

U.S. Court of Appeals for the Ninth Circuit Clarifies When Website Operators are Subject to Personal Jurisdiction

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Courts are increasingly being asked to decide when website operators are subject to personal jurisdiction, a potentially vexing problem, because websites generally lack a specific location and can be accessed from almost anywhere in the world. In two recent decisions, the United States Court of Appeals for the Ninth Circuit has provided guidance on when website operators are subject to jurisdiction and the relevant legal test that applies in such cases.

In July 2023, in *Herbal Brands, Inc. v. Photoplaza, Inc.*, the Ninth Circuit held that selling a physical product from a website and causing the product to be delivered to the forum is sufficient to establish personal jurisdiction in the forum with regard to the sale of the product. In doing so, the court joined the Second and Seventh Circuits, which have reached similar conclusions. Several months later, in *Briskin v. Shopify*, the court held that extracting and retaining customer data and tracking online purchasers in a forum is not, by itself, a sufficient basis to establish personal jurisdiction in the forum.

These two decisions by the Ninth Circuit were narrow and did not address other types of activities that would be sufficient to establish personal jurisdiction, including whether knowingly profiting from consumers in the forum state or having a certain threshold of sales and deliveries would confer jurisdiction, leaving those questions to be resolved in the future.

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