

One Click Dealerships/Internet
Dealer Sales
Bill Brauch, Special Assistant
Attorney General
Director-Consumer Protection
Division
Iowa Department of Justice
March 13, 2013



The Iowa AG's Consumer Protection Division

Chair-NAAG Autos Working Group

Co-Chair, USDOJ-BJA NMVTIS Advisory Board

The Horse & Buggy Days are Long Gone

Today, Autos are Advertised & Sold in Myriad Media

-- Old Faithful: Print, Billboard, TV, Radio

-- More Recently: Websites, Facebook, Twitter, Apps

Internet Sales Scenarios

- 1. NY dealer advertises over Internet, WI consumer sees ad and feels misled.**
- 2. IL dealer advertises over Internet, MO consumer crosses states to buy @ dealership based on ad.**
- 3. California consumer sees FL dealer's Internet site, negotiates sale over phone or e-mail, dealer delivers vehicle to consumer's home.**

Internet Sales Scenarios

- 4. WI dealer salesman sells to CA buyer via e-bay.**
- 5. IN dealer advertises online. Ohio consumer sees it, communicates with dealer and signs lease in Ohio.**
- 6. Company contracts with consumers online to find cars for them, puts customers in touch with local dealers.**
- 7. Dealer advertises on Craig'sList under salesman's name.**

Jurisdiction over Internet Advertising

Old School – State of Iowa v. Baxter Chrysler-Plymouth

- **Omaha dealer advertising in Omaha newspaper and Omaha TV and radio**
- **Iowa Supreme Court held because it was foreseeable ads were read and viewed or heard in Iowa, and because the ads were the subject of the state's cause of action, Iowa courts had personal jurisdiction of the dealership**

The Law of Personal Jurisdiction

Key Factors:

- 1. Purposeful Availment**
- 2. Relation of Cause of Action to Contacts**
- specific vs. general jurisdiction
- 3. Fairness and Reasonableness**

Personal Jurisdiction and the Internet

What subjects a dealer to another state's law?

- Is the NY dealer advertising on the web subject to WI law? (Recall ex. #1)**
- Did NY dealer “purposefully avail” itself of the Wisconsin retail market?**

Personal Jurisdiction and the Internet

NY Dealer – WI resident, cont'd

Courts say, “No,” simply advertising on the Internet does not suffice to create jurisdiction everywhere the Internet can be accessed.

Personal Jurisdiction and the Internet

The *ZIPPO** sliding-scale test:

- **One End** - Clearly doing business over the Internet. Including knowing and repeated transmission of computer files = no doubt personal jurisdiction is proper.
- **Other End** - Defendant simply posted information on Internet accessible to others.

*952 F.Supp. 1119 (1996)

Personal Jurisdiction and the Internet

2. IL dealer advertises over Internet, MO consumer crosses states to buy @ dealership based on ad.

- Does MO have jurisdiction?**
- Does IL have jurisdiction?**

Personal Jurisdiction and the Internet

OK, that one was easy, but what about #3?

3. California consumer sees Florida dealer's Internet site, negotiates sale over phone or e-mail, dealer delivers vehicle to consumer's home.

- *Shisler v. Sanfer Sports Cars*, * CA lacked personal jurisdiction over FL dealer – web ads viewed, vehicle delivered to CA buyer.

***53 Cal.Rptr.3d 335 (2006)**

Personal Jurisdiction and the Internet

***Shisler* - Key Facts Supporting Jurisdiction**

1. Faxes, e-mails, letters, calls exchanged.
2. Dealer advertised “worldwide” shipping.
3. Dealer mailed contract to CA for buyer to sign.

***Shisler* - Key Facts Opposing Jurisdiction**

1. Buyer had his own financing – didn’t use dealers’.
2. Ownership passed when shipper took possession –FL.
3. Buyer arranged the shipping.
4. Only 10 out of > 40,000 sales to CA residents.

Personal Jurisdiction and the Internet

#3, Continued: *Rose v. Rusnak Auto Group* *

- **CA dealer advertised in national magazine and Internet – OH resident saw ad in OH.**
- **Filed in OH state court and removed to OH federal court.**
- **Court held CA dealer subject to personal jurisdiction of OH federal court.**

*2002 WL 741290

Personal Jurisdiction and the Internet

***Rose* - Key Facts Supporting Jurisdiction**

1. Dealer contacted buyer by phone and fax in OH.
2. Dealer delivered car to OH and titled it there for buyer.
3. Dealer mailed contract to OH for buyer to sign.
4. Buyer financed with dealer – so, ongoing relationship.

***Rose* - Key Facts Opposing Jurisdiction**

1. No ads directed specifically to OH.
2. Buyer contacted dealer first.

Personal Jurisdiction and the Internet

4. WI dealer salesman sells to CA buyer via e-bay.

- *Boschetto v. Boucher Auto Group* *

- CA resident won e-bay auction for car sold by WI dealer via a salesman's post.

- Ninth Circuit US Court of Appeals held defendants not subject to personal jurisdiction of CA courts.

* 539 F.3d 1011 (2008)

Personal Jurisdiction and the Internet

Boschetto- Key Facts Opposing Jurisdiction

1. Buyer had no evidence of other Internet sales by defendants.
2. Seller had no ongoing obligations as to CA.
3. Seller did not own website used to make sale.
4. Sale was closed upon completion of auction. No further action by seller required or conducted.
5. Buyer took delivery in seller's state – WI.

Personal Jurisdiction and the Internet

- *Attaway vs. Omega* *
- Idaho e-bay buyers subject to jurisdiction in Indiana for rescinding Paypal payment after receiving delivery of vehicle in Idaho.
- “Purposeful availment” found as buyer hired a shipper to come to IN and pick up vehicle.

* 903 N.E.2d 73 (IndianaCt.App. 2009)

5. Indiana dealer advertises online. Ohio consumer sees it, communicates with dealer and signs lease in Ohio.

Cross-border sale—Dealer License Requirement

***Arnold v. Volkswagen of America* ***

- Court held Indiana dealer violated Ohio dealer licensing law in lease to OH resident.

Key facts:

1. Consumer used Internet search tool to find dealer.
2. Consumer and dealer had several phone conversations, including negotiating price and terms.
3. Dealer brought car to OH for test drive & docs signed in consumer's home.

* 2005 WL 844968

Manufacturer Retail Sales—Dealer License Required

In re License of Ford Motor Company *

- 5th Cir. US Ct of Appeals held Ford Motor Co.'s unlicensed direct sales of used vehicles to consumers violated TX dealer license law.

Key facts: 1. Advertised online by Ford. 2. Consumers could test drive at local dealership. 3. All negotiations were with Ford Motor Co. 4. Ford transferred title to dealership which, in turn, transferred to buyers. 5. Only dealerships that agreed to participate did so.

* 264 F.3d 493 (5th Cir. 2001)

6. Company contracts with consumers online to find cars for them, puts customers in touch with local dealers.

Internet Auto Sales – Brokering

***Autobytel v. Insweb* ***

- Texas federal court held that it had personal jurisdiction over a patent infringement case against a California-based Internet systems developer that created a program assisting TX car buyers to find dealers and financing on a website that also included targeted advertising. Not a licensing case.

* 2009 WL 901482

- 7. Dealer advertises on Craig'sList under salesman's name.**
 - Recall the *Boschetto* case a few frames back?**
 - E-bay post by salesman for dealership.**
 - Does that change the analysis?**

State Regulatory Action – Internet Sales

- **TX law expressly permits a dealer to sell a vehicle online to a buyer who never appears personally at the dealer's place of business.**

(Texas Occupations Code § 2301.362(b))

- **In most states, however, the general requirement to only sell from a physical place of business in the state essentially bars online sales.**

Industry Actions to address Internet selling –

- Industry seems to be doing a good job of educating dealers as to “do’s” and “don’t’s” relating to selling online.**
- Key piece of advice – have the buyer come to the dealership to sign all papers and take delivery.**

Review of personal jurisdiction:

- **Purposeful Availment +**
- **Relation of cause of action to contact +**
- **Fair and Reasonable application of law**

Key facts in deciding “purposeful availment”

- How did the buyer come to contact the seller?
- Indeed, who contacted who first?
- How did the buyer and seller communicate?
- Where did the negotiations occur? (@ dealership?
@ buyer's home? both places? elsewhere?)

- Where will the documents be signed?
- How will the vehicle get to the buyer?
- Does the sale contemplate ongoing contact?
- How much business does the seller do in buyer's state of residence?

Issues for regulators (and consumers)

- Which state's licensing laws will govern?**
- Which state's consumer laws will govern?**
- Which state dealer bond will apply?**
- Which state's sales tax law will apply?**
- If you buy a car from an out-of-state dealer who is not licensed in your state, but where all the facts point to jurisdiction in your state, what protection do you have?**

Where do online auction sales fit in all this?

- If a consumer online purchase from a private seller, legal jurisdiction is probably in seller's home state.
- If a dealer sale to a consumer, depends on the many factors we just reviewed.
- If a wholesale auction, similar factors might apply.

Factors re jurisdiction in wholesale online auctions

- What do the auction rules/agreement say about jurisdiction?
- Where are the sale documents signed?
- Degree of contact between seller and buyer, if any.
- If contacts, frequency, type, who initiates, and whether ongoing contact is contemplated.
- Any guarantees from seller to buyer?
- How does the car get from the seller to the buyer?

Future Regulatory Action?

- Perhaps a model law to permit states to allow dealers licensed in a participating state to sell used autos online into another participating state, but with bond protection for buyers and with certain other minimum protections, such as dealer ads must comply with certain laws of both states re dealer advertising and resolve tax & fee questions.



Questions?

William L. Brauch

Special Assistant Attorney General

Director-Consumer Protection Division

Iowa Department of Justice

Bill.brauch@iowa.gov

515-281-8772