

THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

THE SPORTS AUTHORITY MICHIGAN, INC.,  
a Michigan Corporation, a Delaware Corporation,

Plaintiff,

v.

JUSTBALLS, INC., a Delaware Corporation;  
JUSTBALLS, a Delaware Corporation, and  
JUSTBALLS.COM, INC., a Delaware  
corporation,

Defendants.

Hon. George E. Woods

Case No. 99-75910

Magistrate Judge Morgan

FILED  
NOV 19 6 50 PM '99  
U.S. DISTRICT COURT  
EAST DISTRICT  
DETROIT

MOTION OF DEFENDANT JUSTBALLS.COM, INC.  
TO DISMISS PLAINTIFF'S COMPLAINT

The Complaint in this action purports to name three defendants. In fact, there is just one: Justballs.com., Inc. (hereinafter "Justballs.com").<sup>1</sup> Defendant Justballs.com, by and through its counsel, Dickinson, Wright PLLC, moves this Court to dismiss Plaintiff's Complaint for lack of jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2). The grounds for this motion are based on the allegations of Plaintiff's Complaint and a supplemental declaration of James Medalia.

1. On or about December 9, 1999, Plaintiff, The Sports Authority Michigan, Inc., ("Sports Authority") filed a Complaint against Justballs, Inc., Justballs, and Justballs.com, Inc.,

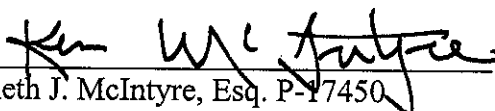
<sup>1</sup> Justballs, Inc. is the former name of Justballs.com, Inc. Justballs, Inc. is no longer in existence. There is no such entity as Justballs.

3

**WHEREFORE**, Defendant Justballs.com respectfully requests this Honorable Court to dismiss Plaintiff's Complaint against it.

Respectfully submitted,

**DICKINSON WRIGHT PLLC**

By:   
Kenneth J. McIntyre, Esq. P-17450  
500 Woodward Ave.  
Ste. 4000  
Detroit, MI 48226-3425  
(313) 223-3556

-and-

**OF COUNSEL**

**DRINKER BIDDLE & REATH LLP**

William J. Lehane, Esq.  
Kelly A. Beaudin, Esq.  
One Logan Square  
18th & Cherry Streets  
Philadelphia, PA 19107

THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

THE SPORTS AUTHORITY MICHIGAN, INC.,  
a Michigan Corporation, a Delaware Corporation,

Plaintiff,

v.

JUSTBALLS, INC., a Delaware Corporation;  
JUSTBALLS, a Delaware Corporation, and  
JUSTBALLS.COM, INC., a Delaware  
corporation,

Defendants.

Hon. George E. Woods

Case No. 99-75910

Magistrate Judge Morgan

U.S. DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

00 JAN 19 PM 5:50

FILED

MEMORANDUM OF LAW IN SUPPORT OF  
MOTION TO DISMISS COMPLAINT OF JUSTBALLS.COM, INC.

I. INTRODUCTION

Justballs.com, Inc. (hereinafter "Justballs.com") is the defendant in this lawsuit alleging trademark infringement, unjust enrichment, dilution, and unfair and fraudulent trade practices under federal and Michigan law.<sup>1</sup> Plaintiff's claims neither arise out of nor are related to any conduct on the part of Justballs.com in this state. In fact, Plaintiff admits that Justballs.com's sole contact with Michigan is that it operates an Internet web site, which is accessible to persons in Michigan as it is to those throughout the United States and the world. The operation of a web site, without more, is not a sufficient basis for personal jurisdiction over Justballs.com.

<sup>1</sup> Justballs, Inc. is the former name of Justballs.com, Inc. Justballs, Inc. is no longer in existence. There is no such entity as Justballs.

Therefore, Justballs.com requests that the Complaint be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(2).

## II. ARGUMENT

### A. **Standard of Review for Personal Jurisdiction**

In all jurisdictional challenges, the party asserting that the district court possesses personal jurisdiction bears the burden of showing that such jurisdiction exists. CompuServe, Inc v Patterson, 89 F3d 1257, 1261-1262 (6<sup>th</sup> Cir. 1996). To determine whether personal jurisdiction exists over a non-resident defendant, federal courts apply the law of the forum state. Theunissen v Matthews, 935 F2d 1454, 1459 (6<sup>th</sup> Cir. 1991). Michigan's long-arm statute extends personal jurisdiction over "the transaction of any business within the state." Chrysler Corporation v Uptown Motor Cars—Hartford, Inc., No. 98-1097, 1999 US App LEXIS 6295 at \*10 (6<sup>th</sup> Cir. April 1, 1999) (citing MICH COM LAWS ANN §600.715 (West 1996)). The Sixth Circuit has held that the Michigan long-arm statute "extends the state's jurisdiction to the limits permitted by due process requirements." Chandler v Barclay's Bank PLC, 898 F2d 1148, 1150-51 (6<sup>th</sup> Cir. 1990). The issue, then, is whether the exercise of personal jurisdiction by this Court over this defendant would violate due process. Id.

Due process mandates that a court exercise jurisdiction only if the defendant has sufficient "minimum contacts" with the forum state, so that summoning the defendant to the forum state would not offend "traditional notions of fair play and substantial justice." International Shoe Co v Washington, 326 US 310, 316 (1945) (quoting Milliken v Meyer, 311 US 457, 463 (1940)). To make the determination of whether the exercise of jurisdiction is consistent with due process, the Sixth Circuit has consistently looked to three criteria:

First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in

the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.

Chrysler at \*11. ( See also Chandler, 898 F2d at 1151; Southern Mach Co v Mohasco Indus, Inc, 401 F2d 374, 381 (6<sup>th</sup> Cir. 1968). In the case at bar, Sports Authority fails to meet the “sine qua non for in personam jurisdiction” -- that of purposeful availment -- and the Complaint must fail for this reason (see Mohasco at 381-382). Further, Justballs.com has no physical presence in Michigan, nor has Sports Authority demonstrated *any* connection with Michigan in order to make the exercise of jurisdiction reasonable there. Accordingly, the Complaint should be dismissed.

The standard for establishing personal jurisdiction depends on the nature of the underlying claim. Personal jurisdiction may be either general or specific in nature, depending on the nature of the contacts in a given case. Third National Bank v WEDGE Group, Inc, 882 F2d 1087, 1089 (6<sup>th</sup> Cir. 1989), *cert denied* 493 US 1058 (1990)). If the cause of action did not arise out of the defendant's activities in the forum state, the plaintiff must meet a “general jurisdiction” standard. Under “general jurisdiction,” the plaintiff must show that the non-resident defendant had “continuous and systematic” contact with the forum, a standard that requires more than minimum contacts with the forum state. Kerry Steel, Inc v Paragon Indus, Inc, 106 F3d 147, 149 (6<sup>th</sup> Cir. 1997), see also Helicopteros Nacionales de Columbia, SA v. Hall, 466 US 408, 416 (1984). Where the plaintiff's cause of action is related to defendant's alleged contacts with the forum, a court exercises “specific jurisdiction”. See, Burger King Corp v Rudzewicz, 471 US 462, 475-6 (1985); Kerry Steel at 149. The “minimum contacts” necessary for specific jurisdiction are established if the defendant has “purposefully directed” his activities at residents

of the forum and the litigation arises from alleged injuries that “arise out of or relate to” those activities. Burger King, 471 US at 472.

Because there is no other arguable basis for jurisdiction, Plaintiff relies entirely on Justballs.com’s Internet web site, which is accessible throughout the United States. Because the plaintiff alleges that Justballs.com’s web site affects them in the State of Michigan, the specific jurisdiction analysis is appropriate. Such a web site, however, without other contacts in the forum state, cannot form the basis of specific jurisdiction.<sup>2</sup>

**B. Justballs.com’s Operation of an Internet Web site, without more, cannot subject it to personal jurisdiction in the State of Michigan**

Not surprisingly, courts have recently been faced with the issue of whether personal jurisdiction can constitutionally be exercised over a defendant based on that defendant’s activities over the Internet. These cases look to the “nature and quality of commercial activity that an entity conducts over the Internet.” Mink v AAAA Development LLC, 190 F3d 333, 336-37 (5<sup>th</sup> Cir. 1999) (citing Zippo Mfg Co v Zippo Dot Com, Inc, 952 F Supp 1119, 1124 (WD Pa 1997)).<sup>3</sup> The Zippo case divides Internet web sites into three types in analyzing personal jurisdiction issues: active, passive, and interactive. At one end of the spectrum, there are defendants who do business over the Internet by entering into contracts with residents of other states which involve the knowing and repeated transmission of computer files over the Internet.

---

<sup>2</sup> General jurisdiction requires a much greater amount of contact with the forum state than is required for specific jurisdiction. Because Plaintiff is clearly unable to meet its burden under the specific jurisdiction standard, general jurisdiction is not at issue here.

<sup>3</sup> The Court in Zippo found jurisdiction not on the basis of the defendant’s web site alone, but, rather, because the defendant indisputably sold passwords to approximately 3000 subscribers in Pennsylvania; entered into seven contracts with Internet providers to furnish its services to their customers in Pennsylvania; and plaintiff’s claims arose out of the defendant’s forum-related conduct.

See e.g., Compuserve, 89 F3d 1257 (6<sup>th</sup> Cir. 1994). In these cases, personal jurisdiction is proper. At the opposite end are situations where a defendant has simply posted information on an Internet web site which is accessible to users in other jurisdictions. Dubbed a “passive” web site by the Zippo court, such a site is not a basis for jurisdiction. See, e.g., Cybersell v Cybersell Inc, 130 F3d 414, 419 (9<sup>th</sup> Cir. 1997). Zippo and its progeny define interactive web sites as those where a user can exchange information with the host computer, and determine the exercise of jurisdiction by examining the level of interactivity and commercial nature of the exchange of information that occurs on the web site.” Zippo at 1119<sup>4</sup>.

Justballs.com’s web site markets and sells balls and related sporting equipment and provides information over the Internet. As such, it falls neither into the passive nor active category, but into the interactive category “best characterized in the middle ground of cases.” See Mieczkowski v Masco Corp, 997 F Supp 782, 787 (ED Tex 1998) (holding that a web site which allowed visitors to “Shop Online” and to check the status of their orders was an interactive site)(personal jurisdiction exercised on other grounds). Accordingly, the Court must evaluate the level of interactivity and the nature of the exchange of information because “a web site alone does not minimum contacts make.” S Morantz, Inc v Hang & Shine Ultrasonics, Inc, No 99-

---

<sup>4</sup> See Mink, infra (declining to find personal jurisdiction where there was no evidence that the defendant conducted business over the Internet by engaging in business transactions with forum residents or by entering into contracts over the Internet); Cybersell v Cybersell Inc, 130 F3d 414 (9<sup>th</sup> Cir. 1997) (declining personal jurisdiction in finding a passive web site where, although “anyone, anywhere” could access the home page and learn about the services offered, it could not be inferred that the defendant deliberately directed its merchandising efforts toward Arizona residents), see also Soma Med Int’l v Standard Chtd Bank, 196 F3d 1292 (10<sup>th</sup> Cir. 1999)(declining to find personal or specific jurisdiction from the maintenance of a passive web site); and GTE New Media Services, Inc v Bellsouth Corp, No. 99-7079, 2000 US App LEXIS (DC App Jan 11, 2000) (declining to find personal jurisdiction based on the maintenance of an interactive web site).

2640, 1990 US Dist LEXIS 19412 at \*19 (December 20, 1999) (dismissing a complaint for lack of personal jurisdiction where the defendant maintained an interactive web site and a toll-free number in the forum state).

Moreover, the focus of the analysis must be on the defendant's activities and their relationship to Michigan, not on the fact that a Michigan resident can access defendant's web site. Case law evaluating interactive web sites typically focuses on specific, not general, jurisdiction and whether the cause of action arises out of the defendant's contacts with the forum state. See, e.g. Maritz, Inc v Cybergold, Inc, 947 FSupp 1328 (ED Mo 1996) and Inset Systems Inc v Instruction Set Inc, 937 FSupp 161 (D Conn 1996) (both trademark infringement actions arising out of the defendant's web site). It is up to the user, not the host, to decide when and where to search for desired information, and whether or not to access services available online. The activity, then, is strictly unilateral on the part of the user.

The United States Supreme Court has held that unilateral activity of a plaintiff (or any other person other than the defendant) is insufficient to provide the required minimum contacts:

The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.

Burger King Corp v Rudzewicz, 471 US 462 at 474-75 (quoting Hanson v Denckla, 357 US 235, 253 (1958)) (emphasis added). The unilateral act of a Michigan resident, in "logging on" to his computer and accessing the Justballs.com web site, *even had it been plead* by the plaintiff, would not be enough to satisfy the purposeful availment requirement.<sup>5</sup>

---

<sup>5</sup> See, e.g., Bensusan Restaurant v King, 937 FSupp 295 (SDNY 1996), where the court addressed the issue of whether the creation of a web site with a telephone number to order a

(continued...)



Sports Authority's apparent theory of jurisdiction rests solely on Justballs.com's operation of its web site, accessible in all fifty states, including Michigan. Therefore, according to Sports Authority, the mere ability of Michigan residents to access the web site, without more, subjects Justballs.com to jurisdiction. Plaintiff has not alleged and cannot allege other contacts with Michigan. Justballs.com does not maintain offices, property or bank accounts in Michigan, nor does it have agents, representatives, or salespeople in the state. Declaration of James Medalia, ¶¶ 3-9. Plaintiffs do not allege that Justballs.com specifically targets Michigan residents in advertising, *nor does it allege that a single Michigan resident has even visited the web site!*<sup>6</sup> Such a theory, according to the Court of Appeals of the District of Columbia, "simply cannot hold water," See, e.g., GTE New Media Services Inc v Bellsouth Corp, No 99-7079, 2000 US App LEXIS 257 at \*14 (DC App Jan 11, 2000)).

GTE, decided just days ago, presented the Court of Appeals for the D.C. Circuit a case of first impression wherein a plaintiff attempted to assert personal jurisdiction over a defendant whose only contact with the forum was an interactive web site. In GTE, the defendant's contact with the forum was stronger than here, as the Court found that the defendants acted to maximize usage of their web sites in the forum. The Court there, following the lead (and majority view) of the Second, Fifth and Ninth Circuits, found that mere accessibility of the defendants' web site in the forum does not establish the necessary "minimum contacts" in that forum to assert personal

---

(..continued)

product was an offer to sell the product in New York, and held that it was not. Even though web users could order tickets from the telephone number posted on the web site and gain information regarding products offered online, the court found that this was "not the equivalent of a person advertising, promoting, selling, or otherwise making an effort to target its product [at the forum state]." Id. at 299 (Emphasis added).

<sup>6</sup> See, e.g., Zippo, *infra* at footnote 2.

jurisdiction. GTE at \*19. “[U]nder this view,” the Court held, “personal jurisdiction in Internet-related cases would almost always be found in any forum in the country. We do not believe that the advent of advanced technology, say, as with the Internet, should vitiate long-held and inviolate principles of federal court jurisdiction.” Id.

Like GTE, this case is one of first impression in the Sixth Circuit. Although CompuServe, *supra*, touched on the issue of personal jurisdiction in a case involving an Internet dispute, the facts of the case are very different from those currently at bar. In that case, the Court concluded that it was reasonable to subject an out of state defendant to jurisdiction in Ohio because the defendant had an Ohio-based distributor, entered into contracts with an Ohio based computer information service which were governed by Ohio law, and sent its products into Ohio. CompuServe at 1264-5. The Court there rested its decision on the defendant’s relationship with Ohio distributor as a software provider and marketer, holding that was the “crucial” element in exercising jurisdiction. CompuServe at 1264.<sup>7</sup>

Unlike CompuServe, Justballs.com has no distributor (or agent, or even a sales representative) in Michigan, nor has it entered into contracts expressly governed by Michigan law. Additionally, Sports Authority has not even made an allegation that any Michigan resident has as much as visited the web site or offered *any* indication of *any* activity on Justballs.com’s part that is directed uniquely toward Michigan. See Hurley v Cancun Playa Oasis International Hotels, No 99-574, 1999 US Dist LEXIS 13716 at \*8-9 (ED Pa Aug 31, 1999) (dismissing a complaint for lack of jurisdiction where complaint lacked any instance of deliberate contact with

---

<sup>7</sup> The assertion of specific jurisdiction was based on the court’s finding that the defendant “set in motion” his ongoing relationship with CompuServe, he entered into a contract that would be governed by Ohio law, and the cause of action arose out of his contact in Ohio. CompuServe at 1265-67.

the forum state, where the defendant maintained an Internet web site and a 1-800 telephone number, and where the plaintiff offered no evidence that defendant formed contracts with the forum state, failed to show that any resident of the forum state even visited the web page, and failed to show that defendant did anything to encourage residents of the forum state to visit its Internet web site or that the web page was directed at residents of the forum state).

Like the defendant in Hurley, the Complaint of Sports Authority “relies solely on the national and international nature of the Internet to demonstrate that [the] web site had the potential to reach and solicit residents.” Id. Such an allegation falls short of Sports Authority’s burden of establishing personal jurisdiction, and subjecting Justballs.com to jurisdiction because of its web site would eviscerate the personal jurisdiction requirements altogether (see, e.g., Morantz, holding “[i]f jurisdiction were [to] be based upon a defendant’s mere presence on the Internet, this would lead to a defendant’s being subjected to jurisdiction on a worldwide basis, and would eviscerate the personal jurisdiction requirements as they currently exist.” Morantz at \*8, citing McDonough v Fallon McElligott, Inc., No 95-4037, 1996 US Dist LEXIS 15139 (SD Cal Aug 5, 1996)).

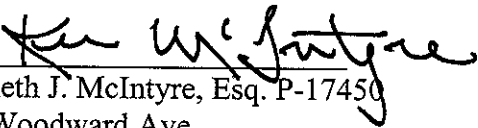
In light of the lack of minimum contacts, the assertion of jurisdiction over Justballs.com in this State would transgress “traditional notions of fair play and substantial justice.” Asahi Metal Indus v Super Ct of Cal, 480 US 102, 113 (1987). The forum has no meaningful ties to the controversy — and no particular interest in the subject matter. The defendant can be tied to the forum only by the existence of a web site. If the concept of personal jurisdiction based on minimum contacts with the forum state is to maintain its vitality in the Internet context, cases such as this one must be brought only where the plaintiff can successfully allege contacts other than the operation of a web site accessible to citizens of the forum state.

**III. CONCLUSION**

Based on the foregoing, Defendant Justballs.com respectfully requests this Honorable Court to dismiss the Complaint for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2).

Respectfully submitted,

**DICKINSON WRIGHT PLLC**

By:   
Kenneth J. McIntyre, Esq. P-17450  
500 Woodward Ave.  
Ste. 4000  
Detroit, MI 48226-3425  
(313) 223-3556

**OF COUNSEL**

**DRINKER BIDDLE & REATH**  
William J. Lehane, Esq.  
Kelly A. Beaudin, Esq.  
One Logan Square  
18<sup>th</sup> & Cherry Streets  
Philadelphia, PA 19103-6996

THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

THE SPORTS AUTHORITY MICHIGAN, INC.,  
a Michigan Corporation, a Delaware Corporation,

Plaintiff,

v.

JUSTBALLS, INC., a Delaware Corporation;  
JUSTBALLS, a Delaware Corporation, and  
JUSTBALLS.COM, INC., a Delaware  
corporation,

Defendants.

Hon. George E. Woods

Case No. 99-75910

Magistrate Judge Morgan

DECLARATION OF JAMES MEDALIA IN SUPPORT OF  
MOTION TO DISMISS JUSTBALLS.COM, INC.

I, James Medalia, Chief Executive Officer of Justballs.com, Inc. (formerly "Justballs, Inc."), declare as follows:

1. I am the Chief Executive Officer of Justballs.com, Inc. (formerly "Justballs, Inc."), (hereinafter "Justballs.com"). I am authorized to make this declaration on Justballs.com's behalf.
2. Justballs.com is a Delaware corporation, with its principal place of business in Kingston, New Jersey.
3. Justballs.com operates an Internet website where it offers various items for sale.
4. Justballs.com does not have a bank account in Michigan.
5. Justballs.com does not maintain offices in Michigan.

U.S. DIST. COURT  
EAST. DIST. MICH.  
KINGSTON  
FILED  
JAN 19 2000  
4:51

6. Justballs.com does not own or rent any property situated in Michigan.

Justballs.com has, at all times, had its only places of business in Kingston, New Jersey.

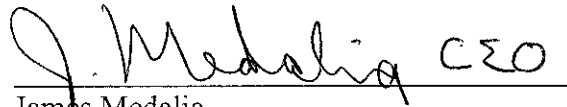
7. Justballs.com does not have an agent in Michigan.

8. Justballs.com does not employ a sales representative in Michigan.

9. Justballs.com has not purposely availed itself of the benefits of Michigan law or subjected itself to the jurisdiction of a Court exercising jurisdiction in Michigan.

10. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17 day of January, 2000.

  
James Medalia

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

THE SPORTS AUTHORITY MICHIGAN, INC.,  
a Michigan corporation, a Delaware corporation,

Plaintiff,

Hon. George E. Woods

v

No. 99-75910

JUSTBALLS, INC., a Delaware corporation,  
JUSTBALLS, a Delaware corporation, and  
JUSTBALLS.COM, INC., a Delaware corporation,

Magistrate Judge Morgan

Defendants.

DICKINSON WRIGHT PLLC  
Kenneth J. McIntyre (P17450)  
500 Woodward Ave., Suite 4000  
Detroit, Michigan 48226  
313-223-3500

DRIKER BIDDLE & REATH LLP  
William J. Lehane, Esq.  
Kelly A. Beaudin, Esq.  
One Logan Square  
18<sup>th</sup> & Cherry Street  
Philadelphia, PA 19107  
Of Counsel to Defendants

RADER, FISHMAN & GRAUER, PLLC  
R. Terrance Rader (P28747)  
Glenn E. Forbis (P52119)  
Kristin L. Murphy (P57284)  
1533 N. Woodward Ave., Suite 140  
Bloomfield Hills, Michigan 48304  
248-594-0600

1999 JAN 19 12 51 PM  
EAST DISTRICT MICHIGAN  
DIXON

PROOF OF SERVICE

(STATE OF MICHIGAN )  
                                  )SS:  
(COUNTY OF WAYNE )

Joan Moorman, being first duly sworn, deposes and says that she is employed at Dickinson Wright PLLC, and that on January 19, 2000 she caused to be served a copy of **Motion of Defendant JustBalls.Com, Inc. to Dismiss Plaintiff's Complaint; Memorandum of Law in Support of Motion to Dismiss Complaint of**

**JustBalls.Com, Inc.; Declaration of James Medalia in Support of Motion to Dismiss JustBalls.Com, Inc.; and this Proof of Service, upon:**

R. Terrance Rader, Esq.  
Glenn E. Forbis, Esq.  
Kristin L. Murphy, Esq.  
Rader, Fishman & Grauer, PLLC  
1533 North Woodward Avenue  
Suite 140  
Bloomfield Hills, Michigan 48304

by placing same in an envelope addressed as above and depositing same with first class postage affixed in the mail receptacle maintained by the U.S. Government at 500 Woodward Avenue, Detroit, Michigan.

James U. Medalia

Subscribed and sworn to before me this  
19<sup>th</sup> day of January, 2000.

Sandra R. Blackmer  
Notary Public  
My Commission expires: \_\_\_\_\_

**SANDRA R. BLACKMER  
Notary Public, Oakland County, Michigan  
Acting in Wayne County  
My Commission Expires May 9, 2004**