

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

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5 THE HONORABLE STEPHEN V. WILSON, U.S. DISTRICT JUDGE PRESIDING

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7 ASIA ECONOMIC INSTITUTE, LLC,)
8 et al.,)

9 Plaintiffs,)

10 vs.)

No. CV 10-1360-SVW

11 XCENTRIC VENTURES, LLC, et al.)

12 Defendants.)
13 _____)

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16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 LOS ANGELES, CALIFORNIA

18 MONDAY, SEPTEMBER 20, 2010
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23 DEBORAH K. GACKLE, CSR, RPR
24 United States Courthouse
25 312 North Spring Street, Room 402A
Los Angeles, California 90012
(213) 620-1149

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
COURT REPORTER DEBORAH K. GACKLE**

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1 **LOS ANGELES, CALIFORNIA; MONDAY, SEPTEMBER 20, 2010; 1:40 P.M.**

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4 THE CLERK: Item 1, CV 2010-136-SVW, Asia Economic
5 Institute, et al. v. Xcentric Ventures, LLC, et al.

6 Counsel, please state your appearance.

7 MS. SPETH: Maria Speth for defendant Xcentric
8 Ventures.

9 MR. GINGRAS: Good afternoon, Your Honor. Dave
10 Gingras on behalf of defendants Xcentric Ventures and Ed
11 Magedson.

12 MS. BORODKIN: Good afternoon, Your Honor. Lisa
13 Borodkin for plaintiffs.

14 THE COURT: Let me first ask Ms. Borodkin -- would
15 you take the lectern. It appears that the RICO claim is no
16 longer at issue if the court denies the motion for
17 reconsideration because the court did grant partial summary
18 judgment on the extortion predicate act, and then in reviewing
19 the pleadings for the hearing today, the plaintiff, while given
20 leave to amend regarding the other predicate act, wire fraud,
21 has abandoned that claim.

22 So it appears that the RICO claim is no longer at
23 issue. If that be the case, you're seeking to remand the case
24 to the state court, correct?

25 MS. BORODKIN: Your Honor, we wanted to; however,

1 defendants indicated they believed there's diversity
2 jurisdiction and on that ground, we felt we were not able to
3 make a motion to remand.

4 THE COURT: But what is the nature of the diversity
5 jurisdiction? In other words, you're a California party is
6 the defendant a nonCalifornia party?

7 MS. BORODKIN: I understand that defendants contend
8 that the defendants are domiciliaries of Arizona.

9 THE COURT: I see. And the defendant is Xcentric
10 Ventures, Bad Business Bureau and Edward Magedson, right?

11 MS. BORODKIN: Correct.

12 THE COURT: In your view, are they separate
13 defendants or just parties that are all under one defendant
14 umbrella?

15 MS. BORODKIN: Mr. Magedson is a separate defendant
16 from Xcentric Ventures, LLC.

17 THE COURT: Let me ask the defendants a few
18 questions.

19 You can take the lectern.

20 What is Mr. Magedson's domicile?

21 MS. SPETH: He is a resident of the state of Arizona,
22 Your Honor.

23 THE COURT: What about Xcentric Ventures?

24 MS. SPETH: Xcentric Ventures is an Arizona LLC whose
25 only member is a Nevada corporation.

1 THE COURT: Bad Business Bureau the same?

2 MS. SPETH: There is no such entity, Your Honor.

3 THE COURT: All right. Back to you.

4 So there are a variety of state-based actions that
5 you're alleging other than the RICO claim. Can you just, in a
6 summary way, describe the state-based actions: Unfair business
7 practice, intentional and negligent interference with
8 prospective economic advantage. I mean what is the unfair
9 business practice other than that which you've described in
10 your RICO effort? In other words the outline of the case
11 doesn't change; we're just sort of trying to fit it into
12 different categories.

13 The outline of the case is that the defendant has
14 this site where it posts complaints about businesses, and then
15 it has a program where it engages those businesses who have
16 experienced adverse comments to enter a program that the
17 defendants have whereby the site will include an explanation or
18 positive comments.

19 The defendant, as I understand it, has no control or
20 no legal obligation to filter what is posted. Just accept that
21 for the moment. If that be the case, how could the defendant
22 be liable for intentional or negligent interference with
23 prospective business opportunity?

24 MS. BORODKIN: Your Honor, plaintiffs are focused
25 especially in the amended pleading on conduct of the

1 defendants, not of contributions of third parties. So the
2 conduct that the amended pleading focuses on falls into a
3 number of categories: One is the defendants' purposeful
4 encoding of the HTML, which is the computer code that's not
5 visible at first sight on the website but that has the effect
6 of extending certain statements into Google searches primarily.

7 So what we're alleging is that they offer to change
8 what they put in the HTML computer code behind the scenes for a
9 price. We allege that they're not transparent with the general
10 audience with the website, that people are not aware that
11 that's an option that they offer. And --

12 THE COURT: Stop for a minute. People are not aware
13 of what option?

14 MS. BORODKIN: That they'll offer to change the HTML
15 so they can change the Google results.

16 THE COURT: In other words -- I'm sort of translating
17 this into my own thinking -- that when a complaint is made and
18 it's posted on the defendant website, the software, which
19 enables the complaint to get onto the defendants' software, is
20 somehow manipulated so that the negative comment is more
21 accessible on a Google search than would be otherwise?

22 MS. BORODKIN: Generally, yes.

23 Our expert has submitted a declaration and report
24 saying most people's point of entry to these reports is not by
25 navigating to their website. They do a Google search for

1 somebody's name, they see the preview, which is the small
2 snippet of text. They make a judgment based on that. They may
3 or may not click through to defendants' website, but the
4 software or computer code that you're referring to is code that
5 defendants write. They offer to change that so that if --

6 THE COURT: They offer to change that to whom?

7 MS. BORODKIN: They offer to people who inquire about
8 the Corporate Advocacy program and to people with whom they've
9 become in legal disputes.

10 THE COURT: Oh, I see. So you're saying that -- I
11 see. What is the unfair business practice? Is that the same
12 thing?

13 MS. BORODKIN: The unfair business practice
14 derivative of their failure to inform the public that this is
15 the basis on which they will offer to change somebody's Google
16 results. They have basically endorsements. We feel they're
17 independent violations of the FTC Act where they will verify
18 safe certain advertisers, possibly participants in the
19 Corporate Advocacy Program.

20 It's not based on an independent evaluation as far as
21 we can see, it's based on their membership in the CAP program,
22 and the implication is damaging to others who are not members
23 of the programs because it implies that they're not verified
24 safe or that they're ripoffs.

25 THE COURT: How do you respond to that?

1 MS. SPETH: Your Honor, there is two issues that
2 Ms. Borodkin has raised: One is she has said that there's
3 something going on with the HTML code. The issue is very
4 simple, Your Honor. If someone posts something on the website
5 that is automatically -- then there's going to be a title tag
6 that's created as a result of the input of the user, that will
7 allow it to be searched by Google. It's not something that the
8 website does, it's something that -- first of all, that Google
9 does by searching the website, and secondly that is --

10 THE COURT: That's the point. I mean the plaintiff
11 contends that what is presented to a Google searcher is not
12 something that the defendant enhances or manipulates, it's just
13 the by-product of the posting by the defendant, and the
14 plaintiff -- at least as I hear it today -- contends that
15 that's not so, that they have some expert who will say that the
16 code is prepared or constructed in a way that enables the
17 Google searcher to contact that negative information more
18 readily than otherwise.

19 MS. SPETH: Neither their complaint nor their expert
20 says such a thing, Your Honor.

21 THE COURT: But let me -- well, how do you intend to
22 address these state law claims? Do you think that they're
23 susceptible to summary judgment?

24 MS. SPETH: Yes, Your Honor, under the Communications
25 Decency Act and everyone is -- perhaps as to the fraud claims,

1 and the fraud claims they lack both reliance and they lack any
2 causation to their damages --

3 THE COURT: Forgetting for the moment the first
4 amendment type of defense, why would that type of defense
5 necessarily control if what the plaintiff says is true, that
6 you're manipulating the code to emphasize the negative
7 information posted on your website? Wouldn't you have to deal
8 with that by way of attempting to establish that the code
9 writing argument that the plaintiff is offering has no
10 substance?

11 MS. SPETH: Your Honor, we don't disagree with the
12 plaintiff's expert and the way the plaintiff's expert -- we
13 disagree with his opinions, but the way he describes the
14 process is accurate; and the process is exactly what Your Honor
15 described in the beginning of your comments. The process is
16 that there is a template, a software code, and when the user
17 inputs the user's information, that's the information that
18 creates the tagging for the title tag.

19 That's the way plaintiff's expert describes it,
20 that's the way it actually happens, and that is a process by
21 which the user inputs the content not Ripoffreport. And so
22 under the Communications Decency Act -- and this very issue has
23 been decided by other federal judges, Your Honor -- under the
24 Communications Decency Act, Ripoffreport is only responsible
25 for what they input.

1 THE COURT: Are other federal judges as capable as I
2 am?

3 MS. SPETH: I don't think as capable as you, Your
4 Honor. They made these decisions after full briefing on the
5 merits.

6 THE COURT: Federal judges are not fungible.

7 MS. SPETH: I do know that, Your Honor.

8 THE COURT: Some are better than others.

9 MS. SPETH: I welcome you to look at this issue
10 independently.

11 THE COURT: Well, then, are you going to file the
12 summary judgment?

13 MS. SPETH: We did move for reconsideration on our
14 motion for summary judgment. We already filed it, Your Honor,
15 and then we moved for reconsideration on it; and the only
16 reason that Your Honor didn't decide it was because you
17 bifurcated and you wanted to hear the RICO claims first.

18 THE COURT: That is true.

19 So now you're saying that it was briefed but not
20 addressed.

21 MS. SPETH: Exactly. At this point we've asked the
22 court to address the remaining claims to --

23 THE COURT: Have you responded to the -- yes. Is it
24 fully briefed?

25 MS. BORODKIN: It is not. It was not on notice. We

1 had no meet and confer. Plaintiffs were relying on the court's
2 statements in the order of July 19th that their motion for
3 summary judgment was inappropriate inasmuch as the case had
4 been bifurcated.

5 THE COURT: Why don't we do it, then, in a cleaner
6 way. Why don't you refile a summary judgment motion and do
7 that by the end of the week, Monday.

8 MR. GINGRAS: Your Honor, if I might, that raises a
9 question because I'm not sure what complaint we would be
10 addressing. There is a first amended complaint, which is the
11 current operative pleading. I think they moved for leave to
12 file a second amended complaint, which has neither been granted
13 nor denied.

14 THE COURT: What would the second amended complaint
15 contain that the first amended complaint doesn't?

16 MS. BORODKIN: Could I be heard, Your Honor, on
17 another point? We respectfully disagree with the entire
18 characterization of the precedent. This theory has never been
19 raised. No federal court has addressed search engine
20 optimization practices --

21 THE COURT: You know something? Obviously this is
22 just an opportunity for the court to get some sort of preview.
23 I have not consider the matter, and certainly I won't until
24 it's briefed. That's why I asked if it was briefed.

25 Now, if the plaintiffs file a summary judgment motion

1 on the state claims, what is the operative complaint? Is it
2 the first amended complaint or the second amended --

3 MS. BORODKIN: I understand. Today we are here on a
4 motion under Rule 15 to amend the pleadings to permit the
5 filing of a second amended complaint. The difference between
6 the second amended complaint is that omits the RICO wire fraud
7 claim. This was done in response to a Rule 11 motion.

8 THE COURT: Why don't we just do this -- I mean all
9 the skirmishing about the complaint -- I mean you know the
10 complaint is -- no one sees the complaint. The jury doesn't
11 see the complaint. So why don't we just agree to strike the
12 RICO claim from the first amended complaint and let that stand?

13 MS. BORODKIN: With respect to our motion to amend
14 the pleadings, plaintiffs have wanted to do that, and we would
15 be amenable to that; however, we did file the motion for
16 reconsideration on the extortion claim.

17 THE COURT: Let me make it simple: The motion for
18 reconsideration is denied. The motion to strike the RICO claim
19 from the first amended complaint is granted. That is the
20 operative complaint.

21 So then file your summary judgment motion with that
22 as the pleading, and file it by next Monday.

23 And then set up the schedule, Paul.

24 THE CLERK: Yes, Your Honor.

25 Filing of the motion will be September 27th; the

1 opposition will be due October 4th, the reply will be due
2 October 12th, hearing will be November 1st at 1:30.

3 THE COURT: Now, there are some other matters that
4 are on the agenda. Apparently the defendants believe that the
5 plaintiff breached a confidentiality agreement by describing
6 the nature of the settlement talks, but while a breach of the
7 confidentiality attached to settlement talks is serious and an
8 ethical matter, the plaintiff, perhaps mistakenly, but
9 arguably, raises the matter as sort of a similar conduct kind
10 of argument; isn't that true? In other words, you're saying --

11 MS. BORODKIN: Yes, we were threatened.

12 THE COURT: You view that as a threat.

13 MS. BORODKIN: It was a threat.

14 THE COURT: Not as a settlement discussion.

15 And, frankly, in this context, it's not worth the
16 court's while to parse that out. So let's just pick up all the
17 flags, all right? No penalty.

18 MS. BORODKIN: Thank you, Your Honor.

19 THE COURT: Thank you.

20 We'll see you on the appointed date.

21 MS. BORODKIN: We have a hearing on October 4th.

22 THE COURT: Yes, thank you.

23 (Proceedings concluded at 1:55 p.m.)

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C E R T I F I C A T E

I hereby certify that the foregoing is a true and correct transcript from the stenographic record of the proceedings in the foregoing matter.

September 23, 2010

Deborah K. Gackle
Official Court Reporter
CSR No. 7106

Date