

Ryan Fountain

From: Matt Zimmerman <mattz@eff.org>
Sent: Wednesday, December 22, 2010 4:59 PM
To: RyanFountain@aol.com
Subject: Fwd: Re: Subpoena in Heartland Recreational Vehicles v. Forest River, Case No. 3:08-cv-490

FYI... haven't received any kind of substantive response yet from Heartland re: the unenforceability of the subpoena.

----- Original Message -----

Subject: Re: Subpoena in Heartland Recreational Vehicles v. Forest River, Case No. 3:08-cv-490
Date: Wed, 22 Dec 2010 12:15:20 -0800
From: Matt Zimmerman <mattz@eff.org>
To: Irmscher, David P. <David.Irmscher@bakerd.com>
CC: Brotherson, James R. <James.Brotherson@bakerd.com>, Meyer, Peter A. <Peter.Meyer@bakerd.com>, Null, Robert D. <Robert.Null@bakerd.com>, Powell, Diana V. <Diana.Powell@bakerd.com>, Marcia Hofmann <marcia@eff.org>, carlos.rosario@eff.org

David,

Thanks. As per our call (and as I indicated in my e-mail from last week), I was hoping to revisit the issue once you had several days to review the authority and briefing that I provided. As you know, we'll need to move forward with objections and a motion to quash if Heartland is not willing to withdraw its subpoena. I'd like to avoid any unnecessary use of our (and the court's) time if at all possible. I'm sure you would as well.

With that in mind, are you in a position to at least give me an approximate schedule as to when Heartland will be able to provide a substantive response to the concerns that I've raised -- namely (a) that the subpoena was sent after discovery closed in the case and (b) that we believe that Heartland has not met its First Amendment burden to obtain the identity of the anonymous poster?

Best,

Matt

On 12/22/10 11:49 AM, Irmscher, David P. wrote:

> We are in the process of reviewing it. If you would like to speak to
> someone in Jim's absence, please feel free to give me a call.

>

> -----Original Message-----

> From: Matt Zimmerman [mailto:mattz@eff.org]

> Sent: Wednesday, December 22, 2010 2:07 PM

> To: Brotherson, James R.

> Cc: Irmscher, David P.; Meyer, Peter A.; Null, Robert D.; Powell,

> Diana V.; Marcia Hofmann; carlos.rosario@eff.org

> Subject: Re: Subpoena in Heartland Recreational Vehicles v. Forest

> River, Case No. 3:08-cv-490

>

> Jim,

>

> I wanted to follow up with you about my request for an additional call
> regarding the subpoena sent to Greg Gerber. Have you had an
> opportunity to review the authority that I provided?

>
> Thanks,

>
> Matt

>
> On 12/17/10 12:27 PM, Matt Zimmerman wrote:

>> Jim,

>>
>> Thank you for your time and the time of your colleagues today. Two
>> follow-up items as per your request:

>>
>> (1) I have confirmed with my client that any material in his
>> possession responsive to your subpoena has been preserved.
>> (2) The four most immediately relevant cases I can point you two
>> regarding the First Amendment right to speak anonymously, and the
>> concurrent elevated discovery standard, are:

>>
>> * *Dedrite Int'l v. Doe No. 3*, 776 A.2d 756 (N.J. App. 2001) (the
>> primary case cited by U.S. courts re: the heightened discovery
>> standard and anonymous online speakers);
>> * *Doe v. 2themart.com*, 140 F. Supp. 2d 1088 (W.D. Wash 2001) (a
>> similar cases regarding the application of a heightened discovery
>> standard and anonymous (non-party) online speakers);
>> * *Mobilisa, Inc. v. Doe*, 170 P.3d 712 (Ariz. Ct. App. 2007) (the
>> highest (state court) application of the standard in Arizona); and
>> * *USA Technologies, Inc. v. Doe*, 713 F. Supp. 2d 901 (N.D. Cal. 2010)
>> (the most recent federal court opinion on the subject that I am
>> immediately aware of).

>>
>> In addition, I have attached our most federal court briefing on the
>> subject, which came in the form of a motion to quash in the USA
>> Technologies case cited above.

>>
>> As I mentioned on the call, I would like to touch base again early
>> next week to discuss this matter once you've had an opportunity to
>> review the authority I've provided. To that end, once you have done
>> so, I'd ask that you let me know when you would be available for
>> another call. In the meantime, if you have any questions for me,
>> please feel free to contact me.

>>
>> Best,

>>
>> Matt

>>
>> On 12/15/10 3:37 PM, Brotherson, James R. wrote:

>>> Hi, Matt.

>>> Friday would be fine. Indiana, or at least the part I'm in, is on
>>> Eastern time. How about 2 PM Eastern? I'll need to ask Dave
>>> Irmischer and/or

> Peter

>>> Meyer, litigators in our Fort Wayne office, to join the call.

>>> Let me know if that works for you.

>>> Jim

>>>

>>> -----Original Message-----

>>> From: Matt Zimmerman [mailto:mattz@eff.org]

>>> Sent: Wednesday, December 15, 2010 6:21 PM

>>> To: Brotherson, James R.

>>> Subject: Subpoena in Heartland Recreational Vehicles v. Forest

>>> River, Case No. 3:08-cv-490

>>>

>>> Dear Mr. Brotherson,

>>>

>>> Please be advised that the Electronic Frontier Foundation represents

>>> Greg Gerber and RV Daily Report with respect to the subpoena

>>> delivered by you to Mr. Gerber dated December 10, 2010, regarding

>>> Heartland Recreational Vehicles v. Forest River, Case No.

>>> 3:08-cv-490. The subpoena seeks identifying information regarding a

>>> reader who posted a comment to the RV Daily Report web site.

>>>

>>> I'd like to schedule a brief telephone call to discuss a number of

>>> questions I have about the subpoena. I'm unavailable most of

>>> tomorrow until later in the afternoon (Pacific Time), but I am

>>> available this afternoon and Friday. If you could please suggest a

>>> time when you would be available between now and Friday, I would appreciate it.

>>>

>>> Best,

>>>

>>> Matt

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