
The Long-Arm of the Law: Infringing Internet Sales Opens up Suit in Customers' Home States

Curry v. Revolution Labs., LLC, Case No. 17-2900 (7th Cir. 2020)

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The Seventh Circuit held that internet sales of products with allegedly infringing branding from a national advertising company will establish personal jurisdiction in Illinois under the Illinois long-arm statute. In trademark infringement cases, unlike patent cases, even a seemingly small number of allegedly infringing sales can be sufficient to establish personal jurisdiction.

In a trademark dispute over sports nutritional supplements, “Diesel Test” and “Diesel Test Red Series,” a *pro se* plaintiff filed suit in Illinois federal court against a limited liability corporation that exclusively sells products online. Both parties agreed that Revolution was not incorporated in the state of Illinois nor did it have a principle place of business in Illinois, so general jurisdiction did not exist. The district court also found there was not specific jurisdiction and dismissed the suit. The Seventh Circuit overturned, applying well-established case law of purposeful availment, connected injury, and fairness.

Revolution argued that sales to 767 Illinois residents, totaling less than 2% of its sales, and business activities that were automatic or directed by consumers were insufficient to establish purposeful availment. The Court found that argument unpersuasive. Judge Ripple writing for the Court, held that by creating a website that allowed shoppers to ship products to Illinois, Revolution had purposefully availed itself of the forum. The Court held that with a nationwide market and advertisements, Revolution reasonably should have expected some sales to Illinois.

Regarding the relatedness requirement, the Seventh Circuit quickly found that the sales to Illinois were of products bearing the allegedly infringing trademark. The Court distinguished this situation over a prior case, *Advanced Tactical*,¹ which found no personal jurisdiction over allegations of trademark infringement. In that case, Real Action had sent emails to Indiana residents and had made at least one sale to an Indiana resident. Rather than basing its decision on the quantity of sales, the Seventh Circuit instead held that *Advanced Tactical* had failed to show that the product sold in Indiana was one of the allegedly infringing products. If the products sold are not the allegedly infringing product, then the minimum contacts would be unrelated to the suit. Therefore, the Court found that the “Diesel Test” products sold to Illinois residents were at the heart of the trademark infringement allegations.

Finally, the Court found it fair for Revolution to defend itself in the Illinois federal courts. By holding itself out as a nationwide provider of sports nutritional supplements, Revolution intends to benefit from its national presence. Further, the state has a strong interest in allowing its citizens to seek legal relief when wronged.

¹ *Advanced Tactical Ordnance Sys. v. Real Action Paintball, Inc.*, 751 F.3d 796 (7th Cir. 2014).