

PERSONAL JURISDICTION AND THE INTERNET 2012

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Cases involving copyright infringement,¹ violations of the Trademark Act², defamation³ and defective or misrepresented goods and services⁴ frequently arise from communications or transactions 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 paper discusses the assertion of personal jurisdiction within the context of the marketing and sale of travel services over the Internet.

Consumer Use Of The Internet

Consumer use of the Internet to make travel arrangements has risen dramatically in recent years. While consumers remain

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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, e.g., hotels and air carriers, and travel sellers, e.g., Cheap Tickets, Expedia, One Travel, Travelocity, TravelNow and Orbitz, offer exclusive fares on their own Web sites with 24 hour accessibility. Retailers continue to develop creative ways to sell travel services by use of the Internet, e.g., Priceline, Travelot, Site59's "last-minute-air-plus-land-packages".

The Solicitation Plus Doctrine

If a foreign travel supplier, e.g., a hotel or an air carrier conducts business through an agent⁵, a wholly owned subsidiary⁶, a parent corporation⁷ or joint venturer⁸ or maintains an office with a 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 contractor⁹, travel agent¹⁰, tour operator¹¹ or the Internet. Under these circumstances New York 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 "¹² and/or contract formation occurs in New York State¹³. This concept, known as the " solicitation-plus " doctrine, is still followed with some exceptions¹⁴ by many U.S. Courts¹⁵ .

A Transactional Analysis Of Internet Commerce

The extent to which an Internet Web site confers personal jurisdiction in the forum in which the consumer's computer is located has been addressed recently by several courts¹⁶. A useful jurisdictional analysis appears in Zippo Manufacturing Co. v. Zippo Dot Com, Inc.,¹⁷ a trademark infringement action brought by the manufacturer of " Zippo " lighters against a computer news service using the Internet domain name of " zippo.com ". 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 ". The defendant had entered into news service contracts¹⁸ with 3,000 Pennsylvania residents and 7 " contracts with Internet access providers to furnish services to their customers in Pennsylvania ". Since it was 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."

Passive Web Sites

If the foreign company maintains an informational Web site accessible to the general public but which can not be used for making reservations then most¹⁹, but not all²⁰, Courts would find it unreasonable to assert personal jurisdiction. For example, in Weber v. Jolly Hotels²¹ a New Jersey resident purchased a tour

packaged by 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 "]. Jolly Hotels conducted no business in New Jersey but had a subsidiary which owned a hotel in New York City which could make reservations at all of its hotels. The plaintiff sustained injuries at defendant's Sicilian hotel and brought suit against Jolly Hotels in New Jersey. Jolly Hotels maintained a Web site accessible in New Jersey which provided "photographs of hotel rooms, descriptions of hotel facilities, information about numbers of rooms and telephone numbers ". The Web site could not be used to make reservations at any of Jolly Hotels. Finding the Web site to be passive in nature the Court dismissed the complaint for a lack of personal jurisdiction but transferred the case to New York because defendant's subsidiary's New York City hotel could make reservations at all Jolly Hotels.

Passive Web Sites Plus

However, passive Web sites combined with other business activity, e.g., the activities of subsidiary corporations in the forum²², providing trainees to a company doing business in the forum²³, entering into a licensing agreement with a company in

the forum and selling to three companies in the forum²⁴, entering into a contract with a company in the forum which contained a forum selection clause and multiple e-mail communications to the forum²⁵, e-mail, fax and telephone communications²⁶, contracts and various correspondence surrounding those contracts²⁷, various support services incident to sales²⁸, e-mail, fax, telephone and regular mail communications²⁹ and 12 sales in the forum and plans to sell more³⁰, mortgage loan applications printed out and chats online with mortgage representatives³¹, fielding e-mail questions about products and sending information about orders³², " the web site contains several interactive pages which allow customers to take and score performance tests, download product demos, and order products on-line (and) provides a registration form whereby customers may obtain product brochures, test demonstration diskettes or answers to questions "³³, may provide a reasonable basis for the assertion of personal jurisdiction.

Interactive Web Sites

If the Web site provides information, e-mail communication, describes the goods or services offered, downloads a printed order form or allows on-line sales³⁴ with the use of a credit card and sales are, in fact, made³⁵ in this manner in the forum, particularly by the injured consumer³⁶, then some Courts³⁷ but not

all³⁸ have found the assertion of personal jurisdiction reasonable. In addition, some Courts may require that the interactivity be coupled with the transaction of substantial business in the forum³⁹. 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 future⁴⁰. Although this area of the law is developing it is fair, at this point, to make the following conclusions.

Lowest Level Of Interactivity

First, the lowest level of travel Web site interactivity, involving e-mail communications which allow travelers to request information but not make reservations, would be an insufficient basis for jurisdiction [Smith v. Basin Park Hotel, Inc.⁴¹

(although the hotel had a Web site the Court found 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 reservations information. No reservation

is confirmed over the website "); Cervantes v. Ramparts, Inc.⁴²
(" Ramparts' only ' continuous ' contact with this state in that
it maintained a Web site which allowed Internet users in
California, or anywhere else, to learn about and send e-mails 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 ")].

Middle Level Of Interactivity

Second, the middle level of travel Web site interactivity,
involving the ability to obtain information, communicate by email
and, in fact, make hotel reservations has generated cases finding
a sufficient basis for jurisdiction [In Brown v. Grand Hotel
Eden-A Summit Hotel⁴³, a case in which a guest was injured at a
Swiss hotel the services of which were marketed through a joint
reservation Web site, the Court found that " Hotel Eden's
presence on the Summit Hotels website, which also permits
reservations to be confirmed automatically supports our finding
that Hotel Eden is ' doing business ' in the State of New York ".
Following discovery, Brown was modified⁴⁴, the Court there
finding that, in actuality, neither Summit's Web site nor the
Hotel Eden's Web site could confirm reservations. " 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 "); Decker v. Circus Circus Hotel⁴⁵ ("...it is clear that any customer can reserve a room through the Web site...by 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 Guides⁴⁶ (" 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")] and cases finding an insufficient basis for jurisdiction [Rodriguez v. Circus Circus Casinos, Inc.⁴⁷ (no jurisdiction based upon interactive reservations Web site); Imundo v. Pocono Palace, Inc⁴⁸ (no jurisdiction based upon interactive reservations Web site); Snyder v. Dolphin Encounters Limited⁴⁹ (no jurisdiction based on interactive reservations Web site); Bell v. Imperial Palace Hotel/Casino, Inc.⁵⁰ (no jurisdiction based upon interactive reservations Web site); Arriaga v. Imperial Palace, Inc.⁵¹ (no jurisdiction based upon interactive reservations Web site)].

Highest Level Of Interactivity

Third, the highest level of travel Web site interactivity, involving the purchase of travel services on the Web site together with other business contacts with the forum, would provide a sufficient basis for jurisdiction [Silk Air v. Superior Court⁵² (general jurisdiction over foreign air carrier " based upon (1) Silk Air's continuing and substantial revenue 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 on its airline "); In re Ski Train Fire in Kaprun, Austria⁵³ (" Siemens AG conducts substantial and continuous business...conducting sales in New York over the Internet, being listed on the New York Stock Exchange...buying a New York company...employs a press contact here and has sued in New York ")

Recent cases⁵⁴ continue to use the Zippo analysis in determining whether and to what extent Internet activity provides a sufficient basis for the assertion of personal jurisdiction.

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 “⁵⁵. The enforceability of an Internet forum selection clause was addressed by the Court in Decker v. Circus Circus Hotel⁵⁶. In Decker, New Jersey consumers made reservations at a Nevada hotel using an interactive Web site. The reservation form which appeared on the computer screen 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. In the Decker case the Court decided to enforce the Nevada forum selection clause. The Court also found that the combination of an interactive Web site with a forum selection clause negates any intent of being haled into a local courtroom.

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 [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.

ENDNOTES

1. See e.g., *Penguin Group (USA) Inc. v. American Buddha*, 16 N.Y. 3d 295 (2011) ("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...we conclude that the alleged injury in this case occurred in New York for purposes of CPLR 302(a)(3)(ii)").

2. See e.g., *Chloe v. Queen Bee of Beverly Hills, LLC.*, 616 F. 3d 158 (2d Cir. 2010) (single act of employee shipping handbag to New York coupled with employer's substantial business activity in New York gives rise to personal jurisdiction).

3. See e.g., *Deer Consumer Products, Inc. v. Little*, 2012 WL 280698 (N.Y. Sup. 2012) ("There 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"); *Null v. Phillips*, 29 Misc. 3d 245 (N.Y. Sup. 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, 250 (2d Cir. 2007) ("posting of defamatory material on a website accessible in

New York does not, without more, constitute transact[ing] business' in New York for the purposes of New York's long-arm statutes") the Null court found that the) comments on his personal website does not suggest that they were specifically targeted to New York viewers as opposed to a nationwide audience").

4. See e.g., *Enderby v. Secrets Matoma Beach Riviera Cancun*, 2011 WL 6010224 (E.D.N.Y. 2011) (slip and fall accident at Mexican hotel; "When solicitation involves a website, 'the fact that a foreign corporation has a website accessible to New York is not sufficient to confer jurisdiction under CPLR 301...A court must 'examine the nature of 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'"; no jurisdiction; passive website); *Grimaldi v Guinn*, 72 A.D. 3d 37 (2d Dept. 2010) (New York resident purchases over the Internet vintage Chevrolet 'cross-ram' manifold and carburetor assembly from Rick's First Generation Camaro, located in Athens, Georgia; personal jurisdiction; passive web site); *Kaloyeva v. Apple Vacations*, 21 Misc. 3d 840 (N.Y. Sup. 2008) (resort in Dominican Republic advertised as having " white sandy beaches, crystal 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 them ill with intestinal poisoning "); personal jurisdiction over New Jersey based tour operator; interactive website).

5. See e.g.,

Second Circuit: *Brown v. Grand Hotel Eden*, 2003 WL 21496756 (S.D.N.Y. 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*, 2002 U.S. Dis. LEXIS 14563 (S.D.N.Y. 2002) (subsidiary qualified as an agent in the forum); *Pavis v. Club Med, Inc.*, 1998 WL 229912 (D. Conn. 1998) (solicitation through travel agents in the forum by agent sufficient basis for jurisdiction over principal); *Sankaran v. Club Mediterranee, S.A.*, 1998 WL 433780 (N.D.N .Y. 1998) (" Defendants' activities through their agents also suffice to show that they have established the requisite contacts with New York ").

Sixth Circuit: *Catalano v. BRI, Inc.*, 724 F. Supp. 1580 (E.D. Mich. 1989) (Michigan has personal jurisdiction over Las Vegas hotel based upon conducting business through an agent with

offices in Michigan).

Seventh Circuit: *Cummings v. Club Mediterranee, S.A.*, 2002 WL 1379128 (N.D. Ill. 2002)(solicitation through travel agents in the forum by agent sufficient basis for jurisdiction over principal);

6. See e.g.,

Eleventh Circuit: *Meier v. Sun International Hotels*, 288 F. 3d 1264 (11th Cir. 2002)(jurisdiction over foreign parent corporation based upon activities of subsidiary corporations in the forum).

State Courts:

Connecticut: *Hersey v. Lonrho, Inc.*, 807 A. 2d 1009 (Conn. App. 2002)(no jurisdiction over parent hotel based solicitation of subsidiary in the forum).

Florida: *Universal Caribbean Establishment v. Bard*, 543 So. 2d 447 (Fla. App. 1989)(jurisdiction based upon activities of subsidiary corporations in the forum).

New York: *Taca Intl. Airlines v. Rolls-Royce of England*, 15 N.Y. 2d 97, 256 N.Y.S. 2d 129, 204 N.E. 2d 329 (1965).

7. See e.g.,

Intermor v. Walt Disney Company, 250 F. Supp. 2d 116, 119-120 (E.D.N.Y. 2003) (the presence of Walt Disney Company in New York insufficient to impose jurisdiction over subsidiary Walt Disney World themepark in Florida); *Dorfman v. Marriott International Hotels, Inc.*, 2002 WL 14363 (S.D.N.Y. 2002)(New York has jurisdiction over Hungarian elevator company which is a mere department of U.S. elevator company); *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. ").

Third Circuit: *Weintraub v. Walt Disney World Co.*, 825 F. Supp. 717 (E.D. Pa. 1993)(Pennsylvania has jurisdiction over Florida resort Walt Disney World based upon connections of parent corporation Walt Disney Company to Pennsylvania).

8. See e.g.,

Second Circuit: *Dorfman v. Marriott International Hotels, Inc.*, 2002 WL 14363 (S.D.N.Y. 2002)(Hungarian and U.S. elevator companies joint venturers);

9. See e.g.,

Second Circuit: *Gelfand v. Tanner Motor Tours, Ltd.*, 385 F. 2d 116 (2d Cir. 1967).

State Courts:

New York: *Guile v. Sea Island Co., Inc.*, 11 Misc. 2d 496, 66 N.Y.S. 2d 467 (1946), *aff'd* 272 App. Div. 881, 71 N.Y.S. 2d 911 (1947).

10. See e.g.,

Second Circuit: *Pavis v. Club Med, Inc.*, 1998 WL 229912 (D. Conn. 1998) (solicitation through travel agents in the forum by agent sufficient basis for jurisdiction over principal);

Third Circuit: *Romero v. Argentinas*, 1993 WL 416547 (D.N.J. 1993).

Tenth Circuit: *Afflerbach v. Cunard Line. Ltd.*, 11 F. Supp. 2d 1260 (D. Wyo. 1998).

State Courts:

New York: *Savoleo v. Couples Hotel*, 136 A.D. 2d 692, 524 N.Y.S. 2d 52 (1988).

11. See e.g.,

Sixth Circuit: *Hughes v. Cabanas del Caribe Hotel*, 744 F. Supp. 788 (E.D. Mich. 1990).

Seventh Circuit: *Wilson v. Humphreys*, 916 F. 2d 1239 (7th Cir. 1990).

12. See e.g., *Intermor v. Walt Disney Company*, 250 F. Supp. 2d 116, 119-120 (E.D.N.Y. 2003).

13. See e.g., *Orazi v. Hilton Hotels Corp.*, 2010 WL 4751728 (E.D. Pa. 2010) ("Plaintiffs' agency claims rest principally on the allegation that Allen Stacy has authorized Hilton making 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, of lack thereof, to commit the non-resident to a reservation...this 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").

14. See e.g.,

First Circuit: *Sigros v. Walt Disney World Co.*, 129 F. Supp. 2d 56 (D. Mass. 2001)(advertising sufficient basis for jurisdiction); *Edwards v. Radventures, Inc.*, 164 F. Supp. 2d 190 (D. Mass. 2001)(solicitation sufficient basis for jurisdiction); *Szafarowicz v. Gotterup*, 1999 WL 782028 (D. Mass. 1999)(Massachusetts may have jurisdiction over Cayman Island diving company if a significant amount of business was done in the U.S.); *Nowak v. Tak How Inc. Ltd.*, 1995 WL 521874 (D. Mass. 1995).

Second Circuit: *Pavia v. Club Med, Inc.*, 1998 WL 229912 (D. Conn. 1998)(solicitation through travel agents in the forum sufficient basis for jurisdiction); *Sankaran v. Club Mediterranee, S.A.*, 1998 WL 433780 (N.D.N.Y. 1998)(solicitation through travel agents in the forum sufficient basis for jurisdiction); *Mallon v. Walt Disney World Co.*, 42 F. Supp. 2d 143 (D. Conn. 1998)(continuous and extensive advertising in the forum, without contract formation, is sufficient to establish jurisdiction over foreign resort); *Begley v. Maho Bay Camps*, 1994 WL 136016 (E.D.N.Y. 1994)(jurisdiction based upon newspaper ads and contact in New York City).

Third Circuit: *Weintraub v. Walt Disney World Co.*, 1993 WL 244064 (E.D. Pa. 1993)(advertising, staffing and customer relations activities sufficient to support jurisdiction); *Gavigan v. Walt Disney World, Inc.*, 646 F. Supp. 786 (E.D. Pa. 1986)(jurisdiction based upon ongoing promotional activities in the forum).

Fifth Circuit: *Kervin v. Red River Ski Area, Inc.*, 711 F. Supp. 1383 (E.D. Tex. 1989)(solicitation of business sufficient for jurisdiction).

Sixth Circuit: *Rafertry v. Blake's Wilderness Outpost Camps*, 1997 WL 14795 (E.D. Mich. 1997)(advertising sufficient for jurisdiction).

Seventh Circuit: *Wilson v. Humphreys*, 916 F. 2d 1239 (7th Cir. 1990)(advertising and contacts with local tour operators sufficient for jurisdiction); *Cummings v. Club Mediterranee, S.A.*, 2002 WL 1379128 (N.D. Ill. 2002)(solicitation through travel agents in the forum sufficient basis for jurisdiction).

State Courts:

Connecticut: *Stewart v. Air Jamaica Holdings Ltd.*, 2000 U.S. Conn. Super. 1107 (Conn. Super. 2000)(plaintiff fails to prove solicitation of business in Connecticut).

15. See e.g.,

First Circuit: *Rosich v. Circus & Circus Enterprises, Inc.*, 3 F. Supp. 2d 148 (D.P.R. 1998)(advertising through travel guide and brochures insufficient contact); *Clark v. City of St. Augustine, Florida*, 977 F. Supp. 541 (D. Mass. 1997) (advertising in forum insufficient contact).

Second Circuit: *Enderby v. Secrets Matoma Beach Riviera Cancun*, 2011 WL 6010224 (E.D.N.Y. 2011) (slip and fall accident at Mexican hotel; "When solicitation involves a website, 'the fact that a foreign corporation has a website accessible to New York is sufficient to confer jurisdiction under CPLR 301...A court must 'examine the nature of 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'"; no jurisdiction; passive website); *Brown v. Grand Hotel Eden*, 214 F. Supp. 2d 235 (S.D.N.Y. 2002) mod'd, *Brown v. Grand Hotel Eden*, 2003 WL 21496756 (S.D.N.Y. 2003) (" 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); *Dorfman v. Marriott International Hotels, Inc.*, 2002 WL 14363 (S.D.N.Y. 2002) (no jurisdiction over Marriott Hotel in Budapest, Hungary or Marriott International Hotels, Inc. based upon solicitation without contract formation in the forum; reservations contracts entered into in Nebraska at worldwide reservations system); *Ciarcia v. Venetianm Resort Hotel Casino*, 2002 WL 265160 (S.D.N.Y. 2002) (" mere solicitation by mailings and telephone calls does not confer jurisdiction "); *Muse v. Vagabond Inn Hotel*, 2002 WL 15803 (E.D.N.Y. 2002) (solicitation of business through toll-free telephone number insufficient for assertion of jurisdiction); *Hinsch v. Outrigger Hotels Hawaii*, 153 F. Supp. 2d 209 (E.D.N.Y. 2001) (placement of ad in publication insufficient for assertion of jurisdiction); *Andrei v. DHC Hotels and Resorts*, 2000 U.S. Dist. LEXIS 4107 (S.D.N.Y. 2000) (mere solicitation of business insufficient for jurisdiction); *Feldman v. Silverleaf Resorts, Inc.*, 2000 U.S. Dist. LEXIS 1005 (S.D.N.Y. 2000) (solicitation, regardless of how substantial, is insufficient to establish jurisdiction); *Swindell v. Florida East Coast Railway Co.*, 42 F. Supp. 2d 320 (S.D.N.Y. 1999) (railroad ticket sales by travel agents and employees at separately owned train stations insufficient to establish jurisdiction); *Weinberg v. Club ABC Tours, Inc.*, 1997 WL 37041 (E.D.N.Y. 1997) (ticket of ticket insufficient to confer jurisdiction); *Lane v. Vacations Charters, Ltd.*, 750 F. Supp. 120 (S.D.N.Y. 1990) (ads and toll free number insufficient contact).

Third Circuit: *Inzillo v. Continental Plaza*, 2000 U.S. Dist. LEXIS 20103 (M.D. Pa. 2000) (advertising and selling hotel accommodations through travel agents and 800 number insufficient

basis for jurisdiction); Poteau v. Walt Disney World Company, 1999 U.S. Dist. LEXIS 12459 (E.D. Pa. 1999) (solicitation of business through travel agents insufficient to establish jurisdiction); Romero v. Holiday Inn, Utrecht, 1998 U.S. Dist. LEXIS 19997 (E.D. Pa. 1998) (advertising through franchisor's Worldwide Directory and making reservations through 800 number insufficient for jurisdiction).

Fourth Circuit: Pearson v. White Ski Company, Inc., 228 F. Supp. 2d 705 (E.D. Va. 2002) (solicitation through advertising and Internet in the forum insufficient to establish jurisdiction in the absence of a connection between advertising and the injury sustained).

Fifth Circuit: Luna v. Compagnie Paramena de Aviacion, 1994 WL 173369 (S.D. Tex. 1994) (solicitation of business and 800 number insufficient).

Sixth Circuit: Denham v. Sampson Investments, 997 F. Supp. 840 (E.D. Mich. 1998) (sending brochures to forum and reserving rooms at hotels insufficient contact).

Seventh Circuit: Dresden v. Treasure Island, LLC, 2001 U.S. Dist. LEXIS 13928 (N.D. Ill. 2001) (indirect advertising in the forum insufficient contact).

Tenth Circuit: Rainbow Travel Service, Inc. v. Hilton Hotels Corp., 896 F. 2d 1233 (10th Cir. 1990) (jurisdiction based upon solicitation and contract formation in the forum); Afflerbach v. Cunard Line, Ltd., 14 F. Supp. 2d 1260 (D. Wyo. 1998) (national advertising and selling tours through travel agents insufficient contact).

State Courts:

California: Silk Air v. Superior Court, 2003 WL 40818 (Cal. App. 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 ").

Connecticut: Hersey v. Lonrho, Inc., 807 A. 2d 1009 (Conn. App. 2002) (no jurisdiction over parent hotel based on solicitation of subsidiary in the forum).

Illinois: Stein v. Rio Parismina Lodge, 296 Ill. App. 3d 520, 521, 695 N.E. 2d 518, 231 Ill. Dec. 1 (1998) (transaction of business through travel agents insufficient contact); Kadala v. Cunard Lines, Ltd., 226 Ill. App. 3d 302, 304, 589 N.E. 2d 802, 168 Ill. Dec. 402 (1992) (solicitation of business in the forum insufficient contact).

New York: Sedig v. Okemo Mountain, 204 A.D. 2d 709, 612 N.Y.S. 2d 643 (1994) (mere solicitation insufficient).

Texas: M.G.M. Grand Hotel, Inc. v. Lee Castro, 8 S.W. 3d 403 (Tex. App. 1999) (solicitation plus doctrine followed in Texas).

16. See e.g.,

Second Circuit: *Brown v. Grand Hotel Eden*, 214 F. Supp. 2d 235 (S.D.N.Y. 2002)

mod'd, *Brown v. Grand Hotel Eden*, 2003 WL 21496756 (S.D.N.Y. 2003); *Rodriguez v. Circus Circus Casinos, Inc.*, 2001 U.S. Dist. LEXIS 61 (S.D.N.Y. 2001); *In re Ski Train Fire in Kaprun, Austria*, 2002 U.S. Dist. LEXIS 14929 (S.D.N.Y. 2002)..

. Third Circuit: *Imundo v. Pocono Palace, Inc.*, 2002 WL 31006145 (D.N.J. 2002); *Snyder v. Dolphin Encounters Limited*, 2003 WL 31771189 (E.D. Pa. 2002) ; *Decker v. Circus Hotels*, 49 F. Supp. 2d 743, 748 (D.N.J. 1999); *Romero v. Holiday Inn, Utrecht*, 1998 U.S. Dist. LEXIS 19997 (E.D. Pa. 1998); *Weber v. Jolly Hotels*, 977 F. Supp. 327 (D.N.J. 1997)..

Fourth Circuit: *Pearson v. White Ski Company, Inc.*, 228 F. Supp. 2d 705 (E.D. Va. 2002).

Fifth Circuit: *Arriaga v. Imperial Palace, Inc.*, 252 F. Supp. 2d 380 (S.D. Texas 2003).

Eighth Circuit: *Bell v. Imperial Palace Hotel/Casino, Inc.*, 200 F. Supp. 2d 1082, 1087-1088 (E.D. Mo. 2001).

Tenth Circuit: *Smith v. Basin Park Hotel, Inc.*, 178 F. Supp. 2d 1225 (N.D. Okla. 2001).

State Courts:

California: *Silk Air v. Superior Court*, 2003 WL 40818 (Cal. App. 2003); *Cervantes v. Ramparts, Inc.*, 2003 WL 257770 (Cal. App. 2003).

17. *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997).

18. *Id* at 952 F. Supp. 1121 (" Dot Com's Web Site contains information about the company, advertisements and an application for its Internet news service...A customer who wants to subscribe ...fills out an on-line application...Payment is made by credit card over the Internet or the telephone. The application is then processed and the subscriber is assigned a password which permits the subscriber to view and/or download Internet newsgroup messages that are stored on the defendant's server in California ").

19. See e.g.,

Second Circuit: *Enderby v. Secrets Matoma Beach Riviera Cancun*, 2011 WL 6010224 (E.D.N.Y. 2011) (slip and fall accident at Mexican hotel; "When solicitation involves a website, 'the fact that a foreign corporation has a website accessible to New York is sufficient to confer jurisdiction under CPLR 301...A court must 'examine the nature of 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'"; no jurisdiction; passive website); American Homecare Federation, Inc. v. Paragon Scientific Corp., 1998 WL 790590 (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 (D. Conn. 1998) (" there 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...it required them to call an ' 800 ' number in Michigan or write Neogen in Michigan or Kentucky "); Hearst Corp. v. Goldberger, 1997 WL 97097 (S.D.N.Y. 1997) (Web site with E-mail contact); Benusan Restaurant Corp. v. King, 937 F. Supp. 295, 301 (S.D.N.Y. 1996), aff'd 126 F. 3d 25 (2d Cir. 1997) (Missouri nightclub's passive web site).

Third Circuit: Remich v. Manfredy, 1999 WL 257754 (E.D. Pa. 1999) (passive web site offering general information and advertising insufficient contact with forum); Molnlycke Health Care AB v. Dumex Medical Surgical Products Ltd., 1999 WL 695579 (E.D. Pa. 1999) (passive website does not confer jurisdiction); Grutkowski v. Steamboat Lake Guides & Outfitters, Inc., 1998 U.S. Dist. LEXIS 20255 (E.D. Pa. 1998) (web site contains information, photographs, map and e-mail connection; reservations can not be made on the web site).

Fourth Circuit: American Information Corp. v. American Infometrics, Inc., 2001 U.S. Dist. LEXIS 4534 (D. Md. 2001) (" A visitor (to Web site) may not enter into a contract, purchase goods or services or transact business on the Web site "); Roche v. Worldwide Media, Inc., 90 F. Supp. 2d 714 (E.D. Va. 2000) (pornographic web site can only be described as passive); Esab Group, Inc. v. Centricut, LLC, 1999 WL 27514 (D.S.C. 1999) (web page which provides information but requires customer to place an order through an 800 telephone number is insufficient for assertion of personal jurisdiction).

Fifth Circuit: Mink v. AAAA Development, L.L.C., 190 F. 3d 333 (5th Cir. 1999) (no long arm jurisdiction based upon printable mail-in order form and toll free number and e-mail address); Amazon Tours, Inc. v. Wet-A.Line Tours, LLC, 2002 U.S. Dist. LEXIS 1649 (N.D. Tex. 2002) (tour operator's Web site " provides information about tours offered by the company. It includes a bulletin board that allows customers to post messages...a fishing report...a form to request a brochure...If a

user wants further information about a tour, he or she must contact the company at its offices in Georgia "); Lofton v. Turbine Design, Inc., 100 F. Supp. 2d 404 (N.D. Miss. 2000) (" the 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 "); Nutrition Physiology Corp. v. Enviros Ltd., 87 F. Supp. 2d 648 (N.D. Tex. 2000) (passive web site does not confer jurisdiction); Broussard v. Deauville Hotel Resorts, Inc., 1999 WL 62152 (E.D. La. 1999) (slip and fall in Florida hotel; no long arm jurisdiction based upon passive website); Mid-City Bowling Lanes & Sports Palace, Inc. v. Ivercrest, Inc., 35 F. Supp. 507 (E.D. La. 1999) (no personal jurisdiction based upon passive website).

Sixth Circuit: Bailey v. Turbin Design, Inc., 86 F. Supp. 2d 790 (W.D. Tenn. 2000) (" there is no indication whatsoever that TDI's website is anything other than wholly passive ").

Seventh Circuit: MJC-A World v. Wishpets Co., 2001 U.S. Dist. LEXIS 13178 (N.D. Ill. 2001) (passive Web site and sale of 90 toys insufficient basis for jurisdiction); (Dow v. Abercrombie & Kent International, Inc., 2000 U.S. Dist. LEXIS 7290 (N.D. Ill. 2000) (passive web site touting quality of services); First Financial Resources v. First Financial Resources, Corp., 2000 U.S. Dist. LEXIS 16866 (N.D. Ill. 2000) (web " site does not allow customers to enter into contracts or receive financial planning services over the Internet ").

Ninth Circuit: Cybersell, Inc. v. Cybersell, Inc., 130 F. 3d 414, 419 (9th Cir. 1997) (" conducted no commercial activity over the Internet in Arizona. All that it did was post an essentially passive home page on the Web "); McDonough v. Fallon McElligott, Inc., 1996 WL 753991 (S.D. Cal. 1996) (" fact that (defendant) has a web site used by (forum state residents) cannot establish jurisdiction by itself ").

Tenth Circuit: Soma Med. Int'l v. Standard Chartered Bank, 196 F. 3d 1292 (10th Cir. 1999) (no jurisdiction based on web site that only provided information); SF Hotel Company, L.P. v. Energy Investments, Inc., 985 F. Supp. 1032, 1035 (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 ").

Eleventh Circuit: JB Oxford Holdings, Inc., 1999 WL 1068444 (S.D. Fla. 1999) (web site 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).

District of Columbia Circuit: GTE New Media Serv. Inc. v.

Bellsouth Corp., 199 F. 3d 1343 (D.C. Cir. 2000)(Yellow Pages accessibility insufficient for long arm jurisdiction); Mallinckrodt Medical, Inc. v. Sonus Pharmaceuticals, Inc., 989 F. Supp. 265, 272 (D.C.D.C. 1998) (" The 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) ").

State Courts:

California: Jewish Defense Organization, Inc. v. Superior Court, 85 Cal. Rptr. 2d 611 (Cal. App. 1999)(defamation action; a passive web site delivering only information insufficient contact with forum for assertion of personal jurisdiction).

New Jersey: Ragonese v. Gaston Rosenfeld, 318 N.J. Super. 63, 722 A. 2d 991 (1998)(foreign air carrier's passive web site insufficient for jurisdiction).

New York: Nationwide Insurance Co. v. Holiday Inn, New York Law Journal, Jan. 27, 2000 (N.Y. Sup.)(passive web site and 800 number insufficient for jurisdiction; Messelia v. Costa, New York Law Journal, Feb. 14, 2000 (N.Y. Civ.)(passive web site providing information insufficient for assertion of personal jurisdiction).

Oregon: Millenium Enterprises v. Millenium Music, 49 USPQ2d 1878 (Oregon Jan. 4, 1999).

20. See e.g.,

Second Circuit: Inset Systems, Inc. v. Instruction Set, Inc., 937 F. Supp. 161, 164 (D. Conn. 1996)(Web site and toll free number; " advertising via the Internet is solicitation of a sufficient repetitive nature ").

Fourth Circuit: Bochan v. La Fontaine, 1999 WL 343780 (E.D. Va. 1999)(posting of libelous messages on the Internet by Texas and New Mexico residents sufficient grounds for the assertion of personal jurisdiction in Virginia where web site was accessed).

Ninth Circuit: Panavision Int'l, L.P. v. Toeppen, 938 F. Supp. 616 (C.D. Cal. 1996)(fraud claims; jurisdiction based upon Web site contact alone).

District of Columbia Circuit: Heroes, Inc. v. Heroes Found, 958 F. Supp. 1 (D.C.D.C. 1996)(Web site, toll free number and local newspaper ad).

21. Weber v. Jolly Hotels, 977 F. Supp. 327 (D.N.J. 1997).

20. See Meier v. Sun International Hotels, 288 F. 3d 1264, 1274 (11th Cir. 2002).

23. See Hasbro, Inc. v. Clue Computing, Inc., 994 F. Supp. 34, 38 (D. Mass. 1997).

24. See *Digital Equipment Corp. v. Altavista Tech*, 960 F. Supp. 456 (D. Mass 1997).
25. See *CompuServe, Inc. v. Patterson*, 89 F. 3d 1257 (6th Cir. 1996).
26. See *EDIAS Software Int'l v. BASIS Int'l Ltd.*, 947 F. Supp. 413 (D. Ariz. 1996).
27. See *Catalytic Combustion Corp. v. Vapor Extraction Technology, Inc.*, 2000 Wisc. App. LEXIS 774 (Wisc. App. 2000).
28. See *Amazon Tours, Inc. v. Wet-A-Line Tours, LLC.*, 2002 U.S. Dist. LEXIS 1649 (N.D. Tex. 2002) (presence of booking agent in the forum who booked no tours in the forum insufficient contact); *American Eyewear, Inc. v. Peeper's Sunglasses And Accessories, Inc.*, 2000 U.S. Dist. LEXIS 6875 (N.D. Texas 2000).
29. See *Resuscitation Tech., Inc. v. Continental Health Care Corp.*, 1997 WL 148567 (S.D. Ind. 1997).
30. See *Gary Scott International, Inc. v. Baroudi*, 981 F. Supp. 714 (D. Mass. 1997).
31. See *Citigroup Inc. v. City Holding Co.*, 97 F. Supp. 2d 549 (S.D.N.Y. 2000).
32. See *TY, Inc. v. Max Clark*, 2000 U.S. Dist. LEXIS 383 (N.D. Ill. 2000) (no jurisdiction; " However, 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 ").
33. See *People Solutions, Inc. v. People Solutions, Inc.*, 2000 U.S. Dist. LEXIS 10444 (N.D. Tex. 2000).
34. See e.g.,
Second Circuit: *Andrei v. DHC Hotels*, 2000 U.S. Dist. LEXIS 4107 (S.D.N.Y. 2000)
(tourist injured at Aruba hotel made reservations through American Airlines website but actual hotel reservations were confirmed when tour operator GoGo Tours contacted Aruba hotel; no jurisdiction over Aruba hotel).
Tenth Circuit: *Smith v. Basin Park Hotel, Inc.*, 178 F. Supp. 2d 1225 (N.D. Okla. 2001) (slip and fall at Arkansas hotel; no jurisdiction found; " The website merely permits a user to submit an email to BPH

requesting reservation information. No reservation is confirmed over the website ").

33. See e.g.,

First Circuit: *Dagesse v. Plant Hotel, N.V.*, 113 F. Supp. 2d 211 (D.N.H. 2000)

(although hotel had interactive reservations Web site plaintiff failed to show that any reservations were actually made using the Web site).

Third Circuit: *Hurley v. Cancun Playa Oasis Hotel*, 1999 U.S. Dist. LEXIS 13716

(E.D. Pa. 1999)(Mexican hotel's Georgia booking agent had 800 number and interactive reservations Web site but plaintiff used neither and failed to show that any actual reservations were made using Web site).

Tenth Circuit: *D.J.'s Rock Creek Marina v. Imperial Foam*, 2002 U.S. Dist. LEXIS 13470 (D. Kan. 2002). Defendant's Web site had the capacity for accepting orders but there was no evidence of sales or other activity in Kansas. " 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 v. Basin Park Hotel, Inc.*, 178 F. Supp. 2d 1225 (N.D. Okla. 2001)

(" There is no evidence that any commercial transactions are actually completed on BPH's website. No reservation is confirmed over the website ").

36. See e.g.,

Eighth Circuit: *Bell v. Imperial Palace Hotel/Casino, Inc.*, 200 F. Supp. 2d 1082 (E.D. Mo. 2001)(" The 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 Mr. Bell's accident and the sole forum contact by Imperial Palace, its website ").

Contra:

Second Circuit: *Rodriguez v. Circus Circus Casinos, Inc.*, 2001 WL 21244 (S.D.N.Y.2001)(" Even if Rodriguez has made his hotel reservations over CCC'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 CCC ").

But see: *Caldwell v. CheapCaribbean.Com, Inc.*, 2010 WL 3603778 (ED. Mich. 2010) ("The Court finds that the interactive website is 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").

37. See e.g.,

Second Circuit: *American Network, Inc. v. Access America/Connect Atlanta, Inc.*, 975 F. Supp. 494 (S.D.N.Y. 1997)(subscriptions for Internet services sold to customers in the forum through contracts entered into on Web site).

Third Circuit: *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997).

Fourth Circuit: *Easb Group, Inc. v. Centricut, LLC*, 1999 WL 27514 (D.S.C. 1999) (web page which provides information but requires customer to place an order using an 800 telephone number is insufficient to confer jurisdiction).

Fifth Circuit: *Origin Instruments v. Adaptive Computer Systems*, 1999 U.S. Dist. LEXIS 1451 (N.D. Texas 1999)(no jurisdiction; failure to show sales in forum through interactive Web site); *Thompson v. Handa-Lopez, Inc.*, 998 F. Supp. 738 (W.D. Tex. 1998)(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, 785 (E.D. Texas 1998)(" Web site lists various categories...individuals can view various furniture selections..individual pieces of furniture can be viewed..as well as price information..an order form can be printed..(customers may) check the status of their purchases.. information is available regarding freight costs..communicate directly with ` on-line ` sales representatives ").

Eighth Circuit: *Uncle Sam's Safari Outfitters, Inc. v. Uncle Sam's Army Navy Outfitters*, 96 F. Supp. 2d 919 (E.D. Mo. 2000) (inoperable interactive web site still under construction insufficient for jurisdiction).

Ninth Circuit: *Stomp, Inc. v. NeatO*, 61 F. Supp. 2d 1074 (C.D. Cal. 1999)(web site functioned as a " virtual store " where " consumers [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); *Park Inns International v. Pacific Plaza Hotels, Inc.*, 5 F. Supp. 2d 762, 764-65 (D. Ariz. 1998)(interactive Web site accepted seven hotel reservations from customers in the forum).

District of Columbia Circuit: *Gorman v. Ameritrade Holding Corp.*, 293 F. 3d 506 (D.C. Cir. 2002)(continuous and systematic sale of securities on Internet Web site sufficient basis for personal jurisdiction); *Blumenthal v. Drudge*, 992 F. Supp. 44, 56 (D.C.D.C. 1998) (" The Drudge Report's web site allows browsers..to directly e-mail defendant..thus allowing an exchange of information..browsers who access the website may request subscriptions to the Drudge Report, again by directly e-mailing their requests to Drudge's host computer..the Drudge Report is..sent..to every e-mail address on his subscription list..constant exchange of information and direct communication ").

State Courts:

Connecticut: *Gates v. Royal Palace Hotel*, 1998 Conn. Super. LEXIS 3740 (Conn. Super. 1998)(jurisdiction based upon concentrated advertising, bookings through travel agents and " invitation to Connecticut citizens to make reservations and other arrangements directly through the Internet ").

Oregon: *Millunium Enterprises v. Millenium Music*, 49 USPQ2d 1878 (Oregon, Jan. 4, 1999).

38. See also:

Eleventh Circuit: *Butler v. Beer Across America*, 83 F. Supp. 2d 1261 (N.D. Ala. 2000)(interactive web site allowing consumers to purchase beer by using a credit card does not confer jurisdiction; " 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 ").

39. See e.g.,

Third Circuit: *Orazi v. Hilton Hotels Corp.*, 2010 WL 4751728 (E.D. Pa. 2010) ("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'").

Fourth Circuit: *Manley v. Air Canada*, 753 F. Supp. 2d 551, 558, 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").

Sixth Circuit: *Matthews v. Kerzner International Limited*, 2011 WL 4071850 (N.D. Ohio. 2011) ("Atlantis does business through the website www.atlantis.com. 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"), *on reconsideration* 2011 WL 5122641 (N.D. Ohio 2011) (no jurisdiction found; "While Plaintiff asserts that (defendant) sends e-mails to former customers and allows customers to book trips and stays at the Atlantis, Plaintiffs fails to provide facts that (defendant) specifically targets advertising to the Ohio market").

Ninth Circuit: *Focht v. Sol Melia, S.A.*, 2012 WL 162564 (N.D. Cal. 2012) ("While Ms. Focht points out that hundreds of thousands of California residents have in fact accessed the website for one or 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...the number of bookings (via interactive website) is not that significant-approximately 4,000 each year").

40. See e.g., *Bell v. Imperial Palace Hotel/Casino, Inc.*, 200 F. Supp. 2d 1082, 1087-1088 (E.D. Mo. 2001) ("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 interest 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 reservation hotline. The purpose of the internet interaction is not achieved until the resident customer leaves the forum state and arrives at the hotel destination. ").

41. *Smith v. Basin Park Hotel, Inc.*, 2001 WL 1682810 (N.D. Okla. 2001).

42. *Cervantes v. Ramparts, Inc.*, 2003 WL 257770 (Cal. App. 2003).

43. *Brown v. Grand Hotel Eden-A Summit Hotel*, 2002 U.S. Dist. LEXIS 7773 (S.D.N.Y. 2002).

44. *Brown v. Grand Hotel Eden-A Summit Hotel*, 2003 WL 21496756 (S.D.N.Y. 2003)(" 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 ").

45. *Decker v. Circus Circus Hotel*, 49 F. Supp. 2d 743, 748 (D.N.J. 1999).

46. *Grutkowski v. Steamboat Lake Guides*, 1998 U.S. Dist. LEXIS 20255 (E.D. Pa. 1998).

47. *Rodriguez v. Circus Circus Casinos, Inc.*, 2001 WL 21244 (S.D.N.Y. 2001).

48. *Imundo v. Pocono Palace, Inc.*, 2002 WL 31006145 (D.N.J. 2002).

49. *Snyder v. Dolphin Encounters Limited*, 2003 WL 31771189 (E.D. Pa. 2002).

50. *Bell v. Imperial Palace Hotel/Casino, Inc.*, 200 F. Supp. 2d 1082 (E.D. Mo. 2001).

51. *Arriaga v. Imperial Palace, Inc.*, 252 F. Supp. 2d 380 (S.D. Texas 2003).

52. *Silk Air v. Superior Court*, 2003 WL 40818 (Cal. App. 2003).

53. *In re Ski Train Fire in Kaprun, Austria*, 2002 U.S. Dist. LEXIS 14563 (S.D.N.Y. 2002).

54. See e.g., *Enderby v. Secrets Matoma Beach Riviera Cancun*, 2011 WL 6010224 (E.D.N.Y. 2011) (slip and fall accident at Mexican hotel; no jurisdiction; passive website); *Manley v. Air Canada*, 753 F. Supp. 2d 551, 558, 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"); *Focht v. Sol Melia, S.A.*, 2012 WL 162564 (N.D. Cal. 2012) (fall from hotel zip-line; no jurisdiction); *Heidle v. The Prospects Reef Resorts, Ltd.*, 364 F. Supp. 2d 312 (W.D.N.Y. 2005) (slip and fall into cistern in time share facility in Tortola, British West Indies; no personal jurisdiction); *DelBuono v. The Imperial Palace Hotel & Casino, LLC*, 2007 WL 4634260 (Conn. Super. 2007) (slip and fall in Las Vegas casino; no personal jurisdiction); *Stinnett v. Atlantic City Showboat, Inc.*, 2008 WL 1924125 (E.D. Pa. 2008) (slip and fall in Atlantic City casino; case transferred to D.N.J.); *Wilson v. Stratosphere Corporation*, 2006 WL 11344169 (W.D. Pa. 2006) (putative class of consumers seek recovery of "a hidden resort fee" charged by hotel/casino in Las Vegas; no personal jurisdiction); *Elayyan v. Sol Melia, S.A.*, 571 F. Supp. 2d 886 (N.D. Ind. 2008) (accident in hotel swimming pool in Spain; no personal jurisdiction); *Norris v. Six Flags Theme Parks, Inc.*, 102 Hawaii 203, 74 P. 3d 26 (2003) (accident at amusement park in Hawaii; no personal jurisdiction); *Snowney v. Harrah's Entertainment, Inc.*, 116 Cal. App. 4th 996, aff'd 35 Cal. 4th 1054, 112 P. 3d 28, 29 Cal. Rptr. 3d 33 (2005) (putative class action seeking recovery for energy surcharges imposed on hotel guests and asserting unfair competition law, breach of contract, unjust enrichment and false advertising claims; personal jurisdiction); *Aguilar v. Honolulu Hotel Operating Corporation*, 2009 WL 466144 (Cal. App. 2009) (trip and fall at hotel in Hawaii provided as part of time share presentation; no personal jurisdiction); *Baker v. Carnival Corporation*, 2006 WL 3360418 (S.D. Fla. 2006) (sexual assault and rape on cruise ship; no personal jurisdiction); *Kaloyeva v. Apple Vacations*, 21 Misc. 3d 840, 866 N.Y.S. 2d 488 (2008) (resort in Dominican Republic advertised as having "white sandy beaches, crystal 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 them ill with intestinal poisoning"); personal jurisdiction over New Jersey based tour operator).

55. Dee Lewis, *Avoiding Internet Litigation in Inconvenient Forums*, *New York Law Journal*, May 14, 2002, p. ("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. ").

56. Decker v. Circus Circus Hotel, 1999 WL 319056 (D.N.J. 1999).