

## Yelp—the online review lawsuit strikes again

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*In our March and May issues, we reported on developments in a recent Virginia court case challenging false and damaging online reviews and subsequent efforts to obtain the names of the anonymous reviewers from the online review website Yelp. A similar case arose recently, this time involving a lawsuit against a Yelp user who posted a negative online review about a Virginia lawyer. This is the first suit by a Virginia lawyer challenging an online review, and it could render Yelp liable for all defamatory online reviews of Virginia businesses.*

### ***Negative Yelp review***

The case began in 2009, when a Yelp user, Christopher Schumacher, posted critical comments about an attorney, Thomas K. Plofchan, Jr., and his firm, the Westlake Law Group. Schumacher initially had retained Westlake to represent him in his divorce proceedings. He claimed Plofchan never did any work on the matter except for participating in a conference call in an attempt to resolve the firm's fee dispute with him.

After Schumacher was ordered to pay the firm a reduced fee, he became dissatisfied and posted the negative comments on Yelp. The review gave Westlake a one-star rating (out of five stars) and contained particularly scathing remarks about the firm and Plofchan, including comments critical of his skills as an attorney. Specifically, Schumacher wrote that Westlake's standard operating procedure "is to be reactive rather than proactive" and that the firm had "a history of messing up cases . . . (search Google . . .)." Schumacher also stated that "Plofchan lied, denied and presented a perfect filibuster . . . true to huckster form," and he accused Westlake and Plofchan of "blatant incompetence."

After discovering the review, Plofchan and Westlake notified Yelp in writing that the statements in Schumacher's post were false and defamatory, and they asked Yelp to remove the review. Yelp, however, refused.

### ***Suit is filed***

In May 2012, Plofchan and Westlake sued Yelp and Schumacher in the Loudoun County Circuit Court for defamation, requesting \$200,000 in compensatory damages and \$200,000 in punitive damages. They charged that Schumacher's statements were defamatory because they damaged the reputation of Plofchan and his law firm and were "objectively false." Additionally, they contended that Yelp was liable for defamation when it acted with "reckless disregard as to whether the statements contained in the review were false or not" by failing to remove the post despite receiving four separate requests to remove it.

In October 2012, Westlake and Plofchan obtained a default judgment against both Yelp and Schumacher because neither defendant responded to the lawsuit within the requisite period of time. The court awarded Plofchan \$100,000 in compensatory damages against each of them. It also granted Plofchan and Westlake's request for an order requiring Yelp to remove Schumacher's review. *Westlake Legal Group v. Schumacher*, No. CL00073624-00 (Loudoun County, VA, filed May 11, 2012).

### ***Federal court proceedings***

Shortly thereafter, Yelp successfully removed the case from Loudoun County to the federal court in Alexandria. Yelp now is arguing that the judgment against it should be set aside for numerous reasons, including First Amendment violations. Most important, it has sought to avoid any liability

because of the provisions of the federal Communications Decency Act, which grants Internet service providers immunity from suit.

In response, Plofchan contends that the federal statute doesn't apply because Yelp does more than merely post reviews. It also evaluates and filters the posts on its website. The court has yet to rule on the issue and say whether Yelp or Plofchan is right. However, a court ruling is expected this summer.

### ***Impact of the case***

If the federal court decides the Communications Decency Act doesn't protect Yelp from liability, the case could have repercussions. The Act has long protected online review websites like Yelp from any liability stemming from their hosting of defamatory comments. With no fear of potential legal liability, these websites have been reluctant to remove allegedly defamatory comments.

If the court finds the Communications Decency Act doesn't immunize Yelp, the decision could open the website up to liability for defamatory online review posts throughout Virginia. As a result, persons who are subject to online posts they believe to be false and defamatory will gain significant additional leverage — and legal support — for a request that Yelp remove the posts or face a lawsuit.

### ***Bottom line***

A decision denying Yelp immunity from suit for false and defamatory online posts could have a monumental impact on the potential liability of online review websites — most notably Yelp — for hosting defamatory online reviews. Most important, such a decision could provide you with additional legal support for a request that Yelp or other online review sites remove false and defamatory reviews about your business. We'll continue to keep you updated as the litigation progresses.

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