UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-2407

PROMIER PRODUCTS INC.,
Appellant

v.

GEAROZ, AIKERTEC-US, ALESDIRECT, ALICEGIRL-US BRAND, ALIFA LED FLASHLIGHTS DIRECT STORE, et al.

On Appeal from the U.S. District Court, W.D. Pa.
Judge Robert J. Colville, No. 2:25-cv-00497

Before: HARDIMAN, BIBAS, and RENDELL, *Circuit Judges*
Argued: Sept. 16, 2026; Filed: Nov. 20, 2026

OPINION OF THE COURT

BIBAS, *Circuit Judge*. False-advertising claims arise out of sales to deceived consumers. So to get a judgment from a Pennsylvania court, a plaintiff must show that a deceived Pennsylvania consumer, not just a lawyer, bought a falsely advertised item online. Applying this logic, the District Court rightly found no reasonable likelihood of success on personal jurisdiction and thus denied a preliminary injunction. But we will vacate the District Court's order and remand for it to figure out whether some defendants waived personal jurisdiction, and to further develop the record about personal jurisdiction.

I. PROMIER'S LAWYERS ORDER FLASHLIGHTS TO PITTSBURGH

Promier Products sells flashlights online through Amazon. A flashlight's big selling point is its brightness. Promier worried that other Amazon sellers were lying about how bright their competing flashlights are. So it hired a Pittsburgh law firm to investigate. To measure the flashlights' brightness, the law firm bought some on Amazon and had them shipped to its Pittsburgh office.

Allegedly, more than three-quarters of those flashlights produced less than one percent of the lumens advertised. So Promier sued 153 Chinese competitors in a single federal lawsuit in the Western District of Pennsylvania. It claimed false advertising under Pennsylvania common law and the Lanham Act, 15 U.S.C. § 1125(a). And it sought not only damages and an accounting of profits, but also an injunction (1) ordering defendants to stop making false claims about their flashlights; (2) ordering banks to freeze defendants' bank accounts; and (3) ordering Amazon and other online marketplaces to freeze defendants' access to their platforms, hold defendants' products in trust, and "restrain" defendants' funds. App. 74. Promier also asked for that relief ex parte through a temporary restraining order, to keep defendants from spiriting their money out of the country.

At first, the District Court hesitated. Promier is an Illinois company, and all the defendants are from China. So the Court ordered Promier to show cause on venue and personal jurisdiction. But Promier managed to assuage those concerns, for a while. It argued that specific personal jurisdiction was proper

because defendants had offered infringing products for sale in Pennsylvania (through Amazon) and had each made at least one sale in Pennsylvania (to Promier's lawyers). Beyond those sales to Promier's lawyers, Promier never specifically alleged how many times or how often each defendant shipped flashlights to customers in Pennsylvania, or any other contacts that they had with customers in Pennsylvania. So, in the alternative, Promier argued that defendants lacked minimum contacts with any one state, and were thus subject to jurisdiction under Federal Rule of Civil Procedure 4(k)(2). Accepting those arguments, the court issued a TRO, granting the broad relief requested.

Over the following month, a few dozen defendants trickled into court and organized themselves into three groups. Two groups answered the complaint, one moved to dismiss, two moved to dissolve the TRO, and all three opposed granting a preliminary injunction. Some of these filings asserted that the District Court lacked personal jurisdiction; others did not. *Compare* D. Ct. ECF No. 68, at 1 *with* App. 202, 467.

With the benefit of more time and adversarial briefing, the District Court revisited its initial finding of personal jurisdiction. It held that Promier's lawyers could not use their own test buys to manufacture jurisdiction. It also noted that joining all 153 defendants might have been improper and gave Promier leave to amend its complaint to address that concern. For both reasons, the court denied the preliminary injunction.

On appeal, Promier does not contest the District Court's joinder ruling. Nor does it argue that personal jurisdiction was proper under Rule 4(k)(2). Rather, it argues only that personal

jurisdiction was proper based on defendants' presence on Amazon, their sales to Promier's lawyers, and the otherwise unsubstantiated allegations that each defendant made other sales in Pennsylvania. And whether or not they are subject to personal jurisdiction, Promier also argues that the two groups of defendants who answered the complaint waived the issue.

We have jurisdiction to review the denial of a preliminary injunction under 28 U.S.C. § 1292(a)(1). We review the District Court's legal rulings de novo, its findings of fact for clear error, and its ultimate denial of the injunction for abuse of discretion. *Del. State Sportsmen's Ass'n, Inc. v. Del. Dep't of Safety & Homeland Sec.*, 108 F.4th 194, 198 (3d Cir. 2024).

II. PROMIER MUST SHOW THAT PERSONAL JURISDICTION IS REASONABLY LIKELY

Under the Fourteenth Amendment's Due Process Clause, states may not deprive persons of liberty or property without due process of law. That clause limits state courts' power to assert jurisdiction over out-of-state defendants. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358 (2021). By state statute, Pennsylvania courts can exercise personal jurisdiction up to that constitutional limit. 42 Pa. Cons. Stat. Ann. § 5322(b). And by federal rule, the same is true of federal courts in Pennsylvania. Fed. R. Civ. P. 4(k)(1)(A).

Personal jurisdiction is usually litigated on a motion to dismiss, because a defendant must assert that defense in its first answer or Rule 12 motion. Fed. R. Civ. P. 12(h)(1). That requirement not only prevents gamesmanship, but also conserves judicial time and resources. *Bel-Ray Co. v. Chemrite (Pty) Ltd.*, 181 F.3d 435, 443 (3d Cir. 1999). But a court need not resolve

personal jurisdiction so early. To survive a motion to dismiss, a plaintiff needs only a prima facie case on personal jurisdiction. *Metcalfe v. Renaissance Marine, Inc.*, 566 F.3d 324, 330 (3d Cir. 2009). And unless there is an evidentiary hearing, a district court must accept the plaintiff's jurisdictional allegations as true. *Id.* So a plaintiff might survive a motion to dismiss, yet ultimately fail to prove personal jurisdiction by a preponderance of the evidence (and thus lose at final judgment).

Because of the lower standard for motions to dismiss, a defendant might be forced to "litigat[e] in a distant or inconvenient forum," only for the court to rule in the end that it lacks jurisdiction. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980). But "[i]n the context of due process restrictions on the exercise of personal jurisdiction, [the Supreme Court] has recognized that the individual interest protected is in not being subject to the binding judgments of a forum with which [the defendant] has established no meaningful contacts, ties, or relations." *Van Cauwenberghe v. Biard*, 486 U.S. 517, 526 (1988) (internal quotation marks omitted). After all, it is primarily when "the judgment is sought to be enforced that liberty or property is in present danger." *York v. Texas*, 137 U.S. 15, 20 (1890). That is why the denial of a motion to dismiss for lack of personal jurisdiction is not immediately appealable. *Van Cauwenberghe*, 486 U.S. at 526–27.

A preliminary injunction is different: Like a binding judgment, it puts the defendant's liberty and property in present danger. While losing a motion to dismiss merely "*exposes* defendants to the State's coercive power," losing on a preliminary injunction actually *subjects* them to it, at least temporarily. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564

U.S. 915, 918 (2011) (emphasis added). And the impact goes beyond the order itself. By empowering the plaintiff to inflict some pain on the defendant, a preliminary injunction can force him to "bargain desperately to buy his way out of the injunction," putting the court's weight behind a coerced settlement. *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 1017 (10th Cir. 2004) (en banc) (McConnell, J., concurring) (internal quotation marks omitted). Indeed, plaintiffs regularly get such settlements in Lanham Act suits like this one. Eric Goldman, *A SAD Scheme of Abusive Intellectual Property Litigation*, 123 Colum. L. Rev. F. 183, 191–92 (2023).

Because of the property and liberty interests at stake at the preliminary-injunction stage, a plaintiff must show, and a district court must find, a reasonable likelihood that the court has personal jurisdiction. *Indus. Elecs. Corp. v. Cline*, 330 F.2d 480, 482 (3d Cir. 1964). An evidentiary hearing or jurisdictional discovery could aid a plaintiff in making the necessary showing. But a district court need not engage in that factfinding before deciding the question of personal jurisdiction for purposes of a preliminary injunction. And when personal jurisdiction is challenged at the preliminary-injunction stage, a district court need not accept the plaintiff's factual allegations concerning personal jurisdiction as true. Lacking the benefit of a full evidentiary record, the court should not let "fiction deny the fair play that can be secured only by a pretty close adhesion to fact." *McDonald v. Mabee*, 243 U.S. 90, 91 (1917).

III. SPECIFIC JURISDICTION REQUIRES LINKING THE FORUM TO THE CLAIM

Modern law divides personal jurisdiction into two types: specific and general. The Chinese defendants here are almost certainly not subject to general jurisdiction in Pennsylvania. General jurisdiction is available only when a defendant is "essentially at home in the forum State." *Goodyear*, 564 U.S. at 919. For corporations, the "paradigm[atic]" examples are "the place of incorporation and principal place of business." *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014) (internal quotation marks omitted). Even engaging in a "substantial, continuous, and systematic course of business" in the forum state is not enough for general jurisdiction. *Id.* at 138.

Specific jurisdiction, by contrast, gives state courts power over any defendant that "purposefully avails itself of the privilege of conducting activities within the forum State." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). But while reaching a broader class of defendants, it covers a narrower class of claims—only those that "arise out of or relate to" the defendant's contacts with the forum. *Ford*, 592 U.S. at 359 (internal quotation marks omitted).

"The first half of that standard [*arising-out-of*] asks about causation." *Id.* at 362. There must be a causal link between the defendant's contacts with the forum and the claim. Demanding a causal link protects defendants, letting them "structure their primary conduct" to avoid certain types of lawsuits in a particular state. *World-Wide Volkswagen*, 444 U.S. at 297. If the defendant's contact with the forum directly causes the plaintiff's claim, a single contact could be enough. *See, e.g.*, *Kulko*

v. Super. Ct., 436 U.S. 84, 96 (1978) (noting that single gunshot into forum state can sometimes be enough); *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 222–23 (1957) (holding that breach of contract with single forum-state resident is enough); *Moore v. Little Giant Indus., Inc.*, 513 F. Supp. 1043, 1045, 1049–50 (D. Del. 1981), *aff'd mem.*, 681 F.2d 807 (3d Cir. 1982) (holding that shipping a single defective product to forum state, causing injury there, is enough).

A claim need not be directly caused by a defendant's contacts with the forum state. It can instead "*relate to* the defendant's contacts with the forum." *Ford*, 592 U.S. at 362 (internal quotation marks omitted). And for these more distantly "relate[d]" claims, courts apply other "real limits" to "adequately protect defendants foreign to a forum." *Id.*

In *Ford Motor*, for example, Ford had marketed, sold, and serviced many cars in the forum states. *Id.* at 365. Because Ford had "continuously and deliberately exploited" those states' markets for cars, the Court concluded that it was fair for those states to exercise jurisdiction over Ford when some of those cars malfunctioned. *Id.* at 364 (internal quotation marks omitted). True, the plaintiffs in that case had not bought their cars in the forum states, so the claims were not directly *caused* by Ford's contacts there. But the accidents happened in the forum states, to residents of those states. Each plaintiff had sued "in the most natural State." *Id.* at 370. This was not a case of "forum-shopping—suing in [a state] because it was thought plaintiff-friendly, even though their cases had no tie to the State." *Id.* at 369–70.

Ford Motor thus suggests that when a state has a strong connection to both the defendant *and* the claim, it may exercise jurisdiction over the defendant even if his contacts there did not directly cause the claim. *Cf. Bristol-Myers Squibb Co. v. Super. Ct.*, 582 U.S. 255, 264 (2017) (holding that defendant's extensive contacts with a forum cannot make up for the lack of any connection between that forum and the claim). In other words, as the "intensity of the defendant's forum contacts" grows stronger, the required link between his contacts and the claim can be weaker. *Hasson v. FullStory, Inc.*, 114 F.4th 181, 193 (3d Cir. 2024) (internal quotation marks omitted). The inverse is equally true: The fewer the defendant's contacts with the forum, the stronger the link must be between his contacts and the claim.

IV. PROMIER HAS NOT MET ITS BURDEN TO SHOW JURISDICTION

Promier offered evidence of two ways that defendants availed themselves of Pennsylvania. First, they all opened storefronts on Amazon, a nationwide retailer. Second, each defendant sold and shipped its flashlight to Promier's lawyers. Promier also asserted that from these two facts, one can infer that defendants made other sales in Pennsylvania. *See, e.g.*, App. 59 (¶ 13) (alleging that "[e]ach Defendant targets … Pennsylvania, and has packaged, advertised, offered for sale, and … sold and continues to sell products, including falsely advertised flashlights, to consumers" there); App. 60 (¶ 17) (alleging that "Defendants have purposefully directed some portion of their illegal activities towards consumers in … Pennsylvania through the advertisement, offer to sell, sale, and/or

shipment of falsely advertised products"). But it did not otherwise substantiate those assertions, and the defendants who answered the complaint denied them. So the District Court did not have to give those assertions any weight.

Five of our sister circuits have addressed similar facts on motions to dismiss, reaching four different holdings. *Am. Girl, LLC v. Zembrka*, 118 F.4th 271, 275, 280 (2d Cir. 2024) (finding personal jurisdiction, even though the one sale was made to plaintiff's lawyer and defendant cancelled the order before shipping it into the forum); *NBA Props., Inc. v. HANWJH*, 46 F.4th 614, 624–27 (7th Cir. 2022) (finding personal jurisdiction once item shipped, even though the buyer was plaintiff's lawyer); *Herbal Brands, Inc. v. Photoplaza, Inc.*, 72 F.4th 1085, 1095, 1097 (9th Cir. 2023) (finding personal jurisdiction because plaintiff was from forum state and sale was part of defendant's "regular course of business," but suggesting there might not be jurisdiction if plaintiff's lawyer bought item just to create jurisdiction); *Bros. & Sisters in Christ, LLC v. Zazzle, Inc.*, 42 F.4th 948, 953–54 (8th Cir. 2022) (no personal jurisdiction where plaintiff alleged only one sale into state, with no mention of whether sale was to lawyer); *Admar Int'l, Inc. v. Eastrock, LLC*, 18 F.4th 783, 788 n.1 (5th Cir. 2021) (same).

Two district courts in this circuit have even addressed this recurring fact pattern by issuing standing orders, effectively trying to settle a contested question of constitutional law in the guise of administrative rules. *In re: "Schedule A" Cases*, Standing Order No. 2025-04, at *2 (D.N.J. Sept. 25, 2025) ("[T]he law is also well-settled that that plaintiff cannot create personal jurisdiction by ordering a product to be shipped to the forum."); *In re: "Schedule A" Cases*, Standing Order No. 2:25-

CV-926, at *4 (W.D. Pa. July 10, 2025) (same). Though seemingly exceeding those courts' authority to make procedural rules, these standing orders highlight the need for guidance from this Court.

A. Defendants might have had minimum contacts with Pennsylvania

Listing a product on Amazon's website is not a contact with Pennsylvania. Amazon sellers just seek "to exploit a national market that necessarily include[s] Pennsylvania." *Shuker v. Smith & Nephew, PLC*, 885 F.3d 760, 780 (3d Cir. 2018) (internal quotation marks omitted). That is not enough to avail oneself of Pennsylvania specifically.

Shipping something into the state can change things. "[P]hysical entry into the state … through … mail … is certainly a relevant contact" for personal jurisdiction. *Walden v. Fiore*, 571 U.S. 277, 285 (2014). Of course, neither this Court nor the Supreme Court has ever held that *one* shipment of *one* item into the forum is necessarily enough for jurisdiction. *Hasson*, 114 F.4th at 195 n.5; *Ford*, 592 U.S. at 366 n.4. After all, the Supreme Court has "long treated isolated or sporadic transactions differently from continuous ones." *Id.* (second source). So if one shipment, unaccompanied by additional follow-on contacts with a customer, can satisfy the contacts prong, that is the bare minimum. As a result, to provide jurisdiction, it would have to be coupled with a claim that is closely related to that shipment. *Hasson*, 114 F.4th at 193.

B. Promier's claims do not arise out of or relate to defendants' known contacts

False-advertising claims protect against "injury to a commercial interest in reputation or sales." *Lexmark Int'l v. Static Control Components, Inc.*, 572 U.S. 118, 132 (2014) (interpreting Lanham Act); *cf. Penn. St. Univ. v. Univ. Orthopedics, Ltd.*, 706 A.2d 863, 870 (Pa. Super. Ct. 1998) (noting that federal law "serves as persuasive authority" in interpreting Pennsylvania's common law of unfair competition). This injury "occurs when deception of consumers causes them to withhold trade from the plaintiff." *Lexmark Int'l*, 572 U.S. at 133; *see also Vanity Fair Mills, Inc. v. T. Eaton Co.*, 234 F.2d 633, 639 (2d Cir. 1956) ("[T]he wrong takes place … where the *deceived customer* buys the defendant's product in the belief that he is buying the plaintiff's.") (emphasis added). Here, that happens when a consumer buys a defendant's flashlight instead of Promier's because false advertising deceives him.

Promier's false-advertising claims thus arise out of defendants' sales to *deceived* consumers—not Promier's lawyers. After all, the law firm "obviously was not confused" about the goods' qualities. *Buccellati Holding Italia S.p.A. v. Laura Buccellati, LLC*, 935 F. Supp. 2d 615, 624 (S.D.N.Y. 2013). And though the claims also arise out of defendants' listings on Amazon, those listings are not contacts with Pennsylvania specifically. *See Shuker*, 885 F.3d at 780. So Promier has not shown that its claims were directly caused by any contacts that defendants made with Pennsylvania.

Nor has Promier shown that its claims are related to defendants' contacts with Pennsylvania. Again, for each defendant,

Promier has shown only one Pennsylvania-specific contact: its own lawyers' test buy. It has not shown that defendants "systematically served a market" in Pennsylvania such that they should expect to be held accountable there. *Ford Motor*, 592 U.S. at 365. Given the truly minimal contacts that Promier has shown—just one sale by each defendant—the relatedness bar is high. After all, relatedness "does not mean anything goes." *Id.* at 362. Promier has not shown that the "relationship among the defendants, the forum, and the litigation is close enough to support specific jurisdiction." *Id.* at 371 (cleaned up).

To show personal jurisdiction at trial, Promier will need to prove at *least* one sale to a deceived consumer in Pennsylvania by a preponderance of the evidence (though we do not decide whether *only* one sale would be enough). So for a preliminary injunction, Promier must show a reasonable likelihood that it will eventually be able to prove that. This requires more than just showing that the defendants offered goods for nationwide sale through Amazon. The question is: Based on the evidence before us, how likely is it that evidence of actual sales will follow? And here, the sales to Promier's lawyers add nothing beyond what a screenshot of an Amazon profile would reveal—that defendants are willing and able to ship to all fifty states. So the District Court did not err in finding that Promier's evidence fell short.

V. SOME DEFENDANTS MAY HAVE WAIVED PERSONAL JURISDICTION

Still, personal jurisdiction is waivable. For parties who have appeared in a case, judges may not dismiss for lack of personal jurisdiction sua sponte. *Zelson v. Thomforde*, 412

F.2d 56, 59 (3d Cir. 1969). And even if a defendant disputes personal jurisdiction in its answer, it may later waive (more accurately, forfeit) it by asking for affirmative relief without resolving jurisdiction first. *Bel-Ray*, 181 F.3d at 443.

On remand, the District Court should consider whether any defendants have waived this defense. *See* D. Ct. ECF Nos. 36, 49, 53, 68; App. 202, 442–43, 448–60, 467. For those defendants who have waived personal jurisdiction, the court should consider the preliminary-injunction motion afresh. To guide its analysis, we note that if a plaintiff shows a likelihood of success on the merits of a Lanham Act false-advertising claim, irreparable harm is rebuttably presumed. 15 U.S.C. § 1116(a); *Nichino Am., Inc. v. Valent U.S.A. LLC*, 44 F.4th 180, 185–86 (3d Cir. 2022) (detailing the burden-shifting approach for this rebuttable presumption). Of course, that presumption, even if unrebutted, might carry less weight in the context of a non-comparative advertising suit (like this one) than it would in a comparative-advertising or trademark-infringement case. *See N. Am. Med. Corp. v. Axiom Worldwide, Inc.*, 522 F.3d 1211, 1227 (11th Cir. 2008). We leave this for the District Court to consider in the first instance.

For those defendants who have not waived personal jurisdiction, denying a preliminary injunction does not end the case. The order under review decided only that Promier's showing at this stage fell short. Presumably, on remand, the District Court will take up the issue of personal jurisdiction anew, perhaps allowing jurisdictional discovery or conducting an evidentiary hearing. Though Promier claims that defendants have made more sales in Pennsylvania, it does not yet have the facts to back up those claims. But given defendants' presence on

Amazon and evident willingness to ship goods to Pennsylvania, those allegations are not frivolous. *See Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 456 (3d Cir. 2003). This is not a case where "'due process' means 'no process.'" Robert H. Jackson, *What Price "Due Process"?*, 5 N.Y. L. Rev. 435, 436 (1927). It simply requires more process.

* * * * *

False-advertising claims arise out of sales to deceived consumers, not resourceful lawyers. The District Court got that right, but it erred in overlooking whether some defendants may have forfeited the issue. We will thus VACATE and REMAND to let it consider that question and allow jurisdictional discovery.

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