

EXPANDED PERSONAL JURISDICTION: THE HIDDEN COST OF INTERACTIVE ONLINE SALES SITES

By Gregory J. Skiff



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The Internet allows businesses from around the world to tap into New York's marketplace, with relatively few upfront costs. A recent federal appeals court decision, *Chloé v. Queen Bee of Beverly Hills, LLC*,¹ paved the way for courts in New York to hold accountable businesses that sell goods or services to New York consumers online but have no physical presence in this state. This is the first time that an appellate level federal court has opined on when businesses operating interactive websites that are more than mere advertising, but do not involve uploading and downloading of files, are subject to suit in New York.²

Five years ago, Chloé, a French design house, discovered that Queen Bee, an online retail designer incorporated in Alabama, was selling counterfeit versions of Chloé's luxury handbags through Queen Bee's website. Chloé's New York law firm carried out a "sting" operation during which one of its paralegals bought a knockoff bag through the website and had it delivered to her New York home. After the bag was determined to be counterfeit, Chloé filed suit against Queen Bee and its principal in federal court in New York for trademark infringement and unfair competition. Queen Bee's principal sought to have the court dismiss the suit for "lack of personal jurisdiction," meaning that its lack of physical presence in the state meant that it could not be subject to suit in New York State. The Court agreed and dismissed the case, finding that the single sale of a counterfeit bag did not constitute sufficient contact with New York State, and that Queen Bee's website alone could not be used to support the suit in New York because it did not target New Yorkers specifically. Chloé appealed, and won. The Second Circuit Court of Appeals

reversed the lower court's decision and held that the lower court did have jurisdiction over Queen Bee's principal because there was sufficient contact and presence in New York where: (1) the counterfeit Chloé bag was shipped to New York; (2) the website which offered Chloé bags for sale to consumers located in New York, permitted those consumers to purchase those bags through a "click here" hyperlink, and facilitated the shipment of the bags to New York; and (3) evidence found at Queen Bee's headquarters revealed another 52 transactions in which the defendant shipped its merchandise to New York.

Putting aside the obvious lesson about not selling products that violate the law, the *Chloé* decision and the likelihood that it will be adopted by other federal courts around the country should be taken under advisement by businesses seeking to expand via a "highly interactive" Internet website allowing consumers around the country and around the globe to purchase and arrange for shipping of their merchandise. Those businesses should perform a cost/benefit analysis that takes into account the fact that such a website may well subject them and their principals to suit in states other than where they are incorporated and other than where they do what they likely consider substantial business.

About Gregory J. Skiff, Law Clerk

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¹ *Chloé v. Queen Bee of Beverly Hills, LLC*, Docket No. 09-3361-cv, 2010 WL 3035495 (2d Cir. Aug. 5, 2010).

² See *Citigroup Inc. v. City Holding Co.*, 97 F. Supp. 2d 549, 565 (S.D.N.Y. 2000) (discussing spectrum of businesses' usage of the Internet).