

Slander and the Internet

by Pamela M. Tobin



Can you get away with anonymously slandering someone on the Internet? The Internet is championed as the great marketplace of ideas. One court described it as “a unique democratizing medium.” The Internet allows speakers to reach an audience larger and more diverse than any the original framers of the Constitution could have imagined. The law has had to evolve to keep pace with this revolutionary medium but has it gone too far in upholding the free exchange of ideas on the Internet?

For instance, you’ve no doubt seen postings on the Internet in which the speaker attacks some product or service, in unmistakable vitriolic terms. The attacker, however, never identifies himself. Does the seller have recourse against this anonymous poster?

The seller can bring a libel action against “John Doe” but must file within one year, in Pennsylvania. The plaintiff will have to find and request the Internet provider to disclose John Doe’s identity. Under federal law, the Internet provider is required to notify the John Doe. John Doe then has the opportunity to file a motion with the court objecting to disclosing his identity.

John Doe will argue that he should not be required to identify himself because disclosure

will chill his rights to free anonymous expression under the First Amendment of the Constitution. The seller, on the other hand, will argue that its reputation has been harmed and it is entitled to recover damages. The court must strike a balance between these two competing interests.

You may be surprised to learn that most courts facing this dilemma have placed the burden upon the libel plaintiff to prove his right to “out” the anonymous speaker. The plaintiff must submit extensive proofs, early in the case, showing that the statements were defamatory, plaintiff’s standing in the community was harmed in fact and the plaintiff incurred specific economic losses. This is a heavy burden for plaintiff to meet right out of the gate. Courts have explained that this heightened burden is necessary in order to discourage cases from being filed just to “out” the anonymous speaker.

But should John Doe’s First Amendment rights trump the plaintiff’s common law rights to protect his reputation? Although courts have legitimate concerns about opening the litigation floodgates, the fact that the slander takes place on the Internet makes the slander and the resultant damages even worse given the Internet’s greater potential to reach a diverse and immense audience. Regardless of the increased burden on the plaintiff, if a speaker chooses to commit slander anonymously, he should be aware that his identity could well be outed and he will be subject to liability for harming another’s reputation

(Submitted Copy; Contact crafanello@localpagespublishing.com) 