

No. \_\_\_\_\_

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IN THE  
**Supreme Court of The United State**

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ZEMBRKA, DBA www.zembrka.com, www.daihb-  
idh.com; www.zembrka.com; www.daibh-idh.com

*Petitioner,*

*v.*

AMERICAN GIRL, LLC.

*Respondent*

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**ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT**

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**PETITION FOR WRIT OF CERTIORARI**

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**Tao Liu**

**Tianyu Ju**

*Counsel of Record*

Glacier Law LLP

41 Madison Avenue, Suite 2529

New York, NY 10010

(626)663-1199

tao.liu@glacier.law / iris.ju@glacier.law

*Counsel for Petitioner*

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## **QUESTION PRESENTED**

Whether an e-commerce seller's virtual presence and conduct – operating an interactive website accessible in a forum state – constitutes “minimum contacts” sufficient to establish specific personal jurisdiction.

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

## RELATED PROCEEDING

United States Court of Appeals for the Second Circuit:

*AMERICAN GIRL LLC v. ZEMBRKA, et. al.*, No. 21-1381 (2nd Cir. 2024) (reported at 118 F.4th 271) (Reversing, the district court’s decision granting motion to dismiss for lack of personal jurisdiction.)

United States District Court for the Southern District of New York:

*AMERICAN GIRL LLC v. ZEMBRKA, et. al.*, No. 21-cv-02372 (S.D.N.Y. Apr. 28, 2021) (unpub., reported at 2021 WL 1699928) (Granted Petitioners’ motion to dismiss for lack of personal jurisdiction.)

*AMERICAN GIRL, LLC v. ZEMBRKA, et. al.*, No. 21-cv-02372 (S.D.N.Y. June 26, 2023) (unpub., reported at 2023 WL 4187377) (Denied Respondent’s motion for reconsideration.)

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## **PETITION FOR WRIT OF CERTIORARI**

Petitioners, ZEMBRKA, DBA [www.zembrka.com](http://www.zembrka.com), [www.daibh-idh.com](http://www.daibh-idh.com), [www.zembrka.com](http://www.zembrka.com), [www.daibh-idh.com](http://www.daibh-idh.com) (hereinafter, “Petitioners”), respectfully petition this court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

## **OPINIONS BELOW**

The decision by the United States Court of Appeals, Second Circuit reversing and remanding the district court’s decision granting motion to dismiss for lack of personal jurisdiction is reported at 118 F.4th 271. That opinion is found in the Appendix to the Petitioner for a Writ of Certiorari (or “Pet. App.”), at pages 1a-20a. The opinion of the District Court of Southern District of New York granting Petitioner’s motion to dismiss is unpublished but is reported at 2021 WL 1699928 and reprinted at Pet. App. 21a-45a. The opinion of the District Court of Southern District of New York denying Respondents’ motion for reconsideration is unpublished but is reported at 2023 WL 4187377 and reprinted at Pet. App. 46a-59a.

## **JURISDICTION**

The judgment of the Court of Appeals, Second Circuit was entered on September 17, 2024. Pet. App. 1a. Petitioner is filing this petition for a writ of certiorari within 90 days. The Court has jurisdiction under 28 U. S. C. § 1254(1).



## STATEMENT OF THE CASAE

This Court has consistently held that for a state to assert personal jurisdiction over a nonresident defendant, there must be defendant purposefully established “minimum contact” to justify such jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-5 (1985), citing *International Shoe Co. v. Washington*, 326 U.S., 310, 316 (1945). Moreover, the plaintiff’s claims “must arise out of or relate to the defendant’s contacts” with the forum. *Bristol-Myers Squibb Co., v. Superior Court of California, San Francisco County*, 582 U. S. 1773, 1786 (2017).

Respondent American Girl, LLC (“Respondent”) is a limited liability company, incorporated in Delaware, and has its principal place of business in California. Pet. App. 3a, fn.1. It has a flagship store in New York. *Id.* Respondent initiated this case under Lanham Act, asserting claims for trademark counterfeiting and trademark infringement against Petitioners, who are non-resident defendants operating interactive websites. Pet. App. 4a, 6a. While Petitioners operated the interactive websites, but no products actually shipped to New York, and the payments were refunded. Pet. App. 8a.

This case presents an ideal vehicle to address the unresolved question of whether virtual presence and conduct constitutes “minimum contacts” sufficient to establish specific personal jurisdiction.

### A. The Decisions Below

The district court granted the motion to dismiss for lack of personal jurisdiction. Pet. App. 7a. Specifically, the district court found that there was no evidence that Petitioners ever shipped the allegedly counterfeit products to New York. *Id.*

Respondent moved for reconsideration, but the district court denied the motion, concluding that “because no products actually shipped to New York and the customer payments were refunded, no business transaction occurred as was required to establish personal jurisdiction ...” Pet. App. 7a-8a. Respondent appeals the district court’s order granting motion to dismiss, and the denial of the motion for reconsideration. *Id.*

The Second Circuit reversed and remanded the district court’s order, concluding that Respondent had adequately demonstrated that Petitioners transacted business New York, as required to establish personal jurisdiction under New York long arm statute. Pet. App. 14a-15a.

This petition follows.

## REASONS FOR GRANTING THE PETITION

### I. THE DECISION BELOW DEEPENS AN ENTRENCHED SPLIT AMONG FEDERAL COURTS OF APPEALS.

The federal circuits are sharply divided on whether virtual presence and conduct constitute “minimum contacts.” The court below held that personal jurisdiction over a non-resident defendant could be established based on virtual transactions, even when those transactions were later cancelled. Pet. App. 14a-15a. In contrast, other circuits require evidence of actual sales or distribution of the allegedly infringing goods to the forum state consumers to satisfy the jurisdictional threshold.

For example, the Eleventh Circuit concluded that purposeful availment under due process was shown when, in addition to operating the fully interactive website accessible in the forum state, defendant had other conducts with the forum through selling and distributing infringing goods through his website to the forum state consumers. *Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339, 1355 (11th Cir. 2013); *citing Toys “R” Us*, 18 F.3d at 453–54; *see also be2 LLC v. Ivanov*, 642 F.3d 555, 558–59 (7th Cir. 2011) (concluding that there was insufficient evidence that the defendant, operator of a dating website which made user accounts freely available, purposefully availed himself of doing business in Illinois).

Similarly, the Third Circuit held that defendant's maintenance of interactive, commercial web sites in Spain and its two sales to New Jersey residents did not establish minimum contacts.... *Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 454-55 (3d Cir. 2003). The Sixth Circuit held that the operation of a website constitutes the purposeful availment of the privilege of acting in a forum state "if the website is interactive to a degree that reveals specifically intended interaction with residents of the state." *Brana v. Moravcik*, 2021 WL 4771008, \*2 (6th Cir. 2021) *citing* *Neogen Corp. v. Neo Gen Screening, Inc.*, 282 F.3d 883, 890 (6th Cir. 2002). Furthermore, the Sixth Circuit held that [a] single deal with an in-forum resident also does not by itself suffice. *Power Investments, LLC v. SL EC, LLC*, 927 F.3d 914, 918 (6th Cir. 2019); *citing* *Burger King*, 471 U.S. at 478, 105 S.Ct. 2174.

The Eight Circuit similarly declined to exercise of specific personal jurisdiction in the forum state over nonresident internet-based defendant, based upon allegation that one consumer from the forum state accessed defendant's nationally available website and purchased one t-shirt bearing plaintiff's logo. *Bros. & Sisters in Christ, LLC v. Zazzle, Inc.*, 42 F.4th 948, 953 (8th Cir. 2022). Likewise, the Federal Circuit held that defendant's website together with its contacts offering a free trial to plaintiff create only an "attenuated affiliation" with the forum as opposed to a "substantial connection" with the forum State as required for specific jurisdiction. *NexLearn, LLC v. Allen Interactions, Inc.*, 859 F.3d 1371, 1378 (Fed. Cir. 2017), *quoting* *Burger King*, 471 U.S. at 475, 105 S.Ct. 2174.

This divergence among the circuits underscores the urgent need for this Court’s review. Moreover, these differing outcomes give plaintiffs every reason to bring suit in the courthouse they believe will be more receptive to their claims. Given that the potential for “[f]orum shopping” is “a substantial reason for granting certiorari,” this Court’s intervention is both timely and necessary to resolve this critical issue. *Yee v. City of Escondido*, 503 U.S. 519, 538 (1992).

## **II. THE DECISION BELOW MUST BE REVERSED.**

The Second Circuit’s approach deviates from this Court’s instruction in *Burger King*, which emphasizes that the “minimum contacts” requirement with regard to the defendant and the forum state ensures that a nonresident defendant will not be forced to defend itself from litigation initiated in a foreign jurisdiction as a result of “random, fortuitous, or attenuated contacts” with the forum. *Burger King*, at 475. Therefore, the decision below must be reversed to align with established precedent and ensure fairness to the non-resident defendant.

## **III. THIS CASE IS AN IDEAL VEHICLE TO PROVIDE A GUIDANCE.**

This case presents an ideal opportunity for the Supreme Court to resolve the specific personal jurisdiction issue when virtual presence and contacts

were involved. The implications extend beyond the immediate parties. The Supreme Court's intervention is crucial to uphold the uniformity and integrity of federal laws, providing clear guidance on this pivotal issue.

### CONCLUSION

For the foregoing reasons, petitioners respectfully request that this Court issue a writ of certiorari.

Respectfully submitted,

/s/ Tao Liu

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Tao Liu

Tianyu Ju

*Counsel of Record*

Glacier Law LLP

41 Madison Avenue, Suite 2529

New York, NY 10010

(626)663-1199

tao.liu@glacier.law

iris.ju@glacier.law

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