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 MOTION FOR LEAVE TO FILE *INSTANTER* SUR-REPLY IN FURTHER OPPOSITION TO CLC'S MOTION TO ALTER OR AMEND JUDGMENT

Defendant craigslist respectfully seeks leave of Court to file the attached, short sur-reply addressing material raised for the first time in Plaintiff CLC's December 8, 2006 Reply in support of its motion to alter or amend the November 14, 2006 judgment entered in this case. In further support of this motion, craigslist states as follows:

1. CLC's motion was one-paragraph long, while its Reply was 10-pages long – *i.e.*, all of CLC's arguments in support of its motion were raised in reply, not in its opening submission.

2. The total length of craigslist's submissions in response to CLC's motion equals 10 pages (7-page Response + 3-page sur-reply) – *i.e.*, even with the attached sur-reply, craigslist's submissions are within the 10-page page limit set by the Court for the briefing of this matter.

WHEREFORE, craigslist respectfully seeks leave to file *instanter* the attached sur-reply.

Respectfully submitted,

CRAIGSLIST, INC.

December 19, 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 PICERKING HALE and DORR LLP
2445 M Street, NW
Washington, DC 20037

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 SUR-REPLY IN FURTHER OPPOSITION TO CLC'S MOTION TO ALTER OR AMEND JUDGMENT

craigslist offers the following in sur-reply to the Reply filed by CLC on December 8, 2006.

1. CLC's Reply confirms for the first time that CLC's motion is made pursuant to Fed.R.Civ.P. 59(e). Nonetheless, CLC has made no effort to demonstrate compliance with any of the Rule's requirements. *See* craigslist 12/1/06 Response at n.1 (undisputed summary of Rule 59). CLC has ignored Rule 59(e)'s requirements because it cannot satisfy any of them. The only grounds CLC has offered for altering or amending the judgment are those that CLC could have offered before or in fact did assert previously. Rule 59 does not permit a disappointed party simply to make new or repackaged old arguments in hopes of effecting a different result. On these process grounds alone, CLC's motion must be denied.

2. In its Reply, CLC urges the Court to abandon its common-sense definition of "print" (as that term is used in the FHA) in favor of a definition so broad it sweeps within its scope what is otherwise understood to be publishing (*i.e.*, the dissemination of information). *See, e.g.*, CLC Reply at 3-4 (arguing that FHA liability extends to intermediaries "which only disseminate or

pass along the discriminatory statement").[1] The CLC alternatively urges a definition of "print" that is so nebulous as to cause the word to lose all meaning (*i.e.*, seeking to hold craigslist liable as a printer for its role in the chain of electronic transmissions that allows individual users of the craigslist service to display Internet content on their computers). It is simply not fair or accurate to say that craigslist's electronic service "prints" housing notices. Moreover, to the extent there is any "printing" at all in this context, it is done, according to CLC's analysis, by those individual users of the site who elect to display information in a form they select on their computer screens – not craigslist.

CLC does not cite to any cases suggesting that the Court committed error in its interpretation of the FHA. Indeed, the few cases cited by CLC support craigslist's interpretation of the term "print." *See, e.g., Mayers v. Ridley*, 465 F.2d 630, 633 (D.C. Cir. 1973) (finding that recorder might be deemed to have printed deeds with restrictive covenants when it accepts and copies them, but the recorder plainly publishes the announcements so no need for analysis; "It might be argued that the Recorder *prints* the covenants when he causes them to be reproduced for purposes of preservation and inspection. But more broadly, he certainly *publishes* them by collecting them in a manner that facilitates access to them by prospective buyers"). The Court should not alter or amend this aspect of its ruling.

3. Ultimately, CLC's Reply is beside the point. The Court did not hold that CLC failed to state the elements of an FHA claim against craigslist. Both craigslist's motion for judgment and this Court's decision granting that motion assumed, at least for the sake of argument, that

[1] Contrary to CLC's Reply (at 2), craigslist does not argue that printing cannot be a violation of the FHA separate from publishing. craigslist's point, as confirmed by the cases cited on Reply by CLC, was that the courts have conflated the two terms. *See* CLC Reply at 3. Indeed, CLC's analysis suggests an appropriate meaning for "print" in the FHA. *See* Reply at 4 (claiming the FHA was enacted to "reach[] all forms of written statement, whether privately or publicly made" – *i.e.*, whether *printed* or published, respectively).

CLC had pled a claim under the FHA by alleging that craigslist had disseminated (or, in the words of CLC's complaint, "published") allegedly discriminatory housing notices originated by others. The critical issue for the Court was whether craigslist was immune from such FHA liability – whether holding craigslist liable in these circumstances would treat craigslist as the "publisher or speaker" of the notices within the meaning of Section 230(c)(1). The Court held that such liability would fall within the scope of Section 230's "publisher or speaker" immunity, but the Court noted that it intentionally was not "defin[ing] the full contours of the word 'publisher' or what constitutes 'treat[ment] as a publisher.'" Mem. Op. at 24, n.14.

CLC's motion and Reply never address the Court's analysis of the scope of the Section 230 immunity. CLC thus has offered nothing to undermine the Court's holding that it (CLC) seeks to hold craigslist liable as a "publisher," *as that term is defined in Section 230.* Instead, CLC merely reargues (Reply at 7-10) that Section 230 protects only interactive computer service providers who screened third party content (a position that was soundly rejected by the Court). Having failed to address the Court's core holding on Section 230 immunity, CLC certainly has failed to carry its burden under Rule 59(e) to alter or amend this ruling.

Conclusion

For all the reasons stated above and in craigslist's Response, craigslist respectfully requests that the Court deny the CLC's motion to alter or amend the November 14, 2006 Judgment. craigslist further requests that the Court provide it such other relief as is just.

Respectfully submitted,

CRAIGSLIST, INC.

December 19, 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 PICERKING HALE and DORR LLP
2445 M Street, NW
Washington, DC 20037

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on December 19, 2006, he caused a true and correct copy of **NOTICE OF MOTION** and **CRAIGSLIST'S MOTION FOR LEAVE TO FILE *INSTANTER* SUR-REPLY IN FURTHER OPPOSITION TO CLC'S MOTION TO ALTER OR AMEND JUDGMENT** 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