

## Order Requiring Non-Party Yelp to Remove Defamatory Reviews Affirmed by California Appellate Court

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A California appellate court recently affirmed a lower court's decision to require Yelp to remove three defamatory reviews. The First Appellate District did, however, remand the case to the trial court to narrow the terms of the removal order, which ordered Yelp to also remove potential future reviews.

The court determined that the removal order was an overbroad prior restraint on speech. But many viewed the June 7, 2016 decision as a major loss for Yelp and a blow to the protections that Section 230 of the Communications Decency Act (CDA) provides to many websites.

#### *Background*

Dawn Hassell is the managing attorney of the Hassell Law Group, a California personal injury firm. Hassell and her firm represented Ava Bird during the summer of 2012.

However, after 25 days, Hassell withdrew from representation. In January 2013, Bird published a negative—and allegedly false—review about her experiences with Hassell and her firm.

Hassell attempted to speak with Bird about the Yelp review. Hassell's call went unreturned. So her office sent Bird an email requesting that she remove the "factual inaccuracies and defamatory remarks" from Yelp.

In an email response, Bird fired back. Bird refused to remove the review and threatened to post (or have someone else post) another review. Nine days later, another negative and allegedly false review went up on Yelp, which Hassell suspected came from Bird.

Bird allegedly posted a third defamatory review in April of that year.

Hassell and her firm filed a defamation-based lawsuit against Bird in April 2013. They claimed Bird's acts caused significant and irreparable harm to their reputations.

Bird never responded to the complaint.

Later, on Jan. 14, 2014, the trial court granted the plaintiffs' default judgment. The court awarded Hassell and her firm \$557,918.75 in damages, plus injunctive relief.

Specifically, the court ordered that Bird remove all defamatory online reviews she published (or caused to be published) about Hassell and the Hassell Law Group; that Bird and anyone acting on her behalf refrain from any future reviews about them; and that **Yelp**, itself, remove the identified defamatory Yelp reviews "and any subsequent comments" from the reviewers.

The judgment became final on March 16, 2014.

Several weeks earlier, Yelp objected to the judgment in a letter to Hassell. Then, on April 30, 2014, Hassell wrote to Yelp again. She asked the company to reconsider its position because of Bird's non-compliance with the judgment (plus she was judgment proof). Thus, Hassell's only remedy was to go through Yelp.

On May 23, 2014, however, Yelp moved to set aside and vacate the judgment. This was ultimately denied.

Yelp appealed.

### *Appellate decision*

In short, the First Appellate District Court, Division Four, held as follows:

- Due process did not bar the removal order;
- The removal order was not a prior restraint, but the order to remove subsequent comments was an overbroad restraint on speech;
- Section 230 of the CDA did not bar the trial court from issuing the removal order because the order did not impose any liability on the website; and
- For purposes of standing to appeal, Yelp was aggrieved by the removal order because the order directly affected the operation of its business and potentially carried some pecuniary consequence.

Among other key findings, the court stated that the California Supreme Court "has explicitly confirmed that injunctions can be applied to nonparties in appropriate circumstances," despite Yelp's insistence that the language requiring it to remove the defamatory reviews should not have been allowed.

Moreover, the appellate court stated that the lower court had power to include the portion of the order that required Yelp to remove the three defamatory reviews "because the injunction prohibiting Bird from repeating those statements was issued following a determination at trial that those statements are defamatory."

Another significant aspect of the court's opinion was its discussion of potential immunity under section 230 of the CDA.

As previously mentioned on our blog, section 230(c)(1) of the CDA states that “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.” In other words, this section generally immunizes “interactive” websites such as Yelp from liability arising from third-party content, including defamatory online reviews.

As the appellate court noted here in *Hassell v. Bird*, the foundation of this immunity is to: 1) encourage websites to self-regulate offensive material, and 2) avoid a chilling effect of speech online.

But the court found the removal order did not violate section 230 “because it does not impose any liability on Yelp.” Hassell and her firm filed their complaint **against Bird**; they obtained a default judgment **against Bird**; and they were awarded damages and injunctive relief **against Bird**.

The court held that Yelp was unable to establish that the CDA or any other law prevented the lower court from issuing the removal order. Accordingly, the court affirmed the lower court’s order denying Yelp’s motion to vacate the judgment against Bird (but remanded the case to the trial court regarding limiting the scope of the removal order, as mentioned above).

While free speech advocates, including websites such as Yelp, continue to push for a **federal anti-SLAPP statute** and similar protections in states that do not presently have anti-SLAPP laws, this was a significant ruling for businesses and professionals who are defamed online and are often left unprotected.

Of course, Yelp has yet to remove the defamatory reviews and will likely continue to challenge the removal order. But, as it stands, this decision is favorable for those seeking to enforce a court order against noncomplying defendants, plus non-party websites.

Moreover, the court’s decision not to allow Yelp to hide behind Section 230 sets a good precedent for harmed parties seeking to compel removal of defamatory content from websites that refuse to comply with valid court orders.

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