

**STATE OF MINNESOTA DISTRICT COURT
COUNTY OF RAMSEY, SECOND JUDICIAL DISTRICT**

**State of Minnesota, by its Attorney General, Hubert H. Humphrey III,
Plaintiff,**

v.

**Granite Gate Resorts, Inc. dba On Ramp Internet Computer Services; and
Kerry Rogers, individually and as president or principal officer of Granite
Gate Resorts, Inc.,
Defendant.**

Court File No. C6-95-7227.

The above-entitled matter came on before the undersigned pursuant to Defendant's Motion to Dismiss pursuant to M.R.C.P. 12.02 (b). Defendants argue that they do not have sufficient minimum contacts with the State of Minnesota to enable this Court to have jurisdiction over them. Eckley M. Keach, appeared for Defendants. Carolyn P. Ham and Ann Beimdiek Kinsella, Assistants Attorney General, appeared for Plaintiff, the State of Minnesota.

Based upon the arguments of counsel and all the files, records, proceedings, and affidavits herein,

IT IS HEREBY ORDERED:

1. That Defendants' Motion to Dismiss for Lack of Jurisdiction is DENIED.
2. The attached memorandum is incorporated herein.

Dated: December __, 1996.

BY THE COURT:

JOHN S. CONNOLLY
JUDGE OF DISTRICT COURT

MEMORANDUM

FACTS

This case involves a lawsuit brought by the Minnesota Attorney General for consumer protection against Defendants Granite Gate Resorts, Inc., doing business as On Ramp Internet Computer Services, and one Kerry Roger who is the president and principal officer of On Ramp. The Attorney General commenced this case on July 18, 1995. The Attorney General alleges deceptive trade practices, false advertising, and consumer fraud per Minn. Stat. 325D.44, 325F.67, and 325F.69, subd. 1 (1994). The complaint of the Attorney General seeks primarily injunctive and declaratory relief.

Defendants responded to the complaint on September 25, 1995, by filing a Motion to Dismiss for Lack of Personal Jurisdiction. The Attorney General requested leave of the Court to conduct limited discovery regarding Defendants' contacts with Minnesota. This was denied on January 10, 1996 by the Honorable Edward S. Wilson.

The matter came on before this Court on March 27, 1996, upon Defendant's Motion to Dismiss. On April 19, 1996, this Court allowed limited discovery so that the Court could make an intelligent decision as to the quantity of the contacts Defendants may have had with the State of Minnesota, the nature and quality of the contacts, and finally, the connection or relationship between the cause of action and the contacts.

HISTORY OF INTERNET

The Department of Defense developed the Internet 25 years ago as a means of linking the computer network of various universities, research centers, and government agencies. The activities of the Internet have grown recently by leaps and bounds. Across this country and in Minnesota, computer users obtain access to the Internet by a telephone connection. Now, the Internet exists as a communication and advertising device used by millions of people around the world and millions of people in the United States. The Attorney General argues that the number of Internet users in Minnesota is close to 507,050 or 11% of the 4,609,548 population of the State of Minnesota. *See* State's Brief, p. 4. According to an affidavit submitted by one Lawrence Liddiard, a Research Associate for the Networking and Telecommunications Servicer at the University of Minnesota, the University of Minnesota alone has 110,000 subscribers who have access to the Internet. The World Wide Web branch of the Internet permits photos, graphics, and audio and video, in lieu of merely text, to be sent to computer users. If a Minnesota computer user selects a Web page, an electronic impulse from his or her computer is sent to the computer where the Web page is stored; the information from the Web page then electronically sends itself into Minnesota to the computer user. *See* Liddiard Affidavit, ¶12.

THE DEFENDANTS' ACTIVITIES VIS A VIS THE COMPUTER

Kerry Rogers, a Nevada resident, originally formed Granite Gate Resorts, Inc., when he tried to buy a hotel in Prescott, Arizona that had been repossessed by a bank and the F.D.I.C. The purchase fell through. Rogers kept the corporation name. A couple of years ago, he started "On Ramp Internet Computer Services." Rather than spend the money to file a new corporation, he used Granite Gate Resorts, Inc., and filed a d/b/a called "On

Ramp Internet Computer Services." On Ramp is a Nevada corporation. On Ramp exists on the Internet. On Ramp advertises on the World Wide Web. Minnesota residents who enter On Ramp's Web site see the following advertisement:

ATTENTION!!! ALL SPORTS BETTORS! You can BET . . . On the Net[.] WagerNet is a service of Global Gaming Services Ltd. of Belize[.] The actual service will not be available through the World Wide Web, but will require hardware and software to access their server, which is in Belize[.]

Where is Belize?

WagerNet™ On-Line sports wagering open to International markets, Fall of 1995[.]

Global Gaming Services Ltd, based in the country of Belize, is pleased to introduce WagerNet, the first and only on-line sports betting site on the Internet. WagerNet will provide sports fans with a legal way to bet on sporting events from anywhere in the world . . . 24 Hours a Day!

How it Works

First, there is a \$100 setup fee, for necessary hardware and software. For security and privacy, all members are issued a card system linked to their personal computer to access WagerNet.

Once on-line the bettor selects the team/s and amount/s they wish to wager. WagerNet then matches your bet with on [sic] opposing bettor or bettors to cover your wager. WagerNet charges each bettor a transaction fee of ONLY 2.5\$% as opposed to the 10% fee charged by most bookmakers.

WagerNet Offers:

- All Star Sports Handicapping
- Security Access Card

WagerNet™
Club Casino International
<http://www.vegas.com/wagernet/>
1-800-RLFLUSH

To better assist you with your sports wagers For more information contact: On Ramp Internet Computer Services, Lead Consultant
Voice: (702) 795-7267 Fax: (702) 795-7860

NOTE: PLEASE CONSULT YOUR LOCAL, COUNTY, AND STATE AUTHORITIES REGARDING RESTRICTIONS ON OFF-SHORE SPORTS BETTING VIA TELEPHONE BEFORE REGISTERING WITH WAGERNET

Terms and Conditions \ Secure or Non-Secure Mailing List for WagerNet Information
Las Vegas Sports Central \ Vegas.COM Home Page

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Exh. M17. The advertisement reaches potentially thousands of Minnesota citizens whose computers enter the Web site on the Internet. The advertisement invites Minnesota residents to do business with On Ramp.

Defendant Kerry Rogers appeared on the CBS Evening News on Wednesday, December 20, 1995. At that time, Dan Rather, the anchor, entitled the segment, "In tonight's Eye on America, Edie Magnus looks at gambling on the Internet: for the 'bettor' or the worse?" Defendant Kerry Rogers who was identified as being from WagerNet stated, "This is part of the future. You will be betting from your home." Eddy Magnus, the reporter, then stated, "Kerry Rogers' WagerNet promises to match up bettors on any sport, anywhere." Kerry Rogers stated, "Someone could be taking a bet in Finland and placing that wager against someone Ecuador." Magnus then asked him how it worked. The interview continued as follows:

Magnus: "Rogers demonstrated how it would work. You must first wire money to an account, plus purchase a special security card. Take this imaginary basketball game."

Rogers: "Here we'll deal with Anaheim vs. Buffalo, over 234 points. I'll accept that bet. And I'll take it for \$1,000. Click OK, and simple as that I've placed a bet."
See 1995, Westlaw 11278741 CBSEVNEWS, 12/20/95.

Defendant Kerry Rogers held the position of president of On Ramp, which in turn owns the "Vegas.Com" network. "Vegas.Com" has a World Wide Web site located at "<http://www.vegas.com>." The Web site of On Ramp provides links to tourist information about Las Vegas and Reno, Nevada, as well as gaming and sports betting information. *See* Janacek Aff., Exh. M21. Prior to August, 1995, On Ramp ran the "Vegas.Com" network. In August of 1995, Digitainment bought On Ramp. Defendant Kerry Rogers still makes all the decisions regarding WagerNet. He also serves on Digitainment's Board of Directors. *See* Wober Aff., ¶8. Digitainment uses On Ramp's trade name. When On Ramp and Digitainment count their customers, they claimed that Internet Advertising will be received by consumers across the country. And, they boasted about the vast reach of its Internet solicitations. On Ramp claimed that in getting a company "on line," On Ramp can make "your company accessible to 2 million customers."

As many as 1.5 million Internet users access the "Vegas.Com" Web site per month. *See* Wober Aff., ¶5. Two of the business advertised on "Vegas.Com" are All Star Sports, Inc., and WagerNet. The first service, All Star Sports, sell "sports picks." All Star claims the picks will help customers bet on sporting events by predicting who will win a particular event. The second service, WagerNet, will allow consumers to bet on sporting events over the Internet. *See* Janacek Aff., Exh. M17, 18.

Some time in July of 1995, the All Star advertisement informed consumers they could purchase sports picks by providing their credit card number over the Internet or by dialing (900) 454-2500. The online advertisement indicated that the credit card would be billed by Granite Gate Resorts, Inc. One Jeff Janacek, a Consumer Investigator for the Minnesota Attorney General's office, did the following:

First, Janacek called the number listed in the Internet advertisement under All Star Sports, (800) 753-5874. When he called that number, a person on the other end of the line answered, "On Ramp Internet Computer Services." Janacek asked where he was calling to. He was told by the person on the other end of the line, "Las Vegas, Nevada." When Janacek asked for more information about gambling on the Internet, he was told to call Defendant Kerry Rogers at (702) 795-7267.

On July 5, 1995, Janacek called that number and said he was calling from Minnesota. He then spoke with a man who identified himself as Kerry Rogers. He then told Rogers he was from Minnesota and wanted to find out how the betting service worked. Defendant Kerry Rogers told him that WagerNet would be up and running and accepting bets over the Internet probably by the football season. Janacek then asked Rogers whether it was legal. Rogers replied that it was. Rogers told him that no federal laws would be broken by calling a bookie in London to place a bet. Rogers then told him that the WagerNet "vigdor," a fee charged for betting, would be 2-1/2%. *See* Janacek Aff., ¶11.

On the same day Janacek telephoned the All Star's 900 number from a telephone in Minnesota, the recording at the other end of the telephone predicted the outcome of three baseball games. Janacek was told that the Twins would beat Baltimore, the Oakland A's would beat the Brewers, and the Angels would beat the Blue Jays. Janacek was told the charge for those picks was \$25.00. *Id.*, at ¶12.

Janacek made another phone call to the On Ramp at (800) 753-5874 on July 7, 1995. A person by the name of Gideon told him that On Ramp, Granite Gate Resort, and All Star Sports were all the same company, an Internet service provider. Janacek then spoke to Defendant Kerry Rogers and asked him about his connection with All Star Sports. Kerry Rogers stated, "All Star Sports is a good client of ours and happens to be a business partner in a couple of other deals." Rogers said that All Star is a small investor in WagerNet and is incorporated in Connecticut. In that same call, Rogers stated that he owned "Vegas.Com" and On Ramp and that he is the technical manager and a major partner in WagerNet. He also told him that he formed Granite Gate Resorts, Inc., in order to buy a hotel in Arizona. He said that now Granite Gate Resorts, Inc., is doing business as On Ramp Internet Computer Services.

The WagerNet advertisement on the "Vegas.Com" Web site claimed that it will "provide fans with a legal way to bet on sporting events from anywhere in the world . . . 24 hours a day." *Id.*, at Exh. M17. The advertisement further states that consumers will soon be able to place bets over the Internet and that consumers must first pay a \$100.00 set-up fee and then deposit at least \$1,000.00 into an "account." Consumers are then told that they will then bet against these accounts for a charge of "2.5% as opposed to the 10% fee charged by most bookmakers." Consumers are then invited to sign up for the WagerNet mailing list by providing their name and address, including their state, and electronic mailing address. The advertisement also states that for further information, call 1-800-753- 5874. On October 8, 1995, Janacek called that number; the number was answered by a staff member of On Ramp. *Id.*, at ¶7. Investigator Janacek signed up for the mailing list by giving a fictitious name as George Jensen from Minnesota. *Id.*, at ¶17, Exs. J, K. On Ramp maintains a database of thousands of names and addresses. *See* Wober Aff., ¶6.

The WagerNet advertisement also gives consumers pertinent information regarding personal jurisdiction. The advertisement tells the consumers to "consult your local, county and state authorities regarding restrictions on off-shore sports betting via telephone." *See* Janacek Aff., Exh. M18. WagerNet then tells the consumers in a section entitled "Applicable law; Jurisdiction" that the WagerNet has a right to apply in an appropriate court in "your state" for an injunction, consequential relief or other remedies if any disputes arise out of WagerNet accounts. *See* Janacek Aff., Exh. L. The advertisement goes on to tell consumers that they, however, have irrevocably submitted to the "jurisdiction of the courts of Belize for any claims."

Federal law prohibits the interstate or foreign transmission of both betting information and bets by one engaged in the business of betting or wagering through wire communication facilities, including telephone wires. *See* 18 U.S.C. Section 1084. Minnesota forbids commercial sports betting. *See* Minn. Stat. Sections 609.75, subds. 2-3; 609.755(1); 609.76, subd. 2; and 609.02, subd. 2 (1994). The Attorney General contends that the WagerNet and All Star advertising in Minnesota explicitly and implicitly represents that betting is lawful. Therefore, Defendants violate the Minnesota Consumer Protection statutes which forbid false advertising, deceptive trade practices and consumer fraud.

RESULT OF COURT'S LIMITED DISCOVERY ORDER OF APRIL 19, 1996

Defendant Kerry Rogers refused to produce to the Court and the Plaintiffs the WagerNet mailing list after the Court ordered limited discovery (the same mailing list that Investigator Janacek filled out on October 8, 1995). *See* Janacek Aff., p. 4. Rogers admitted that as the operator of the "Vegas.Com" server, Rogers had access to the information with the use of the root level password. Rogers maintained that this was intellectual property which was confidential and belonged to a client, not himself. He maintained that it was the client's information, the property of the casino, and not information to which Rogers would have access or use. He further claimed as regards to any restaurants that it was the names of the individuals making reservations, and it was the intellectual property of the restaurant rather than that of Rogers. Rogers conceded in

his affidavit that any decisions concerning the WagerNet site are made by him. However, Rogers claimed that he was not the person to turn over the mailing list of WagerNet and that if Plaintiff or the Court desired to obtain the mailing list, it should seek to obtain the information from the firm on that list, which is a Belizean corporation, Global Gaming Services, Ltd.

Due to Defendant Rogers' failure to turn over information regarding the mailing list of WagerNet, the Court established as a fact, for purposes of the Motion to Dismiss for Lack of Jurisdiction, that there exists on the WagerNet list Minnesota residents, as well as residents throughout the United States. The Court made this determination by its order of the 8th day of October, 1996.^[1] The Court utilized M.R.C.P. 37.02(1). The Court felt that due to the fact that Rogers clearly had complete control of the WagerNet mailing list, along with the fact that the Court found Rogers's claim of intellectual property of another to be a specious argument, the Court felt that this option was the most appropriate sanction in this case.

Discovery also led to the following facts:

- Defendants admit that their web sites can be viewed by anyone on the World Wide Web. *See* Strafaccia Aff. Exh. 6, Answer to Interrogatory 18.
- Computers located in Minnesota and through the United States are accessing Defendants' web sites. *See* Strafaccia Aff. (Second) ¶¶3, 4, 5; Exs. 1, 2, 3.
- During a two-week period in February and March of 1996, at least 248 Minnesota computer users accessed and received transmissions from Defendants' web sites. *Id.*
- Computers located in Minnesota are among the top 500 computers most commonly accessing Defendants' web sites. *Id.*, at ¶6; Exh. 5.
- Defendants received calls on the toll-free number advertised on its web sites, 1-800-RL-FLUSH (753-5874), from throughout the United States, including Minnesota. *Id.*, at ¶8; Exh. 7.
- The telephone records for the 900-number for All Star Sports which was advertised on Defendants' web site show calls from throughout the United States, including 75 calls from Minnesota. *Id.*, at ¶7; Exh. 6.
- The WagerNet mailing list contains the names and addresses of Minnesota residents, as well as people throughout the United States, who signed up to receive special information regarding WagerNet. *See* Order Imposing Sanctions, dated October 8, 1996.

ISSUE

1. Are the Defendants purposefully availing themselves of the market in Minnesota by their Internet advertisement activities so as to give this Court personal jurisdiction?

HOLDING

MINIMUM CONTACTS

Due process requires that a nonresident defendant have "minimum contacts" with the forum state such that it would reasonably anticipate being haled into Court there. *World-Wide Volkswagen, Corp. v. Woodson*, 444 U.S. 286, 297 (1980). Furthermore, maintenance of the suit in the forum state cannot offend traditional notions of fair play and substantial justice. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

FIVE FACTOR TEST

Minnesota uses a five-factor analysis to evaluate due process in the context of personal jurisdiction:

- 1. The quantity of contacts with the forum.
- 2. The nature and quality of those contacts.
- 3. The connection of the cause of action with the contacts.
- 4. Interest of the state in providing a forum.
- 5. Convenience of the parties.

See *Marquette Nat'l Bank, Etc. v. Norris*, 270 N.W.2d 290, 295 (Minn.1978). The first three factors are the most important. See *Bell Paper Box, Inc., v. U.S. Kids, Inc.*, 22 F.3d 816, 820 (8th Cir.1994).

QUANTITY OF ADVERTISING ACTS AND CONTACTS WITH MINNESOTA

If the Defendants in this case had advertised in any type of national publication such as U.S.A. Today, the New York Times, Time Magazine, Sports Illustrated, etc., their argument that they had not purposefully availed themselves of the jurisdiction of Minnesota would have no validity. The Defendants attempt to hide behind the Internet and claim that they mailed nothing to Minnesota, sent nothing to Minnesota, and never advertised in Minnesota. This argument is not sound in the age of cyberspace. Once the Defendants place an advertisement on the Internet, that advertisement is available 24 hours a day, seven days a week, 365 days a year to any Internet user until the Defendants take it off the Internet. In the recent case of *Inset Systems, Inc., v. Instruction Set, Inc.*, 937 F.Supp. 161 (D.Conn. Apr. 17, 1996), the case held as follows:

In the present case, Instruction has directed its advertising activities via the Internet and its toll-free number toward not only the state of Connecticut, but to all states. The Internet as well as toll-free numbers are designed to communicate with people and their businesses in every state. Advertisement on the Internet can reach as many as 10,000 Internet users within Connecticut alone. Further, once posted on the Internet, unlike television and radio advertising, the advertisement is available continuously to any Internet user. ISI has therefore, purposefully availed itself of the privilege of doing business within Connecticut.

Inset Systems, 937 F.Supp. at 165.

Here, Defendant Rogers knew that once he put the WagerNet ad on the Internet, the ad would be on continuously on the Internet and that it had to reach national markets that included Minnesota. At the November 12, 1996, hearing on the Motion to Dismiss, Defendants' attorney attempted to distinguish *Inset, supra*, from this case and argued that because of the proximity to Connecticut and Massachusetts, that the *Inset* Court used that as a deciding factor. *See Inset, supra*, at 165. He argued that this case had no application to Minnesota due to the fact that Nevada is approximately 1,800 miles away from Minnesota. Defendants' counsel's argument at the November 12th hearing had the effect of saying, "Well, if the Internet advertising had been to Arizona on Nevada's south, California on Nevada's west, Oregon and Idaho on Nevada's north, or Utah on Nevada's east, then perhaps those Courts would have jurisdiction.

As we prepare to enter into the 21st century, those arguments or analogies have no relevancy whatsoever. Here, the computer hits on Defendants' Web sites and the fact that the advertisements give consumers phone numbers to call, along with the fact that the Court has determined that WagerNet's mailing list include Minnesota residents, are more than sufficient evidence that Defendants have made a direct marketing campaign to the State of Minnesota. Therefore, it is not unforeseen nor unreasonable to Defendants to be required to come to Minnesota to defend themselves particularly when the Defendants have said that they have the option for any of the customers of WagerNet with whom they have a dispute to sue them in Minnesota. The Minnesota Attorney General's office has a valid right to attempt to get injunctive relief if it is later determined that the Defendants had committed illegal conduct herein.

The *Inset* case involved a patent infringement action in which Defendant moved to dismiss for lack of personal jurisdiction, as well as for the reason that the venue was in the wrong forum. Defendant was a corporation organized under the law of Massachusetts. It did not have any offices or employees within Connecticut. Defendant did not conduct business in Connecticut on a regular basis. Defendant obtained "Inset.Com" as its Internet domain address. Defendant used this domain address to advertise its goods and services. Furthermore, Plaintiff used a domain identical to Plaintiff's trademark. As a result, Internet users inadvertently accessed an unintended company. They further argued that the Internet user may not realize that the advertisement is actually from an unintended company; or the Internet user may erroneously assume that the source of the information is the intended company. Plaintiff argued that this could lead to confusion in the marketplace.

In addressing Defendant's Motion to Dismiss on jurisdictional grounds, the District Court stated at page 164:

Similarly, since March, 1995, ISI has been continuously advertising over the Internet, which includes at least 10,000 access sites in Connecticut. Further, unlike hard-copy advertisements noted in the above two cases, which are often quickly disposed of and reach a limited number of potential consumers, Internet advertisements are in electronic printed form so that they can be accessed again and again by many more potential consumers.

The court concludes that advertising via the Internet is solicitation of a sufficient repetitive nature to satisfy subsection (c)(2) of the Connecticut long-arm statute, C.G.S. Section 33-411, thereby conferring Connecticut's long-arm jurisdiction upon ISI.

Inset Systems, supra, at 165.

If a defendant uses a fraudulent scheme to defraud or to induce Minnesota residents to enter into a transaction, this is something the Courts look to in order to determine quantity of acts. In *Kopperud v. Agers*, 312 N.W.2d 443 (Minn.1981), our Supreme Court exercised jurisdiction over a defendant who purposefully availed himself of the State of Minnesota to carry out a scheme to defraud investors. The Court said, "Although his direct contacts with the state were limited, he was instrumental in setting in motion the fraudulent scheme and keeping it going." *Kopperud*, 312 N.W.2d, *supra*, at 445. In *Marquette*, 270 N.W.2d, *supra*, at 295-96, the Court said, "The fact that a transaction is conducted entirely by 'telephone, mail, and facsimile is of no significant consequence when the defendant purposefully avails itself of conducting activities within the forum state."

In the case at hand, Defendants boasts that the Internet provides a way to reach millions of consumers and to obtain global exposure for products and services. In *A. Uberti and C. v. Leonardo In & For PIMA*, 892 P.2d 1354, 1362 (Ariz.1995), *cert. denied*, 116 S.Ct. 273 (1995), the defendant argued "that its activities, at best, focused on the United States in general, not Arizona. Therefore, Arizona exceeds due process by asserting its jurisdiction here." *A. Uberti and C.*, 892 P.2d, *supra*, at 1362. The Arizona Supreme Court disagreed and, thus, stated, "Were this true, then no individual could assert jurisdiction over defendant simply because defendant did not target a particular state or group of states but instead intended to sell its product to all of America. The argument turns common sense on its head." *Id.*

Likewise, in the case at hand Defendants knew that 1.5 million consumers view their advertisement a month. Logic dictates that the WagerNet mailing list contains the names of many Minnesota residents (that Defendants refuse to turn over).

CONTACTS WITH MINNESOTA

Defendants keep track of who is accessing their website, and therefore know that Minnesota computers are accessing them. Defendants' websites are set up so that they can record all of the Internet protocol numbers or URL addresses of the computer accessing them. *See Answer to Interrogatory 21; see also Wober Aff.* ¶ 5. The URL addresses uniquely identify the location of the computer. This information is stored in access logs. Defendants provided Plaintiff with access to log data for February 25, 1996 through March 10, 1996. *See Strafcccia Aff. (2d)*, ¶¶ 2, 3. Plaintiff's search of this data revealed that at least 248 computers from different locations in Minnesota accessed Defendants' websites multiple times during that two week period. Due to the two-way transfer of information on the Internet, this means that Defendants transmitted words and images to Minnesota each time one of those 248 computers accessed Defendants' website. At the

rate of 248 every two weeks, a total of at least 6,448 Minnesotans would access Defendants' websites in a year. *See* Liddiard Aff., ¶ 10.

Defendants also prepare weekly statistical reports which list the 500 people most often accessing their server. *See* Strafccia Aff. (2d), ¶ 6, Exh. 5; *see also* Wober Aff. (2d), ¶ 2. Plaintiff received only one of these weekly reports. The report for the week of August 26-Sept. 1, 1996 has two Minnesota computer addresses in the list of top 500 people accessing their websites, one from Minneapolis and one from Brainerd. *See* Strafccia Aff. (2d), ¶ 6, Exh. 5. Defendants are hard put to claim surprise with two Minnesota addresses among the top 500 users. It is difficult for them to claim that Minnesotans are not accessing their website.

Defendants' attorney argued at the oral arguments that this case involves WagerNet and not All Star Sports. Defendants' attorney further pointed out that the Plaintiff has not sued All Star Sports. However, All Star Sports are contained on Defendants' website. Their web pages advertise All Star Sports. Plus, the fact that All Star Sports are on Defendants' website, this Court finds it difficult for WagerNet to claim that the two are not linked. Generally, if one is going to bet, he or she would like some information on how other people pick these sporting events. In this case, 75 calls were made to All Star Sports picks for a total number of \$1,525 at \$25 per call. *See* Strafccia Aff. (2d), ¶ 7, Exh. 6. We do not know at this time how many Minnesota people are on the mailing list for WagerNet. We do know that one definitely is. *See* Janacek Aff. ¶ 17, Exh. J. We know that Janacek signed up. We also know that Defendants have refused to turn over this list. Certainly, strong circumstantial evidence exists that several Minnesota residents, if they are going to call All Star Sports to get the prediction on sporting events, are also going to use the services of WagerNet.

Defendants contend that this is not a two-way transaction. The contention of the Defendants is that WagerNet has transmitted nothing over the Internet and that the only person in this case who would transmit anything would be Minnesota residents who contact WagerNet. If that argument is correct, then the Minnesota user would not be able to obtain anything from WagerNet. However, when the Minnesota user plugs in the URL address for Vegas.Com, if Vegas.Com did not send an electric transmission back to the computer user, the computer user would see nothing. He or she would see a blank screen. The way the pictures and words get to the Minnesota residents is by the server, Vegas.Com, automatically transmitting it back to the Minnesota resident. In [*Playboy Enterprises, Inc., v. Chuckleberry Publishing, Inc.*](#), 939 F.Supp. 1032 (S.D.N.Y. 1996), the Court held that one who sets up his or her system and knows that anyone accessing his or her site will get that information, then the server ought to be held responsible for that information. The Court said at page 1044 of *Playboy, supra*:

The PLAYMEN Lite service allows (indeed invites) a user to download Tattilo's pictorial images onto his or her home computer. PLAYMEN Lite can thus be viewed as an "advertisement" by which Tattilo distributes its pictorial images throughout the United States. That the local user "pulls" these images from Tattilo's computer in Italy, as opposed to Tattilo "sending" them to this country, is irrelevant. By inviting United States

users to download these images, Tattilo is causing and contributing to their distribution within the United States.

Id., at 1044.

THE NATURE AND QUALITY OF DEFENDANTS' PURPOSEFUL ADVERTISING CONTACTS WITH MINNESOTA REGARDING THE SECOND FACTOR

In matters of consumer protection, courts routinely hold that out of state defendants soliciting in-state residents have purposely availed themselves of the privilege of conducting business within the State. *See State v. Readers Digest*, 501 P.2d 290 (Wash.1972); *see also State ex rel. Miller v. Baxter Chrysler Plymouth*, 456 N.W.3d 371 (Iowa, 1990). The Court upheld Iowa's exercise of jurisdiction over Nebraska car dealers for false advertising. The Iowa Supreme Court held that in a false advertising case, the nature of the contact with the state is such that the advertisements themselves are the unlawful act giving rise to the cause of action. *Id.*, at 376.

Here, Rogers and WagerNet maintain a Web-site which can be accessed by any Internet user, and which logically appears to be maintained for the purpose and in anticipation of being accessed and used by any and all Internet users, including Minnesota residents. This activity certainly arises to the type of promotional activity or active solicitation to provide the minimum contacts necessary for exercising personal jurisdiction over non-residents.

Unlike when one puts solicitation in the mail, the Internet with its electronic mail operates tremendously more efficiently, it generates much more quickly and possesses a vast means of reaching a global audience. When one sets up and posts advertising information, one does everything necessary to reach the global Internet audience.

WagerNet, when it posts information about its new, up-coming service through a Web site, seeks to develop a potential customer list of users who will be essential to the success of its service. Clearly, WagerNet obtained the Website for the purpose of and in anticipation that Internet users who search the Internet for Websites will access WagerNet's Website and eventually fill out the forms and become part of WagerNet's customer list.

THE CONNECTION OF CAUSE OF ACTION WITH CONTACTS

Minnesota through the Attorney General seeks to regulate solicitation that comes to its state via phone lines hooked up for Internet users. The Courts do not view the contacts the same as what is necessary for a private litigant to pursue a case as compared to the situation in which the state seeks to regulate solicitation within its borders. *See Travelers Health Ass. v. Virginia*, 339 U.S. 643, 653 (1950).

The Minnesota Attorney General brings this lawsuit in an attempt to enforce Minnesota's gambling laws and consumer protection law. The primary relief the Attorney General

seeks is an injunction. They ask for Defendants to either stop sending advertisements to Minnesota computer users or to state in the advertisement that their services are void in Minnesota.

Minn. Stat. 8.31, subd. 123 (1994) gives the Attorney General the right to request an injunction if the Attorney General believes the consumer laws are "about to be" violated. In the consumer protection context, courts have routinely held that out-of-state defendants soliciting in-state residents have purposefully availed themselves of the privilege of conducting business within the state. *See State ex rel. Miller v. Baxter Chrysler Plymouth*, 456 N.W.3d 371, 377 (Iowa, 1990); *see also State v. Reader's Digest Association, Inc.*, 501 P.2d 290 (Wash.1972); *see also State ex rel. Lefkowitz v. Colorado State Christian College*, 346 N.Y.S.2d 482, 485 (Sup.Ct.1973). The rationale for these holdings is obvious--the very purpose of a solicitation is to seek business. Thus, in *Reader's Digest, supra*, at 302, the court held that even though the defendant had no agents, employees, offices or property within the state, by mailing the sweepstakes program to Washington residents, the defendant "deliberately and purposefully sought contact with Washington residents . . . for the purpose of increasing subscription and sales of its products." *Id.*; *see also BLC Ins. Co. v. Westin, Inc.*, 359 N.W.2d 752 (Minn.App.1985) (solicitation of Minnesota consumers by advertising on a Minnesota radio station constituted purposeful availment), *pet. for rev. denied*, (Minn. Apr. 15, 1985), *cert. denied*, 474 U.S. 844 (1985).

FOURTH FACTOR: INTEREST OF STATE IN PROVIDING A FORUM MINNESOTA IS THE RIGHT FORUM FOR THIS ACTION

The Attorney General argues that if they cannot bring a Consumer Protection action in Minnesota, they will not be merely inconvenienced, but they will be completely unable to pursue their cause of action on behalf of Minnesota consumers. In a case involving consumer protection in the State of Washington, the Washington Supreme Court addressed this in the case of *State v. Reader's Digest Association, Inc.*, 501 P.2d 290 (Wash.1972). The Court stated as follows:

Finally, the assumption of jurisdiction by our courts does not offend traditional notions of fair play and substantial justice. Respondent solicited Washington business and deprived substantial profits from Washington residents by clearly illegal methods. It is the duty of the state to protect its residents from such unfair practices. If our courts are not open, the state will be without a remedy in any court and the consumer protection act will be rendered useless.

501 P.2d at 303.

Here the Defendants crossed the Minnesota borders through Internet advertisements and solicited business for their gaming venture. If our Attorney General cannot hail them into our Court, then the citizens of Minnesota will not have an adequate Consumer Protection remedy.

FIFTH FACTOR: INCONVENIENCE?

In *Hanson v. Denckla*, 357 U.S. 251 (1958), the Supreme Court stated, "Progress in communications and transportation has made defense of a suit in a foreign tribunal less burdensome." Here, Defendants tell their prospective customers, "We can either sue you in your State or Belize." Defendants are "hard put" to argue it would be inconvenient to come to Minnesota. Minnesota certainly is much more convenient to both parties than Belize.

REASONABLY ANTICIPATE

In order to reasonably anticipate being hailed into court under the Doctrine of Minimum Contacts, there must be some acts by which the Defendant purposefully avails itself of the privileges of conducting activities within the forum State, thus involving the benefits and protections of its laws. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). In this case, the acts of WagerNet consisted of placing its ad on the Internet 24 hours, seven days a week, 365 days a year.

These acts are much more pervasive and invasive than if the Defendants put a balloon in the air on the west side of the St. Croix and advertised their product so Minnesota residents could view their advertisement. The coup de grace here is when WagerNet tells its prospective customers WagerNet may sue them in the customer's home forum or Belize at WagerNet's option.

JSC

FOOTNOTES:

FN1. The Court's order of October 8, 1996 stated, "It shall be established as a fact for the purposes of this action, that the WagerNet mailing list contains the names and addresses of Minnesota residents, as well as residents throughout the United States unless the WagerNet mailing list is provided to plaintiff by October 21, 1996."