



Company Websites & Internet Ads - Avoiding Personal Jurisdiction in Non-Business States

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In today's internet age, it is almost unheard of for a business, no matter how large or how small, to not maintain some form of an online presence, such as a company website, social media profile, or search engine optimization listing. A consumer may access any company's website or social media profile at the touch of a button from their computers or smartphones anywhere in the world. However, does a consumer's unprecedented access to a business's information

create unforeseen legal consequences for small companies? Specifically, does a small business's website, social media profile or internet advertising activities expose it to being sued and subject to personal jurisdiction in states where the company seemingly has no connection? The answer to this question hinges on the type of website a company maintains and the scope of advertising that a company engages in.

COMPANY WEBSITE AS THE BASIS FOR PERSONAL JURISDICTION

The manner in which a small company maintains its website and describes its business on its website may confer personal jurisdiction on the business in an unintended and unwanted state. Multiple courts have found that the operation of an interactive website, such as one on which consumers can order a company's goods or services, may subject that company to the

exercise of personal jurisdiction. See *e.g.* *Chloe v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 170-171 (2d Cir. 2010) (finding personal jurisdiction in New York where an Alabama-and-California-based defendant used a “highly interactive” website to serve a nationwide market but also sent items physically into New York).

Alternatively, multiple courts have rejected personal jurisdiction on nonresident defendants who have operated passive websites that only provide general information about a company and its products and services. See *e.g.* *Jennings v. AC Hydraulics A/S*, 383 F.3d 546 (7th Cir. 2004) (holding that a defendant’s maintenance of a passive website does not support the exercise of personal jurisdiction over that defendant in a particular forum just because the website can be accessed there). A passive website is one where an internet user may pass by or slow down and read in detail. However, a passive website does not enable the internet user to reach out through that website and connect with the website’s owner. For example, in *Ackourey v. Sonellas Custom Tailors*, 573 Fed. Appx. 208 (3d Cir. 2014), the Third Circuit found that an apparel business’s website listed a travel schedule and only allowed potential customers to email requests for appointments. It did not permit customers to place orders, make payments, or engage in any business transactions. This low degree of commercial activity rendered the apparel business’s website passive and was not grounds for exercising personal jurisdiction.

To avoid being hauled into court in an unforeseen jurisdiction, small companies should operate passive websites that merely provide information about the company and its products. The exercise of personal jurisdiction based on maintaining a passive website is impermissible because the company is not directing its business activities toward consumers in the forum state. Therefore, if a company’s website does little more than generally advertise its business online to anyone searching for its products or services, it should not compose the necessary contacts with the forum state to exercise personal jurisdiction over the company. Suppose a company’s website permits customers to place orders, make payments, or engage in any business transaction. In that case, the company should not be surprised if it is subject to personal jurisdiction in the state from where the customer engaged with the company’s website.

INTERNET ADVERTISING AS THE BASIS FOR PERSONAL JURISDICTION

A small company’s advertising activities may subject it to personal jurisdiction

in states where it does not transact business. Advertising activities include social media posts, search engine optimization listings, or even highway billboards. However, courts have found such advertising contacts irrelevant in conferring specific personal jurisdiction on corporate defendants as long as the advertising is general in scope and not targeted at specific locations. For example, in *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cnty.*, 137 S. Ct. 1773 (U.S. 2017), a group of California plaintiffs brought suit against pharmaceutical giant, Bristol-Myers Squibb Co. (“BMS”), alleging that the group was injured by Plavix, a drug manufactured by BMS. Some of the plaintiffs had purchased Plavix from BMS’s distribution chain in California, but others were nonresidents who received the drug outside of California. The United States Supreme Court held that California courts could not exercise specific personal jurisdiction over the nonresident plaintiffs’ product liability and misleading advertising claims. The Supreme Court reached its conclusion even though BMS had five California research and laboratory facilities that employed around 160 employees. BMS also employed about 250 sales representatives in California and maintained a small state-government advocacy office in Sacramento. Additionally, BMS’s marketing for Plavix was national in scope. BMS conducted a single nationwide advertising campaign for Plavix, using television, magazine, and internet ads to broadcast its message. BMS also sold almost 187 million Plavix pills in California and took in more than \$900 million from those sales. BMS had even contracted with a California company to distribute Plavix nationwide.

Despite all of these contacts, the United States Supreme Court held that BMS’s contacts with California were irrelevant as to specific personal jurisdiction. BMS did not develop Plavix in California, did not create a marketing strategy for Plavix in California, and did not manufacture, label, package, or work on the regulatory approval of the product in California. Further, the mere fact that other plaintiffs obtained the same product in California and sustained the same injuries as the nonresidents did not allow the state to assert specific jurisdiction over the nonresidents’ claims. That is, the United States Supreme Court made clear that the specific jurisdiction analysis focuses on the specific claims at issue and where the defendant sold the specific product that harmed the specific plaintiff, even if the defendant sold identical products to other consumers in the forum state.

The United States Supreme Court’s de-

cision in *Bristol-Myers Squibb Co.* makes clear that a company’s advertising campaign that is “national in scope,” without a clear marketing strategy for a specific state, will not establish specific jurisdiction. The fact that a potential plaintiff has connections to a forum state is insufficient to confer jurisdiction. Thus, a small company’s website or social media profile that does not indicate that the company is targeting advertisements to the potential forum state is insufficient to confer jurisdiction on the company in that state. To avoid being sued in a state where it does not conduct business, a company should engage in general, not specific, advertising. For example, a company should pay Google, or any other search engine, to only show its advertisement to anyone conducting a search on the company or the type of business or service it performs. A business that employs targeted advertising to a specific city or state should expect to be subject to personal jurisdiction in the forum that it targets. Further, if a company has a brick-and-mortar location where it offers products or services to a customer, the company’s website should not contain directions on how to get to its location from any specific location where it does not want to be subject to jurisdiction. Though seemingly innocuous, these directions may be construed as targeting potential customers in a particular forum.

CONCLUSION

There are multiple reasons why a court will find that a company’s website or internet advertising activities will subject a company to personal jurisdiction in an unwanted venue. However, depending on the circumstances, small companies may benefit from proceeding with caution in how exactly they maintain their websites on the internet in terms of interactivity and how specifically they target their advertising campaigns. Maintaining a highly interactive website or engaging in a specifically targeted advertising campaign may open a company up to being sued in unfriendly and unintended states.



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