

RUBY RED SLIPPERS, INC

Ruby Red Slippers, Inc. (“RRS”) is a company based in Kansas. It makes ruby red slippers that have become even more popular than “Barbie” products among the young girl set. Indeed, the *Wall Street Journal* ran an article recently about how the Ruby Red Slippers have been such a remarkable product because it’s one of the few that represented a “crossover” product that appealed to girls from toddler years on up to young ladies in high school. The product had become “all the rage” across America and it was hard to go out in public without seeing some girl or young lady with sparkling ruby red slippers on. Indeed, the success of the product had influenced national TV to air *The Wizard of Oz* in prime time. (For some reason, no one wondered why something called “slippers” would be worn outside the house; RRS correctly guessed that consumers did not get that far in analyzing a purchase and; in any event, the “slippers” were made to serve as inside/outside footwear, complete with leather heels and outsoles.)

RRS has done business in virtually every state, but states on the Eastern Seaboard had been responsible for more sales than any region. Thus, RRS had stations set up in every mall in Eastern seaboard states. These stations were not permanent but rather were the kind of temporary booths one sees in malls when walking in the large passages between stores. RRS employed persons at these mall stations who dressed up as characters from *The Wizard of Oz* – typically the Tin Man, the Scarecrow, and the Cowardly Lion. These displays never have Dorothy in them because RRS’s marketing approach is to make the girl or young lady believe that she’s Dorothy if she only buys and wears the ruby red footwear.

Virginia, which many believe has more malls per capita than most states in the Union, thus had more RRS displays and accounted for a good deal of RRS’s sales – though it was getting sales from all over the country so it was not by any means an overwhelming percentage of RRS’s sales.

Dorothy attends high school in Virginia Beach, VA, but was visiting her Uncle, Aunt, and cousins, the Munchkin Family, in Rainbow City, Alabama over Christmas break. While there she went to a nearby mall and saw a display of the Ruby Red Slippers and bought a pair. While still in Alabama, she wore the footwear for the first time when the right shoe heel separated from the shoe, resulting in Dorothy’s falling, hitting her head, and going into a coma.

Dorothy’s other Aunt, Aunt Em, lived in Virginia near Dorothy. She also happened to be a top-notch lawyer. She consulted with an expert on shoes, known by plaintiffs’ lawyers as the Wizard of Footwear, who confirmed that the pair of shoes was defectively manufactured. The Wizard confirmed that the shoe design met industry standards and, if it had been made according to the design, it would almost certainly not fallen apart. However, the one shoe on this particular pair had not been glued according to the specifications and that accounted for the shoe’s malfunction.



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Dorothy was still in a coma at the time suit was filed against RRS in the Circuit Court of Virginia Beach, Virginia. RRS timely filed a motion entitled “Motion to Dismiss for Lack of Personal Jurisdiction Or Improper Venue and, Alternatively, To Transfer Venue to Alabama.” You are the law clerk for the Virginia Beach Circuit Judge, Glenda (known locally as Glenda the Fair and Just) assigned to rule on this motion. (1) Judge Glenda asks you to write a memorandum analyzing objectively the issues raised by RRS’s motion and her options in ruling. (2) How would your analysis and answer be different if the case had been filed in United States District Court for the Eastern District of Virginia and the judge for whom you clerked was a U.S. District Judge that asked you to analyze RRS’s motion?

FIRST VARIATION ON HYPO: Assume the above facts except that Dorothy bought the footwear at a mall in Virginia and the shoe accident leading to her coma occurred in Virginia. Aunt Em the lawyer, based on the Wizard of Footwear’s analysis, files suit against RRS in the Circuit Court of Virginia Beach, VA. RRS filed a timely motion entitled “Motion to Dismiss for Lack of Personal Jurisdiction Or Improper Venue and, Alternatively, To Transfer Venue.” You are the law clerk for Judge Glenda of the Virginia Beach Circuit Court. (1) Judge Glenda asks you to write a memorandum analyzing objectively the issues raised by RRS’s motion and her options in ruling. (2) How would your analysis and answer be different if the case had been filed in United States District Court for the Eastern District of Virginia and the judge for whom you clerked was a U.S. District Judge that asked you to analyze RRS’s motion?

SECOND VARIATION ON HYPO: Instead of directly selling its product in malls, RRS contracted with another company, Flying Monkey Distrib., Ltd. (“FMD”) to sell the footwear. FMD thus arranged directly with the malls to set up the stations and hired persons to wear the character costumes when selling the footwear. (The only difference FMD employed in selling the footwear was that – in addition to the Tin Man, the Scarecrow, and the Cowardly Lion – FMD had a “Flying Monkey” character but made sure they were much friendlier looking than the ones in the movie.) In this variation (as in the First Variation on Hypo), Dorothy buys the footwear in Virginia and the accident leading to her coma occurs in Virginia. Aunt Em files suit against both RRS and FMD in the Circuit Court of the City of Virginia Beach, Virginia. Both RRS and FMD file timely motions entitled “Motion to Dismiss for Lack of Personal Jurisdiction Or Improper Venue and, Alternatively, To Transfer Venue.” You are the law clerk for Judge Glenda of the Virginia Beach Circuit Court. (1) Judge Glenda asks you to write a memorandum analyzing objectively the issues raised by RRS’s motion and FMD’s motion. (2) How would your analysis and answer be different if the case had been filed in United States District Court for the Eastern District of Virginia and the judge for whom you clerked was a U.S. District Judge that asked you to analyze RRS’s and FMD’s motions?



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