

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

AMP GLOBAL CLEARING, LLC,)	
DANIEL CULP, and AMP FUTURES)	
)	
Plaintiffs,)	
)	Case No. 14 L 1143
v.)	
)	Judge Daniel T. Gillespie
BIG MIKE TRADING, LLC and,)	
MICHAEL BOULTER,)	
)	
Defendants.)	

**RULING and ORDER on DEFENDANTS’
MOTION to DISMISS PLAINTIFFS’ COMPLAINT**

Nature of the proceedings: Plaintiffs Daniel Culp and AMP Global Clearing, LLC initiated this action against Defendants Michael Boulter and Big Mike Trading, LLC for defamation, commercial disparagement, and violations of the Illinois Deceptive Trade Practices Act relating to comments posted on Defendants’ website. *Pl. ’s Complaint*, p. 4, para. 24. Defendants moved to dismiss. For the reasons below, Defendants’ motion to dismiss all counts is granted.

Facts: Plaintiff, Daniel Culp (“Culp”), owns AMP Global Clearing, LLC and AMP Futures (“AMP”; collectively “Plaintiffs”). Defendant, Michael Boulter (“Boulter”), owns and operates the online forum Big Mike Trading, LLC (“BMT”; collectively “Defendants”) where users post their opinions about different online trading services. AMP is one such trading service about which users post on BMT.

James Stone (“Stone”), a nonparty to this suit, was a contractor employed by AMP until Stone was released for not performing his duties. *Pl. ’s Complaint*, p. 3, para. 16. Shortly thereafter, a user named “CostofBusiness” began posting allegedly defamatory information about Plaintiffs. *Pl. ’s Complaint*, p. 4, para. 24. Plaintiffs believe Stone operates this account.

Sometime in January of this year, Culp asked Boulter to remove the posts by the “CostofBusiness” account, which Boulter refused. *Pl. ’s Complaint*, p. 4, para. 23. As the thread of conversation on BMT regarding AMP grew, Boulter eventually posted comments of his own in response to various questions by users of BMT. Plaintiffs claim Boulter’s posts are defamatory, in violation of the Illinois Deceptive Trade Practices Act (hereinafter “IDTPA”), and are commercially disparaging. Plaintiffs additionally seek to hold Defendants liable for the comments posted by the “CostofBusiness” account for the aforementioned claims. Defendants assert that Plaintiffs’ claims regarding the “CostofBusiness” posts are barred by the Communications Decency Act of 1996.

ANALYSIS

- I. 2-619: THE COMMUNICATIONS DECENCY ACT BARS PLAINTIFFS’ STATE LAW TORT CLAIMS AGAINST DEFENDANTS WHICH ORIGINATE FROM THIRD PARTY CONTENT POSTED ON BMT.**

Each count of Plaintiffs' complaint attempts to hold Defendants liable for the conduct of a third party in addition to Defendants' own conduct. Defendants claim immunity from suit relating to comments on their website posted by a third party under the Communications Decency Act of 1996 (hereinafter "CDA"). 47 U.S.C. § 230. The pertinent parts of the CDA read, "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230 (c)(1); and, "nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." 47 U.S.C. § 230 (e)(3).

A website cannot be treated as the "speaker" of a third party's comments posted to the website, therefore it cannot be sued for that third party's statements. *Chi. Lawyers' Comm. for Civ. Rights Under Law, Inc. v. Craigslist*, 519 F.3d 666, 671-672 (7th Cir. 2008). In *Craigslist*, the defendant is a popular website where users can post ads for a wide range of things such as furniture or apartment rentals. *Craigslist*, 519 F.3d at 668. (7th Cir. 2008). The plaintiff sought to hold the defendant liable for violations of the Fair Housing Act stemming from discriminatory comments made by third party users. *Id.* 519 F.3d at 668. (7th Cir. 2008). The Seventh Circuit ruled that the plaintiff could not hold the defendant, craigslist.com, liable for the words of third party posters. *Id.* 519 F.3d at 672. (7th Cir. 2008).

Plaintiffs in the current case rely on *Jones v. Dirty World Entm't Recordings, LLC*, which held that website owners may forfeit their immunity by inviting posts or making posts of their own. 965 F. Supp. 2d 818 (E.D. Ky. 2013). However, this decision was recently reversed and vacated by the Sixth Circuit. *Jones v. Dirty World Entm't Recordings LLC*, 2014 U.S. App. LEXIS 11106 (6th Cir. 2014). In vacating the Eastern District's ruling, the Sixth Circuit held, "A website operator cannot be responsible for what makes another party's statement actionable by commenting on that statement *post hoc*." *Id.* at 42 (6th Cir. 2014).

The Defendants in this case are similarly situated to the defendant in *Craigslist* in that they are both owners of a website where users post information. Given the Seventh Circuit's clear position in that case that a website is not liable for a tortious third party posting, each section of Plaintiffs' complaint that deals with the posts credited to "CostofBusiness" should be dismissed with prejudice. Accordingly, the remainder of this analysis will focus on the posts authored by Defendants.

II. DEFENDANTS' 2-615 MOTION TO DISMISS PLAINTIFFS' COMPLAINT REGARDING DEFENDANTS' ACTUAL STATEMENTS SHOULD BE GRANTED BECAUSE THE COMMENTS ARE NON-ACTIONABLE OPINIONS AND DO NOT DISPARAGE PLAINTIFFS' GOODS OR SERVICES.

After dismissing all allegations related the "CostofBusiness" postings under 2-619, pursuant to the CDA, as discussed above, this court is left to analyze the following remarks made by Defendants:

- (1) "That is correct. They received multiple warnings prior to being banned letting them know they were violating forum policy. Since that time, I am involved in legal action with Amp in order to defend poster's right on BMT, so you can be sure they are no longer welcome on BMT. Unlike other forums, those experiences will not be deleted so long as they are genuine and conform with our forum policy." *Pl. 's Complaint*, Exhibit 2, p. 2/2.

- (2) "Careful about making complaints about AMP. They may threaten you to remove it. Or if you post anything negative about them on other forums where they are a paid sponsor, like Elite Trader for example, they may ask the admin to remove it. I have fought AMP with attorneys to preserve the right for people to post their experiences about AMP on BMT freely. Just be prepared to switch brokers if they were to decide to close your account." *Pl. 's Complaint*, Exhibit 2, p. 1-2.
- (3) "It has come to my attention from multiple users that AMP Trading/AMP Global is threatening to close trading accounts against users who share their experiences about AMP Trading on BMT. If this has happened to you, please contact me ASAP." *Pl. 's Response to Defendants' Motion to Dismiss*, p. 7.

These statements do not rise to the level of a cause of action under the IDTPA or common law commercial disparagement, and, as non-actionable opinions, are not considered defamatory.

a. Defendants' § 2-615 Motion to Dismiss counts I-IV and IX-XII should be granted because Plaintiff cannot state a claim under the IDTPA or for commercial disparagement.

Plaintiffs cannot state a claim for commercial disparagement or under the IDTPA because Defendants' statements do not disparage the quality of Plaintiffs' goods or services. Illinois Courts have recognized commercial disparagement as a cause of action under the common law. *Richard Wolf Med. Instruments Corp. v. Dory*, 723 F. Supp. 37, 42 (N.D. Ill. 1989). However, whether this remains a cause of action in Illinois today is debatable. *Schivarelli v. CBS, Inc.*, 333 Ill. App. 3d 755, 766 (1st Dist. 2002). The IDTPA substantively corresponds with the common law tort of commercial disparagement, which has traditionally been used when the quality of one's goods or services has been disparaged. *Crinkley v. Dow Jones & Co.*, 67 Ill. App. 3d 869, 876 (1978). The pertinent part of the IDTPA states, "A person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, the person: (8) disparages the goods, services, or business of another by false or misleading representation of fact." 815 ILCS 510/2 (2001).

Nothing in the Defendants' statements listed above even remotely speaks to the quality of Plaintiffs' trading services, or suggests that Plaintiffs' business is inferior in some way. The comments describe situations, separate from business dealings, in which Plaintiffs may or may not act in a certain way. Therefore, these statements are not actionable under the IDTPA or for commercial disparagement and the Defendants' motion to dismiss for these counts should be granted.

b. Defendants' § 2-615 motion to dismiss counts V-VIII, sounding in defamation, should be granted because Defendants' statements are opinions and not defamatory.

Defendants' posts on BMT are not defamatory because they are opinions. Statements that "tend to cause such harm to the reputation of another that it lowers that person in the eyes of the community or deters third persons from associating with [that person]" are defamatory. *Bryson v. News. Am. Publs.*, 174 Ill. 2d 77 (1996). "In order to make out a claim for defamation, a plaintiff must set forth facts showing that the defendant made a false statement concerning the plaintiff, that there was an unprivileged publication of the defamatory statement to a third party by the defendant, and that the plaintiff was damaged." *Myers v. The Tel.*, 332 Ill. App. 3d 917, 922 (2002).

If a fact finder could not reasonably interpret a statement to be a factual assertion, the statement is protected under the Constitution as an opinion and cannot be considered defamatory. *Bryson*, 174 Ill. 2d at 100 (1996). A statement is a factual assertion if it is capable of being proven true or false. *Id.* 174 Ill. 2d at 100 (1996). Additionally, whether a statement can be proven true or false is a question of law. *Id.* 174 Ill. 2d at 100, 101 (1996). "In Illinois... if it is plain that the speaker is expressing a subjective view, an interpretation, a theory, conjecture, or surmise, rather than claiming to be in possession of objectively verifiable facts, the statement is not actionable." *Wilkow v. Forbes, Inc.*, 241 F.3d 552, 555 (7th Cir. 2001).

In the present case, Defendants' comments that Plaintiffs "may threaten" or that readers might need to switch brokers if Plaintiffs "were to close your account" are clearly equivocal theories and conjectures about things that may or may not happen. Accordingly, these statements are not capable of being proven as true or false, are not actionable, and Plaintiffs' complaint should be dismissed.

Conclusion: For the reasons stated above, Defendants' motion to dismiss each count of Plaintiffs' complaint should be granted. Additionally, each of Plaintiffs' allegations relating to the comments posted by the "CostofBusiness" account should be dismissed with prejudice.

Order: For the reasons stated above, Defendants' motions to dismiss Plaintiff's First Amended Complaint pursuant to 5/2-619 and 5/2-615 are sustained. Plaintiff's case is dismissed in its entirety with prejudice. This is a final order pursuant to Illinois Supreme Court Rule 301.

Date: July 24, 2014

Enter: _____
Judge Daniel T. Gillespie # 1507

Associate Judge
Daniel T. Gillespie
JUL 24 2014
Circuit Court - 1507