

Judge Rejects Amazon.com Suit Over Los Angeles Company's Name, Website

By a METNEWS Staff Writer

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A local company that sells suntan products under the name "Amazon" cannot be sued in Washington state by Amazon.com just because the defendant's website, amazontan.com, is accessible by Washington residents, a federal district judge has ruled.

Amazon Cosmetics and Tanning Products' activities in Washington were "too limited in breadth and frequency" to subject it to the general jurisdiction of that state's courts, U.S. District Judge Barbara Rothstein of the Western District of Washington ruled. Rothstein also concluded that using the Internet to attract customers from Washington and elsewhere-the company provides a mailing address on the site, but does not take orders over the Internet-does not constitute "purposeful availment" of the Washington forum.

A copy of Rothstein's Feb. 23 order dismissing for improper venue was provided Friday to the METNEWS by the Century City law firm of Kleinberg & Lerner, which represented Amazon Cosmetics.

Amazon.com is a major Internet-based marketer. The company started as a bookseller, and its founder, Jeffrey Bezos, was named Man of the Year by Time Magazine in 1999 after the company branched out into a long list of consumer products, including suntan lotions and cosmetics.

That expansion of Amazon.com's product line led to an exchange of cease-and-desist letters between the Seattle-based company and Von Eric Lerner Kalaydjian, the sole owner of Amazon Cosmetics. Kalaydjian claimed infringement of the trademark AMAZONTAN.COM and two AMAZON service marks, and Amazon.com in turn alleged trademark infringement and dilution, and eventually filed suit in Seattle.

Rothstein found that Kalaydjian had sold about 100 bottles of tanning oil, all but two of them at a flea market in Pasadena. One bottle was shipped to Arizona, and another to Canada, Rothstein noted, while one bottle was shipped to Washington as a free sample.

That bottle was sent free, the judge explained, because Kalaydjian suspected that the person who ordered it was working for Amazon.com, which the Seattle company didn't deny.

"It was a setup," **Michael Diliberto** of Kleinberg & Lerner said Friday.

Washington's longarm statute permits the state's courts to exercise personal jurisdiction in all cases where they may constitutionally do so, Rothstein explained. But in Kalaydjian's case, the connections with the state are due remote to satisfy due process, she concluded.

Rothstein rejected Amazon.com's contention that Kalaydjian's company was subject to Washington jurisdiction under the Ninth Circuit's formulation of the "effects test." That doctrine holds that if a defendant intentionally engages in activity "aimed at the forum state" and causes foreseeable harm there, that defendant can "reasonably anticipate being haled into court in the forum state to answer for his or her conduct."

The test does not apply to a defendant who simply registers the plaintiff's trademark as a domain name and posts a website, the judge explained, but such activity may bring the defendant within the doctrine if there is "something more."

The jurist cited *Panavision Int'l, L.P. v. Toepfen*, 141 F.3d 1316. In that 1998 case, the Ninth Circuit found that a defendant who deliberately used one of the plaintiff's trademarks for a "purposeless" site, then offered to sell the domain name to the plaintiff and deliberately used another trademark for a second site after the defendant wouldn't pay, could be sued in the plaintiff's home state because he had registered the names for extortion purposes and thus directed tortious activity at that state.

The mere fact that Kalaydjian knew of Amazon.com, and knew that it was based in Washington, wasn't the "something more" that the effects test requires, Rothstein said. Kalaydjian wasn't trying to harm Amazon.com or to revoke its right to its domain name, another activity which the Ninth Circuit has held to be "something more," the judge explained.

Amazon.com's lead counsel, David Burman of Perkins Coie in Seattle, did not return a phone call. **Diliberto** said he had not received any word on what Amazon.com plans to do, but that he was optimistic the ruling would survive on appeal.

Diliberto's next step, he said, will be to move for attorney fees under a Washington statute that enables a defendant to recover fees when it establishes that it is not amenable to the state's longarm jurisdiction.

The case is *Amazon.com, Inc. v. Kalaydjian*, C00-1740R.

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