

The facts show the parties are in three separate states, but jurisdictional diversity does not apply for federal court because the plaintiffs and defendants are not all in separate states, so a state court is appropriate. The website for Funny Face indicates the three owners cannot be sued but this will not hold. Disputes between Funny Face and Novelty Now must be resolved, by contract, in the state of Florida. Margolin has filed in New York which long arm principles allow him to do. *International Shoe v. Washington* was legislation that established this precedent. The defendants may, however, request a change of venue.

Two types of alternative dispute resolution appropriate for this case are mediation and arbitration, both of which save time and money over a trial. Mediation (multi-party mediation in this case) uses trained negotiators to bring parties together and work out a settlement that all can accept or reject. Its advantages are it helps the disputing parties preserve their relationship, and parties have a great deal of autonomy. Its disadvantages are that potential or actual inequalities between/among the parties can lead to abuse. Arbitration is a simplified trial before an arbitral panel with limited discovery and using simplified rules of evidence. Its advantages are added control over the process through the choice of arbitrator and the agreed to rules. An arbitrator can be chosen for his or her expertise in a specific type of case. Arbitrators have more flexibility in their decisions than judges. Arbitration is more confidential than litigation. Its disadvantages are that with increased popularity it is becoming more like litigation. Also, arbitration is very difficult to appeal. There may be ethical problems with the privacy issues.

Both Funny Face and Novelty Now would likely prefer mediation because they probably want to preserve their relationship and possibly combine their power together against Margolin. Margolin would likely prefer arbitration because it could equalize the power between consumer and producer/manufacturer and he could push for an arbitrator of his choice.

Corporations may be held liable for criminal actions committed by their agents acting within the scope of their actual or apparent authority. This was established in *New York Central & Hudson River Railroad v. U.S.* Corporate directors, officers and employees may be held liable for their own criminal activity whether or not it benefits the corporation; they are not shielded. Officers and directors may also be held liable for the criminal activity of their agents under the collective knowledge doctrine or because of their responsible relation to the crime.

Potential criminal acts by Funny Face and/or Novelty Now are false pretenses and fraudulent concealment. After shave is regulated as a cosmetic. It is not necessary for all ingredients to be approved by the FDA before marketing, but all ingredients except fragrance must be specified so if the substitution is not shown or if the product is marketed as FDA approved, this is fraudulent. If in fact, using PRY is criminal, that is an additional act.

The potential criminal liability of each of the parties is slightly different. The partnership (whether written or informal of Funny Face) means that it is one and the same as its owners. Novelty Now is incorporated and subject to corporate liability principles.

Applying the WPH process reveals multiple stakeholders, a primary purpose of efficiency, and an apparent failure to apply an ethical guideline. Stakeholders in the arrangement among Funny Face and Novelty Now and the general public to which they advertise and sell include the consumers of the after shave product and their families/communities, the shareholders of Novelty Now and owners of Funny Face, management and/or employees of both companies, and the general community. Choosing to substitute lower-cost but unapproved PRY in the manufacturing process appears designed solely to minimize costs. The public disclosure test would be the easiest and most direct approach to approaching the ethical dilemma in this case. It is unlikely that either Novelty Now or Funny Face would be comfortable advising their customers that they were using an unapproved ingredient.