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Internet Law Update

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LL BEAN'S EXTENSIVE CATALOG AND INTERNET SALES MAKE IT AMENABLE TO GENERAL JURISDICTION IN CALIFORNIA

LL Bean mailed a cease-and-desist letter to Gator.com requesting that it stop its pop-up ads from appearing when LL Bean customer's visited the LL Bean Web site. The basis for its letter was its contention that the pop-ups "'unlawfully appropriated the good will associated with L.L. Bean's famous trademark, created confusion about the source of the products and services offered at llbean.com, and suggested an affiliation or connection between or among L.L. Bean, Gator.com, and Eddie Bauer that does not in fact exist.'" After receiving this letter, Gator.com filed a declaratory judgment action against LL Bean in the Northern District of California. LL Bean filed a motion to dismiss on the basis that the Northern District of California lacked personal jurisdiction. The District Court dismissed the case for lack of personal jurisdiction over the defendant LL Bean. The plaintiff, Gator.com, appealed. [Gator.com Corp. v. L.L. Bean, Inc., 2003 U.S. App. LEXIS 18115 (9th Cir. 2003)]

As the court noted, "personal jurisdiction may be either general or specific." General jurisdiction arises when there are "substantial" or "continuous and systematic" contacts with the forum state, even when those contacts are unrelated to the cause of action at issue in the case. Specific jurisdiction, on the other hand, requires forum-specific activities. In either event, there must be some level of purposeful availment to prevent defendants from being hailed into court based on a random, fortuitous, or

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attenuated contact. The standard for establishing general jurisdiction is fairly high.

Substantial or Continuous and Systematic Contacts Test

In applying the substantial or continuous and systematic contacts test, the courts look for some kind of deliberate presence in the state. The Ninth Circuit has "set a high standard for establishing general jurisdiction" (citing *Shute v. Carnival Cruise Lines*, 897 F.2d 377 (9th Cir. 1990)). The court noted that the "overall commercial contacts (made by LL Bean) with California meet the continuous and systematic contacts test applied in *Davis, Bancroft and Helicopteros*." The court's rationale for this finding was that LL Bean "makes sales, solicits business . . . and serves the state's markets." LL Bean ships large numbers of products to California and maintains contacts with a variety of California vendors on an ongoing basis. Even under the heightened standard typically applied to general jurisdiction, "the 'consistent and substantial pattern of business relations' represented by these facts is sufficient to confer general jurisdiction" over LL Bean.

The court went on to observe that, "even if the only contacts L.L. Bean had with California were through its virtual store, a finding of general jurisdiction in the instant case would be consistent with the 'sliding scale' test that both our own (9th Circuit) and other circuits have applied to internet-based companies."

Reasonableness Test

After finding that LL Bean had engaged in sufficient contact with California to establish general jurisdiction, the Ninth Circuit then looked at whether the application of jurisdiction in this case would be reasonable. In order to establish that jurisdiction is not reasonable, the burden rests on the defendant to present "a 'compelling case' that the assertion of jurisdiction is not reasonable." In support of its position that jurisdiction would not be reasonable, LL Bean advanced three theories. First, it argued that the extent of purposeful interjection worked in its favor.



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Second, it argued that the burden on litigating in California would be high. Third, it argued that there are other forums available.

Because the purposeful interjection standard parallels the question of minimum contacts, the court concluded that LL Bean had purposefully interjected itself into the California market. The court specifically noted that, "even conceding that this may be a close case for general jurisdiction, this factor (purposeful interjection) does not create a 'compelling case' for unreasonableness."

The court rejected LL Bean's claims that the litigation would impose a substantial burden on it in view of the fact that LL Bean is a multimillion dollar business with agents that regularly do business in California. Moreover, balancing the hardships between the parties, the court noted that the burden on Gator, if it were forced to proceed in Maine, would be similar to or greater than the burden on LL Bean. Thus, the court was unpersuaded that the " 'inconvenience is so great as to constitute a deprivation of due process.' "

The fact that Gator had brought a nearly identical declaratory action case in the District Court of Oregon did not make the assertion of jurisdiction by the Northern District of California unreasonable.