

World Trademark Review Daily

**No personal jurisdiction as defendant did not target forum state's market
United States - McDermott Will & Emery UK LLP**

**Jurisdiction
Confusion**

June 08 2011

In *be2 LLC v Ivanov* (Case 10-2980, April 27 2011), considering whether a New Jersey website operator was subject to personal jurisdiction in Illinois, the US Court of Appeals for the Seventh Circuit has held that, for personal jurisdiction to arise, a defendant must in some way target the forum state's market in addition to operating an interactive website that is accessible from the forum state.

The plaintiffs operated an international internet dating website at the domain name 'be2.com'. The plaintiff's US affiliate was located in Delaware. Defendant Nikolay Ivanov, an individual alleged to be the co-founder of a competing internet dating website, was located in New Jersey. The plaintiffs brought a federal trademark infringement action against Ivanov in Illinois based upon his operating of an internet dating website at the domain name 'be2.net'.

The district court entered default judgment against Ivanov after the defendant failed to answer the complaint and attend a scheduled status hearing. Ivanov appeared for the first time through counsel after the entry of default judgment against him, filing a motion to vacate the judgment as void for want of personal jurisdiction. Ivanov argued that he was not subject to personal jurisdiction in Illinois because, among other things, he was not the co-founder or chief executive officer of the competing internet dating company and he had never set foot in Illinois. Ivanov's sworn declaration, however, contained several unbelievable representations. For example, Ivanov claimed that the reference to him as 'CEO' actually meant to communicate that he was the website's 'centralised expert operator', who merely translated content on the website from Bulgarian to English. The district court denied Ivanov's motion, and he appealed.

Although the Seventh Circuit recognised that Ivanov's declaration contained "preposterous" claims, the court nonetheless reversed the district court and remanded the case with instructions to vacate the judgment and dismiss the plaintiffs' complaint for lack of personal jurisdiction.

The court performed a 'minimum contacts' analysis to determine whether personal jurisdiction was proper. Toward the 'purposeful availment' factor, the court considered whether Ivanov had "purposely exploited the Illinois market" to determine if his contacts with the state were sufficient to confer personal jurisdiction. The plaintiffs had submitted evidence showing that 20 persons who listed Illinois addresses had at some point created free dating profiles on Ivanov's website. Even assuming that those 20 individuals were active users of Ivanov's website and were actually located in Illinois, the court determined that such contacts, without more, were attenuated contacts that did not subject the defendant to personal jurisdiction in Illinois. In so holding, the court noted that there was no evidence of any interactions between Ivanov and the 20 individuals. Further, the court reasoned that the evidence submitted showed that the 20 individuals may have created their dating profiles unilaterally by simply stumbling upon Ivanov's website and clicking a button that automatically published their dating preferences online. Without additional evidence showing that the defendant targeted or exploited the Illinois market, the court could not find that Ivanov availed himself of the privilege of doing business in the state.

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