

## Calif. High Court Case Will Affect Internet Free Speech

By **David Evans and Renata Hoddinott, Haight Brown & Bonesteel LLP**

*Law360, New York (November 18, 2016, 8:26 AM EST) --*

The California Supreme Court has agreed to review a case that may have significant ramifications for online review posting on Yelp.com and other similar platforms. The court will be deciding whether internet sites can be ordered to remove defamatory posts without first being put on notice and given an opportunity to be heard.

In 2013, attorney Dawn Hassell filed suit against a former client, Ava Bird, arising out of Hassell's brief legal representation. The attorney-client relationship lasted a total of 25 days, after which Hassell withdrew from the representation because she had difficulties communicating with Bird and Bird had expressed dissatisfaction with Hassell's services.

Following the termination of the attorney-client relationship, Bird published a negative and factually inaccurate review on Yelp.com about her experience with Hassell. Hassell asked Bird to remove the false statements from the review. In response, Bird not only refused to remove the review she also threatened to post an updated review and arrange for another person to post a third review about Hassell. The following month Bird, or someone at her direction, created a false Yelp identity and posted another negative review about Hassell.

Hassell then filed suit against Bird and requested injunctive relief to prohibit Bird from continuing to defame Hassell and requiring Bird to remove each and every defamatory review published about Hassell from Yelp or any other site. After being served with Hassell's lawsuit, Bird posted another negative review about Hassell on Yelp. After Bird failed to answer Hassell's complaint, the court entered judgment against her ordering Bird to remove each and every defamatory review, enjoining Bird from posting any further defamatory reviews on Yelp or any other site, and ordering Yelp to remove all reviews posted by Bird about Hassell, including any subsequent comments by her.

When served with the court's order, however, Yelp Inc. objected stating it was not a party to the litigation and had not been put on notice of Hassell's request for injunctive relief. Yelp filed a motion to set aside and vacate the Bird judgment and alleged it had standing to bring the motion because, although not a party to the action, it was an "aggrieved party" to the judgment.



David W. Evans



Renata L. Hoddinott

Hassell said Bird failed to answer her lawsuit or remove the posts, so she had to seek a court order demanding that Yelp do so. A second Superior Court judge granted Hassell's motion over Yelp's strenuous objections, and the court of appeal denied Yelp's writ petition, prompting its petition for review to the Supreme Court. Yelp seeks to overturn the ruling, claiming it could open the door for businesses to force the company to remove critical reviews and otherwise have a "chilling" effect on freedom of speech.

Though its impact is in dispute, the case has garnered the attention of some of the world's largest internet companies, which say a ruling against Yelp could stifle free speech online and effectively gut other websites whose main function is offering consumers virtually unlimited opportunities to post reviews of services and businesses. Internet giants Facebook Inc., Twitter Inc. and Microsoft Corp. said in an amicus letter to the California Supreme Court in support of Yelp's review petition that the ruling "radically departs from a large, unanimous and settled body of federal and state court precedent" and could be used to "silence a vast quantity of protected and important speech."

Proponents of internet free speech argue that many internet sites including those for magazines and newspapers encourage the posting of comments, opinions, and reviews in the same manner as Yelp. And, while Yelp has regularly maintained that it removes reviews posted by users where there has been adjudication that the reviews or comments are defamatory, it took issue with the order in Hassell's case which was granted without any prior notice to Yelp. Other similar amicus letters were authored by Airbnb Inc., Avvo, GitHub Inc., Glassdoor Inc., Google Inc., the Wikimedia Foundation, and a number of other internet companies.

The concern shared by Yelp and other sites is that Hassell obtained an injunction ordering Yelp to remove the reviews even though Yelp was not a party to the action, had not been served with Hassell's complaint, had no opportunity to challenge the claimed bases for the injunction, and its user (Bird) had not appeared in the action to defend the reviews. They warn that there may be a chilling effect on free speech where a company (or even a president-elect) with significant resources may challenge a negative, albeit truthful, review or comment and seek to silence an individual who may not have the experience or resources to defend him or herself in the fact of such a legal challenge. Then, once a default judgment or the like is obtained, that same company or individual would then be able to obtain a court order directing the online site to delete the offending review or comment, even though the site had no opportunity to challenge the claim, and may not have even known about the claim until after the judgment was entered.

One possible byproduct of the case, if the view espoused by Yelp is adopted by the Supreme Court of California, is that online review websites may then be dragged into court regularly in disputes between third-party users and businesses, and forced to give up their independent ability to maintain the integrity of their platforms with constant court challenges and orders. In this way, opponents warn, the intermediate appellate court's ruling in the Hassell case eviscerates the First Amendment rights of publishers to distribute third-party speech, invites abuse, and threatens internet freedom and the immunity granted to online publishers by Section 230 of the federal Communications Decency Act.

The case provides an interesting discussion on the relationship between the now commonplace online review websites and free speech. The California Supreme Court's decision will no doubt present a road map for the rest of the country in dealing with disputes arising out of negative online reviews and comments; even the U.S. Supreme Court may eventually have to address the issue. With the growth of Yelp and other similar sites, individuals are easily able to post untrue or defamatory statements about any business or professional with little or no oversight or restraint. Such postings can have grave

consequences for professionals who may suffer monetary and reputational injuries as a result. Perception, after all, often becomes reality in the world of online reviews. This is especially true when the websites are unwilling to comply with court orders to remove even demonstrably defamatory portions of reviews merely by asserting the First Amendment. Accordingly, no matter how the Supreme Court decides the issue, its ruling will likely have a significant impact on free speech cases involving the internet for many years to come.

---

*David W. Evans is the managing partner and Renata L. Hoddinott is an attorney in the San Francisco office of Haight Brown & Bonesteel LLP.*

*The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*

---

All Content © 2003-2016, Portfolio Media, Inc.