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IP maven Ron Coleman on developments in trademark, copyright, new media and free speech



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[Ninth Circuit: eBay not a portal to jurisdiction](#)

We spill a lot of pixels here blogging about the question of just how transparent, nay ethereal, eBay is as, say, a facilitator of transactions premised on trademark infringement, such as the sale of counterfeit goods. Regular readers know we're somewhat [wed to the suggestion](#) that eBay knows enough, makes enough and controls enough to render it at least theoretically liable for third-party infringement.



[So far](#), no court has agreed. Fine. That's as far as substantive law. But how about procedural law?

Well, procedural law that implicates due process rights — particularly the issue of a court's assertion of [personal jurisdiction](#) over a non-resident — has been known to look a lot like substantive law. And [vice versa](#). Still and all, it's interesting to see that eBay's virtual lightness of being continues to move courts its way. Now, Evan Brown reports, the Ninth Circuit tells us that eBay, as intermediary and market-maker of a single arguably actionable transaction, cannot suffice as the fulcrum of a claim of personal jurisdiction.

Now as Evan [points out](#), most cases discussing the existence or lack of existence of personal jurisdiction are kind of boring. In contrast, *Boschetto v. Hansing*, he assures us, is the jurisprudential equivalent of rock and roll, chili peppers and Derek Jeter:

What makes this case worth noting . . . is the court's rejection of Boschetto's argument that the eBay component of the deal defined the analysis. Boschetto had argued that the eBay listing would have been viewed by anyone in California, thus that functionality supported an exercise of personal jurisdiction.

But "the issue [was] not whether the court [had] personal jurisdiction over the intermediary eBay but whether it [had] personal jurisdiction over an individual who conducted business over eBay." The court noted that in other Internet-related personal jurisdiction cases, like *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414 (9th Cir. 1997) and the famous case of *Zippo Mfg. Co. v. Zippo Dot Com*, 952 F.Supp. 1119 (W.D.Pa. 1997), the interactive nature of the websites had jurisdictional significance because they permitted the defendants to maintain ongoing contact with the forum.

An isolated sale on eBay, however, is different in nature. In this case, the court found that the eBay aspect was "a distraction from the core issue." The use of eBay was to facilitate a one time contract that created no substantial connection with or ongoing obligations in the forum state.

This is not to say that the use of eBay could never give rise to personal jurisdiction outside a defendant's home forum. A number of cases have so held. See, e.g., [Dedvukaj v. Maloney](#). The court noted that where eBay is used as a means for establishing regular business with a remote forum, the traditional notions of fair play and substantial justice might provide for the exercise of personal jurisdiction. But this was not one of those cases.

We hate to admit it, but sometimes even the Ninth Circuit is right... and sometimes even eBay not being opened with a JD SUPRA™ for evildoing across its intertubes is right... and mostly Evan Brown is right... and this is one of those cases!

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