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Internet Law Update

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By Cecily Anne Snyder and Patrick T. O'Regan, Jr.¹

WEBSITE NOT ALWAYS PURPOSEFUL CONTACT FOR PURPOSES OF PERSONAL JURISDICTION

[David White Instruments, LLC v. TLZ, Inc. dba Toolz, Inc. and Toolz Ltd., 2003 U.S. Dist. LEXIS 8375 (N.D. Ill. May 14, 2003)]

David White Instruments (DWI) et al. sued TLZ, a California corporation, and Toolz Ltd., a corporation organized in China, for patent infringement, trade dress infringement and violations of the Illinois Uniform Deceptive Trade Practices Act.

Toolz, the Chinese corporation, filed a motion to dismiss for lack of personal jurisdiction. In Illinois, the Long Arm Statute analysis collapses into a due process inquiry because it provides that Illinois state courts may exercise personal jurisdiction over defendants "'on any other basis . . . permitted by the Illinois Constitution and the Constitution of the United States.'" Id. at *10. DWI argued that Toolz placed its products in the stream of commerce and therefore the Illinois court could exercise personal jurisdiction over Toolz. DWI relied on the fact that the Toolz website, www.robotoolz.com, encouraged visitors to download information about the products that were alleged to infringe, the website contained an admission that it manufactures the Robotoolz products and that its products are sold in the US, the website produces direct links to retail sellers, and the website enables users to locate the nearest retail seller.

The court acknowledged that a website can be a purposeful contact with a forum state and thus establish a basis for personal jurisdiction. However, it noted that "exercise of personal jurisdiction is proper where a defendant clearly does business with residents of the forum state over the Internet." Id. at 12-13. The court relied on the sliding scale analysis set forth in *Aero Prods. Int'l, Inc. v. Intex Corp.*, 64 U.S.P.Q.2d 1772, 1777 (N.D. Ill. 2002). First the court looked at whether:

¹ Cecily Anne Snyder is the Director of Intellectual Property at Imaging Therapeutics, Inc., San Mateo CA. She handles a wide range of intellectual property matters, including developing market focused patent strategies. She can be reached at cecily@imatx.com. Patrick T. O'Regan, Jr., is a principal of O'Regan & O'Regan in Falmouth MA. He works with local Cape Cod businesses handling a wide variety of both litigation and transactional matters. He can be reached at patrick@oreganlaw.com.
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(1) defendant conducted business over the Internet through an active website; (2) defendant maintained an interactive website; or (3) defendant maintained a passive website. In this instance, the court concluded that there was an insufficient basis for personal jurisdiction because visitors to the Robotoolz website were not able to purchase items directly, no information was exchanged between the visitor and the website, visitors could only make purchases from websites that were distinct from the website, and there were no allegations that the robotoolz.com advertisement was specifically targeted toward Illinois residents. The court concluded that more was required from the defendant than merely placing a product into the stream of commerce. The website, which was merely an advertisement, was insufficient to enable the plaintiff to show purposeful contact. On this basis, the Illinois court dismissed the action against Toolz Ltd. for lack of personal jurisdiction.