United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-7033 **September Term, 2017**

FILED ON: JULY 17, 2018

TRIPLE UP LIMITED,

APPELLANT

v.

YOUKU TUDOU INC.,

APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:16-cv-00159)

Before: ROGERS and MILLETT, *Circuit Judges*, and SENTELLE, *Senior Circuit Judge*.

JUDGMENT

This case was considered on the record from the United States District Court for the District of Columbia, and on the briefs and oral arguments of the parties. The Court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* FED. R. APP. P. 36; D.C. CIR. R. 36(d). It is

ORDERED AND ADJUDGED that the district court's judgment is affirmed.

Youku Tudou Incorporated is a Chinese internet television company that streams original content, user-uploaded videos, and licensed works through its web-based platforms. Youku primarily conducts its business in China, where it maintains its headquarters and more than 3,300 staff. Youku has no offices or employees in the United States, and less than one quarter of one percent of its monthly viewers comes from the United States, not one of whom is alleged to have viewed the videos at issue. Oral Argument Tr. at 31.

Triple Up Limited is a Seychelles company that owned, as relevant here, the exclusive right to broadcast in the United States three Taiwanese movies: "Sleeping Youth," "Sorry, I Love You," and "Squirrel Suicide Incident." Compl. ¶ 1. Those exclusive licenses all expired by the end of November 2017.

Over the course of five months in 2015, Triple Up's attorney streamed these three movies through Youku's website on a computer in his office in the District of Columbia. When Triple Up notified Youku that it was violating copyright law, Youku removed "all versions" of the films at issue within twenty-four hours. J.A. 64.

Triple Up sued Youku in the District Court for the District of Columbia, claiming that its streaming of the videos into the United States infringed Triple Up's exclusive broadcast rights. Triple Up's complaint raises various claims against Youku, including violations of the Copyright Act, 17 U.S.C. § 101 *et seq.*, Lanham Act, 15 U.S.C. § 1125(a), and District of Columbia statutory and common law. The district court dismissed the case for lack of personal jurisdiction on the ground that Youku's isolated internet-based contacts with the United States were insufficient to support specific personal jurisdiction. *See Triple Up Ltd. v. Youku Tudou Inc.*, 235 F. Supp. 3d 15, 31–32 (D.D.C. 2017).

We review the district court's dismissal for lack of jurisdiction *de novo*, *Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 509 (D.C. Cir. 2002), and we affirm due to the absence of both personal jurisdiction and remedial jurisdiction over Triple Up's request for injunctive relief. During litigation, Triple Up abandoned its claim for statutory damages under the Copyright Act, limiting its requested relief to an injunction and actual damages.

In federal court, a plaintiff must establish jurisdiction "for each claim it seeks to press." *Washington Alliance of Technology Workers v. United States Dep't of Homeland Security*, 892 F.3d 332, 339 (D.C. Cir. 2018) (internal quotation and alteration omitted). But Triple Up cannot demonstrate jurisdiction over its request for injunctive relief. Triple Up admits that Youku removed all potentially infringing videos promptly once notified, and that Triple Up has no basis to believe that the videos will be re-posted. In addition, Triple Up's exclusive broadcast license expired nearly eight months ago. Because Triple Up has not plausibly alleged "any real or immediate threat that [it] will be wronged again," the "equitable remedy" of an injunction is "unavailable." *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983); *see id.* at 101–102 (to have Article III standing, plaintiff must show that she "is immediately in danger" and that the "threat of injury" is "not conjectural or hypothetical") (internal quotations omitted); *In re Navy Chaplaincy*, 697 F.3d 1171, 1175 (D.C. Cir. 2017) (when plaintiffs "seek forward-looking injunctive relief, past injuries alone are insufficient to establish standing[;]" they must show "that they face an imminent threat of future injury") (internal citations omitted). Triple Up, for its part, concedes that the expiration of its licenses rendered the request for injunctive relief moot—that is, that Triple Up faces no prospective risk of injury. Oral Argument Tr. at 17.

As to Triple Up's claim for actual damages, personal jurisdiction is lacking. Triple Up bears the burden of plausibly alleging a factual basis for exercising personal jurisdiction over Youku. *See Crane v. New York Zoological Society*, 894 F.2d 454, 456 (D.C. Cir. 1990). Conclusory statements in a complaint "do not constitute the *prima facie* showing necessary to carry the burden of establishing personal jurisdiction." *First Chicago Int'l v. United Exchange Co.*, 836 F.2d 1375, 1378–1379 (D.C. Cir. 1988) (citation and internal alteration omitted). Instead, the focus of the

personal jurisdiction inquiry is whether Youku "has sufficient contacts with the United States as a whole to justify the exercise of personal jurisdiction under the Due Process Clause of the Fifth Amendment." *Mwani v. bin Laden*, 417 F.3d 1, 11 (D.C. Cir. 2005). Personal jurisdiction will exist if Youku "purposefully directed [its] activities at residents of the forum and the litigation results from alleged injuries that arise out of or relate to those activities," *id.* at 12 (internal citations omitted), or Youku's "suit-related conduct" otherwise created a "substantial connection with the [United States]," *Walden v. Fiore*, 571 U.S. 277, 284 (2014).

Triple Up's complaint fails to allege any plausible basis for personal jurisdiction. First, Youku lacks a significant "physical presence" in the United States: it maintains no offices and has no employees here. *Walden*, 571 U.S. at 285. Nor has Youku registered an agent with the United States Copyright Office "because it does not target its services at United States residents or regularly conduct business in the United States." J.A. 63. To notify Youku of a potential copyright infringement, a company has to mail a take-down notice to Youku's address in Beijing. While Youku does have an agent for service of process in New York and some software development deals with United States companies, *Triple Up*, 235 F. Supp. 3d at 31, those contacts are wholly unrelated to the copyright infringement and unfair competition claims arising out of its free streaming services that are at issue here.

Second, nothing in the complaint plausibly alleges or indicates that United States viewers "actually engage in any business transactions with the defendant[]" here. *GTE New Media Services Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1350 (D.C. Cir. 2000). Personal jurisdiction "cannot be based solely on the ability of District residents to access the defendant[']s] websites, for this does not by itself show any persistent course of conduct by the defendant[] in the [forum]." *Id.* at 1349. The complaint does not allege that any United States viewer, including Triple Up's attorney, paid for or otherwise engaged in a business transaction with Youku when viewing the videos. *See Spanski Enters., Inc. v. Telewizja Polska, S.A.*, 883 F.3d 904, 907 (D.C. Cir. 2018) (copyright infringement found when a foreign defendant streamed episodes to United States viewers through its video-on-demand service); *see also Spanski Enterprises, Inc. v. Telewizja Polska, S.A.*, 222 F. Supp. 3d 95, 100–101 (D.D.C. 2016) (viewers pay to stream specific videos through the video-on-demand service); *cf. Gorman*, 293 F.3d at 512 (general personal jurisdiction existed because "District residents use [the defendant's] website to engage in electronic transactions with the firm[,]" such as opening brokerage accounts, transmitting funds, and buying and selling securities). Nor is there any plausible allegation that Youku designed its websites even to make them generally usable by viewers in the United States, let alone to purposefully target them. The text on its websites is entirely in Mandarin Chinese.

Third, Triple Up is incorporated in Seychelles and does not allege that it has distinct business operations in the United States that were injured by Youku. *Cf. Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773, 1782 (2017) (acknowledging that plaintiffs' lack of residency or harm in the forum undermined the strength of the minimum contacts).

Triple Up argues that Youku purposefully availed itself of the United States forum by passively permitting the videos to be streamed in the United States along with "geographically

targeted" advertisements. Triple Up Br. 16. Youku indisputably derives revenue from advertisements that accompany its videos, but Triple Up has not shown that Youku was in control of the advertisements' placement with particular films or "purposefully directed" them toward United States viewers, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). Advertisers purchase Youku's online advertising services through third-party agencies. So while Youku "act[s] to maximize usage of [its] websites," *GTE*, 199 F.3d at 1350, Triple Up has not alleged facts plausibly showing that Youku played a material role in pairing advertisements with specific videos based on viewership, *see Walden*, 571 U.S. at 286 ("[A] defendant's relationship with a * * * third party, standing alone, is an insufficient basis for jurisdiction."). Triple Up's own evidence proves the insufficiency of the connection in that the advertisements accompanying two of the three films were in Mandarin for Chinese video games.

Nor are any facts alleged suggesting that Youku acted intentionally or in bad faith in a manner that led to the three films being viewed in the United States. *See Spanski*, 883 F.3d at 908 (imposing liability where videos only became available in the United States because the defendant had purposefully turned off the default territorial restrictions, had "tried to cover its tracks by abruptly deleting several of the episodes' non-geoblocked formats and then retrospectively altering certain work logs * * * to give the incorrect impression that the episodes had appeared exclusively in geoblocked formats all along"). Youku's limited control over the videos streamed from its websites is reduced further still because users are free to upload their own content to Youku's web-based platforms. *See Walden*, 571 U.S. at 284 ("[T]he relationship must arise out of contacts that the defendant *himself* creates with the forum State.") (internal citation and quotation marks omitted).

Lastly, Triple Up argues that the district court erred in denying it jurisdictional discovery. We review the denial of jurisdictional discovery for an abuse of discretion, and find none here. *See Mwani*, 417 F.3d at 17; *FC Investment Group LC v. IFX Markets, Ltd.*, 529 F.3d 1087, 1091 (D.C. Cir. 2008). Triple Up seeks to depose Youku's Legal Director for information concerning Youku's streaming broadcasts and advertisements and their associated revenues; Youku's "geo-coding and geo-blocking capabilities, policies, and activities[;]" the extent of Youku's VIP service; the location of its servers; and Youku's business dealings with United States companies and investment activities. J.A. 90–91.

Triple Up has offered nothing more than a jurisdictional theory in search of facts to go with it. But jurisdictional discovery is not a fishing expedition. At bottom, Triple Up argues that some English-language advertisements placed by third party advertising agencies, along with a miniscule percentage of monthly internet views coming from the United States, suffices to establish personal jurisdiction, notwithstanding the absence of any Youku business operations in the United States relevant to the alleged harm. That is not enough to establish the minimum contacts required for personal jurisdiction.

Neither has Triple Up plausibly alleged any connection between Youku's VIP service or its business dealings in the United States and its free streaming services and user-uploaded video platforms, which are at issue here. A plaintiff's discovery request "cannot be based on mere

conjecture or speculation." *FC Investment Group*, 529 F.3d at 1094 (citation omitted). While a server in the United States could be jurisdictionally relevant, Triple Up's query is based on a hunch, and the district court properly found that, given the lack of any Youku offices or employees here, a sole server would not change the jurisdictional bottom line. *See Triple Up*, 235 F. Supp. 3d at 31. A district court acts well within its discretion in denying a discovery request when the additionally discovered facts would not affect the jurisdictional analysis. *See Mwani*, 417 F.3d at 17. For those reasons, we conclude the district court did not abuse its discretion in denying the request for jurisdictional discovery, and the district court's judgment is affirmed.

PER CURIAM

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk