

## Texas Woman Can't Sue Over Anonymous Prank Package

By **Y. Peter Kang**

Law360 (August 3, 2022, 8:53 PM EDT) -- A gag gift company which refused to reveal the name of a person who sent a Texas woman a "highly inappropriate and humiliating" prank package was cut loose from an emotional distress damages suit, after a Texas appellate panel ruled Wednesday it had no jurisdiction over the North Carolina-based company.

A three-judge panel for the Fourth Court of Appeals reversed a Bexar County court's decision to keep alive a suit accusing Witty Yeti LLC of sending a prank package purchased by an anonymous buyer to Janelle Plummer at her place of business in San Antonio, which caused her to suffer emotional distress.

"Plummer stated she opened the package in front of her coworkers and that the contents of the package were 'highly inappropriate and humiliating, especially in an office setting,'" the panel **noted in the opinion**.

A website review Wednesday of the company's mailed prank category showed packages from four fake companies offering various products: sex toys, feminine hygiene treatments, penis enhancements and bulk condoms. Instead of the aforementioned products, the packages are filled with confetti which bursts out upon opening, according to the website.

Plummer's suit, filed in August 2021, alleges Witty Yeti's "improper withholding of the purchaser's identity was negligent."

A trial court had denied the company's motion for a special appearance, which is essentially a bid to dismiss for lack of personal jurisdiction. On appeal, Witty Yeti argued Texas courts do not have jurisdiction over it because it does not have sufficient minimum contacts with the Lonestar State.

The panel agreed, saying the company does not do enough business in the state of Texas to trigger the state's so-called long-arm statute.

"The only connection to Texas alleged is that the package purchased from Witty was delivered in Texas," the opinion said. "Plummer states she is unaware of who purchased the package from Witty."

The appeals court shot down Plummer's argument that Witty Yeti's website markets and sells its products to Texas residents, which would warrant personal jurisdiction in a Texas court.

"The record does not make clear how interactive the website is, and even if we took Witty's allegations as true, the website alone is insufficient to subject Witty to jurisdiction of a Texas court," it said. "Thus, Plummer failed to plead facts to bring Witty within the reach of the court's jurisdiction, and Witty only needed to prove that it does not live in Texas to negate personal jurisdiction."

The company established it is located in and organized under the laws of North Carolina, and does not have any members or places of

business in Texas, the panel noted.

"Plummer presented no evidence to the contrary," the panel said. "As such, Witty met its burden to negate all bases of jurisdiction."

An attorney for Witty Yeti, Brandon Grable, told Law360 on Wednesday that he thought the court made the correct decision.

"The ruling reaffirms that out-of-state companies should not have to address the merits of unsworn allegations in a Texas court where facts clearly establish that the company lacks any meaningful contact with Texas," he said via email. "Today's ruling makes clear that merely shipping a product to a Texas resident, at the expense and direction of another, is not a meaningful contact (for jurisdictional purposes)."

An attorney for Plummer did not immediately respond to a request for comment Wednesday.

Justices Rebeca C. Martinez, Patricia O'Connell Alvarez and Liza A. Rodriguez sat on the panel for the Fourth Court of Appeals.

Plummer is represented by Kelli Cubeta of Cubeta Law Group PLLC.

Witty Yeti is represented by Brandon J. Grable of Grable Grimshaw PLLC.

The case is Witty Yeti LLC et al. v. Janelle Plummer, case number 04-22-00075-CV, in the Texas Court of Appeals for the Fourth District.

--Editing by Lakshna Mehta.