



November 5, 2007

Len M. Garza, Esq.
Ruprecht, Hart & Weeks, LLP
306 Main Street
Millburn, NJ 07041

By FedEx and Fax

Re: Notice of forthcoming sanctions motion regarding Plaintiff's frivolous subpoena in *Township of Manalapan v. Moskowitz*

Dear Mr. Garza:

This letter is to notify you, pursuant to New Jersey Rule of Court 1:4-8, that unless your client promptly withdraws its frivolous subpoena to Google Inc. ("Google") which seeks the identity of my client, blogger "datruthsquid" ("Doe"), an application for sanctions will be made.

While lacking any evidence whatsoever to support its theory, your client, the Plaintiff, has nonetheless conclusively represented to the Court that my client is Stuart Moskowitz, the Defendant in *Township of Manalapan v. Moskowitz*, Superior Court of New Jersey, Monmouth County Law Division, Docket No. MON-L-2893-07. In its papers, Plaintiff has expressed what can charitably be described as annoyance and irritation that the anonymous author in question "discusses the various aspects of this litigation on his internet blog ... dissect[ing] the specific allegations asserted against [the Defendant], offering his opinion and analysis of the validity of each claim." Brief in Support of Plaintiff's Application to Vacate the Order to Show Cause, August 3, 2007, at p.15. While Plaintiff may not appreciate such critical speech, that in no way entitles Plaintiff to embark on a fishing expedition aimed at tying my client's writings to the Defendant.

As you and I have repeatedly discussed, your subpoena of September 26, 2007, to Google ("the subpoena") is legally flawed and cannot be enforced. Moreover, it was clearly not issued for any proper purpose but instead to unmask an anonymous speaker who was engaged in activity protected by the First Amendment. In short, the subpoena aims "to harass or to cause unnecessary delay or needless increase in the cost of litigation" and thus violates Rule 1:4-8.

1. The Subpoena, Issued From New Jersey and Served in California, Is Not Enforceable.

As I have repeatedly explained to you, there is no question that the New Jersey subpoena issued to Google – at its corporate headquarters in Mountain View, California – is not enforceable: New Jersey Rule of Court 1:9-4 requires litigants to issue civil subpoenas within the state's borders. Nonetheless, you have refused to withdraw the subpoena.

November 5, 2007

Page 2

Your indifference to this undisputable fact – “[W]e will not be withdrawing the subpoena so, if necessary, we can address the issues via motion practice” – is not acceptable and unnecessarily burdens the Court with the task of resolving this matter. E-mail of November 1, 2007, from Len Garza to Matt Zimmerman.

2. *The Subpoena Does Not Seek Information Relevant to Plaintiff's Claims.*

Litigants may only obtain discovery “which is relevant to the subject matter involved in the pending action.” New Jersey Rule of Court 4:10-2. While discovery requests need not seek admissible information, they must seek “information ... reasonably calculated to lead to the discovery of admissible evidence” relevant to a “claim or defense of the party seeking discovery.” *Id.*

In addition, the First Amendment imposes heightened standards that further protect anonymous speakers from unwarranted discovery requests. As New Jersey appellate courts have held, and as I also discussed with you previously, litigants seeking to unmask anonymous speakers must (among other things) specifically identify actionable content and produce sufficient evidence to support a prima facie case. Moreover, the court must then “balance the defendant’s First Amendment right of anonymous free speech against the strength of the prima facie case presented and the necessity for the disclosure of the anonymous defendant’s identity to allow the plaintiff to properly proceed.” *Dendrite Int'l v. Doe No. 3*, 775 A.2d 756, 761 (N.J. Super. Ct. App. Div. 2001).

By no stretch of the imagination does the subpoena satisfy these standards. Plaintiff has absolutely no reasonable basis to believe that my client’s identity will in any way lead to admissible evidence to support its underlying claims that the Defendant violated various ethical duties to the Plaintiff in 2005.

Moreover, even assuming that my client’s identity was in some way relevant to Plaintiff’s claims, the scope of information and materials sought by the subpoena is clearly overbroad and designed only to improperly pry into the personal life of the author of material critical of the Plaintiff. To wit, in addition to my client’s name and contact information, the subpoena seeks the following information from Google:

- User’s IP address
- Browser type and language
- “Any and all account information”
- Account settings and profile information
- Copies of the weblog posts and comments, including drafts
- Any and all e-mails received by Google from the account holder
- Any and all e-mails sent on Google’s server by the account holder
- “The source of the information being posted on the blog”
- “Any other information associated with the account”

November 5, 2007

Page 3

It is obvious that none of this information sought in the subpoena is relevant to Plaintiff's claims and can only be sought in order to harass my client.

I hereby request that you withdraw the subpoena by November 13, 2007, so that my client and the Court need not be further burdened by this matter. Under Rule 1:4-8, your client would ordinarily have 28 days to withdraw the subpoena before a sanctions motion could be filed. However, since the effective date of the subpoena (as per our recent agreement) is November 14, 2007, action needs to be taken before that 28-day period expires. I therefore request, as per Rule 1:4-8, that your client either consent to an adjournment of the November 14 subpoena deadline or waive the balance of the 28-day notice period. If you do not request an adjournment, your client will be deemed to have elected the waiver.

If you have any questions regarding the impending sanctions application or any related matter, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Zimmerman", with a long horizontal flourish extending to the right.

Matt Zimmerman
Staff Attorney
Electronic Frontier Foundation
454 Shotwell St.
San Francisco, CA 94110
phone: 415-436-9333 x127
fax: 415-436-9993
mattz@eff.org

cc: Defendant Stuart Moskowitz