the State was real or virtual should not matter; traditional notions of justice apply to both traditional and novel avenues of attack.” *Cole-Tuve*, 342 F. Supp. 2d at 369.

The court must next determine whether the cause of action arises from defendants' activities in Maryland. "If a defendant's contacts with the forum state are related to the operative facts of the controversy, then an action will be deemed to have arisen from those contacts." *Marycle*, 166 Md. App. at 504 (2006) (quoting *CompuServe, Inc. v. Patterson*, 89 F.3d 1257, 1267 (6th Cir. 2006)); see also *Creech v. Roberts*, 908 F.2d 75, 80 (6th Cir. 1990) ("An action will be deemed *not* to have arisen from the defendant's contacts with the forum state only when they are unrelated to the operative facts of the controversy.").

Here plaintiff's lawsuit is centered on allegations that another company, partnership, or individuals wrongfully obtained and copied proprietary information. Defendants' alleged unauthorized access and subsequent misappropriation forms the sole basis of this lawsuit. Accordingly, this Court finds that plaintiff's cause of action arises from defendants' contacts with the forum state.

As to the third prong, once purposeful availment has been established, a defendant must make a "compelling case" that it is unreasonable or unfair to require it to defend a suit out of state. *Marycle*, 116 Md. at 510 (citation omitted). Defendants' only argument that jurisdiction would be unreasonable is their unfounded allegation that the sole basis for the action being filed in Maryland state court is convenience to the plaintiff. When a Maryland company is harmed, it is only natural for the Maryland company to bring suit in a Maryland court. Here, defendants had actual notice that any disputes or breaches of the Agreement would be adjudicated in a Maryland court. Convenience might be a byproduct of the venue of this action, but it is in no way the sole basis for exercising personal jurisdiction over the defendants.

For the reasons stated above, defendant's motion to dismiss for lack of personal jurisdiction (DE #19) as to defendants, Brian Nolan and HJN Group, is DENIED.

Dated: April 28, 2009

RONALD B. RUBIN, Judge