

LEGAL UPDATE

TOYS “R” US, THE THIRD CIRCUIT, AND A STANDARD FOR JURISDICTIONAL DISCOVERY INVOLVING INTERNET ACTIVITIES

Jesse Anderson *

I. INTRODUCTION

The prevalence and expansion of Internet commerce has lead to confusion over exactly what amount of contacts a company must have in a forum state in order to subject it to personal jurisdiction. While courts have utilized the “purposeful availment” test, it has proved to be nebulous, at best, when applied to Internet transactions. In 2003, the U.S. Court of Appeals for the Third Circuit had its first opportunity to consider the standard for personal jurisdiction when a claim arises out of a defendant’s operation of a commercially interactive international Web site.¹ In *Toys “R” Us, Inc. v. Step Two, S.A.*, the Third Circuit held that while evaluating a defendant’s minimum contacts with the forum jurisdiction, a court may consider the defendant’s non-Internet activities as well as their Internet activities, even in cases where the claim arises solely from the operation of a Web site.² The Third Circuit noted that while the “plaintiff bears the burden of demonstrating facts that support personal jurisdiction, courts are to assist the plaintiff by allowing jurisdictional discovery unless the plaintiff’s claim is clearly frivolous.”³ It further stated that when a specific, non-frivolous and logical basis to assert personal jurisdiction exists over a defendant, a plaintiff should be granted limited jurisdictional discovery to support its jurisdictional claims.⁴

* J.D. candidate, Boston University School of Law, 2004; B.S. Biology, California State University, Hayward, 2000.

¹ *Toys “R” Us, Inc. v. Step Two, S.A.*, 318 F.3d 446 (3d Cir. 2003).

² *Id.* at 451-55.

³ *Id.* at 456.

⁴ *See id.* at 458.

II. TOYS “R” US AND STEP TWO, A HISTORY

In February of 2001, Toys “R” Us, Inc. and Geoffry, Inc. (“Toys”) brought suit against Step Two, S.A. and Imaginarium Net, S.L (“Step Two”), and alleged that “Step Two used its Internet Web sites to engage in trademark infringement, unfair competition, misuse of the trademark notice symbol, and unlawful ‘cybersquatting,’ in violation of the Lanham Act,⁵ and New Jersey state law.”⁶ The United States District Court for the District of New Jersey granted Step Two’s motion for summary judgment for lack of personal jurisdiction while denying Toys’ request for jurisdictional discovery.⁷ Upon review, the Third Circuit held that the lower court erred in denying Toys’ request for jurisdictional discovery and reversed and remanded the case for limited jurisdictional discovery.⁸ On remand, the focus of the jurisdictional discovery is to be on Step Two’s business activities in the United States.⁹ The lower court is also instructed to reconsider personal jurisdiction over Step Two, based upon the fruits of the jurisdictional discovery.¹⁰

The Dispute in *Toys “R” Us* stems from competing uses of the Internet domain name <Imaginarium>.¹¹ In 1999, Toys acquired Imaginarium Toy Centers Inc., receiving several “Imaginarium” marks, as well as the Imaginarium stores, which specialize in the sale of educational games and toys.¹² Imaginarium Toy Centers began selling educational toys and games in 1985 and, in 1989, registered the “Imaginarium” mark with the U.S. Patent and Trademark Office.¹³ In 1995, Toy Centers, Inc. registered the domain name <imaginarium.com> and launched a Web site designed to promote and sell toys and games to consumers within the United States.¹⁴ As of 2002, Toys owns 37 Imaginarium stores in the United States and there are Imaginarium shops within 175 of the Toys “R” Us stores.¹⁵

Step Two is a Spanish corporation that either owns or has franchised stores under the “Imaginarium” name in Spain and nine other countries.¹⁶ In 1991, Step Two registered the “Imaginarium” mark in Spain and, in 1992, opened its

⁵ 15 U.S.C. § 1114 (2000).

⁶ *Toys “R” Us, Inc.*, 318 F.3d at 448.

⁷ *Id.* at 448.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See id.* at 448-49.

¹² *Id.* at 449.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

2003] TOYS “R” US, THE THIRD CIRCUIT AND A STANDARD

first Imaginarium store.¹⁷ Step Two began to expand through franchising in 1992, and by 2002 had over 165 Imaginarium stores. In 1996, Step Two registered the domain name <imaginarius.es>, and in June of 1999 registered two additional domain names, <imaginariusworld.com> and <imaginarius-world.com>.¹⁸ Step Two registered three more domain names in May of 2000: <imaginariusnet.com>, <imaginariusnet.net>, and <imaginariusnet.org>.¹⁹ Three of these Web sites currently advertise and sell toys and games available at Step Two’s Imaginarium stores.²⁰ The Step Two stores have the same logo and distinctive facade as Toys, and Step Two’s stores also sell the same type of merchandise as the Toys’ Imaginarium stores.²¹ Step Two does not have any stores, offices, bank accounts, or employees within the United States, nor does it pay taxes to the United States or any U.S. state.²² In the district court, Step Two insisted that it had not attempted to direct any advertising or marketing at the United States.²³

Despite the fact that Step Two made no effort to conduct sales within the United States, any U.S. citizen with a computer can access Step Two’s Imaginarium Web sites and order Step Two’s products.²⁴ However, these Web sites are entirely in Spanish and also stipulate that goods can only be shipped within Spain.²⁵ While the Web sites do provide a contact phone number, this number lacks the country code that an overseas user would be required to dial.²⁶ Additionally, all of the prices found on Step Two’s Imaginarium Web sites are only in Spanish pesetas or Euros.²⁷ Toys was able to circumvent these ordering problems by purchasing products from the Step Two Imaginarium Web site while utilizing the Spanish addresses of two Toys “R” Us New Jersey based employees.²⁸ The products were then shipped to the Spanish addresses and forwarded to New Jersey.²⁹ Step Two confirmed these purchases through

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 450. At the time of this update, the author noted that three of the domain names (<imaginarius.es>, <imaginariusworld.com> and <imaginarius-world.com>), not four as noted by the Third Circuit, direct the user to Step Two’s Web sites. These sites were last visited on Mar. 27, 2003.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 450. (“Toys adduced evidence of two sales to residents of New Jersey, conducted via Step Two’s Imaginarium Web sites.”).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

e-mails to New Jersey and also allowed the New Jersey residents to sign up online to Step Two's newsletter.³⁰

III. PERSONAL JURISDICTION BASED UPON THE OPERATION OF A WEB SITE

A. Overview

The creation of the Internet has required courts to design new guidelines to determine whether personal jurisdiction can be established in claims which are based upon a defendant's operation of a commercial Web site.³¹ In order to deal with the problems produced by the Internet, courts have attempted to formulate a standard that can mesh the traditional rules of personal jurisdiction with the new scenarios created by the advent of e-commerce.³² The traditional analysis for personal jurisdiction requires that the plaintiff's cause of action must be related to, or have arisen out of, the defendant's contacts with the forum.³³ The Due Process Clause of the Fifth Amendment further requires that the defendant must have constitutionally sufficient "minimum contacts" with the forum,³⁴ and that subjecting the defendant to the court's jurisdiction must comport with "traditional notions of fair play and substantial justice."³⁵ This "minimum contacts" requirement has been qualified as "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."³⁶ In order to satisfy the "traditional notions of fair play" requirement, a defendant's "conduct and connection with the forum State [must be] such that he should reasonably anticipate being haled into court there."³⁷

B. Purposeful Availment and the Internet

In *Toys "R" Us*, the Third Circuit utilized *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*,³⁸ as the "seminal authority" for applying personal jurisdiction based upon actions arising through the operation of a Web site.³⁹ The court in *Zippo* emphasized that the exercise of personal jurisdiction should be examined in light of where the Web site falls when viewed upon a sliding scale of commercial interactivity.⁴⁰ At one end of the continuum are passive sites that

³⁰ *Id.*

³¹ *Id.* at 451.

³² *Id.*

³³ *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 368 (3d Cir. 2002).

³⁴ *Id.* at 369 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985)).

³⁵ *Id.* (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

³⁶ *Asahi Metal Indus. Co., Ltd. v. Superior Court of California*, 480 U.S. 102, 109 (1987) (quoting *Burger King Corp.*, 471 U.S. at 475).

³⁷ *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

³⁸ 952 F. Supp. 1119 (W.D. Pa 1997).

³⁹ *Toys "R" Us, Inc.*, 318 F.3d at 452.

⁴⁰ 952 F. Supp. at 1124.

2003] TOYS “R” US, THE THIRD CIRCUIT AND A STANDARD

merely post information available to anyone with Internet access while at the opposite end are highly interactive Web sites through which a corporation can conduct business over the Internet.⁴¹ The middle of the spectrum consists of interactive Web sites where a user can exchange information with a host computer.⁴² When it is clear that a defendant is doing business through its Web site, or the claim arises out of the use of the defendant’s Web site in a forum state, then personal jurisdiction exists.⁴³ However, in cases that involve the middle of the continuum, the exercise of personal jurisdiction depends upon the level of commercial information exchange that takes place on the Web site.⁴⁴ In *Zippo*, the defendant had “purposefully availed” itself to conducting business in Pennsylvania because it “repeatedly and consciously chose to process Pennsylvania residents’ applications and to assign them passwords,” knowing that these contacts would create business relationships with residents of Pennsylvania.⁴⁵ The *Zippo* court held that “[w]hen a defendant makes a conscious choice to conduct business with residents of a forum state ‘it has clear notice that it is subject to suit there.’”⁴⁶

Other courts have premised the right to exercise personal jurisdiction upon the requirement that the defendant must intentionally interact with the forum state via their Web site in order to show “purposeful availment.”⁴⁷ In *Desktop Technologies, Inc. v. Colorworks Reproduction & Design*, the court recognized that “there must be ‘something more’ to demonstrate that the defendant directed [its] activity towards the forum state.”⁴⁸ In *ALS Scan v. Digital Service Consultants, Inc.* the Fourth Circuit expressly incorporated an “intentionality” requirement.⁴⁹ The court held that when fashioning a test for personal jurisdiction based upon Internet activities:

a State may, consistent with due process, exercise judicial power over a person outside of the State when that person (1) directs electronic activity into the State, (2) *with the manifested intent of engaging in business or other interactions within the State*, and (3) that activity creates, in a person within the State, a potential cause of action cognizable in the State’s courts.⁵⁰

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*; see also *Toys “R” Us, Inc.*, 318 F.3d at 452.

⁴⁴ *Zippo Dot Com, Inc.*, 952 F. Supp at 1124.

⁴⁵ *Toys “R” Us, Inc.*, 318 F.3d at 452 (quoting *Zippo Dot Com, Inc.*, 952 F. Supp. at 1126).

⁴⁶ *Id.*

⁴⁷ See e.g. *S. Morantz, Inc. v. Hang & Shine Ultrasonics, Inc.*, 79 F. Supp. 2d 537, 540 (E.D. Pa. 1999) (“a web site targeted at a particular jurisdiction is likely to give rise to personal jurisdiction.”).

⁴⁸ 1999 WL 98572, at *5 (E. D. Pa. 1999).

⁴⁹ 293 F.3d 707, 714 (4th Cir. 2002).

⁵⁰ *Id.* (emphasis added).

In *Cybersell, Inc. v. Cybersell, Inc.*, the Ninth Circuit declined to exercise specific jurisdiction, holding that there must be “‘something more’ [beyond the mere posting of a passive Web site] to indicate that the defendant purposefully (albeit electronically) directed his activity in a substantial way to the forum state.”⁵¹ Similarly, the Sixth Circuit has held that the “purposeful availment” requirement is only satisfied if the Web site “is interactive to a degree that reveals *specifically intended interaction* with residents of the state.”⁵²

C. Purposeful Availment and Non-Internet Contacts

In claims that arise out of the operation of a defendant’s Web site, a court should apply the “purposeful availment calculus” to determine if personal jurisdiction is proper.⁵³ When applying this calculus, the court should consider both a defendant’s non-Internet activities as well as their Internet related activities.⁵⁴ Other Courts have examined claims against foreign companies based upon a commercially interactive Web site that, while accessible from any computer, did not allow its products to be shipped to the United States.⁵⁵ In *Euromarket Designs Inc. v. Crate and Barrel Ltd.*, specific jurisdiction was held to exist over an Irish manufacturer based upon its operation of an interactive Web site.⁵⁶ The court identified a number of non-Internet contacts between the Irish company and the forum state that provided the “something more” to allow for personal jurisdiction.⁵⁷ These contacts included the fact that some of the defendant’s vendors were Illinois suppliers, that the defendant attended trade shows in the forum state, and that the defendant chose to advertise in publications which circulate in the United States (although they originated abroad).⁵⁸

Unfortunately, in *Toys “R” Us*, the record was insufficient to allow the Third Circuit to articulate the exact mix of Internet and non-Internet contacts required for the exercise of personal jurisdiction.⁵⁹ However, the Third Circuit did emphasize that this determination should be “made on case-by-case basis by assessing the ‘nature and quality’ of the contacts.”⁶⁰ The court further listed some non-Internet contacts that may supply the “something more” needed to establish personal jurisdiction. The factors included such things as: “serial

⁵¹ 130 F.3d 414 (9th Cir. 1997).

⁵² *Neogen Corp. v. Neo Gen Screening, Inc.*, 282 F.3d 883, 890 (6th Cir. 2002) (emphasis added).

⁵³ *Toys “R” Us, Inc.*, 318 F.3d at 452.

⁵⁴ *Id.*

⁵⁵ See *Euromarket Designs Inc. v. Crate and Barrel Ltd.*, 96 F.Supp. 2d 824 (N.D. Ill. 2000).

⁵⁶ *Id.*

⁵⁷ *Id.* at 837.

⁵⁸ *Id.* at 838 (The publications listed were *British Homes and Gardens* and the *Irish Times*).

⁵⁹ *Toys “R” Us, Inc.*, 318 F.3d at 453.

⁶⁰ *Id.* (citing *Zippo*, 952 F. Supp. at 1127) (quoting *Int’l Shoe*, 326 U.S. at 320)).

2003] *TOYS “R” US, THE THIRD CIRCUIT AND A STANDARD*

business trips to the forum state, telephone and fax communications directed to the forum state, purchase contracts with forum state residents, contracts that apply the law of the forum state, and advertisements in local newspapers. . . .”⁶¹ Finally, the Third Circuit pointed out that the “Supreme Court in *Burger King Corp.*, when expounding on the ‘minimum contacts’ requirement, referred generally to a defendant’s ‘activities’ in the forum state — a term that includes the aforementioned non-Internet contacts.”⁶²

IV. THE HOLDING

A. Personal Jurisdiction over Step Two

The *Toys “R” Us* court held that Toys did not present sufficient evidence to show that Step Two had met the “purposeful availment” requirement, and thus the lower court could not exercise personal jurisdiction over Step Two.⁶³ Even though Step Two’s Web sites were interactive and commercial in nature, the court found that they did not appear to have been intended or designed to reach customers within the forum state.⁶⁴ The factors leading to this determination included: that the Web site was only in Spanish, the prices were only in Spanish pesetas and Euros, merchandise could only be shipped to addresses in Spain, and most importantly, none of Step Two’s Web sites could accommodate addresses within the United States.⁶⁵ Despite the fact that it is possible for New Jersey residents to access the site online and to sign up for Step Two’s newsletter, the court points out that “Step Two asks registrants to indicate their residence using fields that are not designed for addresses within the United States.”⁶⁶

The record as it exists for the *Toys* court was inadequate to support a finding that Step Two had knowingly conducted business with residents of the forum state.⁶⁷ The only two sales to New Jersey were both initiated by Toys and “it appears that Step Two scarcely recognized that sales with U.S. residents had been consummated.”⁶⁸ These sales were deemed to be the kind of “‘fortuitous,’ ‘random,’ and ‘attenuated’ contacts that the Supreme Court has held insufficient to warrant the exercise of jurisdiction.”⁶⁹ The court further held that the electronic newsletters and e-mail responses sent by Step Two do not trigger jurisdiction unless they show “purposeful availment.”⁷⁰ The “exchange of three e-mails between the plaintiff and the defendant regarding

⁶¹ *Id.* at 453-54.

⁶² *Id.* at 454 (quoting *Burger King. Corp.*, 471 U.S. at 475).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 454-55 (quoting *Burger King. Corp.*, 471 U.S. at 475).

⁷⁰ *Id.* at 455.

the contents of the defendant's Web site, without more, did not 'amount to the level of purposeful targeting required under the minimum contacts analysis.'"⁷¹

The Third Circuit found that without further evidence demonstrating "purposeful availment," Toys could not establish personal jurisdiction over Step Two.⁷² However, the court went on to say that "any information regarding Step Two's intent vis-à-vis its Internet business and regarding other related contacts is known by Step Two, and *can be learned by Toys only through discovery.*"⁷³ Therefore, the lower court's denial of Toys' request for jurisdictional discovery was critical because it may have prevented Toys from obtaining the information needed in order to establish personal jurisdiction.⁷⁴

B. Jurisdictional Discovery

Toys requested jurisdictional discovery in order to establish "specific personal jurisdiction or jurisdiction under the federal long arm statute."⁷⁵ The district court denied this request because it believed that "the clear focus of the Court is directed, as it should be to the web site[,] [and] to the activity of the defendants related to that web site, . . ."⁷⁶ The lower court added that "the apparent contradictions, if such will be in the Tena⁷⁷ affidavit, [and] what else Mr. Tena might have been doing here, just ha[s] no relationship to where the eye is directed and should stay[,] and that is[] the Web site activities of this defendant."⁷⁸

The Third Circuit reviews a district court's denial for jurisdictional discovery with an abuse of discretion standard.⁷⁹ The *Toys "R" Us* court held that the lower court's "unwavering focus on the web site precluded consideration of other Internet and non-Internet contacts . . . which, if explored might provide the 'something more' needed to bring Step Two within [the Third Circuit's] jurisdiction."⁸⁰ While it is the plaintiff's burden of demonstrating facts which support personal jurisdiction, the lower courts should assist the plaintiff by allowing for jurisdictional discovery unless the claim is "clearly frivolous."⁸¹ If a plaintiff presents factual allegations that

⁷¹ *Id.* (citing *Barrett v. catacombs Press*, 44 F. Supp. 2d 717, 729 (quoting *Mellon Bank (East) PSFS, N.A. v. DiVeronica Bros., Inc.*, 983 F.2d 551, 556 (3d Cir. 1993); *See also Machulsky v. Hall*, 210 F. Supp. 2d. 531, 542 (D.N.J. 2002) (Minimal e-mail correspondence, "by itself or even in conjunction with a single purchase, does not constitute sufficient minimum contacts.")).

⁷² *Toys "R" Us, Inc.*, 318 F.3d at 446.

⁷³ *Id.* (emphasis added).

⁷⁴ *Id.*

⁷⁵ *Id.*; Fed R. Civ. P. 4(k)(2) (2000).

⁷⁶ *Id.* at 456.

⁷⁷ Felix Tena is President of Step Two.

⁷⁸ *Toys "R" Us, Inc.*, 318 F.3d at 456.

⁷⁹ *Id.* at 455 (citing *Brumfield v. Sanders*, 232 F.3d 376, 380 (3d Cir. 2000)).

⁸⁰ *Toys "R" Us, Inc.*, 318 F.3d at 456 (citing *Cybersell, Inc.*, 130 F.3d at 418).

⁸¹ *Id.* (citing *Pinker*, 292 F.3d at 368); *Mass. School of Law at Andover, Inc. v.*

2003] TOYS “R” US, THE THIRD CIRCUIT AND A STANDARD

suggest “with reasonable particularity” the possible existence of the requisite contacts between the defendant and the forum state, then a request to conduct jurisdictional discovery should be granted.⁸² The Third Circuit found that the district court had failed to adopt a deferential approach to Toys’ request for discovery and instead had focused entirely upon Step Two’s Web site, thus preventing further inquiry into Step Two’s non-Internet activities.⁸³

In its complaint, Toys made sufficient non-frivolous allegations to support a request for jurisdictional discovery.⁸⁴ The complaint alleged that Step Two had “completely copied the Imaginarium concept” and that “Step Two continues to copy Toys’ marketing and developments and intellectual property.”⁸⁵ The court also stated that within Toys’ complaint was a concern that Step Two was attempting to expand its business into the United States by utilizing international Web sites that offer essentially the same goods as those sold by Toys’ Imaginarium stores.⁸⁶

When deciding a motion to dismiss for lack of jurisdiction, it is mandated that all of the plaintiff’s allegations should be accepted as true, and all disputed facts should be construed in a light that is favorable to the plaintiff.⁸⁷ Given that Toys’ allegations were true, the Third Circuit deemed that it would be reasonable to allow Toys to conduct a limited discovery into “Step Two’s business plans for purchases, sales, and marketing.”⁸⁸ Deeper insight into these factors would help to establish whether Step Two’s business activities, both Internet and non-Internet, were aimed towards the forum state.⁸⁹

The Third Circuit also pointed to other aspects of the record that should have alerted the lower court that the “something else” needed to exercise personal jurisdiction did exist.⁹⁰ The court listed such things as: Step Two’s use of U.S. vendors, the fact that the president of Step Two visited the New York Toy Fair each year, two documented sales to residents of New Jersey, and the subsequent e-mails regarding these two purchases.⁹¹ Further inquiry into these specific factors could help “speak ‘with reasonable particularity’ to the possible existence of contacts needed to support jurisdiction.”⁹² The Third Circuit held that Toys’ request for jurisdictional discovery was “specific, non-

American Bar Ass’n., 107 F.3d 1026, 1042 (3d Cir. 1997).

⁸² *Toys “R” Us, Inc.*, 318 F.3d 456 (quoting *Mellon bank (East) PSFS, Nat’l Ass’n v. Farino*, 960 F. 2d 1217, 1223 (3d Cir. 1992)).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 456-57.

⁸⁷ *Id.* at 457 (citing *Pinker*, 202 F.3d at 368).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* (quoting *Mellon Bank (East) PSFS*, 960 F.2d at 1223).

frivolous, and a logical follow-up based on the information known to Toys.”⁹³ The Court granted Toys’ jurisdictional discovery on “the limited issue of Step Two’s business activities in the United States, including business plans, marketing strategies, sales, and other commercial interactions.”⁹⁴ Upon remand the district court is to consider whether any additional facts provide the court with jurisdiction under a traditional analysis, or under the federal long arm statute.⁹⁵

V. CONCLUSION

The Third Circuit’s decision in the *Toys “R” Us* case is significant because it enhances the standard for determining personal jurisdiction in Internet-based cases. When evaluating a defendant’s contacts with the forum jurisdiction, a court may include the defendant’s Internet and non-Internet activities as part of the “purposeful availment” calculus.⁹⁶ Merely operating a Web site that reaches into a particular state will not necessarily subject a defendant to that state’s jurisdiction. However, if a “defendant Web site operator intentionally targets the site to the forum state, and/or knowingly conducts business with the forum state residents via the site, then the ‘purposeful availment’ requirement is satisfied.”⁹⁷ Some of the non-Internet factors that a court should consider include, but are not limited to, such things as: “serial business trips to the forum state, telephone and fax communications directed to the forum state, purchase contracts with forum state residents, contracts that apply the law of the forum state, and advertisements in local newspapers. . . .”⁹⁸ Courts will evaluate jurisdictional claims on a case-by-case basis, and while the plaintiff bears the burden of demonstrating facts that support personal jurisdiction, courts are to assist the plaintiff by allowing jurisdictional discovery unless the plaintiff’s claim is “clearly frivolous.”⁹⁹ Where there is a specific, non-frivolous and logical basis to assert personal jurisdiction over a defendant, the Third Circuit held that a plaintiff should be granted limited jurisdictional discovery to support its jurisdictional claims.¹⁰⁰

⁹³ *Id.* at 458.

⁹⁴ *Id.*

⁹⁵ *Id.*; Fed. R. Civ. P. 4(k)(2) (2000).

⁹⁶ *Toys “R” Us, Inc.*, 318 F.3d at 453.

⁹⁷ *Id.* at 452.

⁹⁸ *Id.* at 453-54.

⁹⁹ *Id.* at 456.

¹⁰⁰ *Id.* at 458.