Glennon v. John Doe One, et al.

- Who?
  - Websites?
  - Anonymous Poster?
- Where?
  - Federal vs. State?
- How?

Communications Decency Act – Safe Harbor for ISPs

"No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1)

- *Jones v. Dirty World Entertainment Recordings, LLC*, 755 F.3d 398 (6th Cir. 2014)
- *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157 (9th Cir. 2008)
- *Carafano v. Metrosplash.com, Inc.,* 339 F.3d 1119 (9th Cir. 2003)

Finding John (or Jane) Doe

- Motion for Expedited Discovery

- 3rd Party Subpoena to shesahomewrecker.com – obtains internet protocol ("IP") address for internet service provider ("ISP") through which post was transmitted

then

- A second 3rd Party Subpoena to ISP to obtain IP address of customer

Federal or State? How to get federal jurisdiction?

Diversity? –

- Didn’t know identity/citizenship of defendants
- Didn’t know if damages met the jurisdictional amount

Federal Question – Copyright Infringement

- John Doe One posted article with plaintiff’s professional headshot
- Photographer Assigned copyright rights to plaintiff including the right to sue for past infringement

Counts

- Copyright Infringement
- Libel *per se*
- Invasion of Privacy
- Intentional Infliction of Emotional Distress
- Tortious Interference with Business Relations
- Declaratory Judgment as to falsity of statement

Relief requested

- Copyright Damages
- Compensatory Damages for lost business + Punitive Damages
- Permanent Injunction
- Declaratory Judgment as to falsity of the posted statement and
- Order to search engines to remove cached data representing the defamatory article from databases

Libel per se

ALA. CODE § 6-5-181

ANY WORDS WRITTEN, SPOKEN, OR PRINTED OF ANY WOMAN FALSELY IMPUTING TO HER A WANT OF CHASTITY ARE ACTIONABLE WITHOUT PROOF OF SPECIAL DAMAGES.

…on punitive damages

– Ala. Code § 6-5-186 provides

Punitive damages shall not be recovered unless

(1) Defendant knew or recklessly disregarded falsity; AND

(2) … plaintiff makes written demand upon the defendant for a public retraction; and defendant fails to make the retraction.

…also

- ISP procedures require that notice must be provided to anonymous ISP customer that subpoena is being issued to discover identity in order to give customer opportunity to object

so…

Notice was published on shesahomewrecker.com -

- Notice of subpoena
- Demand to retract
- https://shesahomewrecker.com/legal-notice-monika-glennon-v-john-does-one-and-two-cv-no-516-cv-00804-hgd-in-the-united-states-district-court-for-the-northern-district-of-alabama/

The rest of the story…

- Identities of fictitious defendants discovered
- Service effected
- Move for entry of default
- First defendant agreed to provide affidavit as to falsity and maliciousness of the post
- Moved for Summary Judgment which was deemed to be motion for default judgment (defendant hadn’t answered)
- Motion granted and order issued ordering:
  - Websites to remove post
  - Search engines to remove post data from indices

Questions

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