

## Single Act, Not Sale, Triggers New York Personal Jurisdiction

*American Girl, LLC v. Zembrka, No. 21-cv-1381 (2d Cir. September 17, 2024)*

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Counterfeit Product Image on Defendants' Website <a href="http://www.zembrka.com">www.zembrka.com</a>	Counterfeit Product Image on Defendants' Website <a href="http://www.dalbh-idh.com">www.dalbh-idh.com</a>	Image of Plaintiff's Authentic American Girl Product
		
		
		

On September 17, 2024, the Second Circuit concluded that under New York’s Long Arm Statute, a business that receives a single product order, sends an order confirmation email, and accepts payment from a customer with a New York shipping address, “transacts business in New York” for purposes of establishing specific personal jurisdiction over a defendant. Personal jurisdiction attaches *even if* the defendant does not complete delivery of the order. The Second Circuit’s decision reversed the Southern District of New York’s grant of a China-based company’s motion to dismiss in a trademark counterfeit and infringement suit filed by the doll manufacturer, American Girl.

Zembrka, a Chinese company with no locations in New York, had allegedly been marketing, manufacturing, and distributing counterfeit American Girl products. Prior to filing suit, American Girl’s counsel purchased the allegedly counterfeit American Girl merchandise from Zembrka’s website and received a confirmation email and PayPal receipts for the orders. American Girl then sued Zembrka alleging that through its websites, Zembrka sold infringing American Girl products in New York and used American Girl’s marks on its websites. The District Court immediately granted a temporary restraining order (“TRO”) enjoining Zembrka from marketing or distributing counterfeit American Girl products.

Two weeks after Zembrka was served with the complaint, it canceled the orders, refunded the payments, and revoked its promise to ship the merchandise. After that, Zembrka filed a motion to dismiss for lack of personal jurisdiction. New York’s long arm statute provides that personal jurisdiction exists when the defendant “transacts any business within the state.” Zembrka argued that the court did not have personal jurisdiction over it because there was not shipment of goods to American Girl and American Girl’s payment was refunded. The District Court agreed and granted the motion to dismiss.

After the TRO was granted but before the motion to dismiss had been granted, there were at least 38 additional New York purchasers of Zembrka’s allegedly counterfeit goods. Based on this new evidence, American Girl moved the District Court to reconsider its dismissal. The District Court denied American Girl’s motion for reconsideration because Zembrka also stopped shipment of those products and refunded all payments made. Because of that, the District Court held that no business transaction actually occurred for purposes of establishing personal jurisdiction. American Girl appealed.

On appeal, the Second Circuit reversed the District Court’s decision. The Second Circuit explained that New York’s Long Arm statute is a “single act statute” and the fact that Zembrka cancelled the orders and refunded payments does not change that the statute only requires *a transaction*, not a completed sale. Because Zembrka conducted at least one transaction in New York, personal jurisdiction was appropriate.

Plaintiffs should note that the Second Circuit appears to allow the manufacturing of jurisdiction, while companies should be aware that a single act such as accepting an order, even if no sale occurs, can be sufficient for a court to assert personal jurisdiction and then be hauled into court, at least in New York.