

2001

Personal Jurisdiction Issues and the Internet

Stephanie A. Waxler

Follow this and additional works at: <http://lawcommons.luc.edu/lclr>



Part of the [Consumer Protection Law Commons](#)

Recommended Citation

Stephanie A. Waxler *Personal Jurisdiction Issues and the Internet*, 13 Loy. Consumer L. Rev. 188 (2001).

Available at: <http://lawcommons.luc.edu/lclr/vol13/iss2/5>

This Student Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola Consumer Law Review by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

Personal Jurisdiction Issues and the Internet

Stephanie A. Waxler

I. Introduction

The use of the Internet has caused an explosion in the amount of interstate and international commerce. A consumer in Alaska can purchase an item from a supplier in Taiwan by merely clicking a button. Though the Internet seemingly makes life easier for consumers, it creates jurisdictional problems for the courts. Personal jurisdiction becomes an issue in such cases due to the different, and perhaps unknown, location of the parties. In such cases, the courts must implement an approach to determine what is the fair and equitable forum for the parties to litigate.

This Note will review the traditional requirements for personal jurisdiction, describe today's Internet system, analyze the methods of finding personal jurisdiction over a party, and discuss holdings of the courts in such cases.

II. Traditional Personal Jurisdiction

The Due Process Clause of the Fourteenth Amendment limits the power of a state court to render a valid judgment against a non-resident defendant.¹ A judgment obtained in violation of due process is invalid and not given the full faith and credit of other states.² In order to satisfy the due process requirement, a defendant must receive proper notice of the lawsuit and be subject to personal jurisdiction in the forum state.³ Whether due process is satisfied depends "upon the quality and nature of the activity in relation to the fair and orderly adminis-

tration of the laws which it was the purpose of the due process clause to insure."⁴

Historically, the court's jurisdiction to render judgment *in personam* was grounded in their de facto power over the defendant's person, and the defendant's physical presence within the territorial jurisdiction of the court was a prerequisite to its rendition of a binding judgment upon the defendant.⁵ Today, due process provides that a non-resident defendant may be subject to jurisdiction if certain minimum contacts with the forum exist such that the maintenance of the suit does not offend the traditional notions of fair play and substantial justice.⁶

The rationale behind this is two-fold: it protects the defendant from the burden of litigating in a distant or inconvenient forum, and insures that states do not reach beyond the limits imposed on them by their status as co-equal sovereigns in a federal system.⁷ Further, the due process clause "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit."⁸ When determining whether a forum may constitutionally assert jurisdiction over a non-resident defendant, the courts focus on the fairness and reasonableness of exercising such jurisdiction over the defendant.⁹ Jurisdiction over a non-resident defendant exists in two forms, general or specific jurisdiction.¹⁰

A. General Jurisdiction

General personal jurisdiction exists over a defendant when he has sufficient contacts with the forum state.¹¹ The defendant's contacts have to be substantial or continuous and systematic to meet this "sufficiency" requirement. In *International Shoe Co. v. State of Washington*, the court found personal jurisdiction over International Shoe because of its continuous and systematic

contacts with the State of Washington.¹² The court noted that International Shoe's contacts with Washington resulted in a large volume of interstate business during the course of which International Shoe received the benefits and protection of the laws of the state.¹³ These activities established sufficient contacts with Washington "to make it reasonable and just according to our traditional conception of fair play and substantial justice to permit the state to enforce the obligations which International Shoe has incurred there."¹⁴

B. Specific Jurisdiction

Alternatively, when a forum seeks to assert specific jurisdiction over an out of state defendant, the "fair warning" requirement is satisfied if the defendant has purposefully directed his activities to the residents of the forum and the litigation results from injuries that arise out of, or relate to, that activity.¹⁵ In such situations, jurisdiction cannot be avoided merely because the defendant did not physically enter the forum.¹⁶ For example, if a defendant delivers its products into the stream of commerce of the forum state, with the expectation that the products will be purchased by consumers in the forum state, and these products injure forum consumers, the defendant is subject to specific personal jurisdiction.¹⁷

With both general and specific personal jurisdiction, a defendant must also meet the "purposeful availment" requirement.¹⁸ This requirement insures that a defendant will not be haled into court as a result of "'random', 'fortuitous' or 'attenuated' contacts, or of the unilateral activity of another party or a third person."¹⁹ Yet foreseeability alone is not a "sufficient benchmark" for a state to exercise personal jurisdiction over a non-resident defendant.²⁰ Critical to the due process analysis is whether the defendant will foresee that his conduct and connections with the forum state are such that he should reasonably anticipate being haled into court there.²¹

In addition to meeting the requirements of general or specific personal jurisdiction mentioned above, the courts also consider other factors to insure that maintenance of the suit would not offend the traditional notions of fair play and substantial justice.²² Such factors include: the burden on the defendant; the forum state's interest in the litigation; the plaintiff's interest in obtaining convenient and effective relief; the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interests of the several states in furthering fundamental substantive social policies.²³ The incorporation of these factors helps insure that a state does not make a binding judgment against a defendant with which the state has no contacts, ties or relation.²⁴

III. The Internet and Personal Jurisdiction

A. The Internet

The Internet is the world's largest network of computers linked together for the purpose of sharing electronic mail and files.²⁵ The Internet contains thousands of independent networks, encapsulating millions of "host" computers which provide information services to the world.²⁶ A "site" is an address on the Internet which permits users to share or exchange information with a specific host.²⁷ The collection of sites available on the Internet is referred to as the "world-wide web."²⁸

In establishing personal jurisdiction over non-resident Internet sites, courts have adopted two different approaches. These two approaches are referred to as the sliding scale test and the effects doctrine.

1. Sliding Scale Test

Under the sliding scale test, Internet websites are placed in one of three categories: 1) passive websites;

2) websites where the user can exchange information with the host computer (interactive websites); and 3) websites where the owner actively does business over the Internet.²⁹ Courts have held that simply registering a domain name for a website is not enough to create personal jurisdiction over a non-resident defendant without "something else."³⁰ Passive websites are just that - sites that merely provide information or advertisements to users.³¹ In these situations, there is no personal jurisdiction over foreign defendants because courts do not want to exercise jurisdiction over everyone who establishes an Internet website.³² *Pheasant Run, Inc. v. Moyses* and *Bensusan Restaurant Corp. v. King*, are two cases in which the courts found no personal jurisdiction over defendants who operated a passive website.³³

In *Pheasant Run, Inc. v. Moyses*, the plaintiff filed an action asserting trademark and trade name infringement of the name "Pheasant Run."³⁴ The plaintiff corporation owned and operated a country club in Illinois, in addition to having "exclusive ownership of the mark for use in connection with golf courses, resort hotels, lodge, convention center, and restaurant services."³⁵ Defendants operated a restaurant in Ohio called the "Pheasant Run Inn" and maintained a website incorporating the name, which the plaintiff claims subjects the defendants to suit in Illinois.³⁶

In its analysis of the sliding scale test, the court found that because the defendants' website was a passive website, they were not subject to personal jurisdiction in Illinois.³⁷ The court based this decision on the fact that while the website contained the defendants' telephone number, it did not enable Internet users to communicate directly with the defendants.³⁸ Additionally, there was no evidence that the defendants advertised over the Internet, consented to ads being posted in Illinois, or even knew that such ads were posted in Illinois.³⁹ Defendants' further contended that they never advertised anywhere outside of Ohio, and never authorized, or were

aware of, any agents or employees to advertise on their behalf.⁴⁰ Since there was no evidence to indicate that the defendants purposefully directed their activities to Illinois, the court refused to exercise personal jurisdiction over the defendants in Illinois.⁴¹

The court in *Bensusan Restaurant Corp. v. King*, reached the same conclusion when it held that a passive website is insufficient to obtain personal jurisdiction in New York over a Missouri defendant.⁴² In *Bensusan*, the plaintiff was a New York corporation that operated clubs worldwide and owned the rights, title, and interest in and to the registered trademark "The Blue Note."⁴³ The defendant owned a small club in Missouri called "The Blue Note," and maintained a website, located on a Missouri server, which included a logo similar to Bensusan's registered trademark.⁴⁴ The defendant's site was a general access website, which means that it was accessible to anyone who had Internet access.⁴⁵ The site contained general information about the Missouri club - a calendar of events and ticket information, including the names and addresses of the local ticket outlets and a charge-by-phone telephone number.⁴⁶ Also, the site contained a disclaimer that it should not be confused with The Blue Note in New York.⁴⁷

The difference between this case and *Pheasant Run* is that here, there was an "offer" to sell an infringing product (the defendant's Blue Note tickets) in New York.⁴⁸ In refusing to find personal jurisdiction in New York, the court stated that the infringement, if any, would have occurred in Missouri and not in New York.⁴⁹ A New York resident would have to access the site, call Missouri to reserve tickets, and go to Missouri to pick up the tickets because the defendant did not mail out tickets.⁵⁰ There was no evidence that the defendant encouraged New York residents to access his site, that he conducted any business in New York, or that he received substantial revenue from interstate commerce.⁵¹ The court concluded that "[t]he mere fact that a person can gain information

on the allegedly infringing product is not the equivalent of a person advertising, promoting, selling or otherwise making an effort to target its products in New York."⁵² Therefore there was no personal jurisdiction over the defendant in New York.⁵³

An interactive website enables a user to exchange information with the host computer.⁵⁴ Personal jurisdiction over interactive website owners is determined by examining the degree of interactivity and commercial nature of the information exchanged.⁵⁵ *LFG, LLC v. Zapata Corp.* and *Conseco, Inc. v. Hickerson* both address jurisdiction over interactive websites, yet the courts differ in their findings of personal jurisdiction.⁵⁶

In *LFG, LLC v. Zapata Corp.*, the Illinois district court found personal jurisdiction over a non-resident defendant operating an interactive website.⁵⁷ The plaintiff was an Illinois business that provided on-line trading, stocks, commodity futures and option research, and financial news, and had a trademark registration of "ZAP."⁵⁸ The defendant, a Delaware corporation with its principal place of business in Texas, developed a website structured as a "portal," through which it offered a list of connections to other sites by way of hyperlinks.⁵⁹ The defendant's site linked users to these related sites at no charge.⁶⁰ Furthermore, users could sign up for the defendant's mailing list.⁶¹ Additionally, the defendant entered into a non-binding letter of intent with an Illinois company for the purpose of acquiring the sites linked to its site.⁶² The plaintiff contended that the defendant's website would cause confusion with its own website because the names "ZAP" and "ZAPATA" were so similar.⁶³

In deciding the issue of personal jurisdiction, the court found that the defendant's website was interactive because it contained a contact page where a user could send e-mail to the defendant in addition to joining its mailing list.⁶⁴ The court next looked at the level of interactivity of the information exchanged over the site.⁶⁵

It found that twenty-five Illinois residents were on the defendant's mailing list and that the defendant created the site for the purpose of developing contacts with Internet users, and that this act illustrated the defendant's choice to enter and establish contact with Illinois.⁶⁶ The court also examined the defendant's non-Internet contacts with Illinois, and found that by entering into a letter of intent with an Illinois company, it purposefully reached out to an Illinois company in order to enhance its reputation among Illinois Internet users.⁶⁷ The court concluded that the exercise of personal jurisdiction over the defendant was proper because its activity caused injury to Illinois residents.⁶⁸

The court in *Conseco, Inc. v. Hickerson*, came to a different conclusion and found no personal jurisdiction in Indiana over a foreign defendant operating an interactive website.⁶⁹ In this case, the Texas defendant used the plaintiff's trademarked name in his website.⁷⁰ The website sought information concerning fraud or unfair treatment by one of the plaintiff's subsidiaries, and contained a "mailto" link, allowing the user to send e-mail directly to the defendant.⁷¹

In determining whether the defendant's website was interactive, the court noted that the site's "mailto" link and thus satisfied the level of activity required for an interactive website.⁷² The court, however, did not find that the defendant's site possessed enough interactivity to give Indiana personal jurisdiction.⁷³ The defendant's only contact with Indiana was his discussion of the plaintiff on his website.⁷⁴ He did not direct any advertising, send any mail, or make any phone calls to Indiana, and did not purposefully avail himself of the benefits or protections of Indiana law.⁷⁵ Because the defendant's contacts were not enough to satisfy the minimum contacts requirement, personal jurisdiction over the defendant in Indiana was improper.⁷⁶

In the third category of the sliding scale test, when a defendant enters into a contract with residents of a

foreign jurisdiction over the Internet that involves knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper.⁷⁷ Personal jurisdiction is proper in this situation because the defendant has established minimum contacts with the forum, and has purposefully and deliberately availed itself of the protections of the forum's laws.⁷⁸

In *Euromarket Designs, Inc. v. Crate and Barrel Ltd.*, the court found that the defendant's website conducted business over the Internet and made and maintained contacts with Illinois.⁷⁹ In this case, the defendant was an Irish corporation that operated stores in Ireland and a website for the purpose of selling its goods.⁸⁰ Prominently displayed on both the store and on the website, was the defendant's name, "Crate and Barrel."⁸¹ The plaintiff, an Illinois corporation, sued the defendant, maintaining that the defendant infringed its "Crate and Barrel" trademark.⁸² Although the defendant was located in Ireland, its website included goods priced in U.S. dollars, and the billing and shipping city, state and zip code format was unique to the United States.⁸³ Moreover, the site contained a menu of the United States.⁸⁴

In addition to the interactive nature of the website, the defendant had made and maintained connections with Illinois.⁸⁵ It had purchased goods from Illinois suppliers, participated in trade shows, promoted business in Illinois, and placed advertisements in foreign magazines targeted to readers in Illinois.⁸⁶ Furthermore, an Illinois resident placed an order and received her goods with the sender marked as "Crate and Barrel" with a Dublin return address.⁸⁷ From the above mentioned facts, the court concluded that the defendant purposefully availed itself of Illinois customers and of the protections of Illinois laws, and therefore was subject to personal jurisdiction in Illinois.⁸⁸

2. Effects Doctrine

The effects doctrine is another way in which courts may determine whether a foreign defendant has established minimum contacts with the forum state to subject him to personal jurisdiction.⁸⁹ Under the effects doctrine, personal jurisdiction over a non-resident defendant is proper when his tortious actions are intentional and directed at the forum state, and cause such harm to a resident plaintiff as can be reasonably anticipated by the defendant.⁹⁰

In *Indianapolis Colts, Inc. v. Metropolitan Baltimore Football Club, L.P.*, the court applied the effects doctrine and found personal jurisdiction in Indiana over the non-resident defendant.⁹¹ The plaintiff contended that the defendant infringed the plaintiff's trademark by broadcasting it over national television.⁹² The court found that the unauthorized broadcasting of the plaintiff's trademark into Indiana caused injury to the plaintiff in Indiana.⁹³ Therefore, the court concluded that the exercise of personal jurisdiction over the defendant was proper under the effects doctrine.⁹⁴

The court in *Panavision Int'l., L.P. v. Toeppen*, used both the effects doctrine and the sliding scale test to assert personal jurisdiction over the defendant.⁹⁵ Here, an Illinois defendant registered a Delaware corporation's trademark as his Internet domain name, and attempted to force the plaintiff to pay him money to "rescind" his domain name.⁹⁶ Although simply registering another's trademark as a website domain name was insufficient to establish personal jurisdiction over a foreign defendant, the court stated that the defendant's registration of the plaintiff's trademark was done solely for the purpose of extorting money from the plaintiff.⁹⁷ The court felt that most of the harm to the plaintiff would be felt in California because its principal place of business was located there.⁹⁸ *But for* the defendant's conduct, no injury would have befallen the plaintiff, and because these claims arose

out of the defendant's California-related activities, personal jurisdiction in California was proper.⁹⁹

IV. Impact

The decisions in the aforementioned cases are predictable and consistent with the notions of fair play and substantial justice underlying personal jurisdiction. When it is clear that defendants have continuous and systematic contacts with the forum state, such as in *LFG, LLC*, *Euromarket Designs*, and *Panavision*, the courts have found personal jurisdiction over the defendants. Where there are no such contacts, as in *Pheasant Run* and *Bensusan*, the courts have declined to find personal jurisdiction over the non-resident defendants. These holdings are comparable to those which would apply to non-Internet defendants, and thus maintain a level of predictability in personal jurisdiction cases. Yet in *Conseco*, the court found a way to find jurisdiction over a defendant, even though he did not have as substantial contacts as the defendants in *LFG, LLC*, *Euromarket Designs*, and *Panavision*. The court equated the defendant's "mailto" link to a contact sufficient enough to justify the exercise of personal jurisdiction.

The courts want to protect the consumers in their forum, as seen in *Euromarket Designs* and *LFG, LLC*. Through predictable yet malleable methods of finding personal jurisdiction over non-resident defendants in Internet actions, the courts have reached a balance between protecting their consumers while staying within the bounds of the personal jurisdiction requirements.

V. Conclusion

From the above mentioned cases, it is clear that courts want to protect their consumers from harm. The application of the sliding scale tests and the effects doctrine, individually and in combination, give the courts a

good framework with which to justify jurisdiction. Personal jurisdiction issues over the Internet are recent, and the courts, using these approaches, are developing a fair and predictable method of asserting personal jurisdiction over non-resident defendants.

Endnotes

1. *Worldwide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980).
2. *Id.*
3. *Id.*
4. *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945).
5. *Id.* at 316.
6. *Id.*
7. *Worldwide Volkswagen Corp.*, 444 U.S. at 292.
8. *Burger King v. Rudzewicz*, 471 U.S. 462, 472 (1985).
9. *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 427 (1984).
10. *Id.*
11. *Id.* at 414.
12. *International Shoe Co.*, 326 U.S. at 320.
13. *Id.*
14. *Id.* (noting that the contacts "...were systematic and continuous throughout the years in question. They resulted in a large volume of interstate business, in the course of which [International Shoe] received the benefits and protection of the laws of the state, including the right to resort to the courts for the enforcement of its right.").
15. *Burger King*, 471 U.S. at 472.

16. *Id.* at 473.
17. *Id.*
18. *Id.* at 475.
19. *Id.*, (citing *Helicopteros Nacionales de Colombia*, 466 U.S. at 417).
20. *Id.* at 474.
21. *Id.*; *Hanson v. Denckla*, 357 U.S. 235, 253 (1958) (holding "The unilateral activity of those who claim some relationship with a non-resident 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.>").
22. *Burger King*, 471 U.S. at 476.
23. *Id.* at 477.
24. *Worldwide Volkswagen Corp.*, 444 U.S. at 294.
25. *Bensusan Restaurant Corp. v. King*, 937 F. Supp. 295, 297 (S.D.N.Y. 1996), *aff'd*, 126 F. Supp. 3d 25 (2d Cir. 1997) (citing *MTV Networks v. Curry*, 867 F. Supp. 202, 203 (S.D.N.Y. 1994)).
26. *Bensusan Restaurant Corp.*, 937 F. Supp. at 297.
27. *Id.*
28. *Id.* (citing *Shea v. Reno*, 930 F. Supp. 916, 929 (S.D.N.Y. 1996)).
29. *Euromarket Designs, Inc. v. Crate and Barrel Limited*, 96 F. Supp. 2d 824, 837-838 (N.D. Ill. 2000); *LFG, LLC v. Zapata Corp.*, 78 F. Supp. 2d 731, 736 (N.D. Ill. 1999).
30. *Euromarket Designs, Inc.*, 96 F. Supp. 2d at 837; *see also Panavision Int'l, L.P. v. Toeppen*, 141 F. 3d 1316, 1318 (9th Cir. 1998). "Every website on the Internet has an identifier called a 'domain name.' *Id.* The domain name often consists of a person's name or a company's name or trademark." *Id.* An example of a domain name would be *Pepsi.com. Id.*

31. *LFG, LLC*, 78 F. Supp. 2d at 736.
32. *Euromarket Designs, Inc.*, 96 F. Supp. 2d at 838.
33. *Pheasant Run, Inc. v. Moyse*, 1999 WL58562 *1,*3 (N.D.Ill. 1999); *Bensusan Restaurant Corp. v. King*, 937 F. Supp. 295, 301 (1996).
34. *Pheasant Run, Inc.*, 1999 WL58562 at *1.
35. *Id.*
36. *Id.* at *1, *3.
37. *Pheasant Run, Inc.*, 1999 WL 58562 at *3.
38. *Id.* at *2.
39. *Id.* at *2, *3 (noting that even if defendants had posted an advertisement, there still would be no personal jurisdiction in Illinois because "no court has ever held that an Internet ad alone is sufficient to subject a party to jurisdiction in another state.").
40. *Id.* at *3.
41. *Id.*
42. *Bensusan Restaurant Corp.*, 937 F. Supp. at 301.
43. *Id.* at 297.
44. *Id.*
45. *Id.*
46. *Id.* at 297.
47. *Id.* at 297-8 (also noting that the site also contained a hyperlink, which allows users of the defendant's site to click the link and connect to the plaintiff's website. A hyperlink is highlighted text or an image that, when selected, permits the user to view another website.)
48. *Id.* at 299.
49. *Id.*

50. *Id.*
51. *Id.* at 300-01.
52. *Id.* at 299.
53. *Id.* at 301.
54. *Euromarket Designs, Inc.*, 96 F. Supp. at 838.
55. *LFG, LLC*, 78 F. Supp. at 736.
56. *Id.* at 739; *Conseco, Inc., v. Hickerson*, 698 N.E.2d 816, 820 (Ind. Ct. App. 1998).
57. *LFG, LLC.*, 78 F. Supp. at 739.
58. *Id.* at 733.
59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.*
63. *Id.* at 734.
64. *Id.* at 736-737.
65. *Id.* at 737.
66. *Id.*
67. *Id.* at 738.
68. *Id.* at 739.
69. *Conseco, Inc.*, 698 N.E.2d at 820.
70. *Id.* at 818.
71. *Id.* at 817. Defendant contended that he needed this information for a lawsuit filed against one of the plaintiff's subsidiaries. *Id.*

72. *Conseco, Inc.*, 698 N.E.2d at 820.
73. *Id.*
74. *Id.*
75. *Id.*
76. *Id.*
77. *Euromarket Designs, Inc.*, 96 F. Supp. 2d at 837.
78. *Id.*
79. *Id.* at 833.
80. *Id.* at 829.
81. *Id.*
82. *Id.* at 828.
83. *Id.* at 829.
84. *Id.*
85. *Id.* at 829.
86. *Id.*
87. *Id.*
88. *Id.* at 840.
89. *Id.* at 835.
90. *Id.* (citing *Calder v. Jones*, 465 U.S. 783 (1984)).
91. 34 F. 3d 410, 411 (7th Cir. 1994).
92. *Id.*
93. *Id.*
94. *Id.*

95. 141 F. 3d 1316, 1321-1322 (9th Cir. 1998).

96. *Id.* at 1321.

97. *Id.* at 1322.

98. *Id.* at 1321.

99. *Id.* at 1322.

