

# PUBLICATION

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## Could Internet Advertising Drag a Texas Franchisee into a Pennsylvania Court?

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A Pennsylvania Federal Court recently refused to dismiss a case filed by a hotel guest and his wife against franchisor Hampton Inns, its Texas franchisee Allen Stacy Hotel, Ltd., its parent Hilton Hotels Corporation and hotel manager Gateway Hospitality Group, Inc., rejecting arguments that the court lacked personal jurisdiction over Hampton and the Texas hotel owner.<sup>1</sup> The opinion marks one court's foray into harmonizing an old line of hotel reservation system cases with modern reservation practices and internet marketing activity for the purpose of considering whether a guest can sue a distant hotel in the guest's home district. This unconventional case represents the court's willingness to extend the reach of Pennsylvania jurisdiction beyond traditional "minimum contacts" limits (which contemplate a voluntary physical presence or transactions delivering goods or services in-state) to transactions originated through ecommerce activity that brought the Pennsylvania guests to the Texas hotel. In a twist of traditional agency concepts, in which the injured party usually seeks to hold the franchisee to be the franchisor's agent as the basis of liability for the franchisor, this case seeks to obtain jurisdiction over and find both franchisor and franchisee liable because the franchisor is the franchisee's agent.

In *Orazi v. Hilton Hotels Corporation, et al.*, Pennsylvania residents Dante Orazi and his wife Eileen (plaintiffs) sued the franchisor, franchisee, reservation system owner and hotel management company<sup>2</sup> for negligence and loss of consortium due to injuries suffered by Mr. Orazi after a "slip, trip and fall" in the bathroom of the Allen, Texas, Hampton Inn.<sup>3</sup> Although the accident occurred in Texas, plaintiffs argued that Hampton and the hotel owner are subject to the jurisdiction of and venue in the Pennsylvania federal court because plaintiffs had booked their Texas hotel room online through the [www.hamptoninn.com](http://www.hamptoninn.com) booking engine from their home in Pennsylvania.

Throughout the opinion, the court seemed to lean towards granting the franchisor's and hotel owner's Motion to Dismiss, as the court found at every step that plaintiffs did not meet their burden of proving the minimum contacts with the Pennsylvania forum. However, the court threw a curveball at the end when it ordered jurisdictional discovery so that plaintiffs could have the opportunity to discover and then allege the proper facts. The court mapped a route for plaintiffs to show them exactly what facts they need to prove in an amended complaint for the court can exercise jurisdiction over the hotel owner and franchisor.

In their Motion to Dismiss, the franchisor and hotel owner first argued that neither possesses the requisite minimum contacts with Pennsylvania to be subject to the court's jurisdiction in this case. The court analyzed in great detail why plaintiffs had not met their burden of establishing jurisdiction over these two defendants. To establish personal jurisdiction, the court must find either general jurisdiction, in which contacts are unrelated to the cause of action but are "continuous and systematic," or specific jurisdiction, in which a claim is "related to or arises out of the defendant's contacts with the forum" and are significant enough for "the defendant to have reasonably anticipate[d] being hauled into court" in that jurisdiction.<sup>4</sup> Hampton's presence through numerous franchised hotels in this judicial district was deemed irrelevant by the court.<sup>5</sup>

For Hampton, the court characterized plaintiffs' attempts at establishing personal jurisdiction as "weak" and "conclusory."<sup>6</sup> Plaintiffs listed the following facts as the basis for their claim of jurisdiction over Hampton: (1) reservation of the room by Mr. Orazi using the Hampton website while in Pennsylvania; (2) a Philadelphia Hampton Inn's listing of the Allen, Texas hotel in its in-room directory and (3) other Philadelphia Hampton Inns'

participation in promotional efforts in the city. The court stated that the in-room directory and promotional efforts of other Hampton Inns were independent actions of the owners of those hotels and did not prove that Hampton controlled or had any relationship with such hotels beyond sharing a brand identity. Even if Hampton did control that advertising, the contacts would be insufficient because plaintiffs did not show that the advertising was specifically targeted to Pennsylvania residents. Also, the website is owned by Hilton and its use could not be imputed to Hampton to constitute a contact because plaintiffs alleged no agency relationship between Hampton and Hilton.

The court pointed plaintiffs toward the need to allege an agency relationship between Hampton and Hilton, and the need to allege that Hampton targets Pennsylvania residents in its marketing for the brand and that such advertising is extensive.

For the Texas hotel owner, the court also found that plaintiffs did not show the requisite minimum contacts with Pennsylvania. Plaintiffs presented no evidence of direct contacts, but relied solely on the argument that Hilton's contacts could be imputed to the owner. Plaintiffs alleged that Hilton is an agent of the owner because Hilton had the authority to accept reservations on the owner's behalf. Relying on a line of New York case law, the court held that a forumstate reservation service that takes and confirms reservations on behalf of the hotel acts as the hotel's agent. However, because plaintiffs did not show that Hilton could confirm reservations for the Texas hotel, the court could not find agency. The court seemed to nudge plaintiffs to provide evidence that Hilton can confirm reservations on the hotel owner's behalf.

The court also found that the other services provided to the hotel owner by Hilton were those of a traditional franchise relationship, which is not, by itself, sufficient to form minimum contacts with the jurisdiction of a hotel guest. Basing apparent authority or alter ego theory on the franchise relationship alone does not constitute due process for either party, the court stated. Unless plaintiffs can prove that the relationship goes beyond that of a traditional franchise relationship, plaintiffs could not use apparent authority or alter ego theory to prove jurisdiction over the hotel owner. Plaintiffs could still use the reservation system as its basis for agency though.

The court then explained that even if plaintiffs prove Hilton was an agent of the hotel owner, plaintiffs must also prove either (i) general jurisdiction over Hilton to the extent that Hilton's contacts with Pennsylvania directly benefit the hotel owner or (ii) specific jurisdiction of Hilton with respect to this cause of action. To prove general jurisdiction, plaintiffs must demonstrate that the Pennsylvania-targeted advertising was geared toward attracting Pennsylvanians to stay at the Texas hotel and that Hilton's interactive website was targeted at Pennsylvania residents and crucial to Hilton's or the hotel owner's business in Pennsylvania. This may prove difficult for plaintiffs to demonstrate. Specific jurisdiction, however, is an easier standard, and plaintiffs must prove only that the online reservation contract entered into between Mr. Orazi and Hilton was sufficiently related to plaintiffs' tort claims (already proven, according to the court) and that Hilton purposefully directed its activities at the forum state. The court suggested that plaintiffs provide evidence of the number of transactions entered into in Pennsylvania on the Hilton website, and that this may be enough to prove specific jurisdiction.

Although it repeatedly stated that plaintiffs did not meet their burden, the court ultimately found that plaintiffs had "alleged sufficient facts to suggest with 'reasonable particularity the possible existence of the requisite contacts between [the defendants] and the forum state.'"<sup>7</sup> In ordering the parties to conduct jurisdictional discovery, the court noted that it wanted to see evidence of the Pennsylvania contacts of Hampton, Hilton and the hotel owner and the relationship of the parties. The court went on to explain:

[D]iscovery is particularly important here where each of the Defendants is a corporation and much of the information that plaintiffs require to evaluate the nature of the relationships among the defendants and the extent of their contacts with this forum, such as the franchise agreement, other contracts and transactional data, is publicly inaccessible and controlled by defendants.<sup>8</sup>

Thus, it appears that this court will give plaintiffs every opportunity to prove jurisdiction. If plaintiffs can provide the facts the court would like to see -- marketing and web-based interaction targeted directly to Pennsylvania residents, agency between Hampton and Hilton and a reservation confirmation service performed by Hilton -- then Hampton and possibly the hotel owner will be forced to litigate this case in Pennsylvania. Franchisors and franchisees should both be cognizant of the ramifications of this potential result as franchisors are increasingly targeting individuals with personalized internet marketing offers based on initial interest about the brand's products or services. If contacts are sufficient for the franchisor and if agency can be proven for the franchisee, then both parties could be forced to litigate in the jurisdictions where their guests reside, instead of the franchisee's home turf.

The ramifications become even more interesting if a court decides to exercise jurisdiction over the franchisor and not the franchisee. Since the franchisor typically will operate in more than one state and market to customers broadly by means of ecommerce platforms, plaintiffs may have an easier time proving the necessary minimum contacts for the franchisor than they will for its franchisees. If a court exercises jurisdiction over a franchisor and not a franchisee in a premises liability or contract claim brought by the franchisee's customer, then defense counsel will raise the issue of whether the franchisee is a necessary and indispensable party required to be joined under Federal Rule of Civil Procedure 19. In premises liability cases like *Orazi*, where the franchisor is the operator of the facility, logic dictates that the franchisee should be a necessary and indispensable party, although no reported case confirms this notion. If a necessary party cannot be joined because of lack of personal jurisdiction in a situation where another court could exercise jurisdiction over all parties, then venue may need to be transferred to that other court anyway, and the *Orazi* court's expeditionary search for jurisdiction could be for naught. In other types of cases, however, the "necessary and indispensable party" analysis may lead to a different result. The parties' arguments and the court's decisions in the upcoming stages of the *Orazi* case should provide helpful instruction on these important procedural issues in franchise cases.

1. *Orazi v. Hilton, et al.*, 2010 U.S. Dist. LEXIS 123472 (E.D. Pa. November 19, 2010). The Motion to Dismiss at issue also alleges improper venue as a basis for dismissal, but this article focuses on jurisdiction only. The court found that venue in the court is improper under 28 U.S.C. § 1391(a)(2) because the acts where the injury occurred took place in Texas, but deferred ruling on venue under §§ 1391(a)(1) and (a)(3) until personal jurisdiction can be determined.

2. Hilton did not join in the Motion to Dismiss and conceded jurisdiction since it is authorized to do business in Pennsylvania. After filing the Motion, the parties stipulated to the dismissal of Gateway. Thus, the court only analyzed its jurisdiction over Hampton and the Texas franchisee.

3. *Id.* at \*2.

4. *Id.* at \*7 (citations omitted).

4. *Id.* at \*12.

6. *Id.* at \*11.

7. *Id.* at \*35.

8. *Id.* at \*36.