

The Seventh Circuit Weighs in on Personal Jurisdiction and the Internet

In a pair of recent decisions, the United States Court of Appeals for the Seventh Circuit has provided guidance on the degree to which internet activities may serve as the basis for personal jurisdiction. See *uBid, Inc. v. The GoDaddy Group, Inc.*, No. 09-3927 (7th Cir. Sept. 29, 2010) ("*uBid*") and *Mobile Anesthesiologists Chicago LLC v. Anesthesia Associates of Houston Metroplex, P.A.*, No. 09-2658 (7th Cir. Oct. 1, 2010) ("*Mobile*").

***uBid*: Numerous Domain Name Registrations, Parking Service and Minimum Contacts Test**

In the first of two decisions, the Seventh Circuit addressed the issue of whether GoDaddy's service of registering domain names (known as "parking" where no actual websites are created) would provide sufficient minimum contacts to allow specific personal jurisdiction over claims under the Anti-Cybersquatting Consumer Protection Act ("ACPA"). *uBid* claimed that parking of domain names allegedly similar to the *uBid.com* domain name violated the ACPA. The lower court refused to find specific personal jurisdiction. The Seventh Circuit reversed.

The Seventh Circuit focused on GoDaddy's specific marketing and sales in Illinois of the type of registration and parking services that *uBid* alleged infringed its domain name rights. In applying the minimum contacts analysis for specific jurisdiction under *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984), the appellate court identified GoDaddy's long running national advertising campaign, including its high-profile Superbowl ads, and "hundreds of thousands" of domain name registration transactions between GoDaddy and Illinois residents, as sufficient evidence of establishing minimum contacts with Illinois for personal jurisdiction. The court also noted that at least two Illinois residents registered and parked domains that were alleged to be confusingly similar to *uBid.com*. The Seventh Circuit then concluded that the Illinois contacts were sufficiently related to the ACPA claim based on the fact that GoDaddy advertised registration and parking services in Illinois and in its national advertising campaigns.

uBid establishes that businesses with an internet presence are subject to specific personal jurisdiction where the defendant advertises and offers online services of the type giving rise to plaintiff's infringement claim. In his concurrence, Circuit Judge Manion argued that the "effects test" announced by the Supreme Court in *Calder v. Jones*, 465 U.S. 783 (1984), for specific personal jurisdiction was the appropriate test. *uBid*, slip. op. at 28 (concurring opinion).

***Mobile*: Single Domain Name Registration, No Contacts with Forum and Effects Test**

In *Mobile*, the court expressly considered the effects test as applied in one of its prior decisions, *Tamburo v. Dworkin*, 601 F.3d 700 (7th Cir. 2010) that required findings of intentional conduct expressly aimed at the forum state with the defendant's knowledge that the conduct would injure the plaintiff in the forum state in order to establish personal jurisdiction for intentional torts. However, unlike the *uBid* defendant, the defendant in *Mobile* was the registrant of a single, allegedly infringing domain. Moreover, the *Mobile* defendant's only cognizable contacts with Illinois were the accessibility of its website from Illinois and the defendant's passive receipt of a cease and desist letter sent from Illinois by the plaintiff. The Seventh Circuit found that even though the defendant had received a cease and desist letter alleging use of a confusingly similar domain name, defendant's conduct was not expressly aimed at the Illinois forum. The court reasoned that the defendant had not conducted any business in Illinois, was only certified to work in Texas and had only advertised for work in Texas on its website. Consequently, personal jurisdiction could not be established. *Mobile* establishes that discrete activities on the internet combined with notice of alleged infringement within a state are insufficient to create personal jurisdiction under the Seventh Circuit's application of the *Calder* "effects" doctrine.

Conclusion and Application. Taken together, these two decisions suggest that in matters involving contacts through the internet, the analysis of specific personal jurisdiction issues in the Seventh and likely other appellate circuits will to a large degree turn on the specific facts presented by each case. What *uBid* and *Mobile* demonstrate is that the business models and size of the defendant are likely to be significant in determining personal jurisdiction. Larger internet defendants may be more likely to satisfy the threshold of minimum contacts with the forum, leaving as the dispositive jurisdictional question the issue of whether those contacts are sufficiently related to the claim. Seventh Circuit courts will not, however, find that jurisdiction exists based only on a defendant's knowledge that the plaintiff has alleged harm in the forum. Rather, the alleged conduct must be aimed expressly at the plaintiff such that the effects of the conduct cause injury in the forum.

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