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Ninth Circuit Affirms Dismissal of Shopify Data Privacy Class Action Based on Lack of Personal Jurisdiction Over Online Payment Platform

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In a jurisdictional win for online servicers and web-based platforms, the Ninth Circuit affirmed the dismissal of a putative class action alleging that Shopify violated California privacy and unfair competition laws by deliberately concealing its involvement in online transactions. *Briskin v. Shopify, Inc.*, 87 F.4th 404 (9th Cir. 2023). The Ninth Circuit affirmed that the district court in California lacked personal jurisdiction because Shopify did not expressly aim its conduct towards the state.

The Californian plaintiff, Brandon Briskin, allegedly purchased fitness apparel from the website of a California-based retailer, using his phone, while physically located in California. *Id.* at 409. Shopify, Inc., which is headquartered and incorporated in Canada, processed the transaction on behalf of the California retailer. *Id.* Briskin alleged that Shopify:

1. collected his personal and credit card information and stored it for later use and analysis;
2. installed cookies on Briskin's phone;
3. connected Briskin's browser to Shopify's network;
4. generated payment forms requiring Briskin to enter personal identifying information;
5. transmitted Briskin's payment information to a second payment processor; and
6. used his information to create consumer profiles, which were then shared with other merchant and business partners.

Id. at 409–10.Briskin brought the lawsuit against Shopify and two of its wholly-owned subsidiaries, neither of which was headquartered or incorporated in California either (together, "Shopify"). *Id.* at 410.Shopify moved to dismiss the allegations for lack of personal jurisdiction, and the district court agreed and dismissed the operative complaint without leave to amend. *Id.* at 410–11.

Because it was undisputed the district court did not have general jurisdiction over any of the defendants, the Ninth Circuit looked to whether the court could exercise specific jurisdiction, which required the plaintiff to show that (1) Shopify directed activities toward, or purposefully availed itself of the privileges of conducting activities in, the forum state and (2) the claims arose out of or related to Shopify's contacts with the state of California .*Id.* at 411–12 (*citing Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017)).

Applying the test established by the U.S. Supreme Court in *Calder v. Jones*, 465 U.S. 783 (1984), the Court of Appeals determined that Briskin could not show that Shopify – a nationwide web-based sales platform – had expressly aimed its conduct towards the state of California. *Id.* at 422. The Ninth Circuit held that Briskin's claims did not arise out of any of Shopify's broader business actions in the state, such as contracts with California merchants, physical Shopify offices and fulfillment centers in California, or other forum-related activities. *Id.* at 410.

Even though Shopify "knowingly profit[ed] from consumers in the forum state," the Court of Appeals held that alone was not sufficient to show that Shopify expressly aimed its conduct toward California, particularly when there were no allegations that Shopify (1) "alter[ed] its data collection activities based on the location of a given online purchaser" or (2) prioritized or specifically targeted California customers. *Id.* at 419, 422.

In so ruling, the Ninth Circuit distinguished cases such as *Briskin*, which involved only online services, from recent decisions such as *Herbal Brands, Inc. v. Photoplaza, Inc.*, 72 F.4th 1085 (9th Cir. 2023), which involved the physical delivery of products in the forum state. *Id.* at 421–22. In *Herbal Brands*, the Court of Appeals held that an Arizona district court had jurisdiction over claims that Herbal Brands brought against New York-based Amazon merchants because those sellers had sold physical products to Arizona customers.72 F.4th at 1088.

Takeaways: The Shopify decision will likely have broad implications for web-based platforms. Under the Ninth Circuit's reasoning, providing online services to a customer in the forum state may not be sufficient to establish jurisdiction unless there is evidence the payment processor or other servicer directly targeted or sold physical products to purchasers in the forum state. As a practical matter, at least in the Ninth Circuit, online servicers and web-based platforms remain most likely to face litigation in the jurisdictions where they are headquartered or incorporated.