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BY TELECOPIER: (866) 961-4984

December 2, 2012

Aaron Kelly, Esquire
Kelly / Warner Law
Suite C-201
404 S. Mill Avenue
Tempe, Arizona 85281

Dear Mr. Kelly:

I write to follow up on the telephone conversation that we had on Friday afternoon about the lawsuit that you have filed on behalf of Mobile Web Media LLC against Roman Lagun and Think Smart Marketing, Inc., for hosting Reviewopedia, a web site where consumers post reviews about online businesses. During our conversation, I told you that your process server had neglected to include the exhibits to the complaint among the papers served on my clients last week; you said that you would send them to me.

I also told you that, with Maria Crimi Speth as local counsel, I will be representing the hosts in the litigation, unless the complaint against them is promptly withdrawn. I called your attention to the binding authority in Arizona, *Austin v. CrystalTech*, 125 P. 3d 389 (Ariz. App. 2005), and explained that I could see neither any basis for your clients, a Utah company and a Colorado citizen, to assert personal jurisdiction over my clients in Arizona, nor any way for you to get around their section 230 immunity for hosting comments critical of your client. You did not provide any basis for your allegation that the hosts actually write the comments on their web site; indeed, you explained that the only reason you alleged this fact was that you were aware of some other web site whose owner has allegedly done so. I don't doubt that it would be convenient for your client if **this** host did likewise, and no doubt your clients wish that were so; but if wishes were horses, beggars would ride. Moreover, you cannot plead around section 230 immunity without alleging with far greater specificity the factual basis for charging the hosts with being information content providers. *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250 (4th Cir. 2009). And the charge that the hosts refused to allow certain positive comments, which were apparently posted by your own client, to appear on their message board, does not deprive the hosts of their section 230 immunity. "Deciding whether or not to remove content or deciding when to remove content falls squarely within [a web host's] exercise of a publisher's traditional role and is therefore subject to the CDA's broad immunity." *Mazur v. eBay Inc.*, 2008 WL 618988, at *9 (N.D. Cal. 2008); *Murawski v. Pataki*, 514 F. Supp.2d 577, 591 (S.D.N.Y. 2007); *Donato v. Moldow*, 865 A.2d 711, 725-726 (2005).

At the conclusion of our conversation, you told me that you would dismiss your action against the hosts, and that you would send me the papers reflecting that dismissal. You also told me that you would send me copies of communications that your client had sent to the hosts of the site

which, you complained, had not been answered. I look forward to receiving both sets of documents.

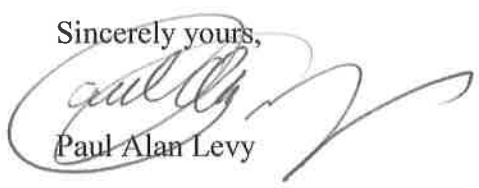
You suggested that you would be pursuing suit against the anonymous posters, and asked whether the host would comply with a subpoena seeking to identify them. Assuming that you will be pursuing this action in Arizona, despite the lack of any basis for personal jurisdiction there, I told you that I expected the host's response to a subpoena to depend on the showing you make under *Mobilisa v. Doe*, 170 P. 3d 712 (Ariz. App. 2007). You also asked whether, in the alternative, my clients would accept a $50,000 payment to remove the critical comment; I told you that my clients do not take money from those who are criticized by the users of the web site, and have no interest in initiating such a practice. Indeed, the fact that your client's reaction to the appearance of a few critical comments on an Internet message board is to offer an outlandish sum to have the criticisms removed only gives reason to question its integrity. It is small wonder that the FTC has been litigating against your client, and that your client is now operating under a consent decree.

I confess that, in light of the commitments that you made when we spoke, I was disappointed that, instead of your sending me the exhibits to the complaint and the unanswered communications, as well as a copy of papers dismissing that complaint, you sent a series of emails asking questions similar to those raised during our conversation. I believe that I answered all the questions in the emails when we spoke, save one that you did not make during our conversation. When we spoke, you told me that you accepted my representation that the hosts do not author content about your client; your email now requests a declaration attesting to that fact, on the theory that you are doing "due diligence." I will not send you such an affidavit.

The time for any "due diligence" is before you file suit, not after litigation has been filed. Having filed suit, it is your burden to prove that the hosts created content defaming your clients, and to allege a sufficient basis for believing that they do; it is not my clients' burden to prove a negative. If you had articulated some factual basis for your allegation, other than a wish and a prayer, I might have advised my clients to consider a different course, but I see no reason to ask them to start executing affidavits just to get you to drop a lawsuit you had no business filing in the first place.

In the circumstances, if I have to draft declarations to send you, they will be attached to a motion for summary judgment and for Rule 11 sanctions for suing without any basis. I truly hope that this will not be necessary, and that you will do as you said you would do when we spoke on Friday, and dismiss the action promptly. We will give you a few days to take such action before proceeding in the litigation.

Sincerely yours,



Paul Alan Levy