

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**AUSTIN GUTTER KING
CORPORATION, INC. and
GARY KULP**

Plaintiffs,

v.

**GOOGLE, INC. and
“NORMA” DOE**

Defendants.

§
§
§
§
§
§
§
§
§
§

CASE NO. 1:12-CV-319

PLAINTIFFS’ ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs Austin Gutter King Corporation, Inc. and Gary Kulp, through their attorneys, Timothy Cornell, David Dunham and Jennifer Tatum Lee, for its Complaint, pursuant to Rule 27(a) of the Federal Rules of Civil Procedure, for an order for pre-case discovery from Defendant Google, Inc., in an action to be commenced against Defendant “Norma” Doe, states and alleges as follows:

I. PARTIES

1. Plaintiff Austin Gutter King is an independent business headquartered in Austin, Texas whose address is 8760 Research Blvd, #138, Austin, TX 78758, and wholly owned by Gary Kulp.
2. Plaintiff Gary Kulp is an individual who resides in Austin, Texas.
3. Defendant Google, Inc. is a multinational conglomerate and one of the largest corporations in the world. It is headquartered at 1600 Amphitheatre Parkway, Mountain View California, 94043, and can be served through its registered agent Corporation Service Company d/b/a CSC Lawyers Incorporating Service, at 211 E. 7th Street, Suite 620, Austin, TX 78701-3218.

4. “Norma” Doe is the person or persons who, in the guise of “Norma Lee,” posted the review discussed above on November 28, 2011. The identity and location of “Norma” Doe is unknown. On November 27, 2011, the same “Norma Lee” appears to have published a similarly defamatory review of a company based in Wisconsin.

II. JURISDICTION AND VENUE

5. The Court also has jurisdiction over claims and potential claims in this matter under 28 U.S.C. §§ 1332 and 1337(d) (diversity), in that this is a case with multiple defendants who are citizens of a state different from that of the Plaintiff in which the amount in controversy exceeds the sum of \$75,000, exclusive of interest.

6. Venue is appropriate under 15 U.S.C. § 1711 because the defendants’ actions had the intended effect of causing injury to citizens throughout the United States, including those in this district.

III. INTERSTATE TRADE AND COMMERCE

7. The business activities of the Defendants were within the flow of, and substantially affected, trade and commerce.

8. During the period of liability, Defendants transacted business in multiple states in a continuous and uninterrupted flow of interstate commerce throughout the United States.

IV. NATURE OF THE ACTION

9. This action is initiated to facilitate a limited deposition subpoena before action, directed at Google, Inc., to compel the identification of Defendant “Norma” Doe, one or more anonymous online commenters who have engaged in mischief and libel against the Plaintiff but are currently unidentified.

10. Google, Inc. and its subsidiaries are the host of Google Places, a feature of Google that

identifies and posts descriptions of businesses, pinpoints them on the Google Maps feature and provides an opportunity for the public to comment on the quality of the business's services or products.

11. The commenters are self-identified but must submit to Google their email addresses and, on information and belief, Google records the IP addresses of each commenter.

12. These posts, through the hosting services of Google, reach an audience throughout Austin, Texas, the rest of the country and the entire world.

13. On November 28, 2011, a customer who identified herself as "Norma Lee" provided Google Places with the following review of Austin Gutter King:

Falsified Customer Reviews We are a small firm that conducts research into fraudulent customer reviews posted by shady businesses. Whereas it seems that Austin Gutter King is not necessarily a "shady business" it DOES appear that they find it necessary to post fake customer reviews. While researching the source of numerous online posts related to this merchant we found that a high percentage of the postings source back to the same block of network addresses. Therefore, it is HIGHLY unlikely that many of the customer service reviews you find posted about this merchant are legitimate. Caveat Emptor....

14. The post at issue may be found at:

<<http://maps.google.com/maps/place?cid=12609984669235590887&hl=en>>

15. The post is false, fraudulent and defamatory. It is directed at Austin Gutter King and asserts as fact numerous falsehoods that have damaged Austin Gutter King.

16. The post falsely identifies Gary Kulp as the author of the supposedly fraudulent posts.

17. Contrary to "Norma Lee's" assertions, Austin Gutter King has never posted falsified customer reviews. On information and belief, "Norma Lee" does not belong to a small firm, and the description of the fictional business implies that Austin Gutter King creates "fraudulent customer reviews" and could be a "shady business." On information and belief, "Norma Lee" had

no means of sourcing the online posts short of a court order, and could not have found a high percentage of postings sourcing back to the same block of network addresses. “Norma Lee” had no data from which to conclude that it is highly unlikely that the reviews are legitimate. These statements are false and defamatory.

18. These statements constitute the publication and/or broadcast of written statements about another which accuses Austin Gutter King of crimes, immoral acts, inability to perform his profession, or lack of integrity or professionalism in business.

19. These comments were intended to do more than voice personal opinion. Rather, they were intended to harm the professional image of Austin Gutter King through the use of fictional people and facts asserted as being real.

20. The post at issue here has caused specific impact and harm to Austin Gutter King in its business reach within a 100 mile radius of Austin. Thus, the impact of the post has harmed Austin Gutter King within this judicial district.

21. The post violates Google’s Review Content Policy. The policy states, in part:

Off-topic reviews: Reviews should describe your personal, first-hand experience with a specific place. Don’t post reviews based on someone else’s experience, or that are not about the specific place you are reviewing. Reviews are not a forum for personal rants or crusades. Don’t use reviews to report incorrect information about a place[.] [ital.. supplied]

22. This defamatory comment has harmed and continues to harm Austin Gutter King’s reputation and directly influences the success of Austin Gutter King’s business engagements and relationships with its employees.

23. Austin Gutter King expects to be a party plaintiff in an action for libel, defamation and tortious interference claims against “Norma” Doe.

24. The facts to be established by this action are the identities and location of “Norma Lee” so as to permit Austin Gutter King amend this lawsuit to include the true identities and effectuate service of process on the appropriate defendant or defendants.

25. This information lies exclusively with Google, and there is substantial risk that this information could be lost or deleted from its records, servers or back-up systems if it does not comply promptly with the proposed narrowly-tailored discovery.

26. Delay of identification could also threaten the expiration of certain statutes of limitations.

27. Consequently, Austin Gutter King must depose, either orally or through written questions, the custodian of records, domain administrator or appropriate representative at Google who can identify “Norma Lee.”

28. A copy of the proposed subpoena to Google is attached with this Complaint as Exhibit A.

V. PRAYER

29. WHEREFORE, the Plaintiff prays that this Court:

(a) Enter the requested order issuing a deposition subpoena to Google to take the deposition upon oral or written examination of the appropriate representatives of Google in order to perpetuate their testimony and provide the otherwise unobtainable information requested so that the Plaintiff may assert its rights against the appropriate defendant or defendants; and

(b) Award such other relief as this Court deems just and proper.

April 10, 2012

Respectfully submitted,

TAYLOR DUNHAM LLP
301 Congress Ave., Suite 1050
Austin, Texas 78701
512.473.2257 Telephone
512.478.4409 Facsimile

By: /s/ Jennifer Tatum Lee

David E. Dunham
State Bar No. 06227700
Jennifer Tatum Lee
State Bar No. 24046950

PERRY, KRUMSIEK & JACK LLP
101 Arch Street
Boston, MA 02110
617.720.4300 Telephone

Timothy Cornell (*Pro Hac Vice* Application
pending)
BBO# 654412

ATTORNEYS FOR PLAINTIFFS