

Central District of California: Test Buys Do Not Create Specific Jurisdiction

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A plaintiff has always been the “master” of a complaint, but such mastery is not unfettered. Principles of subject matter jurisdiction, proper venue, and personal jurisdiction restrict a plaintiff’s choice of forum. A trend of recent cases from the Supreme Court down through the lower courts continue to narrow that “mastery” that a plaintiff once laid claim to. A recent decision from the Central District of California, *Oceanside Health Products LLC v. Instock Goodies Inc.*, 2023 WL 3781649 (C.D. Cal. May 2, 2023) once again confirms that for a court to retain specific personal jurisdiction over a defendant, that defendant must have expressly aimed the allegedly infringing behavior at the forum. For trademark cases, the Central District of California made clear that a test buy of an allegedly infringing product initiated by the plaintiff does not evince the necessary “purposeful direction and purposeful availment” of the forum to give rise to specific jurisdiction.

In *Oceanside*, the plaintiff sold products made by a company called Detoxify, LLC and had the rights to enforce a “Detoxify” trademark. Plaintiff alleged that the defendant was infringing that mark by “advertising and selling products on the Amazon.com marketplace bearing the Detoxify Mark” The defendant is an Amazon marketplace merchant, located in New York, and used the nationwide Amazon platform for selling the allegedly infringing items. Defendant also included references to potentially applicable privacy laws, including those of California. Plaintiff filed suit in the Central District of California, and defendant filed a motion to dismiss asserting the court lacked personal jurisdiction.

In granting the motion, the court first reiterated the general three-part test for specific personal jurisdiction (there was no dispute that the Court lacked general personal jurisdiction over the defendant): “(1) the non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof, (2) the claim must be one which arises out of or relates to the defendant’s forum-related activities, and (3) the exercise of jurisdiction must comport with fair play and substantial justice.”

Importantly, the court explained that the “first prong of the specific jurisdiction test refers to both purposeful direction and purposeful availment..” In trademark infringement actions, courts generally apply “the purposeful direction analysis,” which is governed by the framework from *Calder v. Jones*,

465 U.S. 783 (1984). The test requires a showing that the defendant “must have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) caused harm that the defendant knows is likely to be suffered in the forum state.”

In analyzing the *Calder* test here, the court found that the defendant simply did not affirmatively and expressly aim its allegedly infringing conduct at California. None of the conduct alleged rose to the level of “express aiming” that courts require for specific personal jurisdiction. First, the defendant’s general online sales to a nationwide market through Amazon.com was not “express aiming.” Moreover, “including potentially applicable privacy laws on its website does not necessarily show that a defendant expressly aimed its sales at a particular state.” Similarly, the fact that “Plaintiff is located in California and experienced the harm there,” did not speak to the defendant’s express aiming of conduct to the forum.

Perhaps most interestingly, the court also explicitly found that the plaintiff’s initiation of product purchases that the defendant subsequently fulfilled and shipped to California were not activities that the defendant expressly aimed at the forum. In recognizing that the test buys were initiated by the plaintiff and thus not reflective of the **defendant’s** action, the court upheld a long line of cases making clear that “a plaintiff cannot manufacture personal jurisdiction in a trademark case by purchasing the accused product in the forum state.” This makes sense because the “expressly aiming” inquiry “focus[es] ... on **defendant’s** intentional conduct that is aimed at, and creates the necessary contacts with, the forum state.” *AMA Multimedia, LLC v. Wanat*, 970 F.3d 1201, 1209 (9th Cir. 2020) (emphasis added).

This case serves as an important reminder to practitioners of the continued limits on where a plaintiff may bring a lawsuit based on tortious behavior, such as a claim for trademark infringement. After successful test purchases, potential plaintiffs should consider conducting a more fulsome investigation into the potential defendant’s forum activities that may allow for allegations that more broadly describe a defendant’s interaction with the forum. In any event, while a plaintiff **may** file in any forum he chooses, keeping the case in that forum requires practitioners to carefully analyze a defendant’s actions aimed at that forum, and determine whether the plaintiff’s preferred forum is one where personal jurisdiction over the defendant is proper.

The case is *Oceanside Health Products LLC v. Instock Goodies Inc.*, 2023 WL 3781649 (C.D. Cal. May 2, 2023).

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