

# CPLR 302(a)(3): Situs of Injury in Unfair Competition Action Is Where Plaintiff Lost Business

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

---

### Recommended Citation

St. John's Law Review (1968) "CPLR 302(a)(3): Situs of Injury in Unfair Competition Action Is Where Plaintiff Lost Business," *St. John's Law Review*: Vol. 42 : No. 4 , Article 12.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol42/iss4/12>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [lasalar@stjohns.edu](mailto:lasalar@stjohns.edu).

national commerce. It is clear that even though he derived substantial revenue from interstate or international commerce under the *Gillmore* test, he would nevertheless not be "generally equipped to handle litigation away from his business location."<sup>51</sup>

### Conclusion

Seemingly, CPLR 302(a)(3) will withstand constitutional objections in principle, if not in all applications, as one authority has noted.<sup>52</sup> Probably most difficulty will arise with respect to 302(a)(3)(ii). However, even that subsection may withstand constitutional attack in a proper case. For example, if suit is brought in New York against a large nation-wide manufacturer whose activities in and revenue derived from New York are not sufficient to meet the requirements of 302(a)(3)(i), but whose revenue is largely derived from interstate and international commerce, an application of 302(a)(3)(ii) would probably be allowed to stand. It is almost certain that if (ii) encounters its first constitutional test in a case presenting facts similar to the surfboard hypothetical, it will fail. If 302(a)(3)(ii) is to withstand all constitutional objections it must either be construed by the courts of New York so as to meet due process requirements or it must be amended by the legislature.

Until there is a Supreme Court decision on the constitutionality of obtaining jurisdiction over a non-resident for tortious acts outside the state causing injury within the state, the constitutional status of 302(a)(3) will remain uncertain.

*CPLR 302(a)(3): Situs of injury in unfair competition action is where plaintiff lost business.*

Aside from the substantial revenue conundrum of CPLR 302(a)(3) discussed above, there has been a most recent development in another requirement of 302(a)(3) long-arm jurisdiction,

---

<sup>51</sup> *Id.* One source has noted that 302(a)(3)(ii) could raise a constitutional question under the commerce clause if it placed an unreasonable burden on interstate commerce. Homburger & Laufer, *Expanding Jurisdiction Over Foreign Torts: The 1966 Amendment of New York's Long Arm Statute*, 16 BUFFALO L. REV. 67, 79 (1966). However, since an activity that would give rise to the cause of action occurred within the state, *i.e.*, the injury, this factor would seem to prevent an undue burden on interstate commerce. Note, *Developments in the Law—State Court Jurisdiction*, 73 HARV. L. REV. 909, 986 (1960). Since the cases on commerce clause limitations of jurisdiction proscribe only oppressive and unreasonable burdens, the public interest favors a correlative duty on one who enjoys large scale access and operations in interstate or international commerce to appear, in certain situations, in the forum of the tort victim to litigate a claim. Homburger & Laufer, *supra* at 79-80.

<sup>52</sup> Homburger & Laufer, *supra* note 51, at 76.

namely, whether the injury has occurred in New York. In *Spectacular Promotions, Inc. v. Radio Station WING*,<sup>53</sup> plaintiff was a national publicity firm with offices in New York. It alleged unfair competition by the defendant, an Ohio resident not doing business in New York, for altering one of plaintiff's announcements and broadcasting it in Ohio for a competitor's benefit.

In ascertaining the most reasonable and fair locus of injury for jurisdictional purposes, the court emphasized the foreseeability test of CPLR 302(a)(3) and posed three possible forums for trial of the unfair competition action: the plaintiff's principal place of business, any place the plaintiff does business, and the place where the business was lost. The first possibility was rejected because of the absence of a predictable relationship between the principal place of business and defendant's tortious act.<sup>54</sup> As to the second possibility, the court observed that a large national corporation should not be entitled to sue in any state in which it does business. Granting such latitude to plaintiff, stressed the court, would obviously be unfair to the defendant.

The court adopted the businessman's concept of injury, and concluded that the place where one loses customers is the most foreseeable forum for suit in an unfair competition action. At this situs there would be a reasonable relation between the defendant and the nation-wide plaintiff corporation. It would be here that all the critical events took place and here there would be minimum contacts by the defendant to satisfy the *Hanson v. Denckla* requirements.<sup>55</sup> The court, in conclusion, analogized plaintiff to "a man with his trunk and head in one state and his limbs and fingers spread over many others. If one finger is bruised, the whole body—including each of the fingers—is weakened. Most would agree, however, that the injury is localized in one finger."<sup>56</sup>

#### ARTICLE 6—JOINDER OF CLAIMS, CONSOLIDATION AND SEVERANCE

*CPLR 602: No consolidation or joint trial of actions for personal injuries and declaratory judgment of non-coverage.*

CPLR 602(a) gives the court discretion to grant a motion for joint trial of any or all matters in issue where the pending actions involve a common question of law or fact. This provision is primarily designed to avoid the danger of divergent decisions on a similar issue.

---

<sup>53</sup> 272 F. Supp. 734 (E.D.N.Y. 1967).

<sup>54</sup> *Id.* at 737.

<sup>55</sup> 357 U.S. 235 (1958).

<sup>56</sup> *Spectacular Promotions, Inc., v. Radio Station WING*, 272 F. Supp. 734, 737 (E.D.N.Y. 1967).