

**CAN A COMPANY WEB SITE OFFERING PRODUCTS  
FOR SALE TO THE GENERAL PUBLIC SERVE AS A BASIS FOR  
ESTABLISHING PERSONAL JURISDICTION IN NEW JERSEY?**

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Under certain conditions, New Jersey state and federal courts can exercise New Jersey's long-arm jurisdiction against out-of-state companies and individuals who maintain a web site offering, selling, or distributing products into the stream of commerce in New Jersey. In other words, can a company

based in Florida having a web site advertising products for sale in New Jersey be required to defend a lawsuit brought in New Jersey? As we will explain in greater detail, the answer is "yes" if through an interactive web site a defendant intentionally places products into the stream of commerce in New Jersey.

Before discussing the specifics of establishing jurisdiction over a non-resident defendant based strictly on the presence of a web site, it is first necessary to briefly explain the basic concepts of personal jurisdiction.

**A. PERSONAL JURISDICTION OVERVIEW**

New Jersey's long arm statute provides for personal jurisdiction as far as the Fourteenth Amendment of the United States Constitution permits. Therefore, federal constitutional law determines long-arm jurisdictional questions in New Jersey. *Decker v. Circus Circus Hotel*, 49 F.Supp.2d. 361 (D.N.J. 1999) (citations omitted). Once a defendant raises questions of personal jurisdiction, plaintiff bears the burden to prove, by a preponderance of the evidence, facts sufficient to establish personal jurisdiction. *Carterer Sav. Bank, F.A. v. Shushan*, 954 F.2d 141 (3<sup>rd</sup> Cir. 1992), *rehearing den.*, *cert. den.*, 113 S.Ct. 61, 506 U.S. 817, 121 L.Ed.2d (1992).

To carry its burden of demonstrating that a defendant's contacts with New Jersey are sufficient to confer personal jurisdiction, plaintiff must show with "reasonable

particularity” that New Jersey had either specific jurisdiction,<sup>1</sup> where cause of action arose from defendant’s activities within New Jersey, or general jurisdiction<sup>2</sup> from defendant’s continuous and systematic conduct in New Jersey. *See Giangola v. Walt Disney World Co.*, 753 F.Supp. 148 (D.N.J. 1990).

A strong presumption exists in favor of maintaining jurisdiction where the plaintiff is a resident choosing its home forum. *Danka Funding, L.L.C. v. Page, Scranton, Sprouse, Tucker & Ford, P.C.*,



21 F.Supp. 921 (D.N.J. 1997). *Accord Accord, Burke v. Quartey*, 969 F.Supp. 921 (D.N.J. 1997)(Substantial weight and deference is given to plaintiff’s choice of forum). Further, factual discrepancies in juxtaposed affidavits should be resolved in favor of the party bearing the burden of establishing personal jurisdiction. *LaRose v. Sponco Mfg., Inc.*, 712 F.Supp. 455 (D.N.J. 1989).

"[T]he constitutional touchstone" of the determination whether an exercise of personal jurisdiction comports with due process "remains whether the defendant purposefully established `minimum contacts' in the forum State." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985), quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). "Minimum contacts must have a basis in '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." *Asashi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987), citing *Hanson v. Denckla*, 357 U.S. 235, 253 (1958), and *Burger King*, 471 U.S. at 475. "Jurisdiction is proper . . . where the contacts proximately result from actions by the defendant himself that create a `substantial connection' with the forum State." *Id.*, quoting *McGee v. International Life Insurance Co.*, 355 U.S. 220, 223 (1957) (emphasis in original).

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<sup>1</sup> The question of whether specific jurisdiction exists over a nonresident defendant involves consideration of (1) burden on defendant, (2) forum state’s interest in adjudicating dispute, (3) plaintiff’s interest in obtaining convenient and effective relief, (4) interstate judicial system’s interest in obtaining most efficient resolution of controversies, and (5) shared interest of several states in furthering fundamental substantive social policies. *In re Cendant Corp. Derivative Action Litigation*, 189 F.R.D. 117 (D.N.J. 1999).

<sup>2</sup> "General jurisdiction" is established when a defendant’s contacts with the forum are continuous and systematic. If general jurisdiction exists, the contacts between the defendant and the forum need not be specifically related to the underlying cause of action in order for an exercise of personal jurisdiction over the defendant. *Pinker v. Roche Holdings*, 292 F.3d 361 (3<sup>rd</sup> Cir. 2002).

## B. STREAM OF COMMERCE THEORY

In *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), the United States Supreme that Court remarked personal jurisdiction over a nonresident defendant can be established under the “stream of commerce” theory based on the defendant’s efforts to market its products in other States:

When a corporation purposefully avails itself of the privilege of conducting activities within the forum State,' *Hanson v. Denckla*, 357 U.S. [235,] 253 [(1958)], it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State. *Hence if the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owners or to others.*"

*Id.*, at 297. (emphasis added).

The Supreme Court in *Asashi Metal Industry Co.*, *supra*, further expounded upon the “stream of commerce” theory by illustrating the difference between the conduct of a defendant who merely places a product into the stream of commerce but does nothing more versus the defendant who provides specific channels to market its products through a distributor or sales agent in the forum state:

The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State. Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example, designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State. But a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State.

*Asashi Metal Industry Co.*, 480 U.S. at 112. See generally *Max Daetwyler Corp. v. R. Meyer*, 762 F.2d 290, 299 (3<sup>rd</sup> Cir. 1985) (collecting "stream of commerce" cases in

which the "manufacturers involved had made deliberate decisions to market their products in the forum state").

Under the stream of commerce theory a manufacturer may be held amenable to process in which its products are sold, even if products are sold indirectly through importers or distributors with independent sales and marketing schemes. *DeJames v. Magnificence Carriers, Inc.*, 654 F.2d 280 (3<sup>rd</sup> Cir. 1981), *cert. den.*, 102 S.Ct. 642, 454 U.S. 1085, 70 L.Ed.2d 629 (1981). A defendant corporation purposely directs its activities at a state, for purposes of establishing personal jurisdiction over a nonresident, if that corporation delivers its products into the stream of commerce with expectations



that they will be purchased by consumers in such state. *LG Electronics v. First Intern. Computer, Inc.*, 138 F.Supp.2d 574 (D.N.J. 2001). *See also Reynolds Publishers, Inc. v. Graphics Financial Group, Ltd.*, 938 F.Supp. 256 (D.N.J. 1996) (District Court concluded that it had specific jurisdiction over an out-of-state leasing

company that leased computer equipment to the plaintiff publisher in New Jersey where the leasing company's contact with the publisher spanned several years and several leases and the publisher made approximately 60 monthly payments to the leasing company).

### C. WEB SITE AS BASIS FOR PERSONAL JURISDICTION

New Jersey courts and others have decided when an Internet presence can create personal jurisdiction over a nonresident defendant in the forum state. Generally, New Jersey courts, like others, have focused the inquiry on whether a website is passive or interactive. Passive websites are those that merely provide information and are the least likely to create jurisdiction. Interactive websites are those that either exchange information with the user or permit business transactions, and are more likely to create jurisdiction, with the latter case creating the most risk.

*Weber v. Jolly Hotels* 977 F.Supp. 327 (D.N.J. 1997) was one of the first federal decisions in New Jersey to discuss Internet jurisdiction. In *Weber*, the Court offered some helpful general guideposts to determine whether a basis for personal jurisdiction can be established by virtue of a website presence. First, the Court recognized that the

likelihood that personal jurisdiction can be exercised is directly proportionate to the nature and quality of the commercial activity conducted on the website. Then the Court observed that, for the purpose of jurisdictional analysis, there are generally three categories of websites: 1) sites where the defendants actively do business on the Internet (usually buying or selling through the website) - here personal jurisdiction exists because the defendants enter into contracts with residents of a foreign jurisdiction that involve knowing and repeated communication over the Internet. *Id.* (citations omitted); 2) sites where users can exchange information with the host computer - here the issue of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs from the website. *Id.* (citations omitted); and 3) sites that merely provide information or advertisements ("passive web sites") - here, without other factors, at least in the Third Circuit. *Id.* (citations omitted). *Weber v. Jolly Hotels*, supra, 977 F.Supp. at 333 (citations omitted).

In another case, the District Court in *Decker v. Circus Circus Hotel*, 49 F.Supp.2d 361 (D.N.J. 1999), refused to exercise personal jurisdiction over a Nevada casino because, although the defendant - casino operated an interactive website that invited New Jersey residents to make hotel reservations over the Internet, the website contained a



forum selection clause that conditioned the use of the website upon an agreement that all disputes be settled in Nevada. Apparently due to this clause, the District Court refused to exercise its jurisdiction which might otherwise have arisen from the interactive website. *Id.* The *Decker* case offers one method of reducing the risk of Internet-related personal jurisdiction.

**LEGAL DISCLAIMER:** This article is for general information purposes only and is not intended to be construed as providing legal advice as to any particular situation. Further, this article is not intended to be an exhaustive narrative on the subject of Internet jurisdiction in New Jersey. New Jersey state & federal courts are frequently deciding and publishing new cases which may impact the subject of this article. Moreover, each case is decided on its own unique set of facts. You are encouraged to speak to a lawyer about the facts of your specific situation.

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