

# CHAPTER 1

# Overview of the Legal Environment of Marketing Activities

## Introduction

This chapter is intended to provide you with a brief overview of the legal environment in which marketing activities occur. As is shown throughout the remainder of the book, many types of law impact marketing activities. Some of this law is statutory, while some arises under court opinions, the U.S. Constitution, or the rules and regulations of administrative agencies. Some of the law is found at the federal level, some at the state, or even local, level. Some types of law impose duties upon marketers in an effort to promote free competition, protect consumers, or foster fair business relationships. Other types of law grant rights to marketers, such as providing legal protection for patents, copyrights, and trademarks or protection from unfair business tactics of competitors.

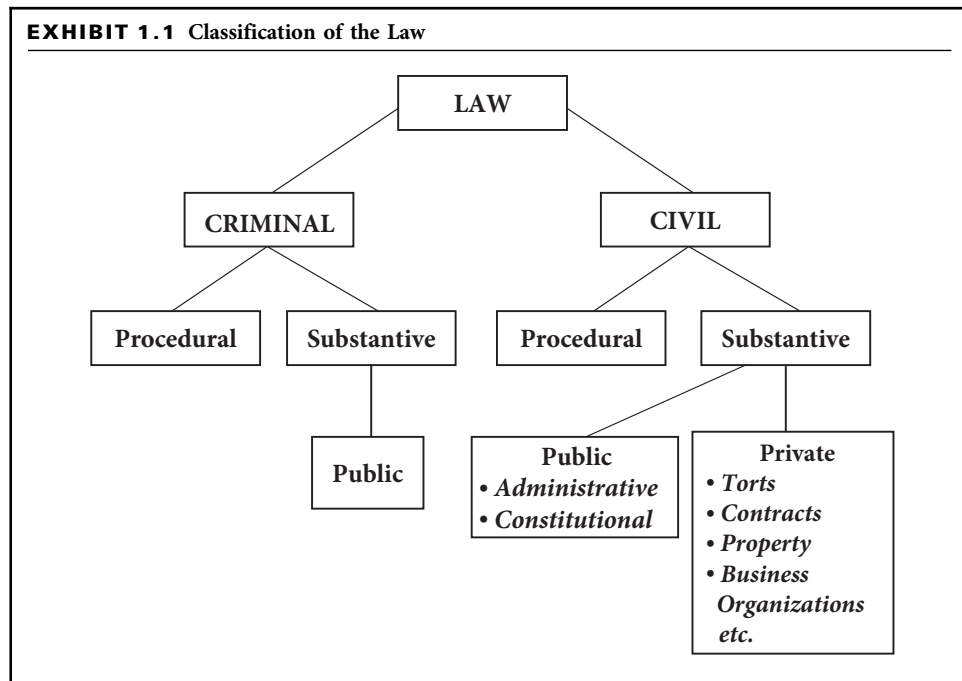
This chapter provides you with a framework within which you can start to analyze the various legal issues discussed in the following chapters. The topics touched upon briefly here appear in specific contexts throughout the book. In many respects, then, this chapter is a preview of coming attractions and is intended to help orient you as you begin your study of the law of marketing.

In light of this goal, this chapter begins by providing several classifications of the law so that you can understand the larger picture of the various types of law that exist within the American legal system. It then discusses the primary and secondary sources of the law and describes the American legal system, including the structure of the state and federal court systems. Finally, the chapter concludes with a short discussion of jurisdiction issues.

## Classifications of the Law

The law has two main purposes: (1) it provides guidelines for decision making, and (2) it creates and enforces legal rights and duties. When we start to classify the law, we can see these two objectives come into play. Classifications also provide snapshots of the organization of the legal system and provide a sense of the wide variety of interests and activities that the law affects.

Law can be classified in many different ways. The first classification provided here is based upon the type of law involved. (See Exhibit 1.1.) The broad category of “law” can be divided into two basic areas: criminal law and civil law. *Criminal law* deals with a violation of the public order; i.e., it involves a wrong against the whole community. The purpose of a



criminal prosecution is to punish the wrongdoer and to deter the wrongdoer and others from committing similar acts in the future. *Civil law*, on the other hand, deals with private relations between individuals or between individuals and the government and establishes the rights and responsibilities arising out of those relationships. The objective of a civil lawsuit is to obtain relief for the injured party, most commonly in the form of monetary damages and/or an injunction. Most of the law discussed in this book is civil law.

Each of these two basic categories can be further divided into procedural and substantive law. *Substantive law* actually defines, creates, and governs legal rights and duties. *Procedural law*, by contrast, defines the method by which people can enforce the rights given to them by the substantive law. For example, procedural law tells us the steps that must be taken to move a lawsuit through the legal system from its initial filing to its final judgment.

Substantive law can be further classified into public and private law. *Public law* deals with the relationship between the government as a sovereign and the individual and is typically enacted or created by a governmental body. Criminal law, for example, is public law, as is constitutional and administrative law. *Private law* deals with the rights and duties that arise as the result of a relationship between individuals, including legal entities such as corporations. Private law encompasses a wide variety of topics, including tort law, contract law, property law, and the law of business organizations.

Law can also be classified based upon political jurisdictions. In the United States, there are essentially three levels of political and legal jurisdictions: (1) federal; (2) state; and (3) local. All three jurisdictions can affect marketing activities, although our discussion in this book focuses primarily on federal and state regulation of these activities.

The *federal government* is the national government and is comprised of the legislative, executive, and judicial branches. Each of these has the ability to create law. Within its sphere, the federal government is superior to the state and local governments. Under the U.S. Constitution, however, the federal government is a government of limited powers. The federal government has no power to act in areas not granted to it under the Constitution. In the specific areas in which the federal government is authorized to act, such as patents and copyrights, the federal government is superior to the state and local governments.

The *state governments* also have legislative, executive, and judicial branches. The states retain all of the governmental power not explicitly granted to the federal government under the U.S. Constitution. This means that the states retain authority to regulate in a number of areas that implicate marketing activities, including trade secrets, contracts, warranties, and products liability. Some areas of the law—such as trademark law, which is discussed in Chapter 6—are regulated by both the federal and state governments.

Each state has the power to create its own state law. Thus, state laws can vary substantially from state to state. Marketers engaged in interstate or national marketing efforts need to be aware of the ramifications of differences in state laws. In some areas, such as sales of goods, the states have undertaken measures to foster uniformity among state laws, thus easing the burden on interstate businesses. These efforts are discussed at various points throughout the book.

*Local governments*, such as cities, towns, villages, and counties, can also regulate business activities, including marketing activities. The powers of local governments are delegated to them by their state legislatures and may be limited or modified by the states. To the extent that they are authorized to act, local governments can create local laws, such as municipal ordinances and regulations. Although local regulations can impact certain types of marketing activities (for example, issues relating to consumer protection), local regulation is of considerably less significance than federal or state regulation in the marketing law arena.

Finally, law can be classified based upon the branch of government that created it. At both the state and federal levels, each of the three branches can create law. The legislative branch enacts statutes; the judicial branch creates common law through its opinions; and the executive branch creates administrative rules and regulations through its power over administrative agencies. Numerous examples of all three types of law are found throughout this book.

## Sources of the Law

The “law” can be found in many places. We look to *primary sources* when we want to find out what the legal rules “really are.” We look to *secondary sources* when we want assistance in finding and interpreting the “law.” There are numerous references to both primary and secondary sources throughout the book, both in the chapter discussions and in the judicial opinions.

### Primary Sources of the Law

As already noted, there are two parallel legal systems in the United States: the federal system and the state systems. (And, in fact, there are 50 separate state systems, plus a system for the District of Columbia, making a total of 52 legal systems in the United States.)

***Primary Sources of Federal Law*** At the federal level, there are a number of primary sources of law: the U.S. Constitution, treaties, federal statutes, federal court opinions, and administrative rules and regulations.

The *U.S. Constitution* is said to be the “supreme law of the land.” It establishes the three branches of the federal government—legislative, judicial, and executive—and addresses the powers and limitations of each of those branches. It restricts the power of the federal government and guarantees the rights and liberties of the people.

No law—whether created by the legislative, judicial, or executive branch or by the federal or a state government—is permitted to conflict with the U.S. Constitution. In addition, under the Constitution, federal statutes and treaties are superior to state constitutions and statutes. The U.S. Supreme Court, by virtue of its power of *judicial review*, has the authority to determine the constitutionality of all laws, federal or state.

A *treaty* is an agreement between or among nations. Under the U.S. Constitution, the President, with the advice and consent of the Senate, has sole authority to enter into

treaties. A valid treaty has the legal force of a federal statute. If a treaty and a federal statute conflict, the last to have been adopted prevails.

In addition, as noted earlier, each of the three federal governmental branches can create law. First, Congress can enact *statutes*. We look at a number of such statutes in later chapters, including the Patent Act, the Copyright Act, the Sherman and Clayton Antitrust Acts, the Federal Trade Commission (FTC) Act, and the Lanham Act. Second, the courts can create *common law* through their judicial opinions. We examine many federal court opinions throughout the book. Third, administrative agencies are part of the executive branch and have the power to enact *administrative agency rules and regulations*. Later chapters examine the regulatory activities of several federal administrative agencies, such as the FTC and the Consumer Product Safety Commission.

**Primary Sources of State Law** To a large extent, the primary sources of state law parallel those found at the federal level. The major exception is that treaties are found only at the federal, and never the state, level. Similarly, local government regulation is found only at the state, and never the federal, level.

Each state has its own *constitution*. Although often patterned upon the language of the federal Constitution, state constitutions are frequently more detailed than the federal Constitution. State constitutions cannot deprive individuals of federal constitutional rights, but they can give individuals additional rights beyond those found in the federal Constitution.

Each of the three branches of the state governments can create law, just as with the three branches of the federal government. The state legislatures can enact state *statutes*. Trade secrets and the right of publicity, for example, are governed by statute in many states, as are sales of goods. The executive branches of the state governments can enact state *administrative agency rules and regulations*. For example, state administrative agencies have undertaken several measures to protect consumers from unscrupulous marketing practices. Finally, the state courts can create *common law* through their opinions. Contract and tort law, for example, are still largely matters of state common law, which means that judicial opinions are an important primary source of state law in these areas.

## Secondary Sources of the Law

Numerous secondary sources of the law exist. Among the most influential of these are the *Restatements of the Law* compiled by the American Law Institute (ALI).<sup>1</sup> The ALI was formed in 1923 and consists of a group of distinguished lawyers, judges, and professors who compile authoritative statements of the common law in particular areas, including contracts, torts, and unfair competition. While the Restatements are not law themselves, the courts frequently look to and adopt the Restatements' positions on various points. Once adopted by a court, the Restatement language becomes a part of the common law of that jurisdiction. We will see numerous references to various Restatements in later chapters.

As noted earlier, each state creates its own legal rules. Historically, the growth of interstate businesses was hampered by the fact that the laws could differ substantially from state to state, making planning and compliance difficult for businesses operating across state lines. In an effort to reduce some of the variation in state laws, the National Conference of Commissioners on Uniform State Laws (NCCUSL) was created in 1892 to prepare uniform state legislation for presentation to and possible adoption by the state legislatures.<sup>2</sup> Until adopted by a state legislature, these model laws have no binding legal effect and so are considered secondary sources of the law. Once adopted by a state legislature, of course, the model statute becomes a state statute and hence a primary source of

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<sup>1</sup>For general information on the ALI, see [www.ali.org](http://www.ali.org)

<sup>2</sup>For general information on the NCC, see [www.nccusl.org](http://www.nccusl.org)

law. The most widely adopted of the uniform laws is the *Uniform Commercial Code (UCC)*, which was jointly created by the NCCUSL and the ALI and which provides uniform rules regarding commercial transactions. The UCC has been adopted by all of the 50 states (although Louisiana has adopted only part of it) and the District of Columbia. The UCC is discussed in Chapter 9 and Chapter 10 in the context of sales of goods and warranties. The NCCUSL is still active in drafting model uniform laws.

The courts may refer to legal encyclopedias, legal dictionaries, treatises, law review articles, and other secondary sources when trying to identify and interpret the legal rules contained within the primary sources of the law. Numerous examples of such secondary sources appear in the cases presented throughout this book.

## The American Legal System

### Common Law and Equity

The American legal system is a *common law*, or *Anglo-American*, legal system. This type of legal system is also found in other English-speaking countries, such as England, Canada (with the exception of Quebec), and Australia. In a common law system, much of the law is created by the judiciary and is found within court opinions. By contrast, much of the world, including Western Europe, Quebec, Scotland, Latin America, and parts of Africa and Asia, has a *civil law system*, in which the bulk of the law is found within legislative codes.

The American legal system is also an *adversary system*, which means that the parties, not the court, initiate and conduct litigation and gather evidence. The parties present their dispute to a neutral fact finder, the court. The theory behind the adversary system is that the two interested parties are most likely to vigorously litigate a case. Civil law systems, by contrast, often depend upon an *inquisitorial system*, in which the judiciary assists in initiating litigation, investigating facts, and presenting the evidence.

Because of the way that the common law developed in England historically, the primary form of legal relief available is monetary damages. Because money is not necessarily an appropriate form of relief in all cases, an additional system of judicial relief evolved that was known as *equity*. A court of chancery, sitting in equity, could award nonmonetary relief in instances where the monetary remedy available at law was inadequate. Among the primary forms of equitable relief found today are *injunctions*, which are court orders requiring a party to undertake an act or refrain from an act, and *specific performance*, which is an order to a party to fulfill its contractual obligations.

Today, virtually all jurisdictions in the United States have merged their courts of equity and law so that a single court can administer both forms of justice. Nonetheless, important distinctions remain. While a jury may be available in cases at law, only judges decide equity cases. In addition, equitable relief is available only at the discretion of the judge. In order to obtain equitable relief, the party seeking such relief must typically show that he or she has “clean hands,” i.e., that he or she acted fairly and honorably toward the other party. There are numerous examples of courts acting in equity throughout this book. Preliminary injunctions, for example, are a commonly requested form of equitable relief in disputes involving marketers.

Within the American legal system, the operative doctrine is *stare decisis*, also known as the *doctrine of precedent*. *Stare decisis* is a Latin term that means “to stand by a decision.” Essentially, this doctrine tells us that each court is bound by its own “precedents,” i.e., that each court must decide subsequent cases in the same way that it or a superior court decided earlier cases with similar facts. A court can overrule its own precedents, however, if it determines that a precedent was wrongly decided or that social or technological advances have rendered the precedent obsolete.

A court is not bound by *every* case that was decided earlier. As noted earlier, there are 52 court systems within the United States—the federal system, 50 state systems, and a system for the District of Columbia. In general, decisions of one court are binding only on that court and on *lower* courts within the *same system*. Thus, a Michigan trial court is bound by a decision of the Michigan Supreme Court but not by a decision of the Texas Supreme Court, which is outside its system. Similarly, the Michigan Supreme Court is not bound by a decision of the Michigan trial court, which is a lower court within its system. A decision of the U.S. Supreme Court on a *federal question* (i.e., a question involving the U.S. Constitution, a federal statute, or a treaty) is binding on all state and federal courts. Within the federal system, however, a decision of a specific circuit court of appeals is binding on that court and on all district (lower) courts within that circuit, but not on other circuit courts or upon the district courts outside its circuit.

### Court Structure

The doctrine of precedent means that it is important to understand how the court systems are arranged. All courts fulfill one of two basic types of judicial functions. First, some courts exercise *trial* functions and are said to have *original jurisdiction*. Cases originate in these courts, and the judges or juries (in appropriate cases) in these courts determine the facts of the case and take the first stab at applying the law to those facts.

In the American legal system, the person who starts a civil lawsuit is known as the *plaintiff*. The person who is being sued is known as the *defendant*. The plaintiff has the burden of proof, which means that the plaintiff must show, usually by a *preponderance of evidence*, that it should prevail. The most common remedies for a civil action are monetary damages and/or an injunction.

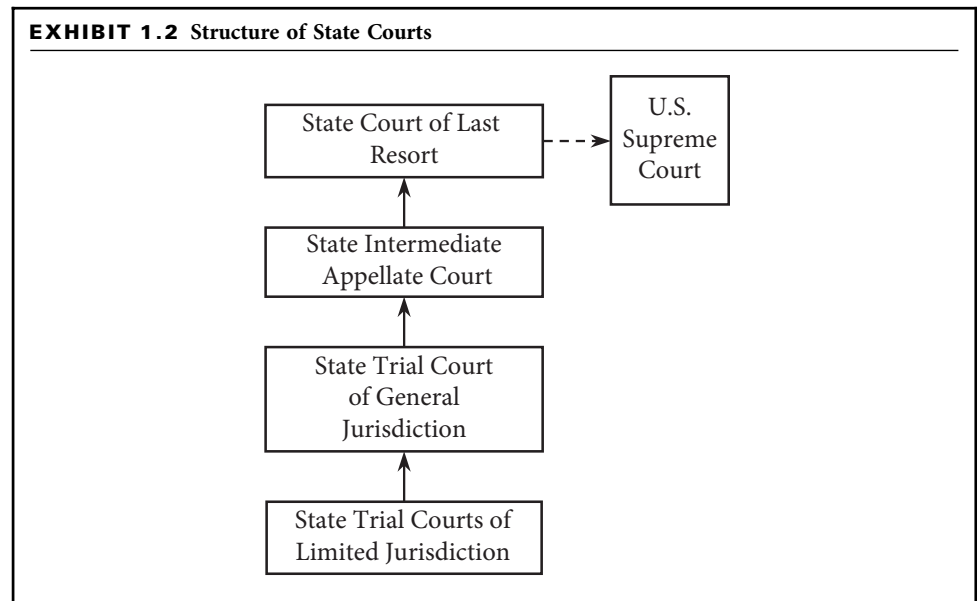
In a criminal case, the government, in its role as *prosecutor*, prosecutes an individual, known as the *defendant*, for a wrong that the individual allegedly committed against the whole community. The government bears the burden of proving that the defendant is guilty *beyond a reasonable doubt*. The punishment for crimes usually consists of imprisonment and/or fines.

The second type of court is said to have *appellate jurisdiction*. Appellate courts generally review only the lower court's theory and application of the law, not the trial court's findings of fact. Appellate courts do not conduct trials, hear evidence or testimony, or determine facts. Rather, appellate courts must accept the facts as determined by the trial court unless the trial court's decision is "clearly erroneous," which is a very difficult standard to meet. An appellate court reviews the factual *record* created by the trial court (e.g., the trial transcript and physical evidence introduced at trial). The appellate court's job is to resolve questions of law, i.e., to determine whether the trial was conducted in a procedurally proper manner and whether the appropriate law was applied correctly to the facts as determined by the trial court.

At the appellate level, the person who lost below and who is bringing the appeal is known as the *appellant* or the *petitioner*. The person who won below and who is defending the appeal is known as the *appellee* or the *respondent*. If the appellate court finds no prejudicial error in the lower court's determination, it will *affirm* the decision. If the court finds a prejudicial error, it will either *reverse* or *modify* the decision. If necessary, the appellate court can also *remand* the case back to the lower court for further proceedings.

We first examine the typical state court structure; then we examine the federal court structure.

**State Court Structure** As already noted, each state has its own court system. There is great variety in state court systems. The most common state court structure is a four-tier



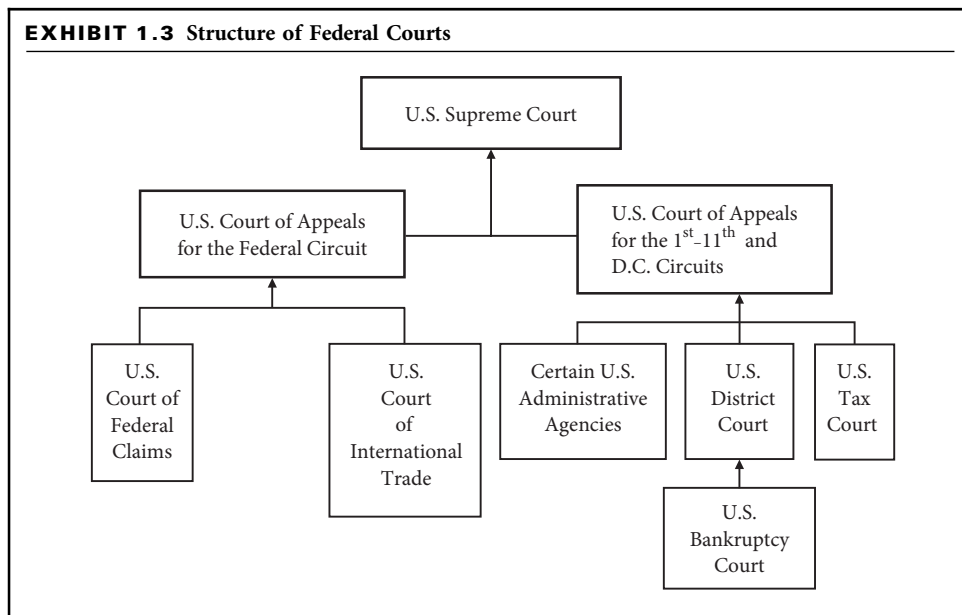
judicial system, although some states use a three- or even two-tier system. (See Exhibit 1.2.) The first, or lowest, tier consists of *trial courts of limited jurisdiction*. These courts have jurisdiction over specific subject matters, such as minor criminal offenses and civil cases up to a specified sum (e.g., \$10,000). *Small claims courts* are found at this level. These are courts that hear civil cases involving relatively small sums of money. In most small claims courts, neither side is represented by an attorney, there is no jury, and the legal procedures are relaxed.

The second tier consists of *trial courts of general jurisdiction*. These courts conduct the trials on all cases not heard by the first tier courts, such as major crimes and civil cases involving larger sums of money. Juries are available in these courts in appropriate types of cases.

The third tier consists of *intermediate appellate courts*. Generally, the losing party in a case before the trial court is entitled to appeal to the intermediate appellate court provided that it can point to an alleged error of law (e.g., that the judge allowed evidence in that should have been excluded, that the jury instructions were incorrect, or that the wrong legal rule was applied). This is known as an *appeal of right* because if the losing party can point to an alleged error of law, the appellate court must hear the appeal. Generally, a panel of three judges hears appeals at this level and a party must persuade two of the three in order to prevail.

Finally, the fourth tier consists of the *appellate court of last resort*, generally known as the supreme court in most (but not all) states. Usually, there are five to nine judges found on this court (they are generally referred to as justices) and all of them hear and decide each case. In most instances, the appealing party must ask the court's permission to appeal; there is usually no appeal of right at this level as there is with the intermediate appellate court. A party generally must persuade a majority of the justices in order to prevail. The decision of this court is usually final. A very few types of cases can be appealed from this court to the U.S. Supreme Court, but those cases must involve a federal question as discussed below. For the most part, cases that reach this level stop here.

**Federal Court Structure** The federal court structure parallels the state court system in many ways. (See Exhibit 1.3.) The main distinction between the two is that federal



courts are courts of limited jurisdiction. They can hear cases only in areas granted to them under the U.S. Constitution. All other cases must go to state court.

The first tier in the federal court system consists of the *trial courts*. These courts include *specialty tribunals*, such as the Patent and Trademark Office (PTO), which we discuss in Chapter 2 and Chapter 6. These tribunals have very limited jurisdiction over specific subject matter. The trial courts also include the *U.S. District Courts*. The district courts hear all cases not heard by the specialty tribunals, including general civil and criminal courts. Generally, one judge hears the case and juries are available in appropriate cases.

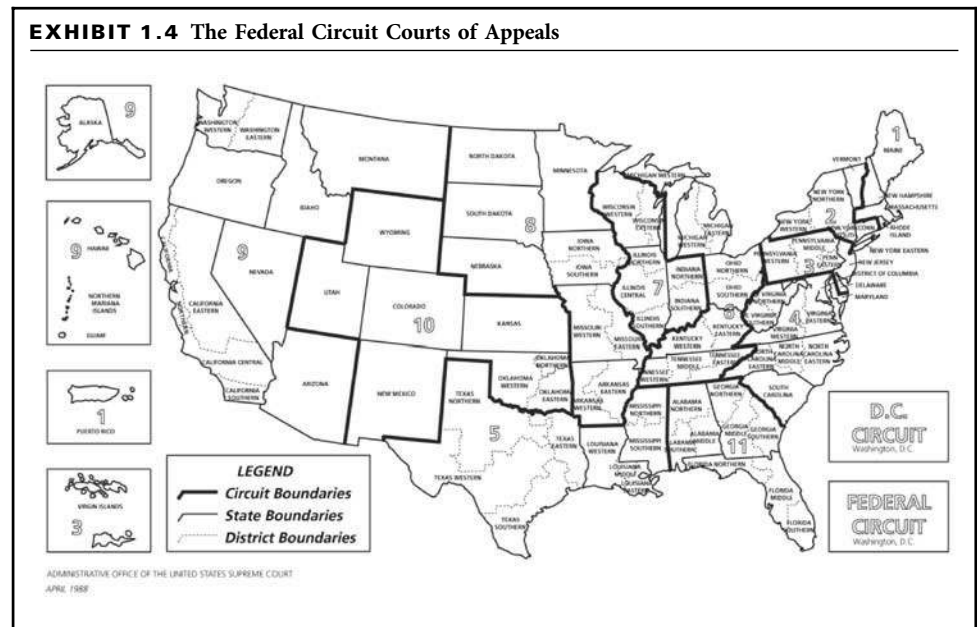
The second tier consists of the *U.S. Courts of Appeals*. These are reviewing courts with appellate jurisdiction, like the intermediate appellate courts in the states. Parties who can point to an alleged error of law have an appeal of right to these courts. Typically, a panel of three judges hears each case (and a party must convince two of the three in order to prevail), although in some instances all of the judges of the circuit may sit *en banc* to hear a case.

There are 12 judicial circuits (the First through Eleventh Circuits, plus the D.C. Circuit). (See Exhibit 1.4.) They hear appeals from the district courts as well as decisions of certain administrative agencies, the Tax Court, and the Bankruptcy Court. Certain appeals, including those from the Court of Federal Claims, the PTO, the United States Court of International Trade, and patent cases decided by a U.S. District Court, are heard by the Court of Appeals for the Federal Circuit (CAFC).

The final tier consists of the *U.S. Supreme Court*. Nine Justices sit on the Supreme Court, and typically all of them hear each case. The U.S. Supreme Court typically reviews federal appellate decisions, although the Court does have original jurisdiction in a very few specific types of cases. In addition, a state court case can end up before the Supreme Court if it raises a federal question (i.e., if it contains an issue involving a federal statute, a treaty, or the federal Constitution).

For all practical purposes, there is no appeal of right to the U.S. Supreme Court. Rather, a party wishing to have its case heard by the Supreme Court must file a petition for a *writ of certiorari*. The Court may either grant the writ and agree to hear the case or, more likely, deny the writ, which means that the lower court's decision stands. The Court typically hears only a very small percentage of the cases presented to it each year. Usually, the Court selects cases that involve a federal question of significant importance or a conflict among the U.S. Circuit Courts of Appeal.





## Jurisdiction

*Jurisdiction* refers to the power or right of a court to hear or decide a case. The court must have two types of jurisdiction in order to have the power to resolve a case: (1) subject matter jurisdiction and (2) jurisdiction over the parties.

### Subject Matter Jurisdiction

*Subject matter jurisdiction* refers to the power of a court to resolve a lawsuit involving a particular type of issue. The federal courts have limited subject matter jurisdiction, as set forth in Article III, Section 2 of the U.S. Constitution. That means that the federal courts can hear cases only where Congress or the Constitution has granted them the power to do so. The state courts have exclusive jurisdiction over all remaining cases.

The federal courts have exclusive jurisdiction over those areas where Congress has explicitly or implicitly so provided. These areas include certain admiralty issues, antitrust, bankruptcy, copyright and patent, federal criminal prosecutions, and suits against the United States.

The federal and state courts have *concurrent jurisdiction* in two instances. Concurrent jurisdiction means that both the state and the federal courts have jurisdiction to hear the case (although ultimately the case will be heard by one court or the other, not both). First, the state and federal courts have concurrent jurisdiction over *federal questions* in which the federal courts have not been given exclusive jurisdiction.

Second, the state and federal courts have concurrent jurisdiction in *diversity* cases. By definition, diversity cases involve state law issues that nonetheless are heard in federal court. Diversity jurisdiction arises where there is: (1) “diversity of citizenship” between the two parties (e.g., when all of the plaintiffs are residents of a state or states different from the state or states of residence of all of the defendants or when the lawsuit is between citizens of the United States and citizens of a foreign country), and (2) the amount in controversy is more than \$75,000. A party’s place of residence is the state in which it resides or is domiciled. A corporation, however, is a resident of both the state in which it is incorporated and the state in which it has its principal place of business.

If a federal court hears a diversity case, it must apply state substantive law. (*Conflict of laws rules* determine which state's law applies.) The federal court generally applies federal procedural law, however.

In a concurrent jurisdiction case, the plaintiff has the option of bringing the case in either state or federal court. If the plaintiff files in state court, however, the defendant may usually have the case *removed* to federal court.

### Jurisdiction over the Parties

In addition to subject matter jurisdiction, a court must also have jurisdiction over the parties to the lawsuit, that is, the court must have the power to bind the parties involved in the dispute. This jurisdictional requirement can be satisfied in one of several ways.

First, the court has jurisdiction over a person who voluntarily comes before it and subjects himself to the court's jurisdiction. In a contract, for example, one party may agree that in the event of a lawsuit, the courts of the state of residence of the other party will have jurisdiction over the dispute.

Second, the court can exercise *in personam* jurisdiction, or *personal jurisdiction*, either over parties located within the state or over parties located outside the state to whom a "long-arm statute" applies. A *long-arm statute* is a state statute that allows a state court to exercise jurisdiction over nonresident defendants who have sufficient contacts (known as *minimum contacts*) with the state such that the exercise of jurisdiction does not offend "traditional notions of fair play and substantial justice."<sup>3</sup> Long-arm statutes typically apply to defendants who: (1) have committed a tort within the state and the tort is the subject matter of the lawsuit; (2) own property within the state and the property is the subject matter of the lawsuit; (3) have entered into a contract within the state and the contract is the subject matter of the lawsuit; or (4) have transacted business within the state and the lawsuit involves that transaction.

Finally, the court can exercise *in rem jurisdiction*, which refers to the power of a state court to hear cases involving property situated within the state.

### Jurisdiction on the Internet

The Internet raises special types of jurisdiction issues. Does a marketer located in Maine, for example, subject itself to the jurisdiction of the Hawaii courts simply because it has a website that is accessible to Hawaii residents? Or, must the marketer undertake more direct activities in Hawaii, such as selling to Hawaiian residents or shipping goods to Hawaii, before it becomes subject to such jurisdiction?

The law is not yet settled regarding jurisdiction on the Internet. Courts generally have held that merely having a website that is accessible by residents in another state is insufficient to subject a defendant to the jurisdiction of that other state. Rather, courts generally look to see whether a defendant website owner has "purposefully availed" itself of the privilege of doing business in that state. Often, the courts have found this requirement is satisfied where a resident of the state has accessed the contents of the site or purchased goods or services offered on it. A recent court decision summarized the law thus:

The likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet.... At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. At the opposite end are situations

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<sup>3</sup>*International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions. A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise [of] personal jurisdiction. The middle ground is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site.<sup>4</sup>

Several state courts have held that successful solicitation of local residents is also sufficient to establish personal jurisdiction over the website owner. Websites that are purely local in nature, however, generally do not support exercise of jurisdiction, especially where the website contains conspicuous disclaimers to that effect.

## DISCUSSION CASES

### 1.1 Jurisdiction

#### *Pebble Beach Company v. Caddy*, 453 F.3d 1151 (9th Cir. 2006)

Pebble Beach Company (“Pebble Beach”), a golf course resort in California, appeals the dismissal for lack of jurisdiction of its complaint against Michael Caddy (“Caddy”), a small-business owner located in southern England. \* \* \* Because Caddy did not expressly aim his conduct at California or the United States, we hold that the district court determined correctly that it lacked personal jurisdiction. \* \* \* Thus, we affirm.

#### I

Pebble Beach is a well-known golf course and resort located in Monterey County, California. The golf resort has used “Pebble Beach” as its trade name for 50 years. Pebble Beach contends that the trade name has acquired secondary meaning in the United States and the United Kingdom. Pebble Beach operates a website located at [www.pebblebeach.com](http://www.pebblebeach.com).

Caddy, a dual citizen of the United States and the United Kingdom, occupies and runs a three-room bed and breakfast, restaurant, and bar located in southern England. Caddy’s business operation is located on a cliff overlooking the pebbly beaches of England’s south shore, in a town called Barton-on-Sea. The name of

Caddy’s operation is “Pebble Beach,” which, given its location, is no surprise. Caddy advertises his services, which do not include a golf course, at his website, [www.pebblebeach-uk.com](http://www.pebblebeach-uk.com). Caddy’s website includes general information about the accommodations he provides, including lodging rates in pounds sterling, a menu, and a wine list. The website is not interactive. Visitors to the website who have questions about Caddy’s services may fill out an on-line inquiry form. However, the website does not have a reservation system, nor does it allow potential guests to book rooms or pay for services on-line.

Except for a brief time when Caddy worked at a restaurant in Carmel, California, his domicile has been in the United Kingdom.

On October 8, 2003, Pebble Beach sued Caddy under the Lanham Act and the California Business and Professions Code for intentional infringement and dilution of its “Pebble Beach” mark. Caddy moved to dismiss the complaint for lack of personal jurisdiction .... On March 1, 2004, the district court granted Caddy’s motion on personal jurisdiction grounds .... \* \* \* Pebble Beach timely appealed to the Ninth Circuit.

<sup>4</sup>*Molnlycke Health Care A.B. v. Dumex Medical Surgical Products, Inc.*, 64 F. Supp. 2d 448, 451 (E.D. Pa. 1999) (quoting *Zippo Mfg Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1977)).

## II

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### A. Personal Jurisdiction

The arguments are straightforward. Caddy contends that the district court may not assert personal jurisdiction over him, and, consequently, that the complaint against him was properly dismissed. Pebble Beach argues in return that Caddy is subject to specific personal jurisdiction in California, or, alternatively, in any forum in the United States, because he has expressly aimed tortious conduct at California and the United States. \* \* \*

\* \* \*

The general rule is that personal jurisdiction over a defendant is proper if it is permitted by a long-arm statute and if the exercise of that jurisdiction does not violate federal due process. Here, both the California long-arm statute and Rule 4(k)(2)—what is often referred to as the federal long-arm statute—require compliance with due process requirements. Consequently, under both arguments presented by Pebble Beach, resolution turns on due process.

For due process to be satisfied, a defendant, if not present in the forum, must have “minimum contacts” with the forum state such that the assertion of jurisdiction “does not offend traditional notions of fair play and substantial justice.”

In this circuit, we employ the following three-part test to analyze whether a party’s “minimum contacts” meet the Supreme Court’s directive. This “minimum contacts” test is satisfied when,

- (1) the defendant has performed some act or consummated some transaction within the forum or otherwise purposefully availed himself of the privileges of conducting activities in the forum, (2) the claim arises out of or results from the defendant’s forum-related activities, and (3) the exercise of jurisdiction is reasonable.

“If any of the three requirements is not satisfied, jurisdiction in the forum would deprive the defendant of due process of law.” \* \* \* Here, Pebble Beach’s arguments fail under the first prong. Accordingly, we need not address whether the claim arose out of or resulted from Caddy’s forum-related activities or whether an exercise of jurisdiction is reasonable ....

Under the first prong of the “minimum contacts” test, Pebble Beach has the burden of establishing that

Caddy “has performed some act or consummated some transaction within the forum or otherwise purposefully availed himself of the privileges of conducting activities in the forum.” We have refined this to mean whether Caddy has either (1) “purposefully availed” himself of the privilege of conducting activities in the forum, or (2) “purposefully directed” his activities toward the forum. \* \* \*

Thus, in order to satisfy the first prong of the “minimum contacts” test, Pebble Beach must establish either that Caddy (1) purposefully availed himself of the privilege of conducting activities in California, or the United States as a whole, or (2) that he purposefully directed its activities toward one of those two forums.

#### 1. Purposeful Availment

Pebble Beach fails to identify any conduct by Caddy that took place in California or in the United States that adequately supports the availment concept. Evidence of availment is typically action taking place in the forum that invokes the benefits and protections of the laws in the forum. All of Caddy’s action identified by Pebble Beach is action taking place outside the forum. \* \* \* Accordingly, we reject Pebble Beach’s assertion that Caddy has availed himself of the jurisdiction of the district court and proceed only to determine whether Caddy has purposefully directed his action toward one of two applicable forums.

#### 2. Purposeful Direction: California

In *Calder v. Jones*, [465 U.S. 783 (1984)], the Supreme Court held that a foreign act that is both aimed at and has effect in the forum satisfies the first prong of the specific jurisdiction analysis. We have commonly referred to this holding as the “*Calder* effects test.” To satisfy this test the defendant “must have (1) committed an intentional act, which was (2) expressly aimed at the forum state, and (3) caused harm, the brunt of which is suffered and which the defendant knows is likely to be suffered in the forum state.” However, referring to the *Calder* test as an “effects” test can be misleading. For this reason, we have warned courts not to focus too narrowly on the test’s third prong—the effects prong—holding that “something more” is needed in addition to a mere foreseeable effect. Specifically we have stated,

Subsequent cases have struggled somewhat with *Calder*’s import, recognizing that the case cannot stand for the broad proposition that a foreign act with foreseeable effects in the forum state will

always give rise to specific jurisdiction. We have said that there must be “something more” .... We now conclude that “something more” is what the Supreme Court described as “express aiming” at the forum state.

Thus, the determinative question here is whether Caddy’s actions were “something more”—precisely, whether his conduct was expressly aimed at California or alternatively the United States.

We conclude that Caddy’s actions were not expressly aimed at California. The only acts identified by Pebble Beach as being directed at California are the website and the use of the name “Pebble Beach” in the domain name. These acts were not aimed at California and, regardless of foreseeable effect, are insufficient to establish jurisdiction.

In support of its contention that Caddy has expressly aimed conduct at California, Pebble Beach identifies a list of cases where we have found that a defendant’s actions have been expressly aimed at the forum state sufficient to establish jurisdiction over the defendant. Pebble Beach asserts that these cases show that Caddy’s website and domain name, coupled by his knowledge of the golf resort as a result of his working in California, are sufficient to satisfy the express aiming standard that it is required to meet. We disagree. If anything, these cases establish that “something more”—the express aiming requirement—has not been met by Pebble Beach.

In *Panavision [Int’l v. Toeppen*, 141 F.3d 1316 (9<sup>th</sup> Cir. 1998)], the defendant, a cybersquatter, registered the plaintiff’s trademark as part of a domain name. The use of the domain name by the defendant prevented the plaintiff from registering its own domain name and was part of a plan to obtain money from the plaintiff in exchange for the rights to the domain name. The court found personal jurisdiction, not merely because of the domain name use, but because the plan was expressly aimed at the plaintiff:

[The Defendant] did considerably more than simply register Panavision’s trademarks as his domain names on the Internet. He registered those names as part of a scheme to obtain money from Panavision. Pursuant to that scheme, he demanded \$13,000 from Panavision to release the domain names to it. His acts were aimed at Panavision in California, and caused it to suffer injury there.

Here, Caddy has hatched no such plan directed at Pebble Beach. He is not a cybersquatter trying to obtain money from Pebble Beach. His operation is legitimate and his website relates directly to that end.

In *Metropolitan Life Insurance Co. v. Neaves*, [912 F.2d 1062 (9<sup>th</sup> Cir. 1990)], the defendant’s alleged plan to defraud the insurance company involved direct interaction with the forum state. We held that the action at issue satisfied *Calder’s* “effects test” because the defendant sent a letter to the forum state addressed to the plaintiff, thereby defrauding a forum state entity.

In *Bancroft & Masters, Inc. v. Augusta National Inc.*, [223 F.3d 1082 (9<sup>th</sup> Cir. 2000)], a dispute over the domain name *www.masters.org* was triggered by a letter sent by Augusta that required Bancroft & Masters, a computer corporation in California, to sue or lose the domain name. We stated that the “expressly aiming” standard was satisfied when “individualized targeting was present.” We reasoned that specific jurisdiction was proper and that the expressly aiming requirement was satisfied because the letter sent by Augusta constituted “individualized targeting.”

The defendant in both *Bancroft* and *Metropolitan Life* did “something more” than commit a “foreign act with foreseeable effects in the forum state.” In both cases this “individualized targeting” was correspondence that was a clear attempt to force the plaintiff to act. Here, Caddy engaged in no “individualized targeting.” There is no letter written by Caddy forcing Pebble Beach to act. The only substantial action is a domain name and non-interactive informative website along with the extraneous fact that Caddy had worked, at some point in his past, in California. This does not constitute “individualized targeting.” Indeed, to hold otherwise would be contrary to what we have suggested in earlier case law.

In *Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007 (9<sup>th</sup> Cir. 2000), we [stated] that when a “website advertiser [does] nothing other than register a domain name and post an essentially passive website” and nothing else is done “to encourage residents of the forum state,” there is no personal jurisdiction. Similarly, in *Panavision* we stated, “We agree that simply registering someone else’s trademark as a domain name and posting a website on the Internet is not sufficient to subject a party domiciled in one state to jurisdiction in another.” Why? Because “the objectionable webpage simply was not aimed intentionally at the [forum state] knowing that harm was likely to be caused there,” and “[u]nder the effects doctrine, ‘something more’ was required to indicate that the defendant purposefully directed its activity in a substantial way to the forum state.”

These cases establish two salient points. First, there can be no doubt that we still require “something more” than just a foreseeable effect to conclude that personal

jurisdiction is proper. Second, an internet domain name and passive website alone are not “something more,” and, therefore, alone are not enough to subject a party to jurisdiction.

In contrast to those cases where jurisdiction was proper because “something more” existed, the circumstances here are more analogous to *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797 (9<sup>th</sup> Cir. 2004). In *Schwarzenegger*, we determined that personal jurisdiction based solely on a non-interactive print advertisement would be improper. In *Schwarzenegger*, the former movie star and current California governor, brought an action in California alleging that an Ohio car dealership used impermissibly his “Terminator” image in a newspaper advertisement in Akron, Ohio. The federal district court in California dismissed the complaint for lack of personal jurisdiction. Applying the *Calder* “effects test,” we affirmed, concluding that even though the advertisement might lead to eventual harm in California this “foreseeable effect” was not enough because the advertisement was expressly aimed at Ohio rather than California. We concluded that, without “something more” than possible effect, there was simply no individualized targeting of California, or the type of wrongful conduct, that could be construed as being directed at the forum state. We held that *Schwarzenegger* had not established jurisdiction over the car dealership.

Pebble Beach, like *Schwarzenegger*, relies almost exclusively on the possible foreseeable effects. Like *Schwarzenegger*, Pebble Beach’s arguments depend on the possible effects of a non-interactive advertisement here, Caddy’s passive website. Notably absent in both circumstances is action that can be construed as being expressly aimed at California. The fact that Caddy once lived in California and therefore has knowledge of the Pebble Beach golf resort goes to the foreseeable effect prong of the “effects test” and is not an independent act that can be interpreted as being expressly aimed at California. [W]e reject also any contention that a passive website constitutes expressed aiming. \* \* \* As with the print advertisement in *Schwarzenegger*, the fact that Caddy’s website is not directed at California is controlling.

### 3. Purposeful Direction: United States

Even if Pebble Beach is unable to show purposeful direction as to California, Pebble Beach can still establish jurisdiction if Caddy purposefully directed his action at the United States. This ability to look to the aggregate

contacts of a defendant with the United States as a whole instead of a particular state forum is a product of Rule 4(k)(2). Thus, Rule 4(k)(2) is commonly referred to as the federal long-arm statute.

The exercise of Rule 4(k)(2) as a federal long-arm statute requires the plaintiff to prove three factors. First, the claim against the defendant must arise under federal law. Second, the defendant must not be subject to the personal jurisdiction of any state court of general jurisdiction. Third, the federal court’s exercise of personal jurisdiction must comport with due process. Here, the first factor is satisfied because Pebble Beach’s claims arise under the Lanham Act. And, as established above, the second factor is satisfied as Caddy is not subject to personal jurisdiction of California, or any state court.

That leaves the third factor—due process. The due process analysis is identical to the one discussed above when the forum was California, except here the relevant forum is the entire United States. And, as with the foregoing analysis, our resolution here depends on whether Caddy’s actions were purposefully directed at the United States. Pebble Beach contends that the “purposeful direction” requirement is satisfied under the *Calder* “effects test” because Caddy’s operation is expressly aimed at the United States. Pebble Beach makes four arguments.

First, Pebble Beach claims that because Caddy selected a “.com” domain name it shows that the United States was his “primary” market and that he is directly advertising his services to the United States. Second, Pebble Beach asserts that his selection of the name “Pebble Beach” shows the United States is his primary target because “Pebble Beach” is a famous United States trademark. Third, Pebble Beach asserts that Caddy’s intent to advertise to the United States is bolstered by the fact that Caddy’s facilities are located in a resort town that caters to foreigners, particularly Americans. Finally, Pebble Beach asserts that a majority of Caddy’s business in the past has been with Americans.

As before, Pebble Beach’s arguments focus too much on the effects prong and not enough on the “something more” requirement. First, ... we conclude that the selection of a particular domain name is insufficient by itself to confer jurisdiction over a non-resident defendant, even under Rule 4(k)(2), where the forum is the United States. The fact that the name “Pebble Beach” is a famous mark known worldwide is of little practical consequence when deciding whether action is directed at a particular forum via the world wide web. Also of minimal importance is

Caddy's selection of a ".com" domain name instead of a more specific United Kingdom or European Union domain. To suggest that ".com" is an indicator of express aiming at the United States is even weaker than the counter assertion that having "U.K." in the domain name, which is the case here, is indicative that Caddy was only targeting his services to the United Kingdom. Neither provides much more than a slight indication of where a website may be located and does not establish to whom the website is directed. Accordingly, we reject these arguments.

This leaves Pebble Beach's arguments that because Caddy's business is located in an area frequented by Americans, and because he occasionally services Americans, jurisdiction is proper. These arguments fail for the same reasons; they go to effects rather than express aiming. Pebble Beach's arguments do have intuitive appeal—they suggest a real effect on Americans. However, as reiterated throughout this opinion, showing "effect" satisfies only the third prong of the *Calder* test—it is not the "something more" that is required. The "something more" additional requirement is important simply because the effects cited may not have been caused by the defendant's actions of which the plaintiff complains. Here, although Caddy may serve vacationing Americans, there is not a scintilla of

evidence indicating that this patronage is related to either Caddy's choice of a domain name or the posting of a passive website. Accordingly, we find no action on the part of Caddy expressly directed at the United States and conclude that an exercise of personal jurisdiction over Caddy would offend due process.

\* \* \*

### III

Caddy did not expressly aim his conduct at California or the United States and therefore is not subject to the personal jurisdiction of the district court. A passive website and domain name alone do not satisfy the *Calder* effects test and there is no other action expressly aimed at California or the United States that would justify personal jurisdiction. \* \* \*

AFFIRMED.

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#### QUESTIONS FOR DISCUSSION FOR CASE 1.1

1. Why is it necessary for Pebble Beach to try to assert the long-arm statutes in this case?
2. The court analyzes only one part of the three-part test for minimum contacts. Why?
3. How does the court apply precedent in deciding this case?

## 1.2. Jurisdiction

### *The American Automobile Association, Inc. v. Darba Enterprises Inc.*, 2009 U.S. Dist. LEXIS 37564 (N.D. Cal. 2009)

\* \* \*

#### Background

This case arises out of the allegedly infringing use by defendants Darba Enterprises, Inc. and Darren Bagnuolo of plaintiff American Automobile Association's ("AAA") trademarks. AAA is a non-profit corporation that provides services and products to consumers, such as roadside assistance packages, auto insurance and health insurance. AAA has used its "famous and distinctive" AAA trademarks (the "AAA Marks") for over 100 years, and has registered more than 70 of these marks with the United States Patent and Trademark Office. Defendant Darba Enterprises is a corporation that operates several websites that purport to match consumers seeking auto insurance quotes with third-party insurers. Defendant

Darren Bagnuolo is the President, Secretary, Treasurer, and Director of Darba Enterprises.

Plaintiff alleges that defendants' websites, including "aaa-insurance-website.com" and "insurance-website.com" displayed the AAA Marks without authorization for the purpose of tricking internet users into believing that the site was affiliated with AAA. Plaintiff also alleges that defendants have used the AAA Marks in pay-per-click advertisements hosted by search engines such as Google and Yahoo!, and have used those marks to act as "keywords" when typed into these search engines. When an internet user clicks on one of defendants' web pages, the user is invited to enter her zip code to get an auto insurance quote. Once the user clicks through several screens and enters information about her car and driving record, the user comes to a screen that asks her to enter her contact information,

including name, address, and phone number. The information entered is submitted to a third-party vendor who apparently distributes it to insurance companies, none of which are AAA and many of which are AAA's direct competitors. Plaintiff has received at least two complaints from consumers in California who mistakenly reached defendants' websites while trying to find AAA on the internet.

When plaintiff discovered defendants' websites, it sent several cease and desist letters to defendants via certified mail. Although defendants did not answer the letters, the websites were modified to remove reference to AAA. However, defendants did not remove the "insurance-website.com" site nor did they discontinue the infringing pay-per-click advertisements. On February 4, 2009, plaintiff filed the instant suit, alleging trademark infringement and dilution, false designation of origin, and unfair competition.

\* \* \*

## Legal Standards

### I. Motion to Dismiss for Lack of Personal Jurisdiction

Personal jurisdiction over a non-resident defendant may exist if the defendant has either a continuous and systematic presence in the state (general jurisdiction), or minimum contacts with the forum state such that the exercise of jurisdiction "does not offend traditional notions of fair play and substantial justice" (specific jurisdiction). \* \* \*

\* \* \*

## Discussion

\* \* \*

### II. Personal Jurisdiction

Defendant Bagnuolo argues that this case should be dismissed for lack of personal jurisdiction. Plaintiff responds that defendant's forum-related activities make personal jurisdiction appropriate. Because plaintiff argues only that specific jurisdiction is warranted, the Court does not address whether general jurisdiction would be appropriate here.

California law requires that the exercise of personal jurisdiction comply with federal due process requirements. To satisfy due process, a nonresident defendant must have "minimum contacts" with the forum state such that the assertion of jurisdiction "does not offend

traditional notions of fair play and substantial justice." The Ninth Circuit employs a three-part test to determine whether the defendant has such minimum contacts with a forum state. First, the "nonresident defendant must do some act or consummate some transaction with the forum or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum," thereby invoking the benefits and protections of the forum state. Second, the claim must "arise [] out of or result [] from the defendant's forum-related activities," and third, the exercise of personal jurisdiction over the defendant must be reasonable. The plaintiff bears the burden of proving the first two prongs. If the plaintiff carries this burden, "the defendant must come forward with a 'compelling case' that the exercise of jurisdiction would not be reasonable."

### A. Purposeful Availment

The "purposeful availment" prong of the specific jurisdiction test "ensures that a nonresident defendant will not be haled into court based upon 'random, fortuitous or attenuated' contacts with the forum state." This prong is satisfied if the defendant has either "(1) 'purposefully availed' himself of the privilege of conducting activities in the forum, or (2) 'purposefully directed' his activities toward the forum."

A defendant has not "purposefully availed" himself of the privilege of conducting activities in a forum state merely because he operates a website which can be accessed there. Rather, in the context of the internet, courts use a sliding scale approach to assess purposeful availment. At one end of the scale are "passive" websites which merely display information, such as an advertisement. Personal jurisdiction is "not appropriate when a website is merely ... passive." At the other end of the scale are "interactive" websites which function for commercial purposes and where users exchange information. Personal jurisdiction is appropriate "when an entity is conducting business over the internet." Where a website is somewhere between the two extremes, "the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the internet."

Defendant argues that his websites were passive. He stresses that because he did not sell anything directly to consumers, his website cannot be considered commercial. But this argument ignores the fact that users who searched for "AAA insurance" and found defendant's



website were brought to a web-page where they were instructed to enter their names and contact information to get a “free rate quote.” Contrary to defendant’s assertions, this is not an example of a website that merely provides information to consumers. In fact, the websites provided *no* information to consumers unless and until they entered their contact information. Plaintiff alleges, and provides circumstantial evidence, that defendant sold this contact information to a third party. Because the defendant has not contradicted or denied this allegation, the Court accepts it as true. Defendant thus profited when California users entered their contact information in his website, even though he did not sell anything to them directly. Therefore, the Court finds that defendant’s websites were interactive and commercial.

By maintaining a commercial website, defendant has “reached out beyond [his] home state of [Nevada] to avail [himself] of the benefits of the California forum.” Plaintiff received at least two complaints from California residents who had mistakenly entered their information into defendant’s website thinking it was an AAA website. Defendant presumably benefitted from these actions by selling the contact information of these California residents. Although the actual number of California residents who entered their contact information into defendant’s website may be small, “the critical inquiry in determining whether there was a purposeful availment of the forum state is the quality, not merely the quantity, of the contacts.” Nor may defendant “escape jurisdiction by claiming that its contacts with California are merely fortuitous.” Defendant’s website required users to enter their zip codes to get “insurance quotes.” It is reasonable to infer that the third parties to whom defendant sold this contact information targeted potential customers based on their geographic location. Moreover, by utilizing pay-per-click advertisements to ensure that its name would come up when internet users searched for “AAA insurance,” defendant intended to lure internet users to its website, including California residents. He “is not being haled into a court in some unexpected location where the Internet is not commonly available, but into a court in California, where a large portion of the world’s Internet users presumably reside.”

The Court therefore finds that defendant purposefully availed himself of the privilege of conducting activities in California and that therefore that plaintiff has satisfied the first prong of the minimum contacts analysis.

## B. Forum-Related Activities

The second prong of the minimum contacts analysis requires that “the claim asserted in the litigation arises out of defendant’s forum related activities.” The Court must determine whether plaintiff would not have been injured but for defendant’s forum-related activities.

This prong is satisfied here. Defendant’s allegedly trademark-infringing website harmed plaintiff in California. Indeed, plaintiff received complaints from at least two California residents who had mistakenly entered their contact information into defendant’s website thinking it was an AAA site. Plaintiff alleges harm directly related to such consumer confusion. But for defendant’s conduct, this harm would not have occurred. Plaintiff’s claims therefore arise out of defendant’s forum-related activities.

## C. Reasonableness

Finally, the Court must determine whether the exercise of jurisdiction would be reasonable here. Even if the first two prongs of the test are satisfied, “the exercise of jurisdiction must be reasonable” in order to satisfy due process. Once the plaintiff carries its burden by proving the first two prongs of the test, the defendant “must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.”

In deciding whether the exercise of jurisdiction would be reasonable, the Court considers seven factors: “(1) the extent of a defendant’s purposeful interjection; (2) the burden on the defendant in defending in the forum; (3) the extent of conflict with the sovereignty of the defendant’s state; (4) the forum state’s interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff’s interest in convenient and effective relief; and (7) the existence of an alternative forum.” The Court balances all seven factors and no one factor is dispositive.

### 1. Purposeful Interjection

“Even if there is sufficient ‘interjection’ into the state to satisfy the purposeful availment prong, the degree of interjection is a factor to be weighed in assessing the overall reasonableness of jurisdiction under the reasonableness prong.”

Although defendant has not come forward with any affirmative evidence that the degree of intrusion was small (e.g., by providing the Court with information

regarding how many California residents versus how many non-California residents entered their information into his website), the evidence so far before the Court does not show a high degree of interjection in California. The Court has evidence only that two California residents ... were confused by defendants' website. This factor weighs in favor of defendant.

## 2. Defendant's Burden in Litigating

"A defendant's burden in litigating in the forum is a factor in the assessment of reasonableness, but unless the 'inconvenience is so great as to constitute a deprivation of due process it will not overcome clear justifications for the exercise of jurisdiction.'"

Here, defendant has not argued to the Court that his burden in litigating in California would be so great as to deprive him of due process. Even if he had, advances in technology and discounted airfare do not make it unreasonable for defendant to litigate in California. This factor does not favor defendant.

## 3. Sovereignty

This factor "concerns the extent to which the district court's exercise of jurisdiction in California would conflict with the sovereignty" of Nevada, defendants' home state. Defendant has not pointed to any conflict of law between California and Nevada or other issues which would adversely impact Nevada's sovereignty interests. This factor therefore does not weigh in favor of defendant.

## 4. Forum State's Interest

California has "a strong interest in protecting its residents from torts that cause injury within the state, and in providing a forum for relief." Defendant has not pointed to any compelling interest that Nevada has in adjudicating the dispute. This factor therefore does not weigh in favor of defendant.

## 5. Efficient Resolution

This factor "focuses on the location of the evidence and the witnesses. It is no longer weighed heavily given the modern advances in communication and

transportation." Even if the Court were to weigh this factor, defendant has not come forward with any evidence that resolution of this matter would not [be] efficient in California. Therefore, this factor does not weigh in favor of defendant.

## 6. Convenient and Effective Relief for Plaintiff

Plaintiff's inconvenience is not weighed heavily in this analysis. AAA is a nation-wide non-profit organization. It is unlikely that convenient and effective relief for plaintiff would be hindered by litigating in Nevada. Plaintiff might be slightly burdened by having to retain local counsel. This factor therefore weighs slightly in favor of plaintiff.

## 7. Alternative Forum

Plaintiff has not shown that an alternative forum is not available. Nevada is an alternate forum. This factor therefore weighs in defendants' favor.

\*\*\* In balancing these factors, the Court finds [defendant] "failed to present a compelling case that the district court's exercise of jurisdiction in California would be unreasonable."

\* \* \*

## Conclusion

For the foregoing reasons and for good cause shown, the Court hereby DENIES defendants' motion to dismiss.

\* \* \*

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## QUESTIONS FOR DISCUSSION FOR CASE 1.2

1. Why was it necessary for AAA to try to assert the long-arm statute in this case?
2. Does the court conclude that it does or does not have personal jurisdiction over the defendant? Why?
3. This opinion does not resolve the underlying dispute between the parties. Why not? What will happen next in this case?