



MEDIA BULLETIN

RIGHT TO ANONYMITY IN INTERNET DEFAMATION CASE REJECTED:

- Darryl Broderick

Last month, the High Court refused to grant Orders sought by a Dublin based student that would have restricted the media's ability to report on proceedings that he had issued against Facebook, Google, YouTube and others arising out of postings on line which falsely accused him of taxi fare evasion. A video clip had been posted on line which purported to show a group of people evading a taxi fare in Monkstown, Co. Dublin. Eoin McKeogh was falsely identified as one of the fare evaders. Mr. McKeogh had sought an injunction against certain "John Doe" Defendants as well as Facebook, Google and others requiring them to take down the posting and / or disable any defamatory material.

The High Court had granted an Interim Order on 11 January requiring the Defendants to the proceedings to take down, disable and / or remove the defamatory material. That Order was later continued by the High Court on 17 January and at that stage the proceedings came to the attention of the media and were widely reported. Mr. McKeogh then brought proceedings against various media organisations, who were joined as third parties to the proceedings, and this firm represented one of those third parties.

The proceedings against the media organisations were defended on the basis that not only was "the genie was out of the bottle" in that Mr. McKeogh's name had been widely reported in all forms of the media at that stage, but also that the Irish Constitution required that justice be administered in public save in exceptional cases. While the Judge held that the comments linking Mr. McKeogh to the alleged taxi fare evasion were defamatory he refused to grant the Orders sought against the media organisations. The Judge held that the mere reporting of proceedings in which a Plaintiff claims

against others that he has been defamed does not of itself constitute a repetition of that defamation provided that it is fair and accurate.

Comment:

Last May, we reported on the Ryan Giggs application for a "Super Injunction" in England. A Super Injunction is essentially a "gagging" Order that prevents not only reporting on the facts of a case but also on the making of the gagging Order itself. In the course of the McKeogh application against the media organisations it was suggested that Mr. McKeogh was seeking a Super Injunction but this was denied by his senior counsel. She stated that her client was not seeking a blanket ban on reportage of the Court application but wanted an Order preventing her client being named as no public interest was served by naming him in association with defamatory material and such reportage breached his constitutional right to privacy. The Judge acknowledged that the Supreme Court had previously found that the right to have justice administered in public far exceeds any right to privacy, confidentiality or good name and held that this case was not so exceptional so as to entitle the Court to deviate from the Law as established.

Like the Giggs case, the McKeogh case demonstrates that in this era of on line saturation, it is virtually impossible to prevent information being disseminated on line even where there are Court Orders preventing such dissemination. The law as it stands is not sufficient to prevent wide spread breaches of Court Orders in on line communications. As recently as this month, this was acknowledged in a separate case by the same judge involved in the McKeogh case, Mr. Justice Peart, who called upon the government to introduce legislation making it a criminal offence to post "patently untrue allegations" on the internet about any person. The Judge made these comments in a case where he made Orders, pending the full hearing of an action, requiring the termination of the rate_your_solicitor.com website.

CAN AN EMPLOYER OWN AN EMPLOYEE'S SOCIAL MEDIA ACCOUNT?

This is the question that a US Court has to answer in proceedings brought by mobile phone site, phonedog.com, against a former employee Noah Kravitz. Last month, a Judge in San Francisco refused an application by Mr. Kravitz to dismiss the claim by phonedog.com.

Mr. Kravitz had tweeted for phonedog as @phonedog_noah but later changed his user name when he left the company with his 17,000 twitter followers. Mr. Kravitz alleged that his former employer had given him permission to continue using the account when he left the company. Some months after Mr. Kravitz left phonedog, the company filed a lawsuit against him claiming that his twitter followers were a customer list in which they had invested substantial resources. The company is claiming damages of US\$370,000.00 broken down into a sum of \$2.50 per twitter follower per month. The case is ongoing.

Comment:

Intellectual property rights in employees social media accounts are going to become an issue of potential contention as long as social media continues to be used as a means of marketing by corporate entities. Ideally, employers should deal with the ownership of social media accounts created or developed during the course of employment and utilised by employees in their employment via internet usage policies. In the absence of a specific policy employers will have to rely on existing copyright law. In Mr. Kravitz's case, the fact that his twitter account contains the former employers name indicates that the company's case against him is far from hopeless. If the company succeeds, it will be interesting to see the Court's view of the company's basis for seeking damages per twitter follower.

THE SKY'S THE LIMIT FOR DAMAGES IN CYBERSPACE

Last December, a Judge in Oregon in the US affirmed a US\$2.5 million defamation judgement against a blogger arising out of defamatory allegations she had made about an investment company. The blogger, Crystal Cox, had made several postings about the Company's allegedly unethical practices. This is one of the highest defamation awards involving social media.

Comment:

This case is an example of the level of damages that can be awarded for on line defamation. It takes into account the potentially world wide audience available to online posters. Defamation awards in Ireland should fall, from the high point of the €10 million awarded by a jury in November 2010, due to the provisions of the Defamation Act, 2009 which allows juries to receive directions as to appropriate damages (the 2009 Act did not apply to that case). However, the audience or potential audience for on line defamatory comments is likely to significantly influence juries in awarding damages in the future. While some might say that one cannot fairly compare lawsuits in the US to those in Ireland, it would be risky to dismiss this award as irrelevant where a €10 million award for defamation has been made in Ireland in the not too distant past.

For further information, please contact:

Richard Martin (richard.martin@rdj.ie),
Darryl Broderick (darryl.broderick@rdj.ie),
John Buckley (john.buckley@rdj.ie),
Uilliam O'Lorcain (uilliam.olorcain@rdj.ie)

Cork Office: 12 South Mall, Cork.

Tel. No. 021 4802700

Fax No. 021 4802797