

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

JOHNNY I. HENRY

PLAINTIFF

VS.

CIVIL ACTION NO. 2:09CV-00099-KS-MTP

GOOGLE, INC. AND AOL

DEFENDANTS

DEFENDANT'S MOTION TO DISMISS

COMES NOW Defendant, AOL LLC (“AOL”), and pursuant to Rules 12(b)(1), (4), (5), (6) and 10(b) of the Federal Rules of Civil Procedure, moves this Court for a dismissal with prejudice of all claims against it in this action and in support thereof states as follows:

1. Plaintiff filed his Complaint on May 20, 2009, a copy of which is attached hereto as Exhibit “A.”

2. In his Complaint, Plaintiff claims that AOL is legally responsible, as the provider of an internet search engine, for purportedly defamatory statements or content that exists on third party internet websites. Plaintiff alleges that the internet sites at issue contain “defamatory, slanderous and libelous statements” concerning him.

3. Plaintiff’s complaint fails to state a claim for which relief can be granted because all of the Plaintiff’s claims against AOL are barred by the Communications Decency Act, 47 U.S.C § 230 (“CDA”). Section 230 of the CDA prohibits lawsuits that seek to treat an interactive computer service provider as the “publisher or speaker” of any information provided by another information content provider or in this case by the third party internet sites referenced by the Plaintiff in his Complaint. *See* 47 U.S.C. § 230 (c)(1).

4. AOL has been held to be a an “interactive computer service” as defined by Section 230 and therefore entitled to its protections including immunity from lawsuits such as that filed by

the Plaintiff seeking to hold AOL liable for content provided by third party internet sites. *See e.g. Zeran v. America Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997) *cert denied*, 524 U.S. 937 (1998); *Green v. America Online*, 318 F.3d 465, 471 (3d Cir. 2003); *Ben Ezra, Weinstein & Co. v. America Online, Inc.*, 206 F.3d 980, 986 (10th Cir. 2000); *Noah v. AOL Time Warner Inc.*, 261 F. Supp.2d 532, 537 (E.D. Va. 2003).

5. Plaintiff's Complaint fails to state a claim upon which relief can be granted because Plaintiff has failed to state his claim in numbered paragraphs as required by Federal Rule of Civil Procedure 10(b). The Complaint should therefore be dismissed.

6. In the alternative, Plaintiff's Complaint is defective and should be dismissed because this Court lacks jurisdiction. Plaintiff has attempted to invoke this Court's diversity jurisdiction pursuant to 28 U.S.C. § 1332 but has failed to plead the required jurisdictional amount in controversy. Because there is no basis for the Court to exercise its diversity jurisdiction the Complaint should be dismissed.

7. In addition, process and service of process are insufficient. Plaintiff erroneously identified Defendant as "A.O.L." in his Complaint instead of Defendant's proper name, AOL LLC Defendant is also misnamed in the summons issued by the Plaintiff. Accordingly, process and service of process are insufficient and the Complaint should be dismissed.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests that this Honorable Court dismiss Plaintiff's Complaint against Defendant AOL LLC with prejudice.

Respectfully Submitted,

S/Roland M. Slover

ROLAND M. SLOVER, MSB NO. 6846

PHILLIP S. SYKES, MSB NO. 10126

ATTORNEYS FOR AOL LLC

OF COUNSEL:

FORMAN PERRY WATKINS KRUTZ & TARDY LLP
City Center Building, Ste. 100
200 South Lamar Street
P. O. Box 22608
Jackson, Mississippi 39225-2608
Telephone: (601) 960-8600
Facsimile: (601) 960-8713

CERTIFICATE OF SERVICE

I do hereby certify that I have mailed, via registered United States mail, return receipt requested, a true and correct copy of the above and foregoing Defendant's Motion to Dismiss to the Plaintiff at the following address:

Johnny I. Henry
P. O. Box 328
Soso, MS 39480

This the 18th day of June, 2009.

S/Roland M. Slover
Roland M. Slover