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New Jersey Appellate Court Rules That E-Mailer Can Retain Anonymity

Plaintiff in Defamation Suit Cannot Discover Identity of Author of E-Mail Sent To High School Faculty Member Stating That Heroes And Cool Kids Club Members Were Engaged In Underage Drinking of Alcohol. Photos Downloaded From www.facebook.com Were Attached As Evidence.

The New Jersey Appellate Division affirmed the trial court's order quashing plaintiff's subpoena in an online defamation case (**A.Z. et al. v. Doe et al., A-5060-08T3** <http://www.ravin.com/articles/a5060-08.pdf>) aimed at discovering the identity of Defendant Doe, an anonymous author, represented by Richard L. Ravin, Esq., of Hartman & Winnicki, P.C. (www.Ravin.com). The appellate court held that Mr. Ravin's client has the right to remain anonymous in an Internet libel and slander case.

Plaintiff alleged that Defendant Doe had defamed plaintiff by sending an e-mail to a high school faculty adviser critical of the Heroes and Cool Kids club. The e-mail stated that some of the club's members were breaking their contracts with the club and breaking the law. The anonymous author attached photos to the e-mail which were downloaded from www.facebook.com showing some members of the club engaging in underage drinking and partying. A list of the names of the individuals pictured in the photographs (including plaintiff) appeared at the end of the e-mail.

In an effort to learn the identity of the author, plaintiff served a subpoena on Cablevision which was the ISP linked with the transmission of the e-mail. Mr. Ravin filed an emergency motion to quash the subpoena on behalf of Defendant Doe. In affirming the result of the lower court, the Appellate Division ruled that pursuant to the *Dendrite v. Doe* case, the online author had a First Amendment right to remain anonymous because plaintiff failed to establish the third *Dendrite* factor – presenting prima facie evidence of its defamation claim. The appellate court found that the plaintiff had failed to prove falsity -- that is, that plaintiff did not engage in underage drinking.

A unique aspect of this case is that the court relied on a certification filed by Defendant Doe, to which were attached additional photos showing plaintiff consuming alcoholic beverages. The Doe certification authenticated these photos as being uploaded to www.facebook.com by plaintiff or her sister. The court found the certification to be compelling evidence of the truth of the statements by Doe, especially given plaintiff's failure to file any sworn statement refuting the

photographs, or otherwise attesting to the falsity of the alleged defamatory statement. Because truth is an absolute defense in defamation cases, the court ruled that plaintiff had failed to meet its burden of proof to present a prima facie case under Dendrite, and therefore, affirmed the lower court's order barring plaintiff from using the court's subpoena power to discover the identity of Doe from Cablevision.

About Richard L. Ravin, Esq.

Mr. Ravin has successfully represented other online anonymous authors in motions to quash subpoenas, including in the Eye-on-Emerson case (see article: www.ravin.com/anonymous.html) in New Jersey Superior Court, and in case in U.S. District Court for the Southern District of New York. Mr. Ravin has also represented corporations, including a publicly traded company and its chief executive officer, seeking the identity of anonymous authors who have posted defamatory statements to financial message boards.

Mr. Ravin is a member of Hartman & Winnicki, P.C., and heads the firm's Internet, Technology, Intellectual Property Law practice areas. He also practices Commercial Litigation, and Bankruptcy law, with offices in Paramus and New York. He is current (and founding) Co-chair of the Internet and Technology Law Committee of the New York State Bar Association's Intellectual Property Law Section and Past Chair of the New York State Bar Association's Intellectual Property Law Section. Mr. Ravin was selected for inclusion in 2010 edition of The Best Lawyers in America® in the practice area of Intellectual Property Law (no aspect of that advertisement has been approved by the Supreme Court of New Jersey. See www.bestlawyers.com for details on selection methodology).

Mr. Ravin is an experienced trial and transactional attorney, with experience handling cases involving trade secrets, trademarks, copyrights, patents, licensing and technology transfers, as well as wide variety of Internet cases, including anonymous online speech, defamation, and domain name disputes. He is admitted to practice law in New Jersey, New York, Florida and the District of Columbia, as well as U.S. District Courts for the District of New Jersey, and Southern and Eastern Districts of New York.