



Friday, 29 March 2024

## Weekly International Law Review

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### Executive Summary (One Minute Read)

**Jane Doe v Webgroup Czech Republic A.S. et al** (US CtApp 9th Ct) - Court finds personal jurisdiction over 11 foreign-based website providers in class action alleging violations of state and federal laws relating to distribution of videos on the internet that depict child pornography

**Lifestyle Equities v Amazon UK Services Ltd** (UKSC) - In a cross-border sale of merchandise where the same trade mark was owned by different entities in USA and UK, Amazon was liable for trade mark infringement where UK customers were targeted by Amazon's US website

## HABEAS CANEM

The scent on the breeze





## Summaries With Link (Five Minute Read)

### **Jane Doe v Webgroup Czech Republic A.S. et al, Case No 22-55315**

US Court of Appeals for the Ninth Circuit

Smith, Collins, & Lee JJ

The class representative, suing under the name of Jane Doe, had been a victim of sex-trafficking when she was 14 and had been filmed being repeatedly raped. She brought suit against a number of non-US based pornography websites that exhibited the film of her being sexually assaulted. The district court had dismissed the claim for lack of personal jurisdiction as the defendants were located outside the US. The Court of Appeals reversed this decision and found personal jurisdiction. Jurisdiction in an American court over a foreign defendant must be in accord with the Due Process Clause of the 14th Amendment to the US Constitution. Under Due Process Clause jurisprudence, an American court can only exercise jurisdiction over a foreign defendant if that defendant has certain minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. Jurisdiction may be general or specific. Plaintiff did not rely on the doctrine of general jurisdiction because for that to apply, a defendant's contacts with the forum must have been so continuous and systematic as to render the defendant essentially at home in the forum. Instead, plaintiff relied on the doctrine of specific jurisdiction which permits an action even though the defendant has limited contacts with the state as long as those contacts are directly related to the alleged wrongful conduct. To find specific jurisdiction over a foreign defendant, three requirements must be met: (1) the defendant must have committed some act by which it purposefully availed itself of the privilege of conducting business in the US; (2) the claim must arise out of the defendant's forum related activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice. The maintenance of a passive website alone cannot satisfy the purposeful availment test. But operating a passive website combine with something more may satisfy the first limb of constitutional due process of law. Here the Court found that defendants had expressly targeted the US by appealing to and profiting from an American audience. In addition, the defendants contracted with a US based content delivery network service to assure high-quality and uninterrupted streaming of the pornography in the US. Based on this and other contributing factors, the Court found that plaintiff had alleged sufficient facts to satisfy the Due Process requirements for exercising specific jurisdiction thereby allowing the case to proceed forward.

[Jane Doe](#)

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### **Lifestyle Equities v Amazon UK Services Ltd [2024] UKSC 8,**

Supreme Court of the United Kingdom

Lord Hodge, Lord Briggs, Lord Hamblen, Lord Burrows, & Lord Kitchin

The trade mark at issue was the 'Beverly Hills Polo Club' brand. The holder of the mark in the EU/UK was Lifestyle Equities which is unrelated to the brand owner in the USA. A UK resident ordered US sourced goods bearing the trade mark through Amazon's US website. The owner of



the EU trade mark contended that Amazon was liable for trade mark infringement because it targeted consumers in the UK/EU. This matter concerned conduct that occurred before Brexit. Applying EU law, the Supreme Court said that Amazon could only be liable for trade mark infringement in a cross-border sale if it in fact targeted consumers in the UK. The mere fact that a foreign website is accessible to a UK resident is insufficient to establish targeting of a UK consumer. The question for the court was whether an average consumer within the UK, who is reasonably well-informed and observant, would consider the website targeted at that consumer. The Court found that targeting had occurred because Amazon offered to deliver to the UK, in a dialog box Amazon specified which goods could be shipped to the UK, and specified UK delivery times and featured the option to pay in British currency. The Supreme Court also stated that Amazon's subjective intent was not the key issue. Rather, the question was one of objective fact taken from the perspective of the average consumer. Intent may, however, be taken into account to the extent it is relevant to the objective assessment made by the court.

[Lifestyle Equities](#)

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## Poem for Friday

### The Nightingale

**By:** Sara Coleridge (1802-1852)

In April comes the Nightingale,  
That sings when day's departed;  
The poets call her Philomel,  
And vow she's broken-hearted.

To them her soft, sweet, ling'ring note  
Is like the sound of sorrow;  
But some aver, no need hath she  
The voice of grief to borrow.

No, 'tis the merry Nightingale,  
Her pipe is clear and thrilling;  
No anxious care, no keen regret,  
Her little breast is filling.

She grieves when boys have robb'd her nest,  
But so would Stork or Starling;  
What mother would not weep and cry  
To lose her precious darling?

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