



Alibaba.Com Found Subject To General Personal Jurisdiction In Missouri – And Possibly In Any State

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Cepia makes ZhuZhu Pets.¹ For purposes of our discussion here, Alibaba's primary business is <alibaba.com>, an Internet website that facilitates international business-to-business transactions. Cepia sued Alibaba Group Holdings Limited and Alibaba.Com Hong Kong Limited for trademark infringement, trade dress infringement, false advertising, false designation of origin, copyright infringement, unfair competition, and dilution over Alibaba's facilitation of the sale of counterfeit and unauthorized ZhuZhu Pets merchandise by hosting a link on <alibaba.com> that directed users to a ZhuZhu Pets microsite featuring ZhuZhu Pets products for sale from various sellers of such merchandise. Both Alibaba entities moved to dismiss for lack of personal jurisdiction. The United States District Court for the Eastern District of Missouri held that Alibaba Group Holdings Limited was not subject to jurisdiction in St. Louis, while Alibaba.Com Hong Kong Limited was. *Cepia LLC v. Alibaba Group Holdings Ltd.*, No. 4:11-CV-273, 2011 WL 5374747 (E.D. Mo. Nov. 8, 2011).²

We are going to assume reader familiarity with the general standards governing personal jurisdiction, but in short form: to exercise personal jurisdiction over a defendant, the federal court must satisfy the long-arm statute of the state in which it sits (Missouri) as well as the due process requirements of the Fourteenth Amendment to the U.S. Constitution. Due process requires that a plaintiff show that a non-resident has "minimum contacts" with the forum state and that the maintenance of the lawsuit does not offend "traditional notions of fair play and substantial justice."

The Court declined to exercise jurisdiction over Alibaba Holdings because Cepia failed to show that Alibaba Holdings "so controlled and dominated the affairs of Alibaba.Com that the latter's corporate existence was disregarded" despite Alibaba Holdings' ownership of the ALIBABA trademarks,

¹ Go to <http://www.zhuniverse.com/> (you won't be disappointed).

² Available here: http://www.pattishall.com/pdf/Cepia_v_Alibaba.pdf.



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ownership stake in <alibaba.com>, the two companies' use of the same name and logo, and sharing a chairman for their separate boards of directors. Moreover, the Court found that all the alleged acts were perpetrated by Alibaba.Com without direct input from Alibaba Holdings.³

Alibaba.Com, however, was subject to general (not just specific) personal jurisdiction. Of greatest interest for other trademark owners facing problems on <alibaba.com>, are the reasons the Court gave for exercising general personal jurisdiction over Alibaba.Com. They were: 1) the effect of Alibaba.Com's alleged intellectual property infringement (a tort) would be felt by Cepia in Missouri; 2) Alibaba.Com had relationships with 1,211 third-party suppliers in Missouri – none of which sold ZhuZhu merchandise; and 3) Alibaba.Com had two paid users from Missouri. In the Court's words:

Alibaba.Com's commercial relationships with third party sellers are a critical aspect of its operation. Further, Alibaba.Com's commercial relationships with third party sellers are not a one time event, but rather a continuing critical component of its business. Alibaba.Com maintains 1,211 such relationships with suppliers in Missouri. Accordingly, Alibaba.Com's contacts with Missouri are systematic and continuous in such a manner that supports general personal jurisdiction. By maintaining systematic and continuous commercial relationships with at least 1,211 people or entities in Missouri, Alibaba.Com, has purposefully availed itself of Missouri's laws.

Whether this Court's analysis would hold up in another jurisdiction is an open question, but this decision likely raises the potential that Alibaba.Com can be sued anywhere in the U.S.. If Alibaba.Com has 1,211 sellers based in Missouri, there is a strong likelihood that it has a significant number of sellers in your state.

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³ The Court also declined to assert personal jurisdiction under Fed. R. Civ. P. 4(k)(2), which permits a federal court to exercise jurisdiction over an entity that has sufficient contacts with the U.S. generally but not with any state in particular.