

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, INC.)	
)	
Plaintiff)	Judge Amy J. St. Eve
)	
v.)	Magistrate Judge Jeffrey Cole
)	
CRAIGSLIST, INC.)	Case No. 06 C 0657
)	
Defendant.)	

CRAIGSLIST'S RESPONSE TO MOTION FOR LEAVE TO FILE SURREPLY

The issues before the Court on craigslist's motion for judgment on the pleadings have been fully aired in the parties' three briefs and the two *amici* briefs. Plaintiff's proposed surreply mostly reargues points already made. While there is thus no need for the surreply offered by Plaintiff, craigslist does not oppose Plaintiff's motion for leave to file its surreply – with one reservation.

If the Court allows Plaintiff to file its surreply, craigslist respectfully requests that the Court not allow the exhibits to that brief. The proposed surreply's Exhibits 1-3 should not be permitted to become part of the record by way of a surreply because they raise new affirmative matters and are also misleading and irrelevant.

Exhibit 1 is a pleading filed in *George S. May Int'l v. Xcentric Ventures, LLC*, Case No. 04 C 6018. craigslist had argued (Reply at 3, n. 3) that the TRO entered against an Internet company (Pltf's Mem. at Ex. 10) can carry no weight for a host of reasons, including because it was entered within days of the filing of the case on a limited record, and because there is no indication that Section 230 was even considered by the Court before its entry. The brief that is Exhibit 1 to the surreply was filed on or about October 5, 2004 – *i.e.*, after the entry of the TRO. Moreover, a review of the record in the *May* case shows that the TRO was extended by agreement of the parties on October 8, 2004, confirming that the Court was

never asked to rule on the Section 230 immunity issue. *See* Joint Initial Status Report at 2 (filed June 22, 2006 in the *George S. May Int'l* case) (attached hereto as Ex. A).

Exhibit 2 is a purportedly year-old excerpt from a website owned by the National Association of Realtors (*see* proposed Surreply at 9) (the exhibit appears to be printed from a website www.stewart.com, and not an NAR site). The (hearsay) article quotes persons who confess that they are not experts in the relevant areas of law. Moreover, to the extent the article is providing advice to realtors with respect to their own websites, this situation is distinguishable from the situation before the Court, because craigslist is not the author of any of the postings at issue, whereas we presume the realtors referenced in the article draft their own postings.

Exhibit 3 claims to be a series of employment notices found on the craigslist site which Plaintiff insinuates are illegal. Not only does the exhibit purport to raise issues far outside the complaint (there is no allegation in the complaint regarding employment postings), but the exhibit does not even demonstrate that the depicted notices are unlawful in any respect – unless the Court makes numerous, unsupported assumptions with respect to the notices, including relating to the size of the employers posting the notices and the nature of the employment offered. *See* 775 ILCS 5/101.2(B) (employer employing fewer than 15 employees exempt under Illinois Human Rights Act); 42 U.S.C. 2000e(b) (similar definition provision in U.S. Code, Title VII); *see also* 775 ILCS 5/104(A)(I) (lawful to place advertisements to express a preference if that preference is based upon a bona fide occupational qualification); 42 U.S.C. 2000e-2(e) (similar provision in U.S. Code, Title VII). The pending motion should be decided on the facts alleged in the complaint, and not on a baseless smear campaign of assertions of unrelated conduct.

Wherefore, to the extent the Court permits the filing of Plaintiff's surreply, craigslist respectfully requests that the surreply's exhibits be stricken.

Respectfully submitted,

CRAIGSLIST, INC.

July 3, 2006

By: s/ Eric D. Brandfonbrener

Eric D. Brandfonbrener
Christopher B. Wilson
PERKINS COIE LLP
131 S. Dearborn, Suite 1700
Chicago, IL 60603
Tel: (312) 324-8400

David J. Burman
PERKINS COIE LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101

David W. Ogden
Patrick J. Carome
WILMER CUTLER PICKERING HALE and DORR LLP
2445 M Street, NW
Washington, DC 20037

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GEORGE S. MAY)
INTERNATIONAL COMPANY,)
)
Plaintiff,)
)
-vs-)
)
XCENTRIC VENTURES, LLC,)
RIP-OFF REPORT.COM)
BADBUSINESSBUREAU.COM,)
ED MAGEDSON, VARIOUS)
JOHN DOES, JANE DOES AND)
ABC COMPANIES,)
)
Defendants.)

Case Number: 04 C 6018

Judge Charles R. Norgle, Sr.

Magistrate Judge Mason

JOINT INITIAL STATUS REPORT

Pursuant to the Court’s orders dated May 31, 2006 and June 4, 2006, attached as Exhibit A, referring this case to Magistrate Judge Mason for the purpose of conducting necessary proceedings and entering an Order/Report and Recommendations on nondispositive motions, with the exception or addition of Plaintiff’s motion for contempt sanctions, the parties hereby submit their joint initial status report as follows:

A. Summary of Claims

Plaintiff George S. May International Company (“GSMIC” or “George S. May”) filed suit against Defendants on September 15, 2004. Plaintiff sought a Temporary Restraining Order and Injunctive Relief, as well as damages, against Defendants based on Plaintiff’s allegations that there was false, defamatory and deceptively misleading information on Defendants’ websites, www.ripoffreport.com and www.badbusinessbureau.com. Judge Norgle granted Plaintiff’s motion for a temporary restraining order and order to show cause as to why a preliminary injunction should not be entered against Defendants, requiring Defendants, among

other things, to take down the allegedly false, defamatory and deceptively misleading information on the websites, on September 24, 2004, and that order was extended by agreement of the parties on October 8, 2004. Subsequently, George S. May believed that Defendants did not comply with the Temporary Restraining Order and moved for an order of contempt. Defendants' position was that they complied with the Order because they had taken down the posting that they believed was the subject of the application for TRO. George S. May's position was that Defendants did not take down other postings that were not specifically identified in their application but which George S. May claimed were false, defamatory and deceptively misleading. Judge Norgle granted George S. May's motion, and found Defendants in contempt of the temporary restraining order on September 13, 2005. Defendants' motion for reconsideration of the contempt order was denied on May 18, 2006. George S. May filed a brief in support of the contempt sanction on October 17, 2005, and the nature and amount of the contempt sanction remains before Judge Norgle. George S. May alleges that it continues to be harmed by Defendants' conduct, as well as the way Defendants have modified the websites to take down the false and deceptively misleading statements of fact, and expects to seek leave to file supplemental evidence of damage, and potentially a new motion for contempt in the near future. Defendants' position is that they have not only taken down all of the postings that were the subject of the application for TRO, but that they have also taken down all of the postings that George S. May claims are false even though there has never been a hearing on whether the postings are actually false and even though Defendants' claim the injunction violates the First Amendment and the Communications Decency Act.

Plaintiff's Complaint alleges four causes of action, including: (1) False or Misleading Description or Misrepresentation under Section 43(a) of the Lanham Act; (2) Defamation/Libel; (3) a cause of action under the Illinois Consumer Fraud and Deceptive Business Practices Act,

815 ILCS § 505/1-12; and (4) a cause of action under the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510/1-7. Defendants moved to dismiss the Complaint for lack of personal jurisdiction, and this motion was denied on January 17, 2006. Defendants filed an answer and affirmative defenses to Plaintiff's Complaint on February 2, 2006. Defendants have alleged five affirmative defenses, including: (1) failure to state a claim; (2) unclean hands; (3) truth; (4) lack of intent/actual malice; and (5) the Communications Decency Act. Plaintiff answered the affirmative defenses on February 10, 2006.

B. Relief Requested/Damages

In this lawsuit, Plaintiff seeks the following relief:

1. Injunctive relief, including a permanent injunction;
2. Monetary damages attributable to Defendants' conduct, such damages which are, by their nature, ongoing and in an amount to be proven at trial, and costs and fees, including attorneys' fees; and
3. As a contempt sanction against Defendants, Plaintiff sought damages in the sum of \$280,000, plus a fine of \$767 per day based on Defendants' failure to comply with the temporary restraining order, among other relief requested.

Based on the scope of this referral, the contempt sanction is to be considered by Judge Norgle. Plaintiff reserves the right to supplement its damages submissions, both for the contempt sanction and on the underlying merits of the Complaint, as it alleges that damages are ongoing.

Among other things, Defendants' Answer and Affirmative Defenses requested damages and attorneys' fees under 15 U.S.C. § 1117(a), Fed. R. Civ. P. 11(c), and costs under 735 ILCS § 5/5-109, and under any other applicable authority.

C. Scope of Referral

See referral orders, attached as Exhibit A.

D. Status of Any Matters Briefed in this Case

Plaintiff's motion for a contempt sanction as a result of the Court's September 13, 2005 order finding Defendants in contempt of the TRO has been fully briefed, and pursuant to the referral order, this matter is to be decided by Judge Norgle. The parties have also fully briefed George S. May's motion for a preliminary injunction, however the TRO remains in effect by agreement of the parties.

E. Discovery /Discovery Deadlines

The parties agreed to a discovery schedule, which was submitted as an agreed order and signed by Judge Norgle on May 24, 2006. See Exhibit B. The parties exchanged Rule 26(a) disclosures in April, 2006, and both parties have propounded and responded to written discovery. No depositions have been scheduled yet, and both parties have yet to exchange documents in response to document requests. Defendants have listed eleven potential witnesses in their Rule 26 disclosures, and several depositions are contemplated by both parties in this case. Plaintiff contemplates that it may also submit expert testimony and opinion. Defendants will be filing a Motion for Summary Judgment based on its position that immunity is provided to Defendants by the Communications Decency Act.

F. Settlement

Shortly after the commencement of the case, the parties discussed settlement, but have not been able to reach any settlement in this case. Plaintiff remains open to settlement discussions with Defendants, including, but not limited to, a settlement conference before the Court with parties present. Defendants are also open to settlement discussions but Defendant Magedson would request permission to be present telephonically (although his counsel could appear in person) because (1) he does not fly; and (2) he is the subject of ongoing death threats.

Respectfully submitted,

s/ Maria Crimi Speth

Maria Crimi Speth, Esq.
Lead Counsel for Defendants
Jaburg & Wilk, P.C.
3200 North Central Avenue, Suite 2000
Phoenix, AZ 85012

James K Borcia, Esq.
David O. Yuen, Esq.
Counsel for Defendants
Tressler, Soderstrom, Maloney & Priess
233 South Wacker Drive, 22nd Floor
Chicago, Illinois 60606

s/ Rachel M. Kindstrand

Bart A. Lazar, Esq.
Rachel M. Kindstrand, Esq.
Counsel for Plaintiff
Seyfarth Shaw LLP
55 East Monroe Street, Suite 4200
Chicago, IL 60603

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on July 3, 2006, he caused a true and correct copy of **CRAIGSLIST'S RESPONSE TO MOTION FOR LEAVE TO FILE SURREPLY** to be served through the Court's electronic system on:

Stephen D. Libowsky
Howrey LLP
Suite 3400
321 North Clark Street
Chicago, Illinois 60610

Laurie Wardell
Elyssa Balingit Winslow
Chicago Lawyers' Committee for Civil Rights Under Law, Inc.
100 North LaSalle Street, Suite 600
Chicago, Illinois 60602

s/ Eric D. Brandfonbrener