

**SINGLE ONLINE SALES AND PERSONAL JURISDICTION: A
MODERN FRAMEWORK FOR PURPOSEFUL AVAILMENT**

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I. INTRODUCTION

Imagine a California resident purchases a box of handmade candles from a Michigan-based seller on eBay. The seller, a small independent business with no physical presence in California, does not advertise to California consumers or take any deliberate steps to target the state's market. They simply list their products on eBay, making them available for purchase nationwide. After receiving the candles, the California buyer claims they were defective and that one flared unexpectedly, causing property damage. They sue the Michigan seller in a California court, requiring the seller to navigate an unfamiliar legal system and incur the costs of out-of-state litigation. Even though the seller had no connection to California beyond this single transaction, the court finds that the sale alone is enough to establish personal jurisdiction. This outcome raises concerns about fairness for small online retailers, who may find themselves unexpectedly subject to lawsuits in distant states simply because a consumer, on their own initiative, purchased a product online.

Cases like this are becoming increasingly common, and courts are divided on how to handle them. The Seventh and Eighth Circuits have reached opposite conclusions on whether a single online sale is enough to establish personal jurisdiction.¹ The Seventh Circuit, in *NBA Properties, Inc. v. HANWJH*, found that a single sale could be sufficient to establish personal jurisdiction, reasoning that foreseeability played a key role in determining whether a retailer purposefully availed itself of a forum.² The Eighth Circuit, in *Brothers and Sisters in Christ, LLC v. Zazzle, Inc.*, took the opposite approach, holding that the defendant's conduct did not establish personal jurisdiction because the website was accessible nationwide and the defendant did not uniquely or expressly aim its conduct at Missouri.³

This Note argues that neither approach provides a fully workable solution. Allowing personal jurisdiction based solely on a single sale risks unfairly subjecting small businesses and independent sellers to litigation in distant states where they had no meaningful connection. On the other hand, requiring a defendant to "uniquely or expressly" target a state sets an unreasonably high bar, potentially leaving consumers without any realistic recourse. This Note proposes a middle-ground solution. Courts should focus on whether the retailer deliberately sought to engage with

1. Compare *NBA Props., Inc. v. HANWJH*, 46 F.4th 614 (7th Cir. 2022) (personal jurisdiction established), with *Bros. & Sisters in Christ, LLC v. Zazzle, Inc.*, 42 F.4th 948 (8th Cir. 2022) (personal jurisdiction not established).

2. *NBA Props.*, 46 F.4th at 625.

3. *Bros. & Sisters in Christ*, 42 F.4th at 954.

consumers in a specific state through identifiable efforts, such as digital marketing targeted at that state's residents, partnerships with local influencers, or other outreach demonstrating an intent to establish business in the forum. Those efforts need not be directed exclusively at one state.

Part II of this Note examines the historical development of specific personal jurisdiction, from *International Shoe Co. v. Washington*⁴ to more modern cases involving the internet, as well as the existing circuit split and the reasoning behind the Seventh and Eighth Circuits' conflicting rulings.⁵ Part III critiques both approaches, highlighting the need for a more balanced test and proposes a framework that aligns with modern e-commerce realities while maintaining fairness for both consumers and retailers.⁶ Part IV concludes by advocating for the Supreme Court to resolve the circuit split between the Seventh and Eighth Circuits and adopt a middle-ground solution that addresses the shortcomings of both approaches and reflects the realities of modern online commerce.⁷

II. BACKGROUND

Personal jurisdiction is defined as a "court's power to bring a person into its adjudicative process."⁸ It is limited by the forum state's long-arm statute, which specifies the individuals and entities over whom courts in that state may assert jurisdiction,⁹ and the Due Process Clause of the Fourteenth Amendment, which safeguards an individual's right to avoid being subjected to binding judgments from a forum where they have no significant "contacts, ties, or relationships."¹⁰ Since a court's jurisdiction over residents of the state where it is located is rarely questioned because it naturally stems from the state's territorial sovereignty, disputes about personal jurisdiction typically focus on the minimum requirements for a court to assert authority over a non-resident defendant.¹¹

4. 326 U.S. 310, 319 (1945).

5. See *infra* Part II; *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997); *NBA Props.*, 46 F.4th at 627, *Bros. & Sisters in Christ*, 42 F.4th at 954.

6. See *infra* Part III.

7. See *infra* Part IV.

8. *Jurisdiction*, BLACK'S LAW DICTIONARY (12th ed. 2024).

9. 62B AM. JUR. 2D *Process* § 147 (2025); *Long-Arm Statute*, BLACK'S LAW DICTIONARY (12th ed. 2024).

10. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945).

11. Kendrick D. Nguyen, *Redefining the Threshold for Personal Jurisdiction: Contact and the Presumption of Fairness*, 83 B.U. L. REV. 253, 255 (citing STEPHEN N. SUBRIN ET AL., CIVIL PROCEDURE: DOCTRINE, PRACTICE, AND CONTEXT 645 (2000) (noting that "it has always been clear that a state has adjudicatory power over persons and things within its borders"))).

Determining whether there is personal jurisdiction over a non-resident defendant “requires an analysis of the relationship among the defendant, the forum, and the litigation.”¹² There are two types of personal jurisdiction that relationship can amount to: general or specific.¹³ General personal jurisdiction can be exercised “only when a defendant is ‘essentially at home’ in the State.”¹⁴ Courts can establish specific personal jurisdiction even when a defendant has only an indirect connection to the forum state if “the defendant purposefully avails itself of the privilege of conducting activities within the forum State.”¹⁵

Specific personal jurisdiction, rather than general jurisdiction, is the primary concern in cases involving online retailers engaged in isolated transactions across state lines, as these businesses are rarely “essentially at home” in the forum state.¹⁶

A. The Evolution of Specific Personal Jurisdiction

This section traces how the doctrine of specific personal jurisdiction has developed in response to shifts in commerce and technology. It begins with the foundational Supreme Court cases that established the modern minimum contacts framework, followed by a discussion of the Court’s efforts to refine that framework in the context of expanding interstate commerce.¹⁷ It concludes by examining how courts have struggled to apply these principles in the internet era, where business activity increasingly occurs online and across state lines.¹⁸

1. From Pennoyer to Purposeful Availment: Building the Framework for Personal Jurisdiction

In 1877, less than a decade after the ratification of the Fourteenth Amendment—which introduced due process protections that would later become central to personal jurisdiction analysis—the U.S. Supreme Court examined the constitutionality of state laws permitting courts to assert

12. *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977).

13. *Bristol-Myers Squibb Co. v. Superior Ct.*, 582 U.S. 255, 262 (2017).

14. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358 (2021) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)).

15. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

16. *See Daimler AG v. Bauman*, 571 U.S. 117, 128 (2014) (“Since *International Shoe*, ‘specific jurisdiction has become the centerpiece of modern jurisdiction theory, while general jurisdiction [has played] a reduced role.’”).

17. *See infra* Section II.A.1; *see also infra* Section II.A.2 (discussing the Court’s later efforts to refine the minimum-contacts framework as commerce expanded).

18. *See infra* Section II.A.3.

personal jurisdiction over nonresidents without serving them in the state in *Pennoyer v. Neff*.¹⁹ The case arose when Neff, a non-resident of Oregon, was sued in Oregon for unpaid legal fees.²⁰ Neff was not personally served in Oregon; instead, notice was published in a local newspaper.²¹ After he failed to appear, a default judgment was entered against him.²² Shortly afterward, Neff acquired a tract of land in Oregon, which was then seized by the sheriff to be sold in order to satisfy the earlier judgment.²³ The Supreme Court held that Oregon lacked personal jurisdiction because Neff had not been personally served in the state and had not consented to jurisdiction.²⁴ *Pennoyer* established a strict territorial rule: personal jurisdiction required either physical presence in the forum or the defendant's voluntary appearance or consent.²⁵

This approach dramatically changed nearly seventy years later in 1945 when the Court decided the landmark case, *International Shoe Co. v. Washington*.²⁶ There, the Supreme Court introduced a more flexible standard for personal jurisdiction, shifting from strict territorial principles to the "minimum contacts" test.²⁷ In *International Shoe*, the defendant, International Shoe, a company incorporated in Delaware, with its primary place of business in Missouri, employed salesmen who worked entirely in Washington state.²⁸ The salesmen earned commissions from their shoe sales in Washington and occasionally rented, at International Shoe's expense, rooms in hotels or business buildings within the state for exhibiting samples.²⁹ The State of Washington brought suit against International Shoe to recover unpaid contributions to the state's unemployment fund, raising the issue of whether a Washington court could exercise personal jurisdiction over International Shoe despite its lack of a physical presence in the state.³⁰

A dramatic departure from the "physical presence" requirement established in *Pennoyer*, the Supreme Court ruled that Washington could exercise personal jurisdiction over International Shoe.³¹ In reaching this result, the Court adopted a new rule: a state may exercise personal

19. 95 U.S. 714 (1877).

20. *Id.* at 715–17.

21. *Id.* at 716–17.

22. *Id.* at 720.

23. *Id.* at 719.

24. *Id.* at 733–34.

25. *Pennoyer*, 95 U.S. at 722, 734.

26. *Int'l Shoe*, 326 U.S. 310.

27. *Id.* at 316.

28. *Id.* at 313.

29. *Id.* at 313–14.

30. *Id.* at 312.

31. *Id.* at 321.

jurisdiction over an out-of-state defendant if the defendant “ha[s] certain *minimum contacts* with [the forum state] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”³² The Court found that International Shoe’s activities in the state—such as employing salesmen who regularly solicited business—were sufficient to establish “minimum contacts.”³³ The Court also noted that, because it is much harder to determine whether a corporation is “present” within a state’s borders compared to an individual defendant, a corporation is deemed to be “present” in a state for jurisdiction purposes if the activities of the corporation in that state have been “continuous and systematic.”³⁴ International Shoe’s activities met this standard because its salesmen continuously solicited business in Washington over several years, resulting in a regular systematic flow of revenue from the state.³⁵

Thus, under the framework set forth in *International Shoe*, a personal jurisdiction minimum contacts analysis asks whether there is sufficient evidence to make it fair to require a nonresident defendant to respond to a lawsuit in a forum state’s court.³⁶ This process begins by assessing “the quality and nature of the [nonresident’s] activity.”³⁷ A court then weighs the interests of the plaintiff and the forum state against the potential burden of litigating outside their home state or principal place of business on the nonresident.³⁸

Over the next seven decades, the Supreme Court expanded upon the foundational principles established in *International Shoe* to address its shortcomings, particularly its lack of precise guidance for applying the “minimum contacts” standard.³⁹ The Court first did so in 1958 with *Hanson v. Denckla*.⁴⁰ Acknowledging the need for refinement of the personal jurisdiction requirement in response to economic and technological advances, the Court emphasized that the focus of the minimum contacts analysis should be on the defendant’s contacts with the forum state, rather than the actions taken solely by the plaintiff or a third

32. *Int’l Shoe*, 326 U.S. at 316 (emphasis added).

33. *Id.* at 320.

34. *Id.* at 316–17.

35. *Id.* at 320.

36. Justin Angotti, *Everywhere and Nowhere: Reframing Personal Jurisdiction to Meet the Realities of an Increasingly Boundaryless Society*, 28 GEO. MASON L. REV. 1513, 1520 (2021) (“Analyzing minimum contacts asks whether there is sufficient evidence to make it reasonable, in the context of interstate federalism, to require a nonresident to respond to a suit in a particular forum’s court.”).

37. *Id.*

38. *Id.* at 1521.

39. *Id.*

40. *Hanson v. Denckla*, 357 U.S. 235 (1958).

party.⁴¹ The Court held that a forum state may not exercise personal jurisdiction over a defendant simply because that forum state is the “‘center of gravity’ of the controversy, or the most convenient location for litigation.”⁴² Instead, courts must examine the extent to 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.”⁴³

The addition of the “purposeful availment” standard to the minimum contacts test was later elaborated on by the Court in *Burger King Corp. v. Rudzewicz*.⁴⁴ There, the Court stated that the “purposeful availment requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts . . . or of the unilateral activity of another party or a third person.”⁴⁵ However, the Court added that personal jurisdiction is proper when the contacts result from the defendant’s own actions that create a substantial connection with the forum state.⁴⁶

2. Challenges in Applying the Framework to a Changing Commercial Landscape Despite the Supreme Court’s Repeated Efforts to Develop Bright-Line Rules to Refine International Shoe

The minimum contacts analysis was criticized for failing to provide a desired level of predictability for lower courts encountering issues not yet clarified by the Supreme Court.⁴⁷ One such issue was how the purposeful availment requirement applied to modern commerce, where defendants increasingly participated in interstate transactions without specifically targeting any particular state.⁴⁸

In *World-Wide Volkswagen Corp. v. Woodson*, the Supreme Court considered, in a product-liability case, whether an Oklahoma court could

41. *Id.* at 253.

42. *Id.* at 254.

43. *Id.* at 253 (emphasis added).

44. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985).

45. *Id.* at 475 (citations omitted) (internal quotation marks omitted).

46. *Id.* (internal quotation marks omitted).

47. See Angotti, *supra* note 36, at 1524 (“Although the Court carved out a few bright-line rules under *International Shoe*’s seemingly flexible standard, the minimum contacts analysis was sometimes criticized for failing to provide a desired level of predictability.”) (citing *Shaffer v. Heitner*, 433 U.S. 186, 217 (1977) (Powell, J., concurring)); Henry S. Noyes, *The Persistent Problem of Purposeful Availment*, 45 CONN. L. REV. 41, 52 (2012), (“[T]he meaning and application of the purposeful availment requirement has given rise to frustration in the courts, and among academics and practitioners alike.”).

48. Angotti, *supra* note 36, at 1524 (referencing *Asahi Metal Indus. Co. v. Superior Ct.*, 480 U.S. 102, 110 (1987)).

assert personal jurisdiction over a non-resident automobile retailer and its wholesale distributor.⁴⁹ Neither entity conducted business in Oklahoma, shipped or sold products there, maintained an agent to accept service of process, nor advertised in media aimed at Oklahoma residents.⁵⁰ Reversing the state court's decision that exercising personal jurisdiction was proper, the Court held that the mere fact that an out-of-state defendant could foresee their product ending up in a state is not sufficient to meet the purposeful availment requirement when a defendant has no contacts, ties, or relations with the forum state.⁵¹ However, Justice White, writing in dicta, indicated that the purposeful availment requirement would be met if an out-state corporation delivered its products into the "stream of commerce" with the *expectation* that they would be purchased in the forum state.⁵²

Seven years later, the Court revisited Justice White's "stream-of-commerce" idea in *Asahi Metal Industry, Co. v. Superior Court*, another product-liability case.⁵³ The issue in *Asahi* was whether a foreign defendant's mere awareness that the components it manufactured, sold, and delivered outside the United States would eventually reach the forum state through the stream of commerce was enough to allow a court to assert personal jurisdiction over the defendant.⁵⁴ All nine justices of the U.S. Supreme Court voted that the exercise of personal jurisdiction would violate the Due Process Clause.⁵⁵ Eight Justices signed on to Section II.B. of Justice O'Connor's opinion, which concluded that the exercise of personal jurisdiction over Asahi would offend the "traditional notions of fair play and substantial justice" aspect of the personal jurisdiction analysis established in *International Shoe*.⁵⁶ A plurality⁵⁷ of justices agreed with the portion of Justice O'Connor's opinion concluding that the minimum-contacts requirement is not satisfied when a defendant merely places a product into the stream of commerce, without more, because that conduct is not purposefully directed at the forum state.⁵⁸ There must be some *additional* acts purposefully directed at the forum state that "indicate

49. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 288 (1980).

50. *Id.* at 289.

51. *Id.* at 298–99.

52. Angotti, *supra* note 36, at 1524 (citing *World-Wide Volkswagen*, 444 U.S. at 298.)

53. *Asahi*, 480 U.S. 102.

54. *Id.* at 105.

55. *Id.* at 105, 116.

56. *Id.* at 105, 113 (internal quotation marks omitted).

57. An opinion is a plurality opinion if a majority of the court agreed on a decision in the case, but less than a majority could agree on the reasoning for that decision. A plurality opinion is not a binding precedent. 20 AM. JUR. 2D *Courts* § 134 (2026).

58. *Asahi*, 480 U.S. at 105, 112.

an intent or purpose to serve the market in the forum State.”⁵⁹ Examples of sufficient additional acts include: “designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State.”⁶⁰ Thus, a defendant’s mere knowledge that the stream of commerce may carry its product into the forum state is not enough to establish sufficient minimum contacts.⁶¹

In 2011, nearly twenty-five years after *Asahi*, the Supreme Court decided *J. McIntyre Machinery, Ltd. v. Nicastro*,⁶² a case that necessitated a reexamination of the Court’s unclear jurisprudence on the concept of purposeful availment.⁶³ There, the defendant was an English corporation that manufactured a shearing machine in England.⁶⁴ That machine injured a New Jersey resident.⁶⁵ The defendant neither marketed nor shipped its products to the state.⁶⁶ Nevertheless, the New Jersey Supreme Court held that New Jersey courts had jurisdiction over the defendant because the defendant knew or reasonably should have known that its products were distributed through a nationwide distribution system that could result in sales in any of the fifty states, including New Jersey.⁶⁷ Writing for a plurality, Justice Kennedy built on Justice O’Connor’s plurality opinion in *Asahi*, asserting that considerations of whether a defendant “place[s] goods into the stream of commerce with the expectation that they will be purchased by consumers in the forum State” and whether a defendant “seek[s] to serve’ a given State’s market” are mere factors in the principal inquiry of whether there is purposeful availment to satisfy the minimum

59. *Id.*

60. *Id.*

61. *Id.*

62. 564 U.S. 873 (2011) (plurality opinion).

63. Noyes, *supra* note 47, at 59 (“In September 2010, the Supreme Court granted certiorari in *J. McIntyre Machinery, Ltd. v. Nicastro*, a case whose facts would require the Court to revisit its muddled jurisprudence regarding purposeful availment.”) (citing Howard Wasserman, *Clarifying Personal Jurisdiction . . . or Not*, PRAWFS BLAWG (June 28, 2011, at 16:05 ET), <http://prawfsblawg.blogs.com/prawfsblawg/2011/06/clarifying-personal-jurisdiction-or-not.html> [<https://perma.cc/BR39-MAPZ>] (“The Court granted cert in *McIntyre* to resolve a question that had been left open 25 years ago in *Asahi*: whether putting a product into the stream of commerce expecting it to reach a particular state was sufficient purposeful availment or whether the defendant must somehow ‘target’ the forum (through some ‘plus’ activities).”).

64. *Nicastro*, 564 U.S. at 878.

65. *Id.*

66. *Id.*

67. *Id.* at 877.

contacts requirement, suggesting a shift back to the pre-“stream-of-commerce” jurisprudence.⁶⁸

3. *Personal Jurisdiction in the Internet Age*

The Supreme Court cases *International Shoe*, *Denckla*, and *Burger King* established important foundational principles for analyzing specific personal jurisdiction, including the “minimum contacts” and “purposeful availment” standards.⁶⁹ However, the rules that apply to non-resident defendants in evolving commerce in cases like *Asahi* and *Nicastro* have been unclear.⁷⁰

The internet has introduced new challenges, particularly as it relates to online sales when jurisdiction hinges on virtual interactions rather than physical presence.⁷¹ Although the personal jurisdiction analysis no longer requires physical presence, it continues to focus on the extent to which a defendant’s contacts establish a presence in the forum state.⁷² The Supreme Court has yet to address how the minimum contacts analysis applies to a defendant’s online conduct, requiring lower courts to look elsewhere for guidance.⁷³ Various approaches have emerged in district and

68. *Id.* at 881–82.

69. *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475–76 (1985).

70. *Nicastro*, 564 U.S. at 877 (“The rules and standards for determining state jurisdiction over an absent party have been unclear because of decades-old questions left open in *Asahi*.”).

71. See generally Zoe Niesel, #*PersonalJurisdiction: A New Age of Internet Contacts*, 94 IND. L. J. 103, 115 (2019) (“At the heart of jurisprudence on the topic of minimum contacts is the concern about the defendant’s ability to structure its contacts as to reasonably anticipate suit in the forum. This concern is brought into focus when assessing tests for personal jurisdiction involving internet contacts.”).

72. Angotti, *supra* note 36, at 1514 (“Although personal jurisdiction jurisprudence no longer solely rests on physicality, the analysis continues to focus on the extent to which a defendant’s contacts establish a presence in the forum state.”) (citing *Walden v. Fiore*, 571 U.S. 277, 283 (2014)); *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014); *Shaffer v. Heitner*, 433 U.S. 186, 209, 212 n.39 (1977).

73. Angotti, *supra* note 36, at 1514; see Niesel, *supra* note 71, at 104 (“Difficulties in applying personal jurisdiction are manifest—the internet does not respect territorial boundaries, is accessible anytime and anyplace, and allows users from all parts of the globe to access and contribute. These aspects do not fall neatly into the traditional jurisprudence on personal jurisdiction, although courts have attempted to classify internet technology such that simple lines can be drawn around internet contacts. However, these frameworks are largely based on technology from the 1990s and do not account for the rise of new web platforms and applications such as social media, targeted advertising, artificial intelligence, and bots, among other things.”).

circuit courts to address the growing importance of internet activities, with the most notable being the *Zippo* test.⁷⁴

The *Zippo* test originated from a 1997 decision by the United States District Court for the Western District of Pennsylvania in *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*⁷⁵ In *Zippo*, the defendant, Zippo Dot Com, Inc. (Dot Com), was a California corporation that operated a globally accessible website and provided an internet news service.⁷⁶ Dot Com obtained the rights to use the domain names “zippo.com,” “zippo.net,” and “zipponews.com” on the internet.⁷⁷ The website featured company information, advertisements, and a subscription-based news service.⁷⁸ Customers subscribed by completing an online application and paying with a credit card, after which Dot Com processed the applications and assigned passwords.⁷⁹ Dot Com had about 140,000 subscribers worldwide, including approximately 3,000 in Pennsylvania, representing roughly two percent of its total subscribers.⁸⁰ Zippo Manufacturing Corporation (“Manufacturing”), a Pennsylvania-based company, filed a lawsuit against Dot Com in its home state, alleging trademark dilution and violations of the Federal Trademark Act.⁸¹

Acknowledging a lack of case law concerning the permissible scope of personal jurisdiction based on internet use, the court stated that “the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet.”⁸² Then, the court introduced a personal jurisdiction sliding scale test.⁸³ At one end of the scale were cases where a defendant conducts clear business over the internet, such as entering into contracts with residents of a foreign jurisdiction that involve intentional and repeated transmissions of computer files.⁸⁴ In such

74. Niesel, *supra* note 71, at 115 (“Particularly troubling [for courts when assessing tests for personal jurisdiction involving internet contacts] is the lack of guidance from the Supreme Court itself. In the absence of such guidance, several approaches have developed in the lower courts to account for the increased significance of internet activities, but the most prominent of these tests is the so-called ‘Zippo test.’”).

75. 952 F. Supp. 1119 (1997); see also Niesel, *supra* note 71, at 116 (describing Zippo’s sliding-scale approach to internet-based personal jurisdiction).

76. *Zippo*, 952 F. Supp. at 1121.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* at 1121.

82. *Zippo*, 952 F. Supp. at 1124.

83. *Id.*

84. *Id.*

instances, exercising personal jurisdiction is appropriate.⁸⁵ At the other end were cases involving purely passive websites that merely provide information accessible to users in other jurisdictions; these do not justify exercising personal jurisdiction.⁸⁶ The middle ground included interactive websites where users can exchange information with the website's host.⁸⁷ For these cases, the exercise of jurisdiction depends on evaluating a website's interactivity and the commercial nature of the information exchanges that occur on the website.⁸⁸

Praised for its simplicity, courts have widely adopted the *Zippo* test in some form when assessing internet-based minimum contacts.⁸⁹ However, a primary argument against the *Zippo* sliding scale is that the majority of websites today fall within its middle ground of interactivity, making the test less effective at providing clear guidance for courts handling modern e-commerce disputes.⁹⁰

B. Whether a Single Online Sale is Enough to Confer Personal Jurisdiction

The rise of e-commerce complicates traditional personal jurisdiction frameworks, underscoring the need for a modernized standard.⁹¹

85. *Id.*

86. *Id.*

87. *Id.* at 1124.

88. *Zippo*, 952 F. Supp. at 1124.

89. Niesel, *supra* note 71, at 118–19 (“The Third Circuit, Fifth Circuit, and Ninth Circuit have recognized the *Zippo* case as a ‘seminal authority regarding personal jurisdiction based upon the operation of an internet web site.’ The Fourth Circuit, Sixth Circuit, and Eighth Circuit have chosen to adopt the *Zippo* test as a factor to define ‘purposeful availment’ in the minimum contacts analysis. Further, even circuits that have not expressly adopted *Zippo* still use its interactivity analysis to determine minimum contacts.”).

90. Celia Kaechele, *Traditional Notions of Fair Play and Substantial Justice in the Age of Internet Interconnectivity: How Masking an IP Address could Constitute Purposeful Availment*, 21 YALE J.L. & TECH. 59, 91 (2019) (“The ability to create and maintain an interactive website is no longer the sole domain of technologically sophisticated corporations. Virtually all websites . . . are now interactive in nature.”) (citing *Kindig It Design, Inc. v. Creative Controls, Inc.*, 157 F. Supp. 3d 1167, 1174 (D. Utah 2016)).

91. See Jayci Noble, *Personal Jurisdiction and the Internet: A Shift in the International Shoe Analysis for Users of E-Commerce and Peer-to-Peer Websites*, 42 S. ILL. U. L.J. 521, 529 (2018) (“[T]he paradigm [for personal jurisdiction] must adjust again for changes in society, considering much of today’s conversations and businesses are rooted in the Internet and Internet commerce. The [Supreme] Court must give consideration to personal jurisdiction as it relates to individuals’ activities in e-commerce and peer-to-peer websites, where transactions are taking place.”); see also *Hanson v. Denckla*, 357 U.S. 235, 250–51 (1958) (recognizing that technological advancements have expanded interstate commerce, necessitating a corresponding evolution in jurisdictional principles).

In recent years, e-commerce has become a dominant force in the retail industry, significantly transforming how goods are bought and sold.⁹² In the third quarter of 2024, U.S. retail e-commerce sales reached approximately \$288.8 billion, accounting for 15.6% of the country's total retail sales.⁹³ This marks a substantial increase from previous decades, with e-commerce accounting for just 6.4% of total sales in 2014 and 1.9% in 2004.⁹⁴

Platforms like Amazon and eBay make online selling more accessible than ever, allowing individuals and small businesses to reach customers nationwide with ease.⁹⁵ Virtually anyone can list and sell products to consumers across the country.⁹⁶ However, this widespread reach raises

92. Dan Ikenson, *The E-Commerce Revolution Is Transforming Global Trade and Benefitting The U.S. Economy*, FORBES.COM (June 13, 2022, at 08:49 ET), <https://www.forbes.com/sites/danikenson/2022/06/13/the-e-commerce-revolution-is-transforming-global-trade-and-benefitting-the-us-economy/> [https://perma.cc/VJ2R-Q3VK].

93. U.S. CENSUS BUREAU, CB24-186, Q. RETAIL E-COM. SALES 3RD QUARTER 2024 (2024), https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf [https://perma.cc/SA4A-7AVS] (“On a not adjusted basis, the estimate of U.S. retail e-commerce sales for the third quarter of 2024 totaled \$288.8 billion . . . E-commerce sales in the third quarter of 2024 accounted for 15.6 percent of total sales.”).

94. U.S. CENSUS BUREAU, CB16-24, Q. RETAIL E-COM. SALES 4TH QUARTER 2015 (2016), <https://www2.census.gov/retail/releases/historical/ecommm/15q4.pdf> [https://perma.cc/R77Y-D6Q5]; U.S. CENSUS BUREAU, CB-05-16, Q. RETAIL E-COM. SALES 4TH QUARTER 2004 (2005), <https://www2.census.gov/retail/releases/historical/ecommm/04q4.html> [https://perma.cc/3S9D-A2TV].

95. *Driving Small Business Success*, EBAY MAIN ST., <https://www.ebaymainstreet.com/smallbiz/issues/drive-small-business-success> [https://perma.cc/DG2X-P8MJ] (last visited Apr. 21, 2025) (“[M]illions of U.S. small businesses and entrepreneurs that rely on the online marketplace to reach customers across the nation and around the world. For decades, eBay has made it possible for anyone—not just big retailers—to benefit from the ecommerce revolution by connecting small businesses in every corner of the country to a massive online market. It’s telling that 43% of eBay sellers live in rural communities or small towns . . . [S]mall businesses are drawn to eBay for many reasons—the platform’s ease, the flexibility it offers, its tools and a vast customer base.”); Jeff Wilke, *Small Businesses Reaching Customers Around the World*, AMAZON (May 3, 2018), <https://www.aboutamazon.com/news/small-business/small-businesses-reaching-customers-around-the-world> [https://perma.cc/4EJL-F5HS] (“Amazon first opened its virtual shelves to small businesses nearly two decades ago, and today millions of small and medium-sized businesses from around the world sell on Amazon. Half of all items purchased on Amazon come from these businesses. Amazon helps small and medium-sized businesses reach hundreds of millions of customers around the world, giving the smallest of businesses the opportunity to compete next to the biggest household brands.”).

96. See Omar Angri, *How to Sell on Amazon US from Anywhere in the World in 2024*, MARGIN BUS. (Sep. 11, 2024), <https://marginbusiness.com/how-to-sell-on-amazon-us-from-anywhere-in-the-world-in-2024/> [https://perma.cc/Z5DT-X8V8].

legal questions: What happens when a seller makes an isolated sale to a buyer in another state and the product causes harm? Is the out-of-state seller required to litigate in the buyer's home state, or should the case instead be litigated in the forum where the seller operates its business?⁹⁷

The Sixth Circuit, in *AMB Media, LLC v. OneMB*, identified a split between the Seventh Circuit in *NBA Properties, Inc. v. HANWJH*,⁹⁸ and the Eighth Circuit in *Brothers and Sisters in Christ, LLC v. Zazzle, Inc.*,⁹⁹ over "whether a company's single electronic sale constitutes purposeful availment of a forum where the plaintiff generated the sale."¹⁰⁰ Despite this acknowledgement, the Sixth Circuit refrained from tackling the issue because the defendants in *AMB Media* had a regular course of business in the forum state that clearly established purposeful availment.¹⁰¹

In *NBA Properties*, the plaintiff, NBA Properties, Inc., the owner and exclusive licensee of the trademarks of the National Basketball Association (NBA) and NBA teams, alleged that HANWJH (defendant), a China-based online retailer, infringed NBA Properties' trademarks by selling counterfeit products via Amazon.com.¹⁰² NBA Properties's investigator purchased an alleged counterfeit product from HANWJH's online Amazon store, designating an address in Illinois as the delivery destination.¹⁰³ The sale went through and the product was delivered to the Illinois address.¹⁰⁴ HANWJH did not have any contacts with Illinois outside of this single sale and the accessibility of HANWJH's Amazon store from Illinois.¹⁰⁵

The Seventh Circuit rejected HANWJH's request for a bright-line rule that a single transaction cannot be sufficient to establish jurisdiction, stating that "[t]he question is not whether the plaintiff purchased enough goods to subject the defendant to personal jurisdiction. The focus is whether HANWJH purposefully directed its conduct at Illinois."¹⁰⁶ The

97. The former option would require a finding of specific personal jurisdiction, which is the focus of this Note, while the latter would rely on general personal jurisdiction. *Daimler AG v. Bauman*, 571 U.S. 117, 127, 137 (2014) (clarifying that specific personal jurisdiction exists when "the suit aris[es] out of or relate[s] to the defendant's contacts with the forum," and general personal jurisdiction exists when the defendant's affiliations with the forum state are "'so continuous and systematic' as to render them essentially at home in the forum State," such as a corporation's place of incorporation or principal place of business).

98. 46 F.4th 614 (7th Cir. 2022).

99. 42 F.4th 948 (8th Cir. 2022).

100. *AMB Media, LLC v. OneMB*, 2024 WL 2052151, at *4 n.3 (6th Cir. 2024).

101. *Id.*

102. *NBA Props.*, 46 F.4th at 618.

103. *Id.* at 617.

104. *Id.*

105. *Id.* at 618–19.

106. *Id.* at 625.

court asserted that “[t]here is no per se requirement that the defendant especially target the forum in its business activity; it is sufficient that the defendant reasonably could foresee that its product would be sold in the forum.”¹⁰⁷ Further, the court stated:

[D]efendant’s actions could be fairly ‘described as purposeful[ly]’ directed where it ‘created an interactive website and explicitly provided that [the forum state’s] residents could purchase its products through that website,’ ‘arranged for the sale of its products through third-party websites,’ ‘sent written confirmation to the [forum state’s] customers acknowledging their sale and including their [forum state’s] shipping address,’ and then, ‘shipped [the product] to its customers who were in [the forum state].’¹⁰⁸

The Eighth Circuit reached the opposite conclusion on similar facts in *Bros. & Sisters in Christ*.¹⁰⁹ There, the plaintiff, Brothers and Sisters in Christ, LLC (BASIC), a company based in Missouri alleged that the defendant, Zazzle, Inc., (Zazzle), sold at least one t-shirt that infringed on BASIC’s federal trademark.¹¹⁰ While its principal place of business was California, Zazzle advertised and sold its products on a webpage accessible to everyone, including those in Missouri.¹¹¹ In dismissing BASIC’s complaint for lack of personal jurisdiction, the court cited Justice Breyer’s concurring opinion in *Nicastro*, stating that “[t]he Supreme Court ‘has strongly suggested that a single sale of a product in a State does not constitute an adequate basis for asserting jurisdiction over an out-of-state defendant.’”¹¹² Further, the court asserted that Zazzle did not “uniquely or expressly” aim its actions at Missouri by offering for sale and selling infringing goods.¹¹³ Since Zazzle’s website was accessible nationwide, the court determined that it did not specifically target Missouri consumers or the Missouri market.¹¹⁴

107. *Id.* at 623 (quoting *Curry v. Revolution Labs., LLC*, 949 F.3d 385, 399 (7th Cir. 2020)).

108. *NBA Props.*, 46 F.4th at 624.

109. *Bros. & Sisters in Christ, LLC v. Zazzle, Inc.*, 42 F.4th 948 (8th Cir. 2022).

110. *Id.* at 950.

111. *Id.* at 951.

112. *Id.* at 953 (quoting *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 888 (2011) (Breyer, J., concurring)).

113. *Bros. & Sisters in Christ*, 42 F.4th at 954 (citing *Johnson v. Arden*, 614 F.3d 785, 798 (8th Cir. 2010)).

114. *Bros. & Sisters in Christ*, 42 F.4th at 954.

NBA Properties and *Brothers and Sisters in Christ* highlight the contrasting approaches taken by the Seventh and Eighth Circuits when evaluating personal jurisdiction in the context of a single online sale.¹¹⁵ Despite similar factual scenarios—each involving a single sale to the forum state via a website that did not specifically sell products to any particular state—the courts reached opposite conclusions, reflecting a fundamental disagreement on the application of the minimum contacts test.¹¹⁶ These decisions illustrate the uncertainty that currently surrounds single-sale personal-jurisdiction disputes and set up the need for a more uniform framework.¹¹⁷

III. ANALYSIS

The contrasting decisions of the Seventh and Eighth Circuits highlight a critical divide in how courts interpret and apply the purposeful availment standard in the context of online single-sale transactions.¹¹⁸ Resolving this circuit split is essential to providing clarity and predictability for both online retailers and consumers.¹¹⁹ This section analyzes the implications of these divergent approaches and proposes a unified framework that balances the interests of retailers and consumers in today's digital marketplace.

A. Seventh Circuit: Pro-Consumer Approach

The Seventh Circuit's decision in *NBA Properties* reflects a broader, pro-consumer approach to personal jurisdiction while simultaneously

115. *NBA Props. v. HANWJH*, 46 F.4th 614 (7th Cir. 2022); *Bros. & Sisters in Christ*, 42 F.4th 948.

116. *NBA Props.*, 46 F.4th at 624; *Bros. & Sisters in Christ*, 42 F.4th at 954.

117. See Noble, *supra* note 91, at 524 ("This is largely because since the *Zippo* ruling, the Internet has evolved and technological advances have drastically altered the ways individuals communicate and conduct transactions. While a large amount of commentary has been written regarding personal jurisdiction in cyberspace, and particularly what counts as sufficient minimum contacts in the forum, there is still a lack of clarity on the topic. This is particularly problematic for individual Internet business sellers, who are engaging in online transactions with individuals all over the world. These sellers are subject to uncertainties regarding what online activities will subject them to jurisdiction in a particular state, and what burdens might be associated with that personal jurisdiction. As a result, these sellers may be discouraged from participating in the online market, because of the risks associated with potential litigation, which limits their opportunities for growth and competition.") (citations omitted).

118. *NBA Props.*, 46 F.4th 614; *Bros. & Sisters in Christ*, 42 F.4th 948.

119. See Noble, *supra* note 91, at 522–23 (discussing the uncertainty and inconsistency in online personal jurisdiction doctrine and the resulting difficulty in predicting litigation outcomes).

raising concerns about overextension.¹²⁰ By emphasizing foreseeability as a sufficient basis for purposeful availment, the court set a relatively low bar for establishing jurisdiction in online sales cases.¹²¹ However, the Seventh Circuit's reasoning directly contrasts with the Supreme Court's holding in *World-Wide Volkswagen*, where the Court asserted that "foreseeability alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause."¹²² The Seventh Circuit's reliance on foreseeability risks shifting the focus of personal jurisdiction away from the defendant's intentional actions and toward the plaintiff's ability to initiate a sale which, in effect, manufactures jurisdiction.¹²³ This approach undermines the Supreme Court's general rule that the defendant's conduct must connect them to the forum in a meaningful way.¹²⁴

Furthermore, the Seventh Circuit's decision blurs the lines of fairness and predictability for defendants. By not requiring the defendant to "especially target" the forum state, the court opens the door for lawsuits in any jurisdiction where a product is purchased, regardless of the defendant's actual intent or activities.¹²⁵ While this holding aligns with the interests of consumers seeking recourse, it could place a substantial burden on smaller online retailers and foreign businesses, who could unintentionally find themselves facing litigation both nationwide and internationally.¹²⁶

B. Eighth Circuit: Pro-Business Approach

The Eighth Circuit, in *Bros. & Sisters in Christ*, adopted a more restrained view of personal jurisdiction, emphasizing the need for clear,

120. See *NBA Props.*, 46 F.4th at 627.

121. See *id.* at 624.

122. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980).

123. See *id.* at 296.

124. See, e.g., *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (reinforcing that personal jurisdiction requires the defendant to purposefully avail itself of the forum state by deliberately engaging in activities that create a substantial connection with the forum).

125. See *NBA Props.*, 46 F.4th at 624.

126. See Cassandra Burke Robertson & Charles W. Rhodes, *The Business of Personal Jurisdiction*, 67 CASE W. RES. L. REV. 775, 783, 785, n.49 (2017) (stating that both the National Federation of Independent Business, which represents small-business interests, and the United States Chamber of Commerce, which generally represents larger corporate interests, have expressed the importance of predictability in personal jurisdiction) (citing Motion for Leave to File and Brief for the Chamber of Commerce of the United States of America et al. as Amici Curiae Supporting Petitioner at 2, *BNSF Railway Co. v. Tyrrell*, No. 16-405 (U.S. Oct. 28, 2016), 2016 WL 6473001 ("Movants' members thus have a keen interest in the predictability that comes when courts follow fair rules for personal jurisdiction and abide by the decisions of this Court.")).

affirmative actions by the defendant to target the forum state.¹²⁷ This interpretation aligns with Justice Breyer's concurrence in *Nicastro*, that more than a single sale of a product in a state is needed to assert jurisdiction over an out-of-state defendant.¹²⁸ By insisting that the defendant "uniquely or expressly" direct its actions toward the forum, the Eighth Circuit's approach mitigates the risk of online retailers being haled into court in every jurisdiction where their website is accessible for consumers to purchase.¹²⁹

While this approach protects defendants, it may leave consumers without meaningful recourse. For instance, Zazzle's t-shirt sale to Missouri was facilitated through a website that allowed nationwide sales, yet the court dismissed the case on the grounds that Zazzle did not "uniquely or expressly" target Missouri consumers.¹³⁰ This reasoning places a heavy burden on plaintiffs to demonstrate forum-directed intent, especially where a retailer operates a nationally accessible website without state-specific outreach.¹³¹ As a practical matter, that approach may encourage online retailers to avoid explicit targeting of any particular state. Moreover, it overlooks the realities of modern commerce, where online retailers frequently operate on a nationwide scale, benefiting from customers across the country without establishing strong ties to any single state.¹³²

What remains are two sharply contrasting approaches to whether a single online sale can establish personal jurisdiction: one that leans heavily toward protecting consumer recourse, as seen in the Seventh Circuit's pro-consumer stance,¹³³ and another that prioritizes shielding businesses from an expansive personal jurisdiction reach, as demonstrated by the Eighth Circuit's pro-retailer approach.¹³⁴ The Seventh Circuit's reliance on foreseeability risks overextending personal jurisdiction,¹³⁵ while the

127. See *Bros. & Sisters in Christ, LLC v. Zazzle, Inc.*, 42 F.4th 948, 954 (8th Cir. 2022).

128. *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 888 (2011) (Breyer, J., concurring).

129. See *Bros. & Sisters in Christ*, 42 F.4th at 954 (quoting *Johnson v. Arden*, 614 F.3d 785, 798 (8th Cir. 2010)).

130. *Bros. & Sisters in Christ*, 42 F.4th at 954 (quoting *Arden*, 614 F.3d at 798).

131. *Bros. & Sisters in Christ*, 42 F.4th at 954.

132. See Kaechele, *supra* note 90.

133. See *NBA Props. v. HANWJA*, 46 F.4th 614, 624 (7th Cir. 2022) ("[T]here is no per se requirement that the defendant especially target the forum in its business activity; it is sufficient that the defendant reasonably could foresee that its product would be sold in the forum.").

134. See *Bros. & Sisters in Christ*, 42 F.4th at 954 (holding that defendant did not "uniquely or expressly" aim its actions at the forum state by offering for sale and selling of infringing goods, since defendant's website was accessible nationwide and did not specifically target the forum state's consumers or market).

135. *NBA Props.*, 46 F.4th at 624.

Eighth Circuit's emphasis on intentional targeting may leave harmed consumers without realistic recourse.¹³⁶

C. Proposed Solution

To resolve this inconsistency, a uniform, middle-ground solution that strikes a balance between the interests of consumers and online retailers is essential. Such a framework would not only provide clarity and predictability for courts, consumers, and businesses, but it would also create a standard that is adapted to the realities of modern e-commerce.

Under this approach, courts should focus on whether a retailer targets a specific state through affirmative and intentional actions rather than merely making products available for purchase nationwide. Targeting a state does not require exclusive focus on that state but occurs when a retailer engages in identifiable efforts to generate sales there, such as state-specific marketing, advertising, or other business activities aimed at attracting consumers in that forum.¹³⁷ In contrast, a retailer that simply operates a passive website accessible from anywhere, without any specific outreach to consumers in a particular state, is not engaging in targeted activity.

To implement this test, courts should undertake a two-step analysis. First, they must determine whether the retailer has engaged in deliberate efforts to reach consumers in the forum state, such as through targeted advertising, localized outreach, or direct solicitation of state residents. These efforts do not need to be exclusive to one state but should reflect an intentional attempt to generate business there. Second, courts should consider whether the retailer's actions have created a reasonable expectation of being subject to litigation in that state, based on the extent of its engagement with the forum state's market.

Unlike the "middle" category under the *Zippo* sliding scale test, which broadly considers whether a website is interactive,¹³⁸ this test places emphasis on who initiated the contact and the purpose behind the interaction. It focuses not just on technical interactivity but on whether the retailer took affirmative steps to cultivate business in the forum state. In other words, merely having an interactive website is not enough; what

136. *Bros. & Sisters in Christ*, 42 F.4th at 954.

137. See *Asahi Metal Indus. Co. v. Superior Ct.*, 480 U.S. 102, 112 (1987) (plurality opinion) (explaining that "[a]dditional conduct" showing an intent to serve the forum market includes "advertising in the forum State" and other forum-directed efforts); *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 355 (2021) (holding that jurisdiction may exist when a company "serves a market for a product in the forum State"); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475–76 (1985).

138. *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997).

matters is whether the defendant intentionally reached into the forum to drive sales.

This test also distinguishes between passive interactions, where a consumer initiates contact with a retailer and makes a purchase through an openly accessible website, and active solicitation, where a retailer directly encourages consumers in a specific state to engage in transactions. For the purposes of this test, passive interactions occur when a retailer lists products for sale on a generally accessible website without directing any specific outreach or marketing efforts toward a particular state. Active solicitation, on the other hand, involves strategies that are specifically designed to attract or engage consumers in a particular state, such as influencer partnerships targeting local audiences, promotional emails sent to consumers based on location, or tailored social media campaigns that encourage engagement from residents of a particular state. This distinction reflects the broader rule that jurisdiction should turn on the defendant's deliberate, forum-directed conduct rather than on a consumer's unilateral decision to complete a purchase there.¹³⁹

Applying this test in the context of today's digital marketplace illustrates how it addresses many of the ways businesses market and sell products online. For instance, a California-based skincare brand that primarily sells online might partner with a popular Chicago-based TikTok beauty influencer to promote its products, emphasizing their effectiveness against the city's harsh winds and cold weather. By tailoring its content to Chicago's climate and directly targeting local consumers through influencer marketing, the company is actively engaging with that market, creating a reasonable expectation of being subject to personal jurisdiction in Illinois, even based on a single online sale.¹⁴⁰

This test accounts for the complexities of modern digital advertising, including programmatic advertising, in which businesses rely on an automated process to place ads across various websites.¹⁴¹ Because retailers do not actively select where these ads appear, this type of advertising remains passive rather than a deliberate effort to target a specific state.¹⁴² By contrast, direct marketing efforts, such as purchasing ad space specifically for users in a particular state, constitute active solicitation under this proposed test.¹⁴³ Similarly, allowing a consumer to

139. See *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *Burger King*, 471 U.S. at 475–76; *Bros. & Sisters in Christ*, 42 F.4th at 954–55.

140. See *Burger King*, 471 U.S. at 475–76; *Ford Motor Co.*, 592 U.S. at 368.

141. See *Programmatic Advertising*, AMAZON ADS, <https://advertising.amazon.com/blog/programmatic-advertising> [https://perma.cc/N68X-TQZU] (last visited Mar. 20, 2025).

142. See *id.*

143. See *Burger King*, 471 U.S. at 475–76; *Ford Motor Co.*, 592 U.S. at 368.

select a shipping destination does not qualify as a deliberate effort to target that state; rather, it is the consumer who initiates contact with the forum by making the purchase.¹⁴⁴ However, if a retailer actively incentivizes sales in a specific state through localized promotions or direct outreach, that retailer should reasonably expect to be subject to jurisdiction there.¹⁴⁵

Importantly, this test is also equipped to evolve alongside future changes in technology. As artificial intelligence (AI) integrates with advertising strategies, this test remains workable because it evaluates whether the retailer intended to reach the forum state, regardless of whether that outreach was carried out manually or through an AI system acting on the retailer's behalf.¹⁴⁶ This test thus avoids the shortcomings of analyses that are ill-suited to modern e-commerce, such as the focus on technical interactivity in the *Zippo* test or the formalistic emphasis on fulfillment mechanics in *NBA Properties*, like whether the retailer allowed purchases or confirmed shipments to a particular state.¹⁴⁷

This test corrects the Seventh Circuit's approach, which risks overextending personal jurisdiction by relying on foreseeability alone.¹⁴⁸ Instead of allowing any retailer with an accessible website to be sued in any state where a purchase occurs, it requires affirmative steps, such as targeted advertising or direct engagement with a forum state, ensuring that jurisdiction is tied to intentional conduct rather than mere foreseeability that a purchase will occur.

At the same time, this test provides a necessary adjustment to the Eighth Circuit's overly rigid standard, which demands that a defendant

144. See *Denckla*, 357 U.S. at 253; *Bros. & Sisters in Christ*, 42 F.4th at 954–55.

145. See *Burger King*, 471 U.S. at 472–76; *Ford Motor Co.*, 592 U.S. at 368.

146. Businesses have already begun using AI tools to make advertising more targeted and more efficient. Lara O'Reilly, *An Nvidia Exec Explains How CMOs are using AI to get the Most Out of their Ad Budgets*, BUS. INSIDER (Mar. 27, 2025, at 13:37 ET), <https://www.businessinsider.com/nvidia-brands-using-ai-boost-marketing-delta-unilever-mars-2025-3> [<https://perma.cc/U2TS-W4AG>]. One recent report explains that Forever 21 used AI to generate audience-specific advertisements in under a day, and those campaigns outperformed more traditional advertising in return on investment. *How AI is Transforming Advertising, from Airlines to Retail, with Measurable ROI and Efficiency Gains*, CO/AI (Mar. 28, 2025, at 09:28 ET), <https://getcoai.com/news/how-ai-is-transforming-advertising-from-airlines-to-retail-with-measurable-roi-and-efficiency-gains/> [<https://perma.cc/5WSK-CTCY>]. Similarly, L'Oréal has adopted AI-driven advertising to optimize ad placement and maximize impact in targeted regions. Fredrik Filipsson, *AI Case Study: Targeted Advertising at L'Oréal*, REDRESS COMPLIANCE (Feb. 24, 2025), <https://redresscompliance.com/ai-case-study-targeted-advertising-at-loreal/> [<https://perma.cc/DZM5-469A>].

147. *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997); *NBA Props. v. HANWJH*, 46 F.4th 614, 624 (7th Cir. 2022).

148. *NBA Props.*, 46 F.4th at 623 (quoting *Curry v. Revolution Lab's, LLC*, 949 F.3d 385 (7th Cir. 2020)).

“uniquely or expressly” target a forum.¹⁴⁹ While preventing courts from asserting jurisdiction based on mere accessibility, it acknowledges that purposeful availment can still occur when a retailer actively solicits sales through digital marketing, advertising, or localized outreach, even if the state is not the exclusive target of those efforts.¹⁵⁰

Further, this test aligns with the Supreme Court’s traditional specific personal jurisdiction jurisprudence seen in *International Shoe*, by assessing “the quality and nature of the [nonresident’s] activity,” and weighing the interests of the plaintiff and the forum state against the potential burden on the nonresident of litigating outside their home state or principal place of business.¹⁵¹ Additionally, it accounts for the “minimum contacts” and “purposeful availment” requirements from *Denckla*¹⁵² and *Burger King*.¹⁵³

Ultimately, this test provides a clear and fair framework that balances the interests of consumers and online retailers. It ensures that businesses are only subject to jurisdiction where they have intentionally sought sales, while protecting them from litigation based solely on passive online interactions. By refining the purposeful availment analysis to reflect how modern e-commerce operates, the test addresses the competing concerns raised by the divergent approaches of the Seventh and Eighth Circuits and offers courts a more practical standard.¹⁵⁴

IV. CONCLUSION

The circuit split between the Seventh and Eighth Circuits highlights a fundamental gap in how courts apply the purposeful availment standard to single online sales.¹⁵⁵ The Seventh Circuit’s broad approach risks subjecting retailers to litigation in any state where a consumer initiates a purchase, while the Eighth Circuit’s restrictive test sets an impractically high bar that may leave consumers without recourse.¹⁵⁶ Neither approach fully accounts for the realities of modern e-commerce, where businesses

149. *Bros. & Sisters in Christ*, 42 F.4th at 954 (quoting *Lindgren v. GDT*, 312 F. Supp. 2d 1125 (S.D. Iowa 2004)).

150. *See Bros. & Sisters in Christ*, 42 F.4th at 954–55; *Burger King*, 471 U.S. at 475–76; *Ford Motor Co.*, 592 U.S. at 368.

151. *See Int’l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945).

152. *Hanson v. Denckla*, 357 U.S. 235, 251 (1958).

153. *Burger King*, 471 U.S. at 475.

154. *E.g.*, *NBA Props. v. HANWJH*, 46 F.4th 614 (7th Cir. 2022); *Bros. & Sisters in Christ*, 42 F.4th 948.

155. *See supra* Section II.B.

156. *See supra* Section III.A–B.

engage in varying degrees of targeted efforts to attract customers across state lines.¹⁵⁷

To resolve this inconsistency, courts should adopt a middle-ground approach that balances the interests of both consumers and retailers.¹⁵⁸ By focusing on whether a retailer has affirmatively and intentionally engaged with a forum state, such as through targeted digital marketing, partnerships with local influencers, or other outreach efforts, this framework ensures that jurisdiction is based on purposeful conduct rather than mere foreseeability.¹⁵⁹ At the same time, it protects retailers from being haled into court in states where they have made no meaningful effort to establish a presence.¹⁶⁰

This solution provides clarity, predictability, and fairness in an area of law that is increasingly uncertain.¹⁶¹ As online commerce continues to evolve, courts must ensure that personal jurisdiction principles evolve with it.¹⁶² By adopting a standard that accounts for both consumer protection and business fairness, courts can provide a workable framework that aligns with the foundational principles of specific personal jurisdiction while addressing the challenges of the digital age.

The Supreme Court should resolve the split between the Seventh and Eighth Circuits by granting certiorari in a case that raises the question of whether a single online sale is sufficient to establish personal jurisdiction, and adopt the proposed middle-ground test tying jurisdiction to intentional, forum-specific outreach.¹⁶³ This would provide much-needed doctrinal clarity and ensure that the law reflects how modern businesses operate.

157. *See supra* Section III.A–B.

158. *See supra* Section III.C.

159. *See supra* Section III.C.

160. *See supra* Section III.C.

161. *See supra* Section III.C.

162. *See supra* Section II.A.3.

163. *E.g.*, *NBA Props., Inc. v. HANWJH*, 46 F.4th 614 (7th Cir. 2022); *Bros. & Sisters in Christ, LLC v. Zazzle, Inc.*, 42 F.4th 948 (8th Cir. 2022).

