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## Personal Jurisdiction and the Marketing of Goods and Services on the Internet

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PERSONAL JURISDICTION AND THE  
MARKETING OF GOODS AND SERVICES  
ON THE INTERNET

*Thomas A. Dickerson, Cheryl E. Chambers & Jeffrey A. Cohen\**

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## I. INTRODUCTION

Cases involving copyright infringement,<sup>1</sup> patent and trademark infringement,<sup>2</sup> defamation,<sup>3</sup> and defective or misrepresented goods and

1. See, e.g., *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1221, 1229, 1232 (9th Cir. 2011); *Del Sol, L.C. v. Caribongo L.L.C.*, No. 2:11CV573DAK, 2012 WL 530093, at \*1, \*4-5 (D. Utah Feb. 17, 2012); *Fraserside IP L.L.C. v. Hammy Media, Ltd.*, No. C11 3025 MWB, 2012 WL 124378, at \*1, \*7, \*10 (N.D. Iowa Jan. 17, 2012); *Penguin Grp. (USA) Inc. v. Am. Buddha*, 946 N.E.2d 159, 160, 165 (N.Y. 2011). In *Mavrix*, the court found specific personal jurisdiction, explaining:

We conclude that Brand expressly aimed at the forum state. . . . On the one hand, we have made clear that maintenance of a passive website alone cannot satisfy the express aiming prong. . . . On the other, we have held that operating even a passive website in conjunction with something more—conduct directly targeting the forum—is sufficient. . . . In determining whether a nonresident defendant has done something more, we have considered several factors, including the interactivity of the defendant’s website; the geographical scope of the defendant’s commercial ambitions; and whether the defendant individually targeted a plaintiff known to be a forum resident.

*Mavrix*, 647 F.3d at 1229 (citations omitted) (internal quotation marks omitted). The court in *Del Sol* also found personal jurisdiction, explaining:

Caribongo’s site provides a retail link that seamlessly allows a user to purchase Caribongo products on the Tarpon Springs website. . . . The purchase process allows a user to create an account or proceed as a guest[,] . . . allows an established wholesaler to complete and submit purchase orders and has a contact page that allows inquiries regarding orders. . . . Caribongo has purposefully set up a website providing a high level of interactivity, which encourages customers to access its website to purchase products.

*Del Sol*, 2012 WL 530093, at \*4. However, in *Fraserside IP*, the court did not find personal jurisdiction because:

xHamster provides its website to internet users throughout the United States and offers them the option of viewing adult films in high definition, or downloading the films. . . . xHamster’s website . . . is visited daily by over 1,500,000 internet users worldwide with roughly 20 percent of the site’s visitors being from the United States. . . . [H]owever [the plaintiff] has presented no evidence of any Iowa resident . . . visiting the website.

*Fraserside IP*, 2012 WL 124378, at \*7. In *Penguin Group*, the court observed that:

the role of the Internet in cases alleging the uploading of copyrighted books distinguishes them from traditional commercial tort cases where courts have generally linked the injury to the place where sales or customers are lost. The location of the infringement in online cases is of little import inasmuch as the primary aim of the infringer is to make the works available to anyone with access to an Internet connection, including computer users in New York. . . . [W]e conclude that the alleged injury in this case occurred in New York for purposes of CPLR 302(a)(3)(ii).

*Penguin Grp.*, 946 N.E.2d at 165 (footnote omitted).

2. See, e.g., *Chloé v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 161, 165 (2d Cir. 2010) (finding that “the single act of an . . . employee shipping [a handbag] into New York, combined with [employer’s] extensive business activity in New York, gives rise to personal jurisdiction over the employee”); *EnviroCare Techs., LLC v. Simanovsky*, No. 11-CV-3458 (JS)(ETB), 2012 WL 2001443, at \*1 (E.D.N.Y. June 4, 2012) (finding personal jurisdiction over Oregon residents operating “an ‘internet store’ called NW Class, . . . [which] is not a physical store or even an independent website. Rather, customers access it through ‘storefronts’ hosted by Amazon.com and eBay.com. As of October 3, 2011, NW Class had 40,312 reviewed transactions on eBay.com and 5,658 transactions on Amazon.com” (citations omitted)); *Bright Imperial Ltd. v. RT*

services<sup>4</sup> frequently arise from communications or transactions

MediaSolutions, S.R.O, No. 1:11-cv-935-LO-TRJ, 2012 WL 1831536, at \*1 (E.D. Va. May 18, 2012) (finding personal jurisdiction based on activities of adult content website); *Surface Preparation Techs. v. Jamaco Indus., LLC.*, No. 1:11-CV-1978, 2012 WL 1192068, at \*1, \*4, (M.D. Pa. Apr. 10, 2012) (finding no personal jurisdiction); *Piano Wellness, LLC v. Williams*, No. 11-1601 (NLH) (AMD), 2011 WL 6722520, at \*1, \*5-6 (D.N.J. Dec. 21, 2011); *ClearPractice, LLC v. Nimble, LLC*, 819 F. Supp. 2d 892, 893, 896 (E.D. Mo. 2011) (finding no personal jurisdiction, since “[t]he viewer [of the website] can exchange information with Nimble, but cannot make purchases, share files or perform business with Nimble”); *Original Creations, Inc. v. Ready Am., Inc.*, 836 F. Supp. 2d 711, 712-14 (N.D. Ill. 2011) (finding personal jurisdiction, since “Life+Gear operates a website that Illinois residents can access and through which Illinois residents can purchase the allegedly infringing products”). In *Surface Preparation Technologies*, the court explained that:

[f]irst, “something more” than simply having a website accessible to individuals in the forum state must be shown. Something more can be established if a plaintiff can show a defendant had “non-internet contacts [with the forum state], advertis[ed] in local publications, [or had] business records of sales in the state.” A website that has only information and a generic contact information input form falls at the passive end of the *Zippo* scale. . . . [F]or web sites in the “interactive” category, it must be shown “a web site targets a particular remote jurisdiction.”

*Surface Preparation Techs.*, 2012 WL 1192068, at \*4 (alterations in original) (citations omitted). In *Piano Wellness*, the court found that:

[t]o the extent Plaintiff bases jurisdiction on Defendant’s operation of a website, the Court finds that such conduct does not provide the Court with personal jurisdiction over Defendant. . . . [T]he website is not interactive. . . . Nor is there any evidence . . . that New Jersey individuals have visited Defendant’s website.

*Piano Wellness*, 2011 WL 6722520, at \*5-6.

3. See, e.g., *Deer Consumer Prods., Inc. v. Little*, No. 650823/2011, 2012 WL 5898052, at \*5 (N.Y. Sup. Ct. Nov. 15, 2012) (“As to CPLR 302(a)(1), the Court has already ruled that the posting of the defamatory reports on the website does not constitute ‘transacting business’ in New York.”); *Deer Consumer Prods., Inc. v. Little*, 938 N.Y.S.2d 767, 771, 778 (Sup. Ct. 2012) (“[T]here is no indication that Little’s internet postings on these websites, which are merely accessible to anyone—in New York and in the entire world—were expressly targeted at anyone in New York.” (alteration omitted)); *Gary Null & Assocs., Inc. v. Phillips*, 906 N.Y.S.2d 449, 452 (Sup. Ct. 2010) (“The case at bar involves developing issues of New York long-arm jurisdiction in a defamation action based on statements appearing on an internet website.”). Relying on *Best Van Lines, Inc. v. Walker*, 490 F.3d 239 (2d Cir. 2007), the *Null* court found that “[t]he nature of [Defendant’s] comments on his personal website does not suggest that they were specifically targeted to New York viewers, as opposed to a nationwide audience.” *Null*, 906 N.Y.S.2d at 454 (citing *Best Van Lines*, 490 F.3d at 253).

4. See, e.g., *Enderby v. Secrets Maroma Beach Riviera Cancun*, No.10-CV-1015 (JFB)(WDW), 2011 WL 6010224, at \*1-2, \*12 (E.D.N.Y. Dec. 1, 2011) (finding no jurisdiction in action involving a slip and fall accident at Mexican hotel) (alterations in original) (citations omitted); *Grimaldi v. Guinn*, 895 N.Y.S.2d 156, 158, 166-67 (App. Div. 2010) (finding personal jurisdiction in case involving a N.Y. resident purchasing over the Internet “a vintage Chevrolet ‘cross-ram’ manifold and carburetor assembly . . . from Rick’s First Generation Camaro, located in Athens, Georgia” even though the website was found to be passive in nature); *Kaloyeva v. Apple Vacations*, 866 N.Y.S.2d 488, 489, 493 (Civ. Ct. 2008) (finding personal jurisdiction over a New Jersey-based tour operator, in a case involving an advertisement, through an interactive website, of a Dominican Republic resort as having “white sandy beaches, crystal clear water, fresh fish and a superb international cuisine[.]” but in fact “the waters were murky, the beach was swarming with insects, the hotel rooms were infested with bed bugs, and the restaurant’s food made [plaintiff] ill with intestinal poisoning”). In *Enderby*, the court explained that:

conducted over the Internet. The increasing use of the Internet for the transaction of business, especially involving the marketing and sale of goods and services, has raised important issues regarding the assertion of personal jurisdiction over foreign companies. This Idea discusses the assertion of personal jurisdiction within the context of the marketing and sale of travel services over the Internet.

### A. *Consumer Use of the Internet*

Consumer use of the Internet to make travel arrangements has risen dramatically in recent years. While consumers remain cautious about the reliability of information, the prospect of hidden fees, and insecure credit card transactions, travel shopping on the web is increasing, particularly as travel suppliers, for example, hotels and air carriers and travel sellers, including Cheap Tickets, Expedia, One Travel, Travelocity, TravelNow, and Orbitz, offer exclusive fares on their own websites with twenty-four hour accessibility. Retailers continue to develop creative ways to sell travel services by use of the Internet, for example, Priceline and Travelocity's "last-minute" travel packages.<sup>5</sup>

### B. *The "Solicitation-Plus" Doctrine*

If a foreign travel supplier, for example, a hotel or an air carrier, conducts business through an agent,<sup>6</sup> a wholly owned subsidiary,<sup>7</sup>

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[w]hen solicitation involves a website, "the fact that a foreign corporation has a website accessible to New York is insufficient to confer jurisdiction under C.P.L.R. § 301." A court must "examine the nature and quality of the activity" on the website, which may range from "passive websites that display but do not permit an exchange of information" to "interactive [websites], which permit the exchange of information between the defendant and [website] viewers," to "cases in which the defendant clearly does business over the internet."

*Enderby*, 2011 WL 6010224, at \*12 (alterations in original) (citations omitted).

5. See PRICELINE, <http://www.priceline.com/promo/lastminute/> (last visited Feb. 7, 2013); TRAVELOCITY, <http://www.travelocity.com/Travel-Deals> (last visited Feb. 7, 2013).

6. See, e.g., *Brown v. Grand Hotel Eden*, No. 00 Civ. 7346(NRB), 2003 WL 21496756, at \*5 (S.D.N.Y. June 30, 2003) ("[A] hotel is subject to the general jurisdiction of the New York courts . . . [where] full confirmation powers [have been granted] to their New York agents . . ."); *In re Ski Train Fire in Kaprun, Austria* on November 11, 2000, 230 F. Supp. 2d 376, 384 (S.D.N.Y. 2002) (finding that the presence of a subsidiary in the forum was sufficient to confer general jurisdiction over the foreign parent); *Cummings v. Club Mediterranee, S.A.*, No. 01C6455, 2002 WL 1379128, at \*2, \*5 (N.D. Ill. June 25, 2002) (finding solicitation through travel agents in the forum sufficient basis for jurisdiction over principal); *Sankaran v. Club Mediterranee, S.A.*, No. 97 Civ. 8318(RPP), 1998 WL 433780, at \*4 (S.D.N.Y. July 31, 1998) ("Defendants' activities through their agents also suffice to show that they have established the requisite contacts with New York . . ."); *Pavia v. Club Med, Inc.*, No. CIVA3:97CV808 (AWT), 1998 WL 229912, at \*3-4 (D. Conn. Mar. 30, 1998) (finding solicitation through travel agents in the forum by agent sufficient basis for jurisdiction over principal); *Catalano v. BRI, Inc.*, 724 F. Supp. 1580, 1582-83 (E.D. Mich.

a parent corporation,<sup>8</sup> or joint venturer,<sup>9</sup> or maintains an office with staff, a bank account, and a local telephone number, then the assertion of personal jurisdiction would, generally, be appropriate. In the absence of such indicia of physical presence in the forum, however, the assertion of personal jurisdiction is more problematic. For example, a foreign travel supplier or travel seller may conduct business through an independent contractor,<sup>10</sup> travel agent,<sup>11</sup> tour operator,<sup>12</sup> or the Internet. Under these

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1989) (finding that Michigan had personal jurisdiction over Las Vegas hotel based upon conducting business through an agent with offices in Michigan).

7. See, e.g., *Meier v. Sun Int'l Hotels, Ltd.*, 288 F.3d 1264, 1272-74, 1276 (11th Cir. 2002) (finding jurisdiction over foreign parent corporation based upon activities of subsidiary corporations in the forum); *Conley v. MLT, Inc.*, No. 11-11205, 2012 WL 1893509, at \*1, \*3-4 (E.D. Mich. May 23, 2012) (finding jurisdiction over parent of a Mexican hotel); *Hersey v. Lonrho, Inc.*, 807 A.2d 1009, 1013, 1016 (Conn. App. Ct. 2002) (finding no jurisdiction over parent hotel based upon solicitation of subsidiary in the forum); *Universal Caribbean Establishment v. Bard*, 543 So. 2d 447, 447-48 (Fla. Dist. Ct. App. 1989) (finding jurisdiction based upon activities of subsidiary corporations in the forum); *Taca Int'l Airlines, S.A. v. Rolls-Royce of Eng., Ltd.*, 204 N.E.2d 329, 329-31 (N.Y. 1965). In *Conley*, the court did not find jurisdiction where a guest at a hotel in Mexico:

was seriously injured when one of the support poles of the hammock upon which he was laying broke, causing him to fall and suffer serious head injuries[.] . . . fractur[ing] his skull and was subsequently airlifted from Cozumel, Mexico to Broward County, Florida where he underwent emergency surgery. . . . The Sixth Circuit has adopted an alter-ego theory of personal jurisdiction. This theory provides that a non-resident parent corporation is amenable to suit in the forum state if the parent company exerts so much control over the subsidiary that the two do not exist as separate entities but are one and the same for purposes of jurisdiction. . . . [The] factors to determine whether the alter-ego theory of personal jurisdiction applies [are]: (1) sharing the same employees and corporate officers; (2) engaging in the same business enterprise; (3) having the same address and phone lines; (4) using the same assets; (5) completing the same jobs; (6) not maintaining separate books, tax returns and financial statements; and (7) exerting control over the daily affairs of another corporation.

*Conley*, 2012 WL 1893509, at \*1, \*3-4 (internal quotation marks omitted).

8. See, e.g., *Intermor v. Walt Disney Co.*, 250 F. Supp. 2d 116, 119-120 (E.D.N.Y. 2003) (finding the presence of Walt Disney Company in New York insufficient to impose jurisdiction over subsidiary theme park in Florida); *Dorfman v. Marriott Int'l Hotels, Inc.*, No. 99 CIV 10496(CSH), 2002 WL 14363, at \*3, \*11 (S.D.N.Y. Jan. 3, 2002) (finding jurisdiction over a Hungarian elevator company, on the basis that it is a mere department of a U.S. elevator company); *Weintraub v. Walt Disney World Co.*, 825 F. Supp. 717, 720-21 (E.D. Pa. 1993) (finding Pennsylvania jurisdiction over Florida resort, Walt Disney World, based upon connections of parent corporation Walt Disney Co. to Pennsylvania); *Grill v. Walt Disney Co.*, 683 F. Supp. 66, 69 (S.D.N.Y. 1988) ("There is nothing in the record which suggests that Disney Co. acts as agent for Disney World Co., or that Disney World Co. is merely a department of Disney Co. Accordingly, the presence of the parent company in New York does not confer jurisdiction over . . . Disney World Co.").

9. See, e.g., *Dorfman*, 2002 WL 14363, at \*3, \*11 (involving joint venture between Hungarian and United States elevator companies).

10. See, e.g., *Gelfand v. Tanner Motor Tours, Ltd.*, 385 F.2d 116, 119, 121 (2d Cir. 1967); *Guile v. Sea Island Co.*, 66 N.Y.S.2d 467, 468 (Sup. Ct. 1946), *aff'd*, 71 N.Y.S.2d 911 (App. Div. 1947).

11. See, e.g., *Afflerbach v. Cunard Line, Ltd.*, 14 F. Supp. 2d 1260, 1262 (D. Wyo. 1998); *Pavia*, 1998 WL 229912, at \*3-4 (finding solicitation through travel agents in the forum by agent

circumstances, N.Y. courts have found personal jurisdiction if there was active solicitation of business plus “some financial or commercial dealings in New York or [the foreign company] holds itself out as operating in New York”<sup>13</sup> and/or contract formation occurs in New York.<sup>14</sup> This concept, known as the “solicitation-plus” doctrine, is still followed, with some exceptions,<sup>15</sup> by many U.S. courts.<sup>16</sup>

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sufficient basis for jurisdiction over principal); *Romero v. Aerolineas Argentinas*, 834 F. Supp. 673, 676 (D.N.J. 1993); *Savoleo v. Couples Hotel*, 524 N.Y.S.2d 52, 52 (App. Div. 1988).

12. See, e.g., *Wilson v. Humphreys (Cayman) Ltd.*, 916 F.2d 1239, 1241 (7th Cir. 1990); *Hughes v. Cabanas del Caribe Hotel*, 744 F. Supp. 788, 791 (E.D. Mich. 1990).

13. *Intermor*, 250 F. Supp. 2d at 119.

14. See, e.g., *Orazi v. Hilton Hotels Corp.*, No. 09-cv-05959, 2010 WL 4751728, at \*4 (E.D. Pa. Nov. 22, 2010). In *Orazi*, the court explained that:

Plaintiffs’ agency claims rest principally on the allegation that Allen Stacy has authorized Hilton to make binding reservations on its behalf. They rely on a series of hotel reservation service cases applying New York law, wherein the in-state reservation service’s authority to make and confirm reservations without consulting the non-resident defendant—that is, the ability to bind the defendant—was a determinative factor in the courts’ finding of agency. Courts in this Circuit likewise appear to place weight on the agent’s authority, or lack thereof, to commit the non-resident to a reservation. . . . [T]his Court agrees that where a forum-state reservation service has the power to not only make reservations on behalf of a non-resident defendant but also to confirm them without need for further authorization from the defendant, the reservation service acts as non-resident’s agent. Such a relationship satisfies the traditional elements of agency.

*Id.* at \*4 (footnotes omitted).

15. See, e.g., *Wilson v. Humphreys (Cayman) Ltd.*, 916 F.2d at 1244 (finding advertising and contacts with local tour operators sufficient for jurisdiction); *Cummings v. Club Mediterranee, S.A.*, No. 01C6455, 2002 WL 1379128, at \*4-5 (N.D. Ill. June 25, 2002) (finding solicitation through travel agents in the forum sufficient basis for jurisdiction); *Edwards v. Radventures, Inc.*, 164 F. Supp. 2d 190, 195 (D. Mass. 2001) (finding solicitation sufficient basis for jurisdiction); *Sigros v. Walt Disney World Co.*, 129 F. Supp. 2d 56, 64-65 (D. Mass. 2001) (finding advertising sufficient basis for jurisdiction); *Szafarowicz v. Gotterup*, 68 F. Supp. 2d 38, 41-42 (D. Mass. 1999) (explaining that Massachusetts may have jurisdiction over Cayman Island diving company if a significant amount of business was done in the United States); *Mallon v. Walt Disney World Co.*, 42 F. Supp. 2d 143, 144-45 (D. Conn. 1998) (explaining that continuous and extensive advertising in the forum, without contract formation, is sufficient to establish jurisdiction over foreign resort); *Sankaran v. Club Mediterranee, S.A.*, No. 97 Civ. 8318(RPP), 1998 WL 433780, at \*3-4 (S.D.N.Y. July 31, 1998) (finding solicitation through travel agents in the forum sufficient basis for jurisdiction); *Pavia*, 1998 WL 229912, at \*3-4 (finding solicitation through travel agents in the forum sufficient basis for jurisdiction); *Rafferty v. Blake’s Wilderness Outpost Camps*, 950 F. Supp. 196, 198-99 (E.D. Mich. 1997) (finding advertising sufficient for jurisdiction); *Nowak v. Tak How Inv. Ltd.*, 899 F. Supp. 25, 31 (D. Mass. 1995); *Begley v. Maho Bay Camps, Inc.*, 850 F. Supp. 172, 174-75 (E.D.N.Y. 1994) (finding jurisdiction based upon newspaper ads and contact in New York City); *Weintraub v. Walt Disney World Co.*, 825 F. Supp. 717, 720-21 (E.D. Pa. 1993) (finding that advertising, staffing, and customer relations activities sufficient to support jurisdiction); *Kervin v. Red River Ski Area, Inc.*, 711 F. Supp. 1383, 1387-88, 1391-92 (E.D. Tex. 1989) (finding solicitation of business sufficient for jurisdiction); *Gavigan v. Walt Disney World, Inc.*, 646 F. Supp. 786, 788, 790 (E.D. Pa. 1986) (finding jurisdiction based upon ongoing promotional activities in the forum); *Stewart v. Air Jamaica Holdings Ltd.*, No. CV 990589438, 2000 WL 639174, at \*6 (Conn. Super. Ct. May 2, 2000) (finding no jurisdiction where plaintiff failed to prove solicitation of business in Connecticut).

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16. See, e.g., *Rainbow Travel Serv., Inc. v. Hilton Hotels Corp.*, 896 F.2d 1233, 1239 (10th Cir. 1990) (finding jurisdiction based upon solicitation and contract formation in the forum); *Enderby v. Secrets Maroma Beach Riviera Cancun*, No. 10-CV-1015 (JFB)(WDW), 2011 WL 6010224, at \*12-14 (E.D.N.Y. Dec. 1, 2011); *Ruddy v. Wilmot Mountain, Inc.*, No. 10 C 07219, 2011 WL 3584418, at \*3 (N.D. Ill. Aug. 12, 2011); *Brown v. Grand Hotel Eden*, No. 00 Civ. 7346(NRB), 2003 WL 21496756, at \*3 (S.D.N.Y. June 30, 2003); *Pearson v. White Ski Co., Inc.*, 228 F. Supp. 2d 705, 709 (E.D. Va. 2002) (finding solicitation through advertising and Internet in the forum insufficient to establish jurisdiction in the absence of a connection between advertising and the injury sustained); *Ciarcia v. Venetian Resort Hotel Casino*, No. 01 CIV 4245(RO), 2002 WL 265160, at \*1 (S.D.N.Y. Feb. 25, 2002) (“[M]ere solicitation by mailings and telephone calls does not confer personal jurisdiction . . . .”); *Muse v. Vagabond Inn Hotel*, No. 01-CV-106(FB), 2002 WL 15803, at \*2 (E.D.N.Y. Jan. 7, 2002) (finding solicitation of business through toll-free telephone number insufficient for assertion of jurisdiction); *Dorffman v. Marriott Int’l Hotels, Inc.*, No. 99 CIV 10496(CSH), 2002 WL 14363, \*12, \*15 (S.D.N.Y. Jan. 3, 2002) (finding no jurisdiction over Marriott Hotel in Budapest, Hungary or Marriott International Hotels, Inc. based upon solicitation without contract formation in the forum, where reservations contracts were entered into in Nebraska at worldwide reservations system); *Dresden v. Treasure Island, LLC.*, No. 00 C 6153, 2001 WL 1002518, at \*4-6 (N.D. Ill. Aug. 31, 2001) (finding indirect advertising in the forum insufficient contact for jurisdiction); *Hinsch v. Outrigger Hotels Haw.*, 153 F. Supp. 2d 209, 212-13 (E.D.N.Y. 2001) (finding that the placement of an ad in a publication is insufficient for assertion of jurisdiction); *Inzillo v. Cont’l Plaza*, No. 3:99-CV-0100, 2000 WL 1752121, at \*3 (M.D. Pa. Nov. 27, 2000) (finding advertising and selling hotel accommodations through travel agents and toll-free number insufficient basis for jurisdiction); *Andrei v. DHC Hotels & Resorts, Inc.*, No. 99 Civ. 2555(TPG), 2000 WL 343773, at \*4 (S.D.N.Y. Mar. 31, 2000) (finding mere solicitation of business insufficient for jurisdiction); *Feldman v. Silverleaf Resorts, Inc.*, No. 98-CV-4566, 2000 WL 35542530, at \*3 (E.D.N.Y. Jan. 31, 2000) (explaining that solicitation, “regardless of how substantial[,] is insufficient” to establish jurisdiction (internal quotation marks omitted)); *Poteau v. Walt Disney World Co.*, No. CIV. A. 99-CV-843, 1999 WL 619646, at \*5 (E.D. Pa. Aug. 16, 1999) (finding solicitation of business through travel agents insufficient to establish jurisdiction); *Swindell v. Fla. E. Coast Ry. Co.*, 42 F. Supp. 2d 320, 322-23 (S.D.N.Y. 1999) (holding that railroad ticket sales by travel agents and employees at separately owned train stations insufficient to establish jurisdiction); *Romero v. Holiday Inn*, No. Civ.A. 98 2192, 1998 WL 961384, at \*2-3 (E.D. Pa. Dec. 15, 1998) (finding advertising through franchisor’s Worldwide Directory and making reservations through toll-free phone number insufficient for jurisdiction); *Afflerbach*, 14 F. Supp. 2d at 1266 (finding national advertising and selling tours through travel agents insufficient contact for personal jurisdiction); *Rosich v. Circus & Circus Enters., Inc.*, 3 F. Supp. 2d 148, 149 (D.P.R. 1998) (finding advertising through travel guide and brochures insufficient contact); *Denham v. Sampson Invs.*, 997 F. Supp. 840, 843 (E.D. Mich. 1998) (finding sending brochures to forum and reserving rooms at hotels insufficient contact to establish jurisdiction); *Clark v. City of St. Augustine, Fla.*, 977 F. Supp. 541, 544 (D. Mass. 1997) (finding advertising in forum insufficient contact); *Weinberg v. Club ABC Tours, Inc.*, No. 96 CV 2729, 1997 WL 37041, at \*3 (E.D.N.Y. Jan. 21, 1997) (finding the sale of a ticket insufficient to confer jurisdiction); *Luna v. Compania Panamena de Aviacion, S.A.*, 851 F. Supp. 826, 829, 834 (S.D. Tex. 1994) (finding solicitation of business and toll-free telephone number insufficient to establish jurisdiction); *Lane v. Vacations Charters, Ltd.*, 750 F. Supp. 120, 124, 126 (S.D.N.Y. 1990) (finding advertisements and toll-free telephone number insufficient contact to confer jurisdiction); *Silk Air (Sing.) Pvt., Ltd. v. Superior Court*, No. B159966, 2003 WL 40818, at \*3 (Cal. Ct. App. Jan. 6, 2003) (“It is true that case law holds jurisdiction cannot be assumed over a foreign corporation based solely upon sales by independent non-exclusive agents.”); *Hersey v. Lonrho, Inc.*, 807 A.2d 1009, 1013-15 (Conn. App. Ct. 2002); *Stein v. Rio Parismina Lodge*, 695 N.E.2d 518, 522-24 (Ill. App. Ct. 1998) (finding transaction of business through travel agents insufficient contact); *Kadala v. Cunard Lines, Ltd.*, 589 N.E.2d 802, 810 (Ill. App. Ct. 1992) (finding solicitation of business in the forum insufficient contact). *Sedg v. Okemo Mountain*, 612 N.Y.S.2d 643, 644 (App. Div. 1994) (finding mere solicitation insufficient);



## II. A TRANSACTIONAL ANALYSIS OF INTERNET COMMERCE

Several courts have recently addressed the extent to which an Internet website confers personal jurisdiction in the forum in which the consumer's computer is located.<sup>17</sup> A useful jurisdictional analysis appears in *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*,<sup>18</sup> a trademark infringement action brought by the manufacturer of "Zippo" lighters against a computer news service using the Internet domain name of "zippo.com."<sup>19</sup> In *Zippo*, the defendant was a California-based news service with "an interactive Web site through which it exchanges information with Pennsylvania residents in hopes of using that information for commercial gain later."<sup>20</sup> The defendant had entered into news service contracts "with 3,000 [Pennsylvania residents] and . . . seven contracts with Internet access providers to furnish its services to their customers in Pennsylvania."<sup>21</sup> Since it was the

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*M.G.M. Grand Hotel, Inc. v. Castro*, 8 S.W.3d 403, 410 (Tex. App. 1999) (explaining the "solicitation-plus" doctrine followed in Texas).

In *Ruddy*, the court explained that:

Wilmot's website permits anyone, not just Illinois residents, willing to travel to Wisconsin to purchase season passes, lift tickets, gift certificates and sign up for rentals. The only portion of the website that is directed towards Illinois residents is a page that provides links to Google Maps directions to Wilmot from four Illinois cities. . . . Providing directions to the ski resort from Illinois is simply a component of advertising. . . . [V]irtually all of defendant's contacts with Illinois involve the solicitation of business. Illinois courts consistently reject mere solicitation of business as a basis for the exercise of general personal jurisdiction.

*Ruddy*, 2011 WL 3584418, at \*3. (N.D. Ill. Aug. 12, 2011). The Southern District of New York in *Brown* also rejected mere solicitation as a basis for jurisdiction because:

there is well-developed law addressing jurisdiction over foreign hotels. If a New York agent possesses independent authority to make and confirm reservations on behalf of a hotel, the hotel is considered present . . . ; merely soliciting business from prospective customers in New York does not suffice to establish jurisdiction.

*Brown*, 2003 WL 21496756, at \*3.

17. See, e.g., *Brown*, 2003 WL 21496756, at \*4-5; *Brown*, 214 F. Supp. 2d at 339; *Arriaga v. Imperial Palace, Inc.*, 252 F. Supp. 2d 380, 384-87 (S.D. Tex. 2003); *Snyder v. Dolphin Encounters Ltd.*, 235 F. Supp. 2d 433, 440-41 (E.D. Pa. 2002); *Pearson*, 228 F. Supp. 2d at 709; *Imundo v. Pocono Palace, Inc.*, No. 01 807(WGB), 2002 WL 31006145, at \*4 (D.N.J. Aug. 14, 2002); *In re Ski Train Fire in Kaprun, Austria* on November 11, 2000, 230 F. Supp. 2d 392, 400 (S.D.N.Y. 2002); *Smith v. Basin Park Hotel, Inc.*, 178 F. Supp. 2d 1225, 1235 (N.D. Okla. 2001); *Bell v. Imperial Palace Hotel/Casino, Inc.*, 200 F. Supp. 2d 1082, 1087-88 (E.D. Mo. 2001); *Rodriguez v. Circus Circus Casinos, Inc.*, No. 00 Civ. 6559(GEL), 2001 WL 21244, at \*2-3 (S.D.N.Y. Jan. 9, 2001); *Decker v. Circus Circus Hotel*, 49 F. Supp. 2d 743, 747-48 (D.N.J. 1999); *Romero*, 1998 WL 961384, at \*3; *Weber v. Jolly Hotels*, 977 F. Supp. 327, 333-34 (D.N.J. 1997); *Cervantes v. Ramparts, Inc.*, No. A098642, 2003 WL 257770, at \*2-3 (Cal. Ct. App. Feb. 7, 2003); *Silk Air*, 2003 WL 40818, at \*3.

18. 952 F. Supp. 1119 (W.D. Pa. 1997).

19. *Id.* at 1121.

20. *Id.* at 1121, 1125.

21. See *id.* at 1121, 1126. The court held:

defendant's "conscious choice to conduct business" in Pennsylvania, the court asserted personal jurisdiction based upon the following analysis:

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 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>22</sup>

Implicit in the *Zippo* analysis and those cases which have followed it is some form of continuous transaction of business. This is not to say, however, that a single Internet transaction involving the sale of goods or services may not be sufficient to establish personal jurisdiction.<sup>23</sup>

#### A. *Burden of Proof*

In addition, plaintiffs carry the burden of establishing, in detail, a level of Internet activity sufficient to warrant the assertion of personal jurisdiction. For example, the court in *Matthews v. Kerzner International Ltd.*,<sup>24</sup> a case involving a guest's accident caused by an allegedly defective water slide, noted that:

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[Zippo] Dot Com's Web site contain[ed] information about the company, advertisements and an application for its Internet news service. . . . A customer who want[ed] to subscribe . . . fill[ed] out an on-line application . . . . Payment [was] made by credit card over the Internet or the telephone. The application [was] then processed and the subscriber is assigned a password which permit[ed] the subscriber to view and/or download Internet newsgroup messages that [were] stored on the Defendant's server in California.

*Id.* at 1121.

22. *Id.* at 1124, 1126 (citations omitted).

23. Compare *Hinners v. Robey*, 336 S.W.3d 891, 901-02 (Ky. 2011) (holding a single sale of a car over the Internet through an eBay transaction insufficient to establish personal jurisdiction), with *Grimaldi v. Guinn*, 895 N.Y.S.2d 156, 158, 166-67 (App. Div. 2010) (finding that a N.J. resident who agreed with a N.Y. resident to rebuild the New Yorker's vintage car in New Jersey was nonetheless subject to New York's long-arm jurisdiction, where the N.J. resident not only operated a passive, non-interactive website on the Internet, but actively pursued and solicited the plaintiff's business in New York by means of phone calls, faxes, e-mail, and regular mail).

24. No. 1:11 CV 417, 2011 WL 5122641 (N.D. Ohio Oct. 27, 2011).

while some courts have exercised general jurisdiction on the basis of “virtual stores” and other online activity approximating physical presence in the forum state, Plaintiff presents only a blanket assertion that “Defendants,” collectively, do business through [www.atlantis.com](http://www.atlantis.com), and fails to present facts concerning the nature, quality, and volume of activity through the site and its nexus to Ohio. While the court is sensitive to the fact that Plaintiff seeks redress for his injuries in a convenient forum, Plaintiff must nevertheless present some facts from which the court can make a good-faith and well-reasoned decision concerning the issue of jurisdiction.<sup>25</sup>

And in *Wilson v. RIU Hotels & Resorts (Riusa II, S.A.)*,<sup>26</sup> a hotel guest slipped and fell in a bathtub/shower injuring herself but failed to establish personal jurisdiction over the hotel although she booked the tour through a travel agency, Apple Vacation’s, website.<sup>27</sup> The court noted that “maintenance of a website which allows users to reserve accommodations at Defendant’s resorts does not demonstrate that Riusa II [hotel] has had systematic and continuous contact with Pennsylvania. General jurisdiction requires more than a recognition that a nonresident corporation has an interactive web site.”<sup>28</sup>

### B. Passive Websites

If the foreign company maintains an informational website accessible to the general public, but which cannot be used for making reservations then most,<sup>29</sup> but not all,<sup>30</sup> courts would find it unreasonable

25. *Id.* at \*5-6 (citations omitted).

26. No. 10 7144, 2011 WL 3241386 (E.D. Pa. July 29, 2011).

27. *Id.* at \*1, \*3.

28. *Id.* at \*8 (internal quotation marks omitted).

29. See, e.g., *GTE New Media Servs. Inc. v. Bellsouth Corp.*, 199 F.3d 1343, 1350 (D.C. Cir. 2000) (finding Yellow Pages website accessibility insufficient for exercise of long arm jurisdiction); *Soma Med. Int’l v. Standard Chartered Bank*, 196 F.3d 1292, 1299 (10th Cir. 1999) (finding no jurisdiction based on website that only provided information); *Mink v. AAAA Dev. LLC*, 190 F.3d 333, 336-37 (5th Cir. 1999) (finding no long arm jurisdiction based upon printable mail-in order form, toll-free number, and e-mail address); *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 419-20 (9th Cir. 1997) (finding no jurisdiction over Defendant, which “conducted no commercial activity over the Internet in Arizona. All that it did was post an essentially passive home page on the web”); *Piano Wellness, LLC v. Williams*, No. 11-1601 (NLH)(AMD), 2011 WL 6722520, at \*5-6 (D.N.J. Dec. 21, 2011); *Enderby v. Secrets Maroma Beach Riviera Cancun*, No. 10-CV-1015 (JFB)(WDW), 2011 WL 6010224, at \*12-13 (E.D.N.Y. Dec. 1, 2011); *ClearPractice, LLC v. Nimble, LLC*, 819 F. Supp. 2d 892, 893, 896 (E.D. Mo. 2011) (finding no personal jurisdiction in trademark infringement case because a “viewer [of the website] can exchange information with Nimble, but cannot make purchases, share files or perform business with Nimble”); *Robbins v. Flightstar, Inc.*, No. 2:09-CV-735, 2011 WL 61189, at \*3 (D. Utah. Jan. 7, 2011) (finding no personal jurisdiction); *Amazon Tours, Inc. v. Wet-A-Line Tours, LLC*, No. 3-01-CV-1433-R, 2002 WL 230895, at \*3 (N.D. Tex. Jan. 31, 2002) (describing a tour operator’s website that “provides information about various tour

packages offered by the company[,]...a bulletin board that allows customers to post messages . . . , a fishing report . . . , [and] a form to request a brochure . . . . If a user wants further information . . . , he or she must contact the company at its offices in Georgia"); *MJC-A World of Quality, Inc. v. Wishpets Co., Ltd.*, No. 00 C 6803, 2001 WL 987890, at \*7 (N.D. Ill. Aug. 27, 2001) (finding a passive website and the sale of ninety toys insufficient basis for jurisdiction); *Am. Info. Corp. v. Am. Infometrics, Inc.*, 139 F. Supp. 2d 696, 698, 702-03 (D. Md. 2001) (involving a website where "[a] visitor may not enter into a contract, purchase goods or services, or transact business on the Web site"); *First Fin. Res. v. First Fin. Res., Corp.*, No. 00 C 3365, 2000 WL 1693973, at \*3 (N.D. Ill. Nov. 8, 2000) ("[Website] does not accept orders or requests for financial planning services and does not provide any method by which a customer could place an order or request for financial planning over the site. Further [Defendant] does not enter into contracts on the site"); *Lofton v. Turbine Design, Inc.*, 100 F. Supp. 2d 404, 410-11 (N.D. Miss. 2000) ("[T]he primary purpose of the website is for advertising. The website does not contain a price list for services, contract for engagement of services, or order form. It is not suited for shopping or ordering online."); *Roche v. Worldwide Media, Inc.*, 90 F. Supp. 2d 714, 718-19 (E.D. Va. 2000) (finding that a "pornographic web site can only be characterized as 'passive'"); *Nutrition Physiology Corp. v. Enviros Ltd.*, 87 F. Supp. 2d 648, 654 (N.D. Tex. 2000) (holding that a passive website does not confer jurisdiction); *Bailey v. Turbine Design, Inc.*, 86 F. Supp. 2d 790, 795-96 (W.D. Tenn. 2000) ("[T]here is no indication whatsoever that TDI's website is anything other than wholly passive."); *JB Oxford Holdings, Inc. v. Net Trade, Inc.*, 76 F. Supp. 2d 1363, 1366-67 (S.D. Fla. 1999) (holding that a website providing connections to Internet, listing of national toll free telephone number, and a pending application to do business in Florida provided insufficient contacts with Florida to permit exercise of personal jurisdiction); *Molnlycke Health Care AB v. Dumex Med. Surgical Prods. Ltd.*, 64 F. Supp. 2d 448, 452, 455 (E.D. Pa. 1999) (finding a passive website does not confer jurisdiction); *Broussard v. Deauville Hotel Resorts, Inc.*, No. CIV. A. 98-3157, 1999 WL 621527, at \*2-3 (E.D. La. Aug. 13, 1999) (finding of no long arm jurisdiction based upon passive website); *Remick v. Manfredy*, 52 F. Supp. 2d 452, 458 (E.D. Pa. 1999) (involving a passive website offering general information and advertising, which were insufficient contact with the forum); *Mid City Bowling Lanes & Sports Palace, Inc. v. Ivercrest, Inc.*, 35 F. Supp. 2d 507, 512 (E.D. La. 1999) (finding no personal jurisdiction based upon a passive website); *ESAB Grp., Inc. v. Centricut, LLC*, 34 F. Supp. 2d 323, 327 (D.S.C. 1999) (holding that a web page which provides information but requires customer to place an order through a toll-free telephone number is insufficient for assertion of personal jurisdiction); *Millennium Enters. v. Millennium Music, LP*, 33 F. Supp. 2d 907, 920, 924 (D. Or. 1999) (concluding that personal jurisdiction does not exist where "defendants [do] nothing more than publish an interactive Web site"); *Grutkowski v. Steamboat Lake Guides & Outfitters, Inc.*, No. Civ.A. 98-1453, 1998 WL 962042, at \*4-5 (E.D. Pa. Dec. 28, 1998) (involving a website containing information, photographs, map, and e-mail connection where reservations could not be made on the website); *Am. Homecare Fed'n, Inc. v. Paragon Scientific Corp.*, 27 F. Supp. 2d 109, 114 (D. Conn. 1998) ("The Website does not list . . . products which are sold nor does it provide any process for ordering . . . . No sales . . . occur through the Website and an individual accessing the site cannot order . . . . It does not provide anyone with files to download, nor does it link to anyone else's Website."); *Edberg v. Neogen Corp.*, 17 F. Supp. 2d 104, 114-15 (D. Conn. 1998) ("[T]here is no evidence that any user in Connecticut accessed Neogen's Web site or purchased products based upon the Web site advertisement. . . . Internet users could not order products directly from the Web site. . . . [I]t required them to call an '800' number in Michigan or write Neogen in Michigan or Kentucky."); *Mallinckrodt Med., Inc. v. Sonus Pharm., Inc.*, 989 F. Supp. 265, 272 (D.D.C. 1998) (finding that "[t]he act of posting a message on an AOL electronic bulletin board—which certain AOL subscribers may or may not choose to access" is not sufficient for personal jurisdiction"); *SF Hotel Co., L.P. v. Energy Invs., Inc.*, 985 F. Supp. 1032, 1035-36 (D. Kan. 1997) ("Boto's advertisement in a trade publication appears on the Internet. Boto did not contract to sell any goods or services . . . over the Internet site." (internal quotation marks omitted)); *Hearst Corp. v. Goldberger*, No. 96 Civ. 3620 (PKL)(AJP), 1997 WL 97097, at \*8 (S.D.N.Y. Feb. 26, 1997) (involving an Internet website with e-mail contact); *Bensusan Rest. Corp. v. King*, 937 F.

to assert personal jurisdiction. For example, in *Weber v. Jolly Hotels*,<sup>31</sup> a N.J. resident purchased a tour package from a Massachusetts travel agent—not an exclusive selling agent—which featured accommodations at a Sicilian hotel owned by an Italian corporation, Itajolly Compagnia Italiana Dei Jolly Hotels (“Jolly Hotels”).<sup>32</sup> Jolly Hotels did not conduct business in New Jersey but had a subsidiary that owned a hotel in New York City that “accept[ed] reservations for all of [Jolly Hotels’s] hotels in Italy.”<sup>33</sup> The plaintiff sustained injuries at the defendant’s Sicilian hotel and brought suit against Jolly Hotels in New Jersey.<sup>34</sup> Jolly Hotels maintained a website, accessible in New Jersey, which provided “photographs of hotel rooms, descriptions of hotel facilities, information about numbers of rooms and telephone numbers.”<sup>35</sup> The website could not be used to make reservations at any of Jolly Hotels’s locations.<sup>36</sup> Finding the website to be passive in nature, the court concluded that it

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Supp. 295, 297, 301 (S.D.N.Y. 1996), *aff’d*, 126 F.3d 25 (2d Cir. 1997) (involving Missouri nightclub’s passive website); *McDonough v. Fallon McElligott, Inc.*, No. CIV. 95-4037, 1996 WL 753991, at \*3 (S.D. Cal. Aug. 5, 1996) (“[T]he fact that [defendant] has a Web site used by [forum state residents] cannot establish jurisdiction by itself.”); *Jewish Def. Org., Inc. v. Superior Court*, 85 Cal. Rptr. 2d 611, 620 (Ct. App. 1999) (holding that a passive website delivering only information is insufficient contact with a forum for assertion of personal jurisdiction); *Ragonese v. Rosenfeld*, 722 A.2d 991, 995-96 (N.J. Super. Ct. Law Div. 1998) (holding that a foreign air carrier’s passive website is insufficient for jurisdiction); *Nationwide Ins. Co. v. Holiday Inn, N.Y. L.J.*, Jan. 27, 2000, at 32 (N.Y. Sup. Ct. Jan. 26, 2000) (explaining a decision that found a passive website and toll-free telephone number insufficient for jurisdiction); *Existence of ‘Passive’ Web Site for Products Does Not Subject Company to Jurisdiction*, N.Y. L.J., Feb. 14, 2000, at 2 (reporting on the findings of the court in *Messelia v. Costa* that a passive website providing information is an insufficient basis for assertion of personal jurisdiction). In *Robbins*, the court found no personal jurisdiction because:

Airplane’s West’s website fits squarely within the “passive” category. Perhaps in anticipation of such a finding, Plaintiffs advanced the novel argument before the court that the subsequent communications between the two parties discussing and ultimately contracting for the airplane acted as a substitute for the typical “shopping cart” feature, making the process sufficiently interactive for jurisdictional purposes. Such an argument must be rejected because it seeks to change the nature of the website.

*Robbins*, 2011 WL 61189, at \*3.

30. See, e.g., *Bochan v. La Fontaine*, 68 F. Supp. 2d 692, 694-95, 699 (E.D. Va. 1999) (finding posting of libelous messages on the Internet by Texas and New Mexico residents sufficient grounds for the assertion of personal jurisdiction in Virginia where website was accessed); *Heroes, Inc. v. Heroes Found.*, 958 F. Supp. 1, 3-5 (D.D.C. 1996) (finding jurisdiction based on website, toll-free telephone number, and local newspaper advertisement); *Panavision Int’l, L.P. v. Toeppen*, 938 F. Supp. 616, 619, 621 (C.D. Cal. 1996) (finding jurisdiction based upon website contact alone); *Inset Sys., Inc. v. Instruction Set, Inc.*, 937 F. Supp. 161, 164 (D. Conn. 1996) (finding that “advertising via the Internet is solicitation of a sufficient repetitive nature” for purposes of long-arm jurisdiction).

31. 977 F. Supp. 327 (D.N.J. 1997).

32. *Id.* at 329-30.

33. *Id.* at 329, 334.

34. *Id.* at 330.

35. *Id.* at 329 (internal quotation marks omitted).

36. See *id.* at 333.

did not have personal jurisdiction over defendant and transferred the case to New York, because defendant's subsidiary's New York City hotel could make reservations at all Jolly Hotels locations.<sup>37</sup>

### C. *Passive Websites Plus*

However, passive websites combined with other business activity, for example, the activities of subsidiary corporations in the forum;<sup>38</sup> providing trainers to a company doing business in the forum;<sup>39</sup> entering into a licensing agreement with a company in the forum and selling to three companies in the forum;<sup>40</sup> entering into a contract with a company in the forum, which contained a forum selection clause and multiple e-mail communications to the forum;<sup>41</sup> e-mail, fax, and telephone communications;<sup>42</sup> contracts and various correspondence surrounding those contracts;<sup>43</sup> various support services incident to sales;<sup>44</sup> e-mail, fax, telephone, and regular mail communications;<sup>45</sup> twelve sales in the forum and plans to sell more;<sup>46</sup> mortgage loan applications printed out and chats online with mortgage representatives;<sup>47</sup> fielding e-mail questions about products and sending information about orders;<sup>48</sup> and where "the web site contains several interactive pages which allow customers to take and score performance tests, download product demos, and order products online [and] . . . provides a registration form whereby customers may obtain product brochures, test demonstration diskettes, or

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37. *Id.* at 334.

38. *See* Meier v. Sun Int'l Hotels Ltd., 288 F.3d 1264, 1274, 1276 (11th Cir. 2002).

39. *See* Hasbro, Inc. v. Clue Computing, Inc., 994 F. Supp. 34, 37-38, 44, 46 (D. Mass. 1997).

40. *See* Digital Equip. Corp. v. Altavista Tech., Inc., 960 F. Supp. 456, 464 (D. Mass. 1997).

41. *See* CompuServe, Inc. v. Patterson, 89 F.3d 1257, 1264 (6th Cir. 1996).

42. *See* EDIAS Software Int'l, L.L.C. v. BASIS Int'l Ltd., 947 F. Supp. 413, 422 (D. Ariz. 1996).

43. *See* Catalytic Combustion Corp. v. Vapor Extraction Tech., Inc., No. 00-0450-FT, 2000 WL 1124245, at \*4 n.6 (Wis. Ct. App. Aug. 8, 2000).

44. *See* Amazon Tours, Inc. v. Wet-A-Line Tours, LLC, No. 3-01-CV-1433-R, 2002 WL 230895, at \*2-3 (N.D. Tex. Jan. 31, 2002) (finding presence of booking agent in the forum who booked no tours in the forum insufficient contact to establish jurisdiction); *Am. Eyewear, Inc. v. Peeper's Sunglasses & Accessories, Inc.*, 106 F. Supp. 2d 895, 901 (N.D. Tex. 2000).

45. *See* Resuscitation Techs., Inc. v. Cont'l Health Care Corp., No. IP 96-1457-C-M/S, 1997 WL 148567, at \*5-6 (S.D. Ind. Mar. 24, 1997).

46. *See* Gary Scott Int'l, Inc. v. Baroudi, 981 F. Supp. 714, 716, 719 (D. Mass. 1997).

47. *See* Citigroup Inc. v. City Holding Co., 97 F. Supp. 2d 549, 565-66 (S.D.N.Y. 2000).

48. *See* Ty Inc. v. Clark, No. 99 C 5532, 2000 WL 51816, at \*4 (N.D. Ill. Jan. 14, 2000) (finding no jurisdiction, because although defendants "do not run a completely passive web site[,] . . . at the same time, the defendants do not clearly do business over their web site, for they do not take orders nor enter into contracts over the web site").

answers to questions,”<sup>49</sup> may all provide a reasonable basis for the assertion of personal jurisdiction.

#### D. Interactive Websites

If the website provides information, e-mail communication, describes the goods or services offered, downloads a printed order form, or allows online sales<sup>50</sup> with the use of a credit card and sales are, in fact, made in this manner in the forum,<sup>51</sup> particularly by the injured consumer,<sup>52</sup> then some courts,<sup>53</sup> but not all,<sup>54</sup> have found the assertion of

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49. See *People Solutions, Inc. v. People Solutions, Inc.*, No. Civ.A. 399-CV-2339-L, 2000 WL 1030619, at \*3 (N.D. Tex. July 25, 2000).

50. See, e.g., *Smith v. Basin Park Hotel, Inc.*, 178 F. Supp. 2d 1225, 1235 (N.D. Okla. 2001) (finding no basis for jurisdiction, because “[t]he website merely permits a user to submit an email . . . requesting reservation information. No reservation is confirmed over the website”); *Andrei v. DHC Hotels & Resorts, Inc.*, No. 99 Civ. 2555(TPG), 2000 WL 343773, at \*1-2 (S.D.N.Y. Mar. 31, 2000) (finding no jurisdiction over Aruba hotel where the tourist injured at the hotel made reservations through American Airlines’s website but actual hotel reservations were confirmed when tour operator GoGo Tours contacted the Aruba hotel).

51. See, e.g., *D.J.’s Rock Creek Marina, Inc. v. Imperial Foam & Insulation Mfg. Co.*, No. 01-4139-JAR, 2002 U.S. Dist. LEXIS 13470, at \*12, \*16 (D. Kan. June 10, 2002) (finding no jurisdiction where “CW has had no actual internet-based contacts with residents of Kansas: no sales, no inquiries, no requests for quotes, no emails, nor any phone calls, letters or contacts emanating from the web site information. . . . CW has never made a sale to a Kansas resident”); *Smith*, 178 F. Supp. 2d at 1235 (“There is no evidence that any commercial transactions are actually completed on BPH’s website. . . . No reservation is confirmed over the website.”); *Dagesse v. Plant Hotel N.V.*, 113 F. Supp. 2d 211, 218 (D.N.H. 2000) (providing that, although hotel had interactive reservations website, Plaintiff failed to show that any reservations were actually made using the website); *Hurley v. Cancun Playa Oasis Int’l Hotels*, No. Civ.A. 99 574, 1999 WL 718556, at \*1 (E.D. Pa. Aug. 31, 1999) (providing that, although a Mexican hotel’s Georgia booking agent had a toll-free telephone number and interactive reservations website, plaintiff used neither and failed to show that any actual reservations were made using website).

52. See, e.g., *Bell v. Imperial Palace Hotel/Casino, Inc.*, 200 F. Supp. 2d 1082, 1088 (E.D. Mo. 2001). But see *Rodriguez v. Circus Circus Casinos, Inc.*, No. 00 Civ. 6559(GEL), 2001 WL 21244, at \*3 (S.D.N.Y. Jan. 9, 2001); *contra Caldwell v. CheapCaribbean.Com, Inc.*, No. 2:09-cv-13828, 2010 WL 3603778, at \*8 (E.D. Mich. Sept. 8, 2010).

In *Bell*, the court explained that:

[t]he central reason why plaintiffs fail to establish the necessary minimum contacts for specific jurisdiction, however, is because they have failed to demonstrate that their cause of action has any relation to Imperial Palace’s ‘contacts’ with Missouri. From the record before the Court, the defendant’s only contact with Missouri is a website that is accessible to residents in Missouri. The subject matter of plaintiff’s suit is a slip and fall accident that occurred on the hotel premises in Las Vegas. That event is entirely unrelated to the defendant’s website. While the Court is not suggesting that these facts would necessarily change the analysis, the plaintiffs do not maintain that they used the website to make reservations with the Imperial Palace, that their travel agent used the website to secure their reservations, or that they were enticed by the website to visit the Imperial Palace. In fact, they do not claim to have ever viewed the website prior to their visit to the defendant’s hotel. The Court can see no causal link or connection between [plaintiff’s] accident and the sole forum contact by Imperial Palace, its website.

*Bell*, 200 F. Supp. 2d at 1088. The court in *Rodriguez* observed that:

even if [plaintiff] has made his hotel reservations over [defendant's] website—and it is not alleged that he did—the personal injuries at the heart of this lawsuit arose, if at all, from the allegedly negligent conduct of the defendants in Nevada rather than from the making of a hotel reservation. Absent the requisite nexus, there is no basis for long-arm jurisdiction over [defendant].

*Rodriguez*, 2001 WL 21244, at \*3. However, in *Caldwell*, “[t]he Court [found] that the interactive website [was] sufficient to establish personal jurisdiction over the defendants, even though the *Caldwells* did not use the interactive features of the website and therefore, as to them, the website functioned as a passive website providing information.” *Caldwell*, 2010 WL 3603778, at \*8.

53. See, e.g., *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1229-32 (9th Cir. 2011); *Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 510, 513 (D.C. Cir. 2002) (finding continuous and systematic sale of securities on an Internet website sufficient basis for personal jurisdiction); *Del Sol, L.C. v. Caribongo L.L.C.*, No. 2:11CV573DAK, 2012 WL 530093, at \*4-5 (D. Utah Feb. 17, 2012); *Uncle Sam's Safari Outfitters, Inc. v. Uncle Sam's Army Navy Outfitters-Manhattan, Inc.*, 96 F. Supp. 2d 919, 923-25 (E.D. Mo. 2000) (finding inoperable interactive website still under construction insufficient for jurisdiction); *Stomp, Inc. v. NeatO, LLC*, 61 F. Supp. 2d 1074, 1078 & n.7 (C.D. Cal. 1999) (finding that a website functioned as a “virtual store” where “[c]onsumers [could] view descriptions, prices, and pictures of various products [and could] add items to their virtual shopping cart and check out by providing credit card and shipping information” (internal quotation marks omitted)); *Origin Instruments Corp. v. Adaptive Computer Sys.*, No. CIV.A. 397CV2595-L, 1999 WL 76794, at \*4-5 (N.D. Tex. February 3, 1999) (finding no jurisdiction based upon Plaintiff's failure to show sales in forum through interactive website); *ESAB Grp., Inc. v. Centricut, LLC*, 34 F. Supp. 2d 323, 327, 333-34 (D.S.C. 1999) (finding website that provides information, but requires customers to call a toll-free telephone number before placing an order online, insufficient to confer jurisdiction); *Millennium Enters. v. Millennium Music, L.P.*, 33 F. Supp. 2d 907, 920-21 (D. Or. 1999); *Blumenthal v. Drudge*, 992 F. Supp. 44, 56-58 (D.D.C. 1998); *Park Inns Int'l, Inc. v. Pac. Plaza Hotels, Inc.*, 5 F. Supp. 2d 762, 764-66 (D. Ariz. 1998) (finding jurisdiction where interactive website accepted seven hotel reservations from customers in the forum); *Thompson v. Handa-Lopez, Inc.*, 998 F. Supp. 738, 743-44 (W.D. Tex. 1998) (holding corporation subject to personal jurisdiction in Texas based upon entering into contracts to play casino games with Texas citizens); *Mieczkowski v. Masco Corp.*, 997 F. Supp. 782, 787-88 (E.D. Tex. 1998); *Am. Network, Inc. v. Access Am./Connect Atlanta, Inc.*, 975 F. Supp. 494, 499-501 (S.D.N.Y. 1997) (finding jurisdiction based on subscriptions for Internet services sold to customers in the forum through contracts entered into on a website); *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1125-27 (W.D. Pa. 1997); *Gates v. Royal Palace Hotel*, No. CV 9866595S, 1998 WL 951002, at \*4, \*6 (Conn. Super. Ct. Dec. 30, 1998) (finding jurisdiction based upon concentrated advertising, bookings through travel agents and “invitation to Connecticut citizens to make reservations and other arrangements directly through the Internet”).

In *Blumenthal*, the court found that:

The Drudge Report's web site allows browsers . . . to directly e-mail defendant . . . thus allowing an exchange of information . . . [B]rowsers who access the website may request subscriptions to the Drudge Report, again by directly e-mailing their requests to Drudge's host computer. . . . [T]he Drudge Report is . . . sent . . . to every e-mail address on his subscription mailing list. . . . The constant exchange of information and direct communication . . . is the epitome of web site interactivity.

*Blumenthal*, 992 F. Supp. at 56. The court in *Mieczkowski* explained that:

defendant's Web site lists various categories through which . . . individuals can view various furniture selections[,] . . . individual pieces of furniture can be viewed . . . as well as price information[,] . . . an order form can be printed . . . [so that customers may] check the status of their purchases[,] . . . [i]nformation is also available regarding freight costs . . . [and] customers can communicate directly with “on-line” sales representatives . . . .



personal jurisdiction reasonable. In addition, some courts may require that the interactivity be coupled with the transaction of substantial business in the forum<sup>55</sup> or “targets a particular remote jurisdiction.”<sup>56</sup>

*Mieczkowski*, 997 F. Supp. at 787.

54. See *Ruddy v. Wilmot Mountain, Inc.*, No. 10 C 07219, 2011 WL 3584418, at \*3 (N.D. Ill. Aug. 12, 2011); *Butler v. Beer Across Am.*, 83 F. Supp. 2d 1261, 1268 (N.D. Ala. 2000) (“Beer Across America’s site does not even anticipate the regular exchange of information across the Internet . . . . Rather, it is closer to an electronic version of a postal reply card.”).

55. See, e.g., *Focht v. Sol Melia, S.A.*, No. C 10 0906 EMC, 2012 WL 162564, at \*8-9 (N.D. Cal. Jan. 19, 2012); *Matthews v. Kerzner Int’l Ltd.*, No. 1:11 CV 417, 2011 WL 4071850, at \*1 (N.D. Ohio Sept. 8, 2011) (“Atlantis does business through [its] website[s]. These websites allow users to ‘Book Now,’ select travel dates, select a number of travelers, choose a room, add dining plans, choose flights, choose shuttle transfers and confirm reservations. Users provide contact information, credit cards, and receive e-mail notifications of Atlantis travel packages.” (citations omitted)), *on reconsideration* 2011 WL 5122641, at \*5 (N.D. Ohio Oct. 27, 2011) (“While Plaintiff asserts that [Defendant] sends e-mails to former customers and allows customers to book trips and stays at the Atlantis, Plaintiff fails to provide facts that [Defendant] specifically targets advertising to the Ohio market.”); *Chan v. ResortQuest Park City, LLC*, No. CIV. S-11-420 FCD, 2011 WL 3555624, at \*3 (E.D. Cal. Aug. 11, 2011) (“[I]n cases involving interactive websites, courts must analyze the ‘the level of interactivity and commercial nature of the exchange of information that occurs on the Web site’ to determine their jurisdictional effect.”); *Manley v. Air Can.*, 753 F. Supp. 2d 551, 557 n.2 (E.D.N.C. 2010) (“This is not to say that a court could not exercise personal jurisdiction based on internet sales, but rather that something more than the *de minimus* sales presented here would be necessary to satisfy the rigors of constitutional due process.” (citation omitted)); *Orazi v. Hilton Hotels Corp.*, No. 09-cv-05959, 2010 WL 4751728, at \*7 (E.D. Pa. Nov. 22, 2010).

In *Focht*, the court explained that:

[w]hile Ms. Focht points out that hundreds of thousands of California residents have in fact accessed the website for one to two million page views, she has failed to explain why those numbers have any real significance absent an indication that, e.g., SM was targeting a California audience with its website (as opposed to an international one, especially given the nine languages available on the website) or that the interactive website produced a substantial portion of its revenue. . . . [T]he number of bookings [via the interactive website] is not that significant—approximately 4,000 each year.

*Focht*, 2012 WL 162564, at \*8 (citations omitted). Similarly, the court in *Orazi* found that: the “mere operation of a commercially interactive web site” that is accessible in the forum is insufficient to demonstrate the website operator purposefully directed its activities at the forum. The defendant must also either ‘intentionally target[ ] the site to the forum, state and/or knowingly conduct [ ] business with forum state residents via the site’ to satisfy the purposeful availment requirement.

*Orazi*, 2010 WL 4751728, at \*7 (alterations in original) (footnotes omitted).

56. See *Surface Preparation Techs. v. Jamaco Indus., LLC*, No. 1:11-CV-1978, 2012 WL 1192068, at \*4 (M.D. Pa. Apr. 10, 2012) (internal quotation marks omitted); see, e.g., *Conley v. MLT, Inc.*, No. 11-11205, 2012 WL 1893509, at \*7 (E.D. Mich. May 23, 2012); *Collazo v. Enter. Holdings, Inc.*, 823 F. Supp. 2d 865, 869 (N.D. Ind. 2011); *Wilson v. RIU Hotels & Resorts*, No. 10-7144, 2011 WL 3241386, at \*6 (E.D. Pa. July 29, 2011).

In *Conley*, the court explained that:

Defendants’ website is a fully interactive one in which customers or travel agents may book stays at the various hotels and resorts owned by Defendants. In fact, from 2007 to 2010, 155 guests with Michigan addresses booked hotel or resort reservations from Defendants’ website. There is no dispute that Defendants entered into contracts with Michigan residents using their website. Additionally, Plaintiffs submitted significant

This seems to be the trend for the sale of goods and services that are delivered after they are ordered by the consumer on his or her home computer. As noted above, however, at least one court has made an unwarranted distinction between placing Internet orders for the immediate delivery of goods and services and making reservations for delivery of hotel accommodations some time in the future.<sup>57</sup> Although this area of the law is developing, it is fair, at this point, to make the following conclusions.

### 1. Lowest Level of Interactivity

First, the lowest level of travel website interactivity, involving e-mail communications which allow travelers to request information but not make reservations, would be an insufficient basis for jurisdiction.<sup>58</sup>

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evidence that Defendants directly focused marketing efforts toward Michigan residents. Allegro representatives attend annual trade shows in Michigan and engage in direct mail and e-mail solicitations to Michigan-based travel agencies and tour operators. . . . Defendants have entered into Cooperative Marketing Agreements with Defendant MLT, a tour operator based out of Minnesota. . . . These agreements describe Defendants' marketing efforts in detail, and specifically provide for email, direct mail, and radio advertising in Michigan.

*Conley*, 2012 WL 1893509, at \*7 (citations omitted). In *Collazo*, the court observed that: [t]he Seventh Circuit has declined to adopt *Zippo*'s approach for cases involving Internet contacts, including by declining to decide "what level of 'interactivity' is sufficient to establish personal jurisdiction based on the operation of an interactive website." The maintenance of a public Internet website, without more, will not establish general jurisdiction. . . . [T]he question is not how interactive those sites are, but whether Defendants, through those sites, some way *targeted* Indiana's market.

*Collazo*, 823 F. Supp. 2d at 869 (citations omitted). In *Wilson* the court found that the "Plaintiff need[ed] to demonstrate that [the Defendant] specifically targeted this forum, which she has not done." *Collazo*, 2011 WL 3241386, at \*6.

57. See, e.g., *Bell*, 200 F. Supp. 2d at 1087. The court noted that:

Although reservations can be made over the internet, this case is clearly distinguishable from those where goods may be ordered over the internet. In internet cases involving the sale of goods, the entire transaction (order, payment, and confirmation) can be completed online. The resident can bring about the transmission of the goods into the forum state through the order alone. Hotels, on the other hand, are somewhat unique in the internet context. Neither party anticipates that goods, services, or information of intrinsic value will be transmitted or provided in the forum state as a result of the internet exchange of information. To the contrary, both parties recognize that the internet exchange is simply preliminary to the individual traveling outside the forum state to use the service. In this respect, the exchange of information over the internet is not unlike a toll-free reservations hotline. The purpose of the internet interaction is not achieved until the resident customer leaves the forum state and arrives at the hotel destination.

*Id.* (citation omitted).

58. *Smith v. Basin Park Hotel, Inc.*, 178 F. Supp. 2d 1225, 1235 (N.D. Okla. 2001); *Cervantes v. Ramparts, Inc.*, No. A098642, 2003 WL 257770, at \*2-3 (Cal. Ct. App. Feb. 7, 2003) In *Smith*, the court found that although the hotel had a website, there was no basis for asserting jurisdiction since "[t]here is no evidence that any commercial transactions are actually completed on [the hotel's] website. The website merely permits a user to submit an email to [the hotel] requesting

## 2. Middle Level of Interactivity

Second, the middle level of travel website interactivity, involving the ability to obtain information, communicate by e-mail and, in fact, make hotel reservations has generated cases finding a sufficient basis for jurisdiction.<sup>59</sup>

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reservations information. No reservation is confirmed over the website. *Smith*, 178 F. Supp. 2d at 1235. The court in *Cervantes* explained that:

Ramparts's only 'continuous' contact with [the forum] state is that it maintained a Web site which allowed Internet users in California, or anywhere else, to learn about and send e-mail to the Luxor Hotel. . . . That the Ramparts Web site permitted limited interactivity does not distinguish it from maintenance of an "800" telephone number for purposes of establishing general jurisdiction.

*Cervantes*, 2003 WL 257770, at \*2-3.

59. See *Conley*, 2012 WL 1893509, at \*7 ("Defendant's website is a fully interactive one in which customers or travel agents may book stays at the various hotels and resorts owned by Defendants. . . . [F]rom 2007 to 2010, 155 guests with Michigan addresses booked hotel or resort reservations through Defendants' website."); *Diem v. Quinn Hotel Praha, A.S.*, No. H-10-2848, 2012 WL 524182, at \*1-2 (S.D. Tex. Feb. 15, 2012) (finding no personal jurisdiction based on "an intermediate site neither active nor completely passive"); *Brown v. Grand Hotel Eden*, No. 00 Civ. 7346(NRB), 2003 WL 21496756, at \*4-5 (S.D.N.Y. June 30, 2003); *Brown v. Grand Hotel Eden*, 214 F. Supp. 2d 335, 339 (S.D.N.Y. 2002) (finding that "Hotel Eden's presence on the Summit Hotels Web site, which also permits reservations to be confirmed automatically supports [the] finding that Hotel Eden is 'doing business' in the State of New York"); *Decker v. Circus Circus Hotel*, 49 F. Supp. 2d 743, 748 (D.N.J. 1999) ("[I]t is clear that any customer can reserve a room through the Web site. . . . [B]y making reservations available on the Internet, the defendants have effectively placed their hotel and its services into an endless stream of commerce."); *Grutkowski v. Steamboat Lake Guides & Outfitters, Inc.*, No. Civ.A. 98-1453, 1998 WL 962042, at \*4-5 (E.D. Pa. Dec. 28, 1998) ("This site does not permit a reader to purchase or reserve tours over the Internet and thus, does not permit [defendant] to 'transact business' over the Internet.").

Cases finding an insufficient basis for jurisdiction include: *Arriaga v. Imperial Palace, Inc.*, 252 F. Supp. 2d 380, 386-87 (S.D. Tex. 2003) (finding no jurisdiction based upon interactive reservations website); *Snyder v. Dolphin Encounters Ltd.*, 235 F. Supp. 2d 433, 440-41 (E.D. Pa. 2002) (finding no jurisdiction based on an interactive reservations website); *Imundo v. Pocono Palace, Inc.*, No. 01 807(WGB), 2002 WL 31006145, at \*4 (D.N.J. Aug. 14, 2002) (finding no jurisdiction based upon an interactive reservations website); *Bell*, 200 F. Supp. 2d at 1088, 1091-92 (finding no jurisdiction based upon an interactive reservations website); *Rodriguez v. Circus Circus Casinos, Inc.*, No. 00 Civ. 6559(GEL), 2001 WL 21244, at \*2-3 (S.D.N.Y. Jan. 9, 2001) (finding no jurisdiction based upon an interactive reservations website).

In *Brown*, the Southern District of New York found that:

Hotel Eden withholds from Summit the right to book rooms during time periods of Hotel Eden's choosing and thus Summit's power to reserve rooms is subject to the hotel's grant of authority. Absent an outright grant of authority to confirm reservations, an agent is not 'doing business' on behalf of a hotel . . . The only interactivity Hotel Eden's website allows is the opportunity for users to inquire into room availability. Upon receiving these inquiries, the hotel responds, through e-mail or fax, with an offer if a suitable room is available; the user then must respond to the hotel to accept the offer.

*Brown*, 2003 WL 21496756, at \*4.

### 3. Highest Level of Interactivity

Third, the highest level of travel website interactivity, involving the purchase of travel services on the website together with other business contacts with the forum, would provide a sufficient basis for jurisdiction.<sup>60</sup>

Recent cases,<sup>61</sup> with some exceptions,<sup>62</sup> continue to use the *Zippo*

60. See, e.g., *Conley*, 2012 WL 1893509, at \*7; *In re Ski Train Fire* in Kaprun, Austria on November 11, 2000, 230 F. Supp. 2d 376, 382-84 (S.D.N.Y. 2002); *Silk Air (Sing.) Pvt., Ltd. v. Superior Court*, No. B159966, 2003 WL 40818, at \*3 (Cal. Ct. App. Jan. 6, 2003). In *In re Ski Train Fire*, the court found that:

Siemens AG conducts substantial and continuous business in [the forum] state[,] . . . conducting sales in New York over the Internet, being listed on the New York Stock Exchange[,] . . . buying a New York company, . . . employ[ing] a press contact here, and ha[ving] sued in New York.

*In re Ski Train Fire*, 2012 WL 1893509, at \*7. The California Court of Appeals found general jurisdiction over a foreign air carrier “based upon (1) Silk Air’s continuing and substantial revenues in California, (2) its advertising in California by means of flyers distributed through its parent company’s Los Angeles offices, and (3) its interactive internet site allowing Californians to purchase tickets for flights on its airline.” *Silk Air*, 2003 WL 40818, at \*3.

61. See, e.g., *Focht v. Sol Melia, S.A.*, No. C 10 0906 EMC, 2012 WL 162564, at \*8-9 (N.D. Cal. Jan. 19, 2012); *Enderby v. Secrets Maroma Beach Riviera Cancun*, No. 10-CV-1015 (JFB)(WDW), 2011 WL 6010224, at \*12-14 (E.D.N.Y. Dec. 1, 2011); *Manley v. Air Can.*, 753 F. Supp. 2d 551, 557 n.2 (E.D.N.C. 2010); *Elayyan v. Sol Melia, S.A.*, 571 F. Supp. 2d 886, 900 (N.D. Ind. 2008); *Stinnett v. Atlantic City Showboat, Inc.*, No. 07-4743, 2008 WL 1924125, at \*4 (E.D. Pa. Apr. 29, 2008); *Baker v. Carnival Corp.*, No. 06-21527-CIV-HUCK, 2006 WL 3360418, at \*3-4 (S.D. Fla. Nov. 20, 2006); *Wilson v. Stratosphere Corp.*, No. Civ.A. 05-939, 2006 WL 11344169, at \*3 (W.D. Pa. Apr. 24, 2006); *Heidle v. Prospect Reef Resort, Ltd.*, 364 F. Supp. 2d 312, 318 (W.D.N.Y. 2005); *Snowney v. Harrah’s Entm’t, Inc.*, 112 P.3d 28, 33-34 (Cal. 2005); *Aguilar v. Honolulu Hotel Operating Corp.*, No. G040737, 2009 WL 466144, at \*3 (Cal. Ct. App. Feb. 25, 2009); *Delbuono v. Imperial Palace Hotel & Casino, LLC*, No. CV075011543, 2007 WL 4634260, at \*4-5 (Conn. Super. Ct. Dec. 4, 2007); *Norris v. Six Flags Theme Parks, Inc.*, 74 P.3d 26, 32 (Haw. 2003); *Kaloyeva v. Apple Vacations*, 866 N.Y.S.2d 488, 492-93 (Civ. Ct. 2008).

62. See, e.g., *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1227 (9th Cir. 2011); *Fraserside IP L.L.C. v. Hammy Media, Ltd.*, No. C11 3025 MWB, 2012 WL 124378, at \*6 (N.D. Iowa Jan. 17, 2012); *Collazo v. Enter. Holdings, Inc.*, 823 F. Supp. 2d 865, 869 (N.D. Ind. 2011); *Robbins v. Flightstar, Inc.*, No. 2:09-CV-735, 2011 WL 61189, at \*3 (D. Utah Jan. 7, 2011).

The Ninth Circuit “ha[s] followed *Zippo*. But *Zippo*’s sliding scale test was formulated in the context of a specific jurisdiction inquiry. The level of interactivity of a nonresident defendant’s website provides limited help [in establishing] general jurisdiction.” *Mavrix Photo*, 647 F.3d at 1227 (citations omitted). Similarly:

[t]he Eighth Circuit Court of Appeals concluded that, while the *Zippo* model is an appropriate approach when considering specific jurisdiction, it is insufficient, in and of itself, for determining whether a defendant’s contacts are both substantial and continuous for purposes of general jurisdiction.

*Fraserside IP*, 2012 WL 124378, at \*6. Furthermore:

[t]he Seventh Circuit has declined to adopt *Zippo*’s approach for cases involving Internet contacts, including by declining to decide what level of interactivity is sufficient to establish personal jurisdiction based on the operation of an interactive website. The maintenance of a public Internet website, without more, will not establish general jurisdiction. . . . [T]he question is not how interactive those sites are, but whether Defendants, through those sites, some way *targeted* Indiana’s market.

analysis in determining whether and to what extent Internet activity provides a sufficient basis for the assertion of personal jurisdiction.

### III. INTERNET FORUM SELECTION CLAUSES

To reduce the likelihood of being sued in the consumer's local court, foreign travel suppliers and travel sellers may rely upon forum selection clauses, arbitration clauses, and choice of law clauses contained in the Internet transaction documents.

For instance, an Internet business may want its users to agree that any dispute arising between them shall be resolved in the courts of the Internet business's home state or city, or that it shall be resolved before an arbitration tribunal rather than a court, or that a judge rather than a jury will decide the case, or that the law of a particular state will govern the relationship.<sup>63</sup>

The court in *Decker v. Circus Circus Hotel*<sup>64</sup> addressed the enforceability of an Internet forum selection clause. In *Decker*, New Jersey consumers made reservations at a Nevada hotel and sought to assert personal jurisdiction based on, *inter alia*, the hotel's interactive website that allowed any customer to reserve a room.<sup>65</sup> The interactive website displayed a reservation form, which contained a forum selection clause informing guests that should they wish to commence a lawsuit against the hotel, it could only be brought in Nevada.<sup>66</sup> In the *Decker* case, the court decided to enforce the Nevada forum selection clause.<sup>67</sup> The court also found that the combination of an interactive website with a forum selection clause negates any intent of being haled into a local courtroom.<sup>68</sup>

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*Collazo*, 823 F. Supp. 2d at 869 (citations omitted) (internal quotation marks omitted). The District of Utah found that "although helpful, . . . the *Zippo* analysis, by itself, is incomplete." *Robbins*, 2011 WL 61189, at \*3.

63. Robert Y. Lewis, *Avoiding Internet Litigation in Inconvenient Forums*, N.Y. L.J., May 14, 2002, at 4 ("Such precautions . . . include having users of Internet services or products enter into binding agreements before using the services or products in which they agree on how and where any dispute that arises will be resolved.").

64. 49 F. Supp. 2d 743 (D.N.J. 1999).

65. *See id.* at 748.

66. *Id.*

67. *Id.*

68. *See id.*

#### IV. CONCLUSION: THE INTERNET MAY HAVE EXPANDED JURISDICTION

The Internet may have changed the way in which the courts should decide what types of business contacts justify the assertion of personal jurisdiction. Although the courts are not yet in agreement on what constitutes a threshold of interactivity in the marketing of goods and services over the Internet (which is often coupled with more traditional contacts with the forum), there has been some movement towards a re-evaluation of the solicitation-plus doctrine as an appropriate analytical framework within which to resolve jurisdictional issues.

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