Ayla, LLC v. Alya Skin Pty. Ltd.

United States Court of Appeals for the Ninth Circuit

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No. 20-16214

Reporter

11 F.4th 972 *; 2021 U.S. App. LEXIS 25921 **; 2021 U.S.P.Q.2D (BNA) 898

AYLA, LLC, a Delaware Limited Liability Company, Plaintiff-Appellant, v. ALYA SKIN PTY. LTD., an Australian Private Company, Defendant-Appellee.

Prior History: Appeal from the United States District Court for the Northern District of California. D.C. No. 4:19-cv-00679-HSG. Haywood S. Gilliam, Jr., District Judge, Presiding.

Counsel: Gregory R. Smith (argued), Peter J. Gregora (argued), Bridget A. Smith, Jason C. Linger, and Colette E. Woo, Lowenstein & Weatherwax LLP, Los Angeles, California, for Plaintiff-Appellant.

David Grossman (argued) and Camron Dowlatshahi, Loeb & Loeb, Los Angeles, California, for Defendant-Appellee.

Judges: Before: J. Clifford Wallace and Daniel P. Collins, Circuit Judges, and Jed S. Rakoff,* District Judge. Opinion by Judge Rakoff.

HOpinion

[*976] RAKOFF, District Judge:

Ayla, LLC ("Ayla"), a San Francisco-based beauty brand, filed an action against Alya Skin Pty. Ltd. ("Alya Skin"), an Australian beauty and skincare brand, in the **[*977]** federal district court for the Northern District of California, alleging trademark infringement, false designation of origin, and unfair competition. (Compl. ¶ 24-53). Alya Skin moved to dismiss for lack of personal jurisdiction pursuant to *Federal Rule of Civil Procedure 12(b)(2)*. The district court granted the motion to dismiss. We hold that Alya Skin is subject to specific personal jurisdiction under *Federal Rule of Civil Procedure 4(k)(2)* and reverse.

FACTUAL AND PROCEDURAL BACKGROUND

Ayla is a San Francisco-based beauty and wellness brand that offers skincare and hair products through its online and retail stores, as well as health and personal care advice on its website. (Compl. ¶ 6, 8). Ayla is the registered owner of three trademarks for use of the "AYLA" word mark in connection with on-site beauty services, online retail beauty products and cosmetics services, and cosmetics. (Compl., ¶ 9-11, Ex. 1-3). Ayla alleges that its promotional efforts have generated significant consumer goodwill toward its brand and that Ayla's exclusive and continuous use of the AYLA mark has led the public to associate the mark with Ayla products. (Compl. ¶ 7, 12).

Defendant Alya Skin is an Australian skincare company. (Compl. ¶ 7). Its place of incorporation and principal place of business are in Australia, (Compl. ¶ 7), but Alya Skin sells and ships its products worldwide. Ayla alleges that Alya Skin began to use the marks ALYA and ALYA SKIN in connection with beauty products and online retail services in "early 2018." (Compl. ¶ 13).

Ayla brought this action against Alya Skin in the United States District Court for the Northern District of California in February 2019. The complaint asserts claims for trademark infringement and false designation of origin pursuant to the Lanham Act, *15 U.S.C. §§ 1114*, *1125(a)*, as well as unfair com-

* The Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation.

petition under the California Business & Professions Code and under California common law. (Compl. ¶ 24-53). Ayla alleges that Alya Skin has "capitalize[d] on Ayla's valuable reputation and customer goodwill … by using the confusingly similar ALYA and ALYA SKIN marks in connection with the advertisement, marketing, promotion, sale, and/or offer for sale of beauty supplies and retail store services." (Compl. ¶ 15).

Alya Skin moved to dismiss for lack of personal jurisdiction. In support of its motion, Alya Skin submitted a declaration by one of its cofounders that asserted that Alya Skin has no retail stores, offices or branches, officers, directors, or employees, bank accounts, or real property in the United States. Further, Alya Skin asserted that it does not sell its products "in any retail store in the United States," solicit business from Americans, advertise "in any publications that are directed primarily toward California residents," or otherwise direct advertising toward California through online, television, and radio marketing. The declaration also stated that Alya Skin ships worldwide but "less than 10% of its sales have been to the United States and less than 2% of its sales have been to California." Another cofounder submitted a declaration stating that Alya Skin does not employ or contract directly with social media influencers, but rather works with a Philippines-based firm to contact Instagram influencers worldwide. However, Alya Skin stated that it does contract with "a third-party logistics company" in Hayden, Idaho named Dollar Fulfilment "to fulfill all of [Alya Skin's] shipments outside of Australia and New Zealand."

In response, Ayla submitted four declarations of its own. The declarations and **[*978]** accompanying exhibits showed that Alya Skin filed an application for trademark registration in the United States on December 14, 2018, and represented to potential customers that its products are approved by the U.S. Food and Drug Administration (FDA). The declarations also showed that Alya Skin ships from, and allows returns to, the Idaho facility that Alya Skin identified as Dollar Fulfillment.

Ayla also offered evidence regarding Alya Skin's online activities. The Alya Skin website listed United States dollars as the default currency when accessed by plaintiff's counsel. The website advertises two-to four-day delivery to the United States, two-to five-day delivery to New Zealand and Australia, and five-to ten-day delivery outside of those countries. On November 20, 2018, Alya Skin posted advertisements for a "Black Friday" sale on its Facebook page. Alya Skin later advertised in an Instagram post: "ATTENTION USA BABES WE NOW ACCEPT afterpay." Ayla also asserted that Alya Skin "appear[ed] to have hired social media influencers" who live in the United States. Lastly, Ayla offered evidence of Alya Skin's website, which states that its products have been featured in American magazines, including *Vogue* and *Teen Vogue*.

STANDARD OF REVIEW

We review *de novo* the district court's dismissal for lack of personal jurisdiction. *CollegeSource, Inc. v. AcademyOne, Inc., 653 F.3d 1066, 1073 (9th Cir. 2011)*. When a motion to dismiss is "based on written materials rather than an evidentiary hearing, 'the plaintiff need only make a prima facie showing of jurisdictional facts.'" *Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 800 (9th Cir. 2004)* (quoting *Sher v. Johnson, 911 F.2d 1357, 1361 (9th Cir. 1990)*). We "may not assume the truth of allegations in a pleading which are contradicted by affidavit," *Data Disc, Inc. v. Sys. Tech. Assocs., Inc., 557 F.2d 1280, 1284 (9th Cir. 1977)*, but factual conflicts between dueling affidavits "must be resolved in the plaintiff's favor." *Schwarzenegger, 374 F.3d at 800*.

DISCUSSION

Ayla challenges the district court's determination that it did not have nationwide jurisdiction over Alya Skin pursuant to *Federal Rule of Civil Procedure 4(k)(2)*. Personal jurisdiction is proper under *Rule 4(k)(2)* when (1) the action arises under federal law, (2) "the defendant is not subject to jurisdiction in any state's courts of general jurisdiction," and (3) the court's exercise of jurisdiction comports

with due process. [1] *See* Fed. R. Civ. P. 4(k)(2). Ayla's Lanham Act action relating to trademark infringement and false designation of origin undisputedly arises under federal law, and on appeal, Ayla only challenges the district court's holding with respect to nationwide jurisdiction. [2] Thus, our only inquiry is whether the district court erroneously held that the exercise of nationwide jurisdiction over Alya Skin does not "comport **[*979]** with due process." *See* Pebble Beach Co. v. Caddy, 453 F.3d 1151, 1159 (9th Cir. 2006).

Under Rule 4(k)(2), the due process analysis "is nearly identical to traditional personal jurisdiction analysis … [but] rather than considering contacts between [the defendant] and the forum state, we consider contacts with the nation as a whole." *Holland Am. Line Inc. v. Wärtsilä N. Am., Inc., 485 F.3d 450, 462 (9th Cir. 2007)*.

A district court's exercise of jurisdiction over a nonresident defendant comports with due process when the defendant has at least "minimum contacts" with the forum and subjecting the defendant to an action in that forum would "not offend traditional notions of fair play and substantial justice." Int'l. Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945) (citation and quotation marks omitted); *see also Holland Am. Line, 485 F.3d at 462*. A defendant's minimum contacts can give rise to either general or specific jurisdiction. *See* Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414-15, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984). The district court here could not assert general jurisdiction over Alya Skin, because neither Alya Skin's principal place of business nor its place of incorporation is in the United States, and Alya Skin cannot be considered "at home" in the United States. *See* Daimler AG v. Bauman, 571 U.S. 117, 137, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014); (Compl. at ¶ 7). Accordingly, the sole potential basis for personal jurisdiction is specific jurisdiction.

Specific jurisdiction exists over nonresident Alya Skin (1) if the company "performed some act or consummated some transaction" by which it "purposefully directed its activit[ies]" toward the United States or "purposefully availed itself of the privilege of conducting business" in the United States, (2) if Ayla's Lanham Act and unfair competition claims "arise out of or result from" Alya Skin's "forum-related activities," and (3) if the exercise of jurisdiction is reasonable. *See* Rio Props., Inc. v. Rio Int'l Interlink, 284 F.3d 1007, 1019-20 (9th Cir. 2002). "The plaintiff bears the burden on the first two prongs," but once both are established, "the defendant must come forward with a 'compelling case' that the exercise of jurisdiction would not be reasonable." Boschetto v. Hansing, 539 F.3d 1011, 1016 (9th Cir. 2008) (quoting Schwarzenegger, 374 F.3d at 802).

I.

Our analysis under the "purposeful availment or direction" prong of the specific jurisdiction test turns on the nature of the underlying claims. *See* Morrill v. Scott Fin. Corp., 873 F.3d 1136, 1142 (9th Cir. 2017). We generally focus our inquiry on purposeful availment when the underlying claims sound in contract and on purposeful direction when they arise from alleged tortious conduct committed outside the forum. *Id.*; *see also* Schwarzenegger, 374 F.3d at 802-03 (applying the purposeful direction test where "defendant's actions outside the forum state … are directed at the forum, such as the distribution in the forum state of goods originating elsewhere"). Trademark infringement is treated as tort-like for personal jurisdiction purposes, and so

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[1] Rule 4(k)(2) is not disfavored in this Circuit. The district court accurately commented that courts have rarely exercised jurisdiction under 4(k)(2), but this rarity simply reflects that situations where a defendant has the requisite contacts with the United States but not with any one state are unusual. The rarity of the rule's applicability does not indicate that Rule 4(k)(2) imposes a higher standard for due process.

[2] In the district court, Ayla had argued that Alya Skin is subject to personal jurisdiction in California and, in the alternative, that it is subject to nationwide jurisdiction pursuant to Rule 4(k)(2). The district court held that Ayla failed to prove that Ayla is subject to personal jurisdiction in California. Ayla does not challenge that holding on appeal and states that its appeal "is premised solely on Rule 4(k)(2)."

we focus on purposeful direction here. *AMA Multimedia, LLC v. Wanat, 970 F.3d 1201, 1208 (9th Cir. 2020)* ("[The plaintiff] alleges copyright and trademark infringement claims, which sound in tort, so we apply a 'purposeful direction' analysis and ask whether [the defendant] has purposefully directed activities at the United States." (citation omitted)).

[*980] Under the "effects test" set forth in *Calder v. Jones, 465 U.S. 783, 104 S. Ct. 1482, 79 L. Ed. 2d 804 (1984)*, a defendant purposefully directs its activities toward the forum when the defendant has "(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *Axiom Foods, 874 F.3d at 1069* (quoting *Wash. Shoe Co. v. A-Z Sporting Goods Inc., 704 F.3d 668, 673 (9th Cir. 2012)*). Express aiming requires more than the defendant's awareness that the plaintiff it is alleged to have harmed resides in or has strong ties to the forum, because "the plaintiff cannot be the only link between the defendant and the forum." *Walden v. Fiore, 571 U.S. 277, 285, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014)*. "'[S]omething more'—conduct directly targeting the forum"—is required to confer personal jurisdiction. *Mavrix Photo, Inc. v. Brand Techs., Inc., 647 F.3d 1218, 1229 (9th Cir. 2011)* (quoting *Rio Props., 284 F.3d at 1020*).

Here, Ayla has adduced sufficient evidence of "something more" to satisfy the effects test set forth in *Calder*. Alya Skin's marketing, sales, and operations reflect significant focus on the United States. These connections are not premised on Alya Skin's connection to the plaintiff. Rather, each of these connections are between Alya Skin and the forum itself.

Specifically, Alya Skin promoted its allegedly infringing product by means of references explicitly aimed at Americans. Such "significant advertising efforts," locally targeted toward the forum, establish purposeful direction. *See Sinatra v. Nat'l Enquirer, Inc., 854 F.2d 1191, 1195-96 (9th Cir. 1988)* (citing defendant's "California advertising efforts to attract patients" as evidence of purposeful direction); *see also CollegeSource, 653 F.3d at 1080* (use of California-specific Google AdWords constituted purposeful interjection). By advertising on Instagram with the words "ATTENTION USA BABES WE NOW ACCEPT afterpay," Alya Skin targeted its promotional materials specifically towards the United States. This post was an intentional, explicit appeal to American consumers and no others.

The district court found that Alya Skin's marketing targeted sales internationally rather than specifically at Americans. But, in so finding, the district court ignored instances where Alya Skin did target its sales specifically at Americans, most notably the "ATTENTION USA BABES" post. Moreover, the district court improperly discounted the significance of Alya Skin's advertising for "Black Friday" sales, *i.e.*, sales on the day after the U.S.'s distinctive Thanksgiving holiday. Although Alya Skin presented evidence that Black Friday is "slowly catching on in Australia," Alya Skin's own evidence underscores that Black Friday originated in the U.S. and remains "America's biggest shopping day." Taken together with Alya Skin's other advertising aimed at Americans, the company's "Black Friday" advertising provides further support for the conclusion that Alya Skin's marketing targeted the United States. *See Schwarzenegger, 374 F.3d at 800* (where no evidentiary hearing was held, conflicts between affidavits "must be resolved in the plaintiff's favor"). In addition, Alya Skin advertised on its website that its products were featured in American magazines, including *Teen Vogue* and *Vogue*. We need not decide whether the magazine features referenced on Alya Skin's website would by themselves establish purposeful direction and confer personal **[*981]** jurisdiction. [3] But in the

[3] Citing Alya Skin's website, Ayla contends that Alya Skin's products were featured in American publications but does not, with any specificity, allege that Alya Skin paid for or otherwise initiated its products' inclusion in these "features." In the absence of specific factual allegations about the degree of control that Alya Skin exercised over its magazine contacts with the United States, we will not conclude that they are sufficient in themselves to satisfy the purposeful direction requirement.

context of Alya Skin's other advertising, they reinforce our conclusion here that Alya Skin satisfied the purposeful direction requirement by directing "an insistent marketing campaign … toward [the forum.]" *See* Rio Props., 284 F.3d at 1020 (holding website-operator defendant's magazine advertisements supported the exercise of jurisdiction where defendant also ran local radio advertisements). That Alya Skin may have addressed much of its advertising to an international or Australian audience does not alter the jurisdictional effect of marketing targeted specifically at the United States, the relevant forum.

With respect to Alya Skin's volume of sales in the United States, Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984), is instructive. In *Keeton*, the Supreme Court upheld the exercise of jurisdiction in New Hampshire over a nonresident magazine publisher defendant. Id. at 772-75. The Court reasoned that although the magazine publisher had a nationwide audience and had not targeted the forum particularly, it should reasonably anticipate an action "wherever a substantial number of copies are regularly sold and distributed." Id. at 781.

Alya Skin's substantial sales to American consumers are similar to the significant volume of sales in *Keeton*. Nearly ten percent of Alya Skin's products are sold in and shipped to the United States. By this percentage-of-sales measure—the only metric in the record before us—Alya Skin's sales to the forum are considerably more regular and significant than those in *Keeton*. *Compare* Keeton v. Hustler Mag., Inc., 682 F.2d 33, 33 (1st Cir. 1982) ("[Defendant's] circulation in New Hampshire amounts to less than one percent of their total circulation in the United States."), *rev'd and remanded*, 465 U.S. 770, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984), *with* ("Alya Skin offers to ship its products worldwide but less than 10% of its sales have been to the United States."). As *Keeton* demonstrates, there is no "small percentage of sales" exception to the purposeful direction principles discussed herein. Alya Skin's sales to the forum are no less substantial simply because the company sold more products elsewhere. Alya Skin's argument that its United States sales are "*de minimis*" and preclude the exercise of jurisdiction therefore fails.

To be sure, Alya Skin's contacts with the United States would be insufficient if they were "random, isolated, or fortuitous." Keeton, 465 U.S. at 774. But Alya Skin has done more than merely place its products into the stream of commerce, running the risk that its products might randomly or serendipitously arrive in the United States. *See Holland Am. Line, 485 F.3d at 459-60* (contrasting "mere placement of a product into a stream of commerce" and "sell[ing] … products directly into the United States"). Alya Skin offers its products directly for sale to the United States on its website. Though some of its sales to the United States may have occurred through third-party websites, like Instagram and Facebook, Alya Skin operates those social media accounts. Further, Alya Skin is not a parts manufacturer with no control over the ultimate distribution of its products. **[*982]** *See* Asahi Metal Indus. Co., Ltd. v. Super. Ct. of Cal., Solano Cnty., 480 U.S. 102, 112-13, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987) (plurality) (finding no jurisdiction where a parts manufacturer "did not create, control, or employ the distribution system that brought its valves to California"). To the contrary, Alya Skin determines how and whether its orders are fulfilled.

Further, Alya Skin's choice of fulfilment center is especially telling. Alya Skin contracts with a fulfilment center located in Idaho to ship its products throughout the United States and elsewhere. When a defendant corporation chooses to associate itself with a forum through a contractual relationship that "envision[s] continuing and wide-reaching contacts," the defendant purposefully avails itself of the forum and satisfies minimum contacts. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 480, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985); *see also* McGee v. Int'l Life Ins., 355 U.S. 220, 223-24, 78 S. Ct. 199, 2 L. Ed. 2d 223 (1957) (insurance contract with forum resident fairly subjected insurer to jurisdiction because of the continuing nature of the contractual relationship); *cf.* Boschetto, 539 F.3d at 1019 (holding no purposeful direction where only connection to the forum was "a one-time contract for the sale of a good"). The contract between Alya

Skin and Dollar Fulfillment was ongoing and envisioned performance in the United States. Although the distribution center shipped Alya Skin products worldwide, performance of the contract clearly contemplated shipping products from Idaho to consumers throughout the United States.

As the Supreme Court emphasized in *Burger King*, courts ought to consider the "contemplated future consequences" of the contract to decide whether a defendant purposefully availed itself of the forum. *Burger King, 471 U.S. at 479*. Alya Skin contemplated not only that performance would occur in the forum, but also that the location of the distributor could help Alya Skin better serve the American market and grow its American contacts. By contracting with a distribution center in the United States, Alya Skin could offer two-to four-day shipping within the United States, whereas delivery to most other parts of the world would take five to ten days.

Finally, Alya Skin's purported FDA approval supports the conclusion that the defendant sought out the benefits afforded by this country's regulatory regime. [4] Alya Skin represents to consumers that its products are "FDA approved." Obtaining and advertising approval by the FDA, a United States regulatory agency, is an appeal specifically to American consumers for whom the acronym "FDA" has meaning. Alya Skin offers no other explanation for obtaining and advertising FDA approval. This case is thus distinguishable from *Goodyear Dunlop Tires Operations S.A. v. Brown*, where the Supreme Court found no personal jurisdiction over a foreign tire company even when its products "conformed to tire standards established by **[*983]** the U.S. Department of Transportation and bore markings required for sale in the United States." *564 U.S. 915, 922, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2011)*. There is no evidence here that, as with the Department of Transportation in *Goodyear*, the FDA encourages foreign corporations to conform with its safety standards to show generally that its products are safely manufactured. *See id. at 922 n.2*. On the contrary, the FDA's extraterritorial jurisdiction is limited to products "intended for import into the United States." *21 U.S.C. § 337a*.

Viewing the facts in totality and in the light most favorable to plaintiff, *Schwarzenegger, 374 F.3d at 800*, we conclude that Alya Skin purposefully directed its activities toward and availed itself of the protections and benefits of the United States.

II.

We now turn to the specific jurisdiction "nexus" question: whether Ayla's claims "arise out of or result from" Alya Skin's "forum-related activities." *See Rio Props., 284 F.3d at 1019*; *Axiom Foods, 874 F.3d at 1068-69*. In the Supreme Court's phrasing, a plaintiff's claims must "arise out of or relate to the defendant's contacts with the forum." [5] *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1026, 209 L. Ed. 2d 225 (2021)* (emphasis omitted) (quoting *Bristol-Myers Squibb Co. v. Superior Ct. of Cal., S.F. Cnty., 137 S. Ct. 1773,*

[4] Alya Skin also filed a trademark application for the ALYA SKIN mark. This might be considered compelling evidence that Alya Skin has satisfied the purposeful availment or direction test. *See, e.g.*, *Nat'l Pat. Dev. Corp. v. T.J. Smith & Nephew Ltd., 877 F.2d 1003, 1009-10, 278 U.S. App. D.C. 215 (D.C. Cir. 1989)* (en banc) ("By registering a patent in the United States Patent and Trademark Office, a party residing abroad purposefully avails itself of the benefits and protections patent registration in this country affords."). However, the trademark application was withdrawn before any action was taken on it. The parties dispute whether the withdrawn application constitutes an additional significant contact. We need not decide this issue because, in all events, we do not see how the claims in this case could be said to arise out of or relate to a *withdrawn* application.

[5] Alya Skin contends that Ayla "has not adequately shown that the[] purported sales to the United States are the 'but for' cause of its harm." This argument is misguided. We clarify that our precedents permit but do not require a showing of but-for causation to satisfy the nexus requirement. *See, e.g., Core-Vent Corp. v. Nobel Indus. AB, 11 F.3d 1482, 1490 (9th Cir. 1993)* (applying "arises out of or related to" test). A narrower test is foreclosed by the Supreme Court's recent decision in *Ford Motor, 141 S. Ct. at 1026*. In that case, the Supreme Court emphasized that a strict causal relationship is not required. *See id.* ("None of our precedents has suggested that only a strict causal relationship between the defendant's in-state activity and the litigation will do.").

1780, 198 L. Ed. 2d 395 (2017)).

This action both arises out of and relates to Alya Skin's contacts with the United States. *Id.* Ayla challenges Alya Skin's promotion, sale, and distribution of beauty products bearing the ALYA mark on the ground that this mark is confusingly similar to Ayla's own trademark. Alya Skin's contacts with the United States include the very same promotions, sales, and distribution of which Ayla complains. Ayla sought to capture the attention of an American audience and thereby sell allegedly infringing products to that audience with advertisements addressed to "USA BABES," representations that its products were approved by the FDA, and promises that it could ship goods from the Idaho distribution center to American customers within five business days. Further, Alya Skin has been somewhat successful in its efforts: about 10% of its total sales are to the United States. Each of these contacts relate to Ayla's claims because they are part of Alya Skin's attempts to serve and attract customers in the United States market, which caused Ayla's injuries in the United States. Thus, Ayla's claims arise out of Alya Skin's contacts with the United States. *See id.*

III.

Because Ayla has met its burden of proving that Alya Skin purposefully directed its activities at the forum and that the instant claims arise out of or relate to those activities, the burden shifts to Alya Skin to present a "compelling case" that the exercise of jurisdiction would be unreasonable **[*984]** and therefore violate due process. Boschetto, 539 F.3d at 1016. In this inquiry, we are guided by seven factors: "(1) the extent of the defendant's purposeful interjection into the forum state's affairs; (2) the burden on the defendant of defending in the forum; (3) the extent of conflict with the sovereignty of the defendant's state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum." Freestream Aircraft (Berm.) Ltd. v. Aero L. Grp., 905 F.3d 597, 607 (9th Cir. 2018).

The purposeful interjection factor in the reasonableness analysis is "analogous to the purposeful direction" factor. Sinatra, 854 F.2d at 1199. As discussed above, the extent of Alya Skin's contacts with the United States is substantial. Alya Skin has a "regular course" of sales of the allegedly infringing products into the United States and produced marketing directed at American consumers. *Cf. J.* McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 889, 131 S. Ct. 2780, 180 L. Ed. 2d 765 (2011) (Breyer, J., concurring in judgment). Alya Skin maintains ongoing ties to the forum through its contract with Dollar Fulfillment, a fulfillment center in Idaho that enables Alya Skin to ship its products quickly within the United States. Accordingly, this factor weighs in favor of jurisdiction.

In light of Alya Skin's extensive contacts with the United States, Alya Skin's argument that it would suffer financial hardship and be unduly burdened because its cofounders would have to travel to the United States for court appearances is entitled to little weight. We recognize that litigation in a distant forum is inconvenient. More importantly, we acknowledge "unique burdens placed upon one who must defend oneself in a foreign legal system." Asahi Metal, 480 U.S. at 114. However, these burdens do not outweigh the contacts on which Ayla's claims are premised. *See id.* ("When minimum contacts have been established, often the interests of the plaintiff and the forum in the exercise of jurisdiction will justify even the serious burdens placed on the alien defendant.").

The remaining factors weigh in favor of jurisdiction because of the territorial nature of Ayla's claims. Although litigation against a foreign corporation "creates a higher jurisdictional barrier than against a citizen from a sister state because important sovereignty concerns exist," Sinatra, 854 F.2d at 1199, the resolution of Ayla's claims will unlikely undermine Australian sovereignty. Ayla seeks only the determination and enforcement of its rights under United States trademark law and California unfair competition law and challenges Alya Skin's sales only in the United States.

Because Ayla's claims rest on the law of California and the United States, the United States would provide "the most efficient judicial resolution of the controversy," as well as better provide Ayla "convenient and effective relief." *Freestream Aircraft, 905 F.3d at 607*. The United States also has a clear interest in protecting its consumers from confusion and providing redress for violations of its trademark laws. Although Alya Skin asserts that Ayla "has not provided any evidence that Australia, or any other jurisdiction, is unavailable to adjudicate a trademark dispute such as this one," we have held that "[w]hether another reasonable forum exists becomes an issue only when the forum state is shown to be unreasonable." *CollegeSource, 653 F.3d at* ***[*985]*** *1080* (citation omitted). Alya Skin "has not made that showing." *Id.*

Though the burden on Alya Skin of litigating this case under a foreign dispute resolution system may be relatively high, it does not outweigh Ayla's interest in adjudicating its trademark dispute in the United States. The exercise of jurisdiction over Alya Skin is reasonable and thus satisfies the demands of due process.

CONCLUSION

For the foregoing reasons, we hold that Alya Skin is subject to specific personal jurisdiction in the United States under *Federal Rule of Civil Procedure 4(k)(2)*. Accordingly, we reverse the district court's dismissal of Ayla's complaint.

REVERSED AND REMANDED.