Levitt v. Yelp! Inc. Doc. 29

1 2 3 4 5 6	COOLEY LLP MICHAEL G. RHODES (116127) (rhodesm MATTHEW D. BROWN (196972) (brownn BENJAMIN H. KLEINE (257225) (bkleine) 101 California Street, 5th Floor San Francisco, CA 94111-5800 Telephone: (415) 693-2000 Fax: (415) 693-2222  Attorneys for Defendant YELP! INC.	nd@cooley.com)
7 8	LINITED STAT	TES DISTRICT COURT
9	NORTHERN DISTRICT OF CALIFORNIA	
10	SAN FRANCISCO DIVISION	
11		
12	BORIS Y. LEVITT, on behalf of himself and all others similarly situated,	No. CV 10-01321 MHP
13	Plaintiff,	DEFENDANT YELP! INC.'S NOTICE OF
14	V.	PENDENCY OF OTHER ACTIONS OR PROCEEDINGS (CIVIL L.R. 3-13)
15	YELP! INC.; and DOES 1 through 100,	
16	inclusive,  Defendants.	Courtroom: 15 Judge: Honorable Marilyn Hall Patel Trial Date: None Set
17	Defendants.	That Date. None Set
18 19		No. CV 10-02351 MHP
20	CATS AND DOGS ANIMAL HOSPITAL, INC.,et al., on behalf of	140. CV 10-02331 WITH
21	itself and all others similarly situated,	
22	Plaintiffs,	
23	V.	
24	YELP! INC.,	
25	Defendant.	
26		
27		
28		
COOLEY LLP ATTORNEYS AT LAW SAN FRANCISCO		DEF. YELP'S NOTICE OF PENDENCY OF OTHER ACTIONS OR PROC. CASE NOS. CV 10-1321& 10-2351 MHP

Defendant Yelp! Inc. ("Yelp"), by and through its undersigned counsel of record, hereby notifies the Court and all opposing parties pursuant to Civil Local Rule 3-13 that the two instant actions, *Levitt v. Yelp! Inc.*, No. CV 10-01321 MHP ("*Levitt*"), and *Cats and Dogs Animal Hospital, Inc. v. Yelp! Inc.*, No. CV 10-02351 MHP ("*Cats and Dogs*"), involve overlapping subject matter and the same defendant as another pending action. The other action, entitled *Gelareh Rahbar and Rahbar Dentistry, PC v. Yelp! Inc.*, No. CGC 10 499227 ("*Rahbar*"), is pending in the Superior Court of the State of California, County of San Francisco.

## The Rahbar Action

Yelp operates a popular website, www.yelp.com (the "Yelp Website"), which allows Yelp users (known as "Yelpers") to write reviews of local businesses and allows anyone to read these reviews. Since 2004, Yelpers have written millions of reviews about every kind of local business—from restaurants and cafes to mechanics and dentists. Yelpers rate these businesses on a scale of one to five stars. Like many websites, Yelp sells advertisements to local businesses, which can appear on the Yelp Website as "Sponsored Results" (clearly labeled as such) in response to certain searches.

Per their allegations, the plaintiffs in *Rahbar* (the "Rahbar Plaintiffs") are a dentist and her professional corporation, which advertised on Yelp's website beginning in 2008. The Rahbar Plaintiffs allege that after they began advertising on Yelp, two false and defamatory reviews of their business were posted by third parties on Yelp's website, causing a loss in revenue. After the negative reviews were posted, the Rahbar Plaintiffs allege that Yelp demanded more money from them, or the negative and false reviews would become more prominent. Yelp denies these allegations. Yelp terminated its advertising relationship with Plaintiffs after learning that Plaintiffs had sued the third-party users who posted the negative reviews of their business.

## Relationship of the Rahbar Action to the Levitt and Cats and Dogs Actions

The *Rahbar* action involves overlapping subject matter and claims with the *Levitt* and *Cats and Dogs* actions. The *Rahbar* action focuses its factual allegations on allegedly defamatory statements posted by certain, specific Yelpers—allegations that do not form the basis of the *Levitt* and *Cats and Dogs* actions. However, *Rahbar* does involve—like *Levitt* and *Cats and Dogs*—

allegations that, based on whether a business chooses to advertise with Yelp or not, the display of reviews of such business on the Yelp Website is either positively or negatively affected.

Plaintiffs in all three actions assert claims for violation of California's Unfair Competition Law, Business and Professions Code Section 17200 *et seq*. The Rahbar Plaintiffs also include claims for (a) violation of Cal. Penal Code §§ 518-19 (extortion), (b) violation of Cal. Penal Code § 524 (attempted extortion), (c) intentional interference with prospective economic advantage, (d) unauthorized commercial use of name, (e) conspiracy to injure in trade, and (f) interference with contract. Plaintiffs in the *Cats and Dogs* action include additional claims for (a) violation of Cal. Penal Code §§ 518-19 (extortion), (b) violation of Cal. Penal Code § 524 (attempted extortion), and (c) intentional interference with prospective economic advantage. Plaintiff in the *Levitt* action includes additional claims for (a) violation of California Business and Professions Code Section 17500, (b) negligent misrepresentation, and (c) intentional misrepresentation. Unlike the *Levitt* and *Cats and Dogs* actions, the *Rahbar* action is not styled as a class action.

## Yelp Has Moved to Stay the *Rahbar* Action Under California-State-Law Principles Applicable When Related Federal Actions Are Pending

On June 11, 2010, Yelp moved to stay the *Rahbar* action pending resolution of the *Levitt* and *Cats and Dogs* actions, to avoid conflicts, conserve resources, and promote an efficient determination of the actions. Under California state law, a state court has discretion to stay a state-court action when there is a pending federal-court action that covers the same subject matter. *Caiafa Prof'l Law Corp. v. State Farm Fire & Cas. Co.*, 15 Cal. App. 4th 800, 804 (1993). Concurrent with the motion to stay, Yelp also filed a demurrer to the Complaint in the *Rahbar* action.

Dated: July 16, 2010

COOLEY LLP

/s/ Matthew D. Brown

Matthew D. Brown (196972)

Attorneys for Defendant Yelp! Inc.

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