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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Dansons US LLC,

10 Plaintiff,

11 v.

12 ASmoke USA LLC,

13 Defendant.  
14

No. CV-20-01853-PHX-MTL

**ORDER**

15 Before the Court is Defendant ASmoke USA LLC's ("ASmoke") Motion to Dismiss  
16 for Lack of Personal Jurisdiction (the "Motion") (Part of Doc. 13). For the reasons set forth  
17 below, the Motion is granted.

18 **I. BACKGROUND**

19 Plaintiff, Dansons US LLC ("Dansons"), is an Arizona limited liability corporation  
20 with its principal place of business in Arizona. (Doc. 28 ¶ 9.) Dansons manufactures and  
21 sells "high quality barbeque grills, smokers, and related products to consumers  
22 nationwide." (*Id.* ¶ 18.) Part of Dansons' portfolio of brands includes PIT BOSS®, which  
23 has developed a "large following[] among grilling enthusiasts" and enjoys a "large  
24 following on social media and in popular culture." (*Id.*) Dansons alleges that it has  
25 exclusively used the trademark "BIGGER, HOTTER, HEAVIER" (the "Dansons  
26 Trademark") in connection with its products since September 2015. (*Id.* ¶ 19.) Dansons  
27 filed a trademark application seeking registration of the Dansons Trademark, which was  
28 unopposed. (*Id.* ¶ 20.) After Dansons filed its Complaint, the Dansons Trademark became

1 registered. (Doc. 16-6 at 2.)

2 ASmoke is a Delaware limited liability company with its principal place of business  
3 in Delaware. (*Id.* ¶ 10; Doc. 13 at 7.) ASmoke also markets and sells barbecue grills that  
4 are made by a “non-party manufacturer.” (Doc. 13 at 7.) ASmoke’s grills included an  
5 under-the-lid printout that was nearly identical to what Dansons used and displayed the  
6 phrase “BIGGER, HOTTER, HEAVIER.” (*See* Doc. 28 ¶ 35.) ASmoke sold sixty-three  
7 allegedly infringing grills in the United States. (Doc. 13 at 6.) Of those sales, “only three  
8 were made in Arizona, and one of those sales was to [Dansons].” (*Id.*) After these sales,  
9 ASmoke contends that it “discontinued use of the allegedly infringing print-out upon  
10 receipt of a cease and desist letter from [Dansons].” (*Id.*) ASmoke’s owner, Michael Ying,  
11 “is also the owner of Dansons’ former factory.” (Doc. 28 ¶ 2.) Dansons alleges that  
12 ASmoke has “engaged in ‘individualized targeting’ of Dansons as retaliation for Dansons  
13 reducing, and, eventually ending, its business relationship with Mr. Ying’s factory.” (*Id.*  
14 ¶ 15.)

15 In September 2020, Dansons filed a Complaint (Doc. 1) and Motion for Preliminary  
16 Injunction (Doc. 2) in the District of Arizona alleging trademark infringement, trade dress  
17 infringement, false designation of origin under the Lanham Act, and unfair competition  
18 under Arizona common law. In response, ASmoke filed its Motion to Dismiss for Lack of  
19 Personal Jurisdiction and Failure to State a Claim. (Doc. 14.) The Court denied the Motion  
20 for Preliminary Injunction,<sup>1</sup> granted ASmoke’s Motion to Dismiss for Failure to State a  
21 Claim, and took the issue of personal jurisdiction under advisement. (Doc. 23.) Shortly  
22 thereafter Dansons filed its First Amended Verified Complaint, adding allegations to  
23 bolster its claims and jurisdictional statement. (Doc. 28.) The Court then ordered the parties  
24 to submit a Joint Supplemental Brief to address whether any of the new allegations in the  
25 First Amended Verified Complaint alter the parties’ personal jurisdiction arguments. (Doc.  
26 30.) The parties timely filed the Joint Supplemental Brief. (Doc. 31.)

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28 <sup>1</sup> Dansons has since filed a Renewed Motion for Preliminary Injunction. (Doc. 26.)

## II. LEGAL STANDARD

Pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, a defendant may move, “prior to trial, to dismiss the complaint for lack of personal jurisdiction.” *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977). In a motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of showing that an exercise of jurisdiction is proper. *Ziegler v. Indian River Cty.*, 64 F.3d 470, 473 (9th Cir. 1995). “[I]n the absence of an evidentiary hearing,” a plaintiff “need only make a prima facie showing of jurisdictional facts.” *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990) (internal citation omitted). When examining whether there is a prima facie showing of jurisdictional facts, any “uncontroverted allegations in [the complaint] must be taken as true, and conflicts between the facts contained in the parties’ affidavits must be resolved in [plaintiff’s] favor.” *Am. Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996) (internal quotation marks and citations omitted); *see also Sher*, 911 F.2d at 1361 (treating plaintiff’s allegations as true).

## III. DISCUSSION

### A. Personal Jurisdiction Overview

As a general matter, if a relevant federal statute does not provide for personal jurisdiction, a “district court applies the law of the state in which the court sits.” *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011) (citing Fed. R. Civ. P. 4(k)(1)(A)). Arizona’s long-arm statute is coextensive with the requirements of federal due process. Ariz. R. Civ. P. 4.2(a);<sup>2</sup> *see also A. Uberti & C. v. Leonardo*, 181 Ariz. 565, 569 (1995) (discussing the intention behind Arizona’s long-arm statute). Consequently, the analyses of personal jurisdiction under Arizona law and federal due process are the same. *See Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800–01 (9th Cir. 2004). For an exercise of personal jurisdiction to comport with federal due process, the non-resident defendant must have certain “minimum contacts” with the forum state such that an exercise

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<sup>2</sup> Arizona’s long-arm statute states that a court “may exercise personal jurisdiction over a person, whether found within or outside Arizona, to the maximum extent permitted by the Arizona Constitution and the United States Constitution.”

1 of jurisdiction “does not offend traditional notions of fair play and substantial justice.”  
2 *Schwarzenegger*, 374 F.3d at 801 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316  
3 (1945)). Personal jurisdiction may be general (based on a forum connection unrelated to  
4 the underlying suit) or specific (based on an affiliation between the forum and the  
5 underlying controversy). *See, e.g., Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015)  
6 (citing *Boschetto v. Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008)). Both parties agree that  
7 only specific jurisdiction applies.

## 8 **B. Specific Personal Jurisdiction**

9 The Ninth Circuit employs a three-prong test to assess whether a defendant has  
10 sufficient minimum contacts with the forum state to be subject to specific personal  
11 jurisdiction:

- 12 (1) The non-resident defendant must purposefully direct his  
13 activities or consummate some transaction with the forum  
14 or resident thereof; or perform some act by which he  
15 purposefully avails himself of the privilege of conducting  
16 activities in the forum, thereby invoking the benefits and  
17 protections of its laws;
- 18 (2) the claim must be one which arises out of or relates to the  
19 defendant’s forum-related activities; and
- 20 (3) the exercise of jurisdiction must comport with fair play and  
21 substantial justice, i.e., it must be reasonable.

22 *Picot*, 780 F.3d at 1211 (citing *Schwarzenegger*, 374 F.3d at 802) (internal citations  
23 omitted). The burden initially falls on the plaintiff to show the first two prongs but  
24 subsequently shifts to the defendant to show the third. *CollegeSource, Inc. v. AcademyOne,*  
25 *Inc.*, 653 F.3d 1066, 1076 (9th Cir. 2011).

26 The first required element of specific jurisdiction, “purposeful direction,”<sup>3</sup> is

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27 <sup>3</sup> Although “purposeful availment” is often used as shorthand to mean both purposeful  
28 availment and purposeful direction, it is important to understand them as distinct concepts  
requiring distinct tests. *Schwarzenegger*, 374 F.3d at 802. The precise analysis depends on  
the type of claim brought – “for claims sounding in tort, [the Court] appl[ies] a purposeful  
direction test and look[s] to evidence that the defendant has directed his actions at the forum  
state, even if those actions took place elsewhere.” *Picot*, 780 F.3d at 1212. Because the  
claims brought by Danson in its First Amended Verified Complaint (Doc. 28) are tort-  
like, the Court applies the purposeful direction test. *See, e.g., Mavrix Photo*, 647 F.3d at

1 measured using the “effects” test put forth by the Supreme Court in *Calder v. Jones*, 465  
2 U.S. 783 (1984). See *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1069 (9th  
3 Cir. 2017). The effects test requires the defendant to “have (1) committed an intentional  
4 act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is  
5 likely to be suffered in the forum state.” *Id.* (internal quotation marks and citations  
6 omitted). “The proper question is not where the plaintiff experiences a particular injury or  
7 effect but whether the defendant’s conduct connects him to the forum in a meaningful  
8 way.” *Walden v. Fiore*, 571 U.S. 277, 290 (2014).

### 9 **1. Intentional Act**

10 The intentional act requirement connotes an “intent to perform an actual, physical  
11 act in the real world, rather than an intent to accomplish a result or consequence of that  
12 act.” *Schwarzenegger*, 374 F.3d at 806. Accepting Dansons’ allegations as true, ASmoke  
13 committed intentional acts by infringing on its intellectual property rights, which is the  
14 basis for each claim. (See Doc. 28 ¶¶ 4, 28, 51, 53, 61, 69, 76, 85, 91.) Accordingly,  
15 *Calder*’s first part is satisfied.

### 16 **2. Express Aiming**

17 An “express aiming” analysis centers on whether “the defendant’s allegedly tortious  
18 action was expressly aimed at the forum state.” *Picot*, 780 F.3d at 1214 (citing *Brayton*  
19 *Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1129 (9th Cir. 2010)) (internal  
20 quotation marks omitted). The precise form of analysis depends largely on the “specific  
21 type of tort or other wrongful conduct at issue.” *Schwarzenegger*, 374 F.3d at 807. Dansons  
22 alleges that ASmoke has engaged in “individualized targeting” by selling infringing grills  
23 into Arizona “as retaliation for Dansons reducing and, eventually ending, its business  
24 relationship with Mr. Ying’s factory.” (Doc. 28 ¶¶ 14–15.) And these grills were sold  
25 “while ASmoke’s public advertisements and social media pages” included the infringing

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27 1228 (holding copyright infringement to be a “tort-like cause of action,” and then applying  
28 purposeful direction test); *Best W. Int’l Inc. v. I-70 Hotel Corp.*, No. CV11-1281-PHX-FJM, 2012 WL 2952363, at \*2 (D. Ariz. July 19, 2012) (using purposeful direction test in a trademark infringement dispute).

1 trademark. (*Id.* ¶ 14.) Dansons contends that, together, this “individualized targeting” and  
2 selling of grills into Arizona satisfies the express aiming requirement. (*Id.* ¶ 16.) The Court  
3 will address each of these arguments in turn.<sup>4</sup>

4 First, Dansons’ attempt to show express aiming through two sales to Arizona  
5 residents falls short.<sup>5</sup> The Supreme Court in *Walden v. Fiore* recognized that a plaintiff  
6 cannot establish specific personal jurisdiction through nonspecific contacts with the forum  
7 state, as those contacts would be ““random, fortuitous, or attenuated.”” 571 U.S. at 290.  
8 Dansons’ argument here boils down to ASmoke’s two sales to Arizona customers. There  
9 are no allegations concerning how these two Arizona buyers purchased ASmoke’s  
10 allegedly infringing grills or what further efforts ASmoke made to purposefully direct these  
11 sales to Arizona. Dansons’ assertion that these grills were sold “while ASmoke’s public  
12 advertisements and social media pages” included the allegedly infringing trademark also  
13 does not help show that ASmoke expressly aimed these contacts to Arizona. Following  
14 *Walden*’s logic, Dansons cannot establish express aiming by pointing to two random,  
15 fortuitous, and attenuated sales. Without more, these two sales cannot bolster Dansons’  
16 personal jurisdiction claim.

17 Second, Dansons argues that ASmoke’s knowledge that it resides in Arizona and  
18 ASmoke’s allegedly infringing behavior impacting Dansons establishes personal  
19 jurisdiction. (Doc. 16 at 7–8.) This argument ignores binding precedent. In *Axiom Foods*,  
20 the Ninth Circuit clarified that, after *Walden*, a plaintiff can no longer show that a defendant  
21 expressly aimed at the forum state by alleging only that the defendant knew of the

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22  
23 <sup>4</sup> Dansons relies heavily on this District Judge’s decision in *BBK Tobacco & Foods LLP v.*  
24 *Cent. Coast Agric. Inc.*, No. CV-19-05216-PHX-MTL, 2020 WL 3893563 (D. Ariz. July  
25 10, 2020), where this Court found personal jurisdiction. (*See* Doc. 31.) In *BBK*, the  
26 defendant actively proposed to “co-brand” its corporate logo with the plaintiff’s registered  
27 trademark. (Doc. 16 at 1–2, No. CV-19-05216.) The Complaint also alleged that the  
28 defendant unilaterally emailed the plaintiff’s representatives in Arizona to order “well  
above 10,000 pieces” of its product. (Doc. 1 ¶¶ 9–15, No. CV-19-05216; *see also* Doc. 16  
at 1–2, No. CV-19-05216.) Dansons’ allegations here fall far short of what occurred in  
*BBK*, rendering the comparison unpersuasive.

<sup>5</sup> The Court agrees with ASmoke that the third sale into Arizona, which Dansons itself  
initiated, cannot be considered for this personal jurisdiction analysis. *See Walden*, 571 U.S.  
at 291 (“[I]t is the defendant, not the plaintiff or third parties, who must create contacts  
with the forum State.”).

1 plaintiff's forum connections and could have reasonably foreseen harm in that forum. 874  
2 F.3d at 1069–70. The test discredited in *Axiom Foods*, and advanced by Dansons here,  
3 impermissibly undermines the due process concerns at the heart of personal jurisdiction by  
4 shifting the focus away from the defendant's contacts with the forum state in favor of the  
5 plaintiff's contacts. *See Modulus Fin. Eng'g Inc. v. Modulus Data USA Inc.*, No. CV-19-  
6 04685-PHX-SMB, 2020 WL 2512785, at \*5 (D. Ariz. May 15, 2020) (recognizing that this  
7 approach "distorts the proper focus of the 'minimum contacts' inquiry"); *see also Picot*,  
8 780 F.3d at 1214 (stating that the "express aiming" analysis centers on whether "the  
9 defendant's allegedly tortious action was expressly aimed at the forum state.") (citation  
10 omitted). That Dansons feels the impact of the alleged infringement in Arizona turns the  
11 focus to its own connections here, which is not relevant in considering ASmoke's  
12 connections to Arizona. The same goes for Mr. Ying's apparent knowledge of Dansons  
13 being an Arizona company and allegedly targeting Dansons for their failed business  
14 relationship. Dansons has therefore failed to allege that ASmoke has expressly aimed its  
15 contacts to Arizona.

16 As to Dansons' individualized targeting assertion, the Ninth Circuit made clear that  
17 "while a theory of individualized targeting may remain relevant to the minimum contacts  
18 inquiry, it will not, on its own, support the exercise of specific jurisdiction, absent  
19 compliance with what *Walden* requires." *Axiom Foods, Inc.*, 874 F.3d at 1070. Dansons'  
20 conclusory allegation of individualized targeting based on Mr. Ying's past relationship  
21 with it, combined with two random sales, cannot combine to establish minimum contacts.  
22 As previously discussed, Dansons has not alleged that this targeting was purposefully  
23 directed and expressly aimed at the forum state.

24 Because Dansons has failed to show ASmoke alleged infringement was expressly  
25 aimed at Arizona, the Court need not advance to *Calder*'s third requirement,  
26 *Schwarzenegger*, 374 F.3d at 807 n.1, or the remaining prongs of the minimum contacts  
27 test. *Ariz. Sch. Risk Retention Tr., Inc. v. NMTC, Inc.*, 169 F. Supp. 3d 931, 936 (D. Ariz.  
28 2016). Dansons has failed to meet its burden to prove that the Court has personal

1 jurisdiction over ASmoke. *See In re W. States Wholesale Natural Gas Antitrust Litig.*, 715  
2 F.3d 716, 742 (9th Cir. 2013) (“If any of the three requirements is not satisfied, jurisdiction  
3 in the forum would deprive the defendant of due process of law”). The Court must therefore  
4 dismiss this action for lack of personal jurisdiction.

5 **IV. CONCLUSION**

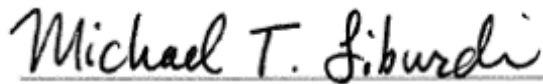
6 Accordingly,

7 **IT IS ORDERED granting** ASmoke’s Motion to Dismiss for Lack of Personal  
8 Jurisdiction (Part of Doc. 13).

9 **IT IS FURTHER ORDERED denying as moot** Dansons’ Renewed Motion for  
10 Preliminary Injunction (Doc. 26).

11 **IT IS FINALLY ORDERED** directing the Clerk of the Court to enter judgment  
12 accordingly and close this case.

13 Dated this 11th day of December, 2020.

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17 Michael T. Liburdi  
18 United States District Judge  
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