

From: Boss Partner
To: Newbie
Date: 01/04/YR01
Re: Smith v. Johnson

Hi. I hope you're settled in and that you like the office we've assigned to you. Listen, about the Johnson case that I wrote you about the other day...

I had a very interesting conversation with a friend of mine who also practices law here in Fresno. I told her all about the Johnson case and she told me that she heard that there was a case in the federal district court for the Eastern District of California that had many similar facts to our case. She tells me she thinks it discussed jurisdiction, defamation, invasion of privacy, and Intentional Infliction of Emotional Distress, which are all seemingly relevant to our case.

Unfortunately, my friend forgot the name of the case although she thinks it was also about the publication of a website called something-"exposed" and a movie that was made about some high-profile murders. In any case, I'd love to go search for it but I have to prepare for my court hearing next Wednesday and I just don't have the time.

Please do me a favor and:

- Find the case that my friend was talking about; and
- With regard to all of the issues in common with our case mentioned above (ONLY those issues, mind you), brief it formally in a way that will allow me to refer to it in the most useful manner.

I know you've been given a copy of "Legal Research, Analysis and Writing" by Hames and Ekern and I certainly expect that you will refer to their method in most effectively briefing this case for me.

Thank you very much.

B. Partner

From: Boss Partner
To: Newbie
Date: 01/02/YR03
Re: Welcome!

Dear Newbie:

First, welcome to the firm of Aberdeen, Bernanke and Claustrophobic, situated here in lovely downtown Fresno, California. I understand that you're going to spend your first day filling out forms and getting acclimated and settled in, but when you're ready to start working, take a look at the rest of this letter, which will introduce you to our client, Jane Johnson.

Jane Johnson lives in Portland, Oregon. A few years back, Jane used to sell stuff on ebay for a living. But she got a bad online reputation because of a few bad reviews that were posted online about her by her disgruntled customers. After these reviews steadily decreased her customer base, she was eventually forced to go out of business.

Based on this experience and her bitterness against online websites that are devoted to allowing consumers who are upset to anonymously and maliciously post reviews about producers, Jane came up with a new idea for how to make money. She decided to create a new website that would be devoted to allowing service providers and other sellers to complain about customers that they didn't like.

Because Jane knew of a popular website devoted to allowing customers to complain about service providers called "pissedconsumer.com" she decided to call her own site "pissedproducer.com." On April 15, YR-01, she posted her homepage which contain the following message:

This website is devoted to allowing the producer to fight back. While there are myriads of websites out there devoted to allowing malicious crybaby consumers to launching cowardly attacks against hard-working producers behind the safety and anonymity of their own computers, this website levels the playing field.

Producers are encouraged to post feedback about consumers that other producers should be wary of. Producers may post stories about deadbeat buyers, customers who leave unwarranted negative reviews or anything else that other producers might want to be aware of. Consumers have many outlets to complain about us hard-working producers and so it's only fair that they be subject to the same kind of public scrutiny for their wrongful actions.

However, false information of any sort may not be posted on this website. Moreover, pissedproducer.com does not warrant that any information posted by any third party on this website is true. The posted content is solely the responsibility of the party who posted it and in no way will pissedproducer.com assume any responsibility for any negative review posted by any person on this site.

This site was an instant hit as within months, thousands of companies posted reviews about customers who had failed to pay their bills, made false and malicious complaints against them and committed other malfeasance.

On July 18, YR-01, Jane added a feature to the website that allowed producers to upload multimedia files that portrayed poor consumer behavior. Using this feature, users of the website are able to upload audio and/or video files that show interactions with consumers even if the consumer did not know that he or she was being recorded.

Jane also began requiring all would-be posting producers to fill out a form with basic information about them and the customer they were complaining about, and evidence they have of the incident. One of the required boxes that had to be checked was whether the producer had a video or pictures of the customer's bad behavior. Although Jane sometimes used the information provided to weed out crackpots, she also used the information to generate more interesting and exciting postings through audiovisual content. Thus, whenever a producer checked the video box, the website automatically opened up a pop-up box encouraging the producer to also post the video or pictures.

Jane did not, and still does not charge any sort of fee to the user or to the poster of any information. However, in August of YR-01, Jane began selling advertising on the website. Within two months, the website was generating tens of thousands of dollars of advertising revenue each month. Today, the website generates almost \$30,000 of advertising revenue each month and Jane's business is worth in excess of \$1 million according to her estimate.

On June 12, YR-02, Brenda James, who owns an auto repair garage here in Fresno, posted the following review about Douglas Smith on pissedproducer.com:

Douglas Smith came into my shop the other day with his beat up old YR-09 Toyota Corolla for an oil change and a diagnostic, since his check engine light was on. After a thorough diagnostic, I informed him that his catalytic converter needed to be replaced or his car would not pass its next inspection. He asked me for an estimate and I told him that it would cost approximately \$800 to replace the converter and that I would throw in the oil change for free. He agreed. When I finished the job, I gave him a bill for \$808 and he then claims that he had never agreed to pay that much. When I reminded him about the earlier estimate, he denied that he had agreed to allow me to go ahead with the work.

I told him I would not return his car without payment and he then cursed at me but give me his credit card which I promptly processed. The next week, I found that the scoundrel had disputed the credit card charge, claiming that I had forced him to make the charge by threat of withholding his car and that he had never agreed to the work and the first place. He also complained about me to the Better Business Bureau even though I had done absolutely nothing wrong. I was forced to spend many hours defending myself both in the credit card dispute and to the Better Business Bureau all because one bitter customer's false accusations.

Brenda also posted a video from a camera that overlooks the waiting area of her garage. The camera is in plain view, although, because it is in an innocuous location, it is possible that customers did not know that they are being videotaped when they speak to Brenda or whomever is working as cashier as Brenda's garage.

The video that Brenda posted is of Douglas Smith in a heated exchange with Brent. Throughout the discussion, Douglas appears to be angry and several times yells obscenities in the direction of Brenda.

Brenda then posted Douglas Smith's home address and telephone number and for kicks, the make and model of Douglas' car and his license plate number.

On July 2, YR-02, Douglas was told by a friend about the post that Brenda had made about him. Furious, he immediately sent an e-mail to info@pissedproducer.com demanding that the entire post about him be deleted immediately. Jane wrote him back a polite e-mail wherein she suggested that he take advantage of a feature of the website that allows consumers to refute the allegations against them on the same page on which the allegations appear. She also politely refused to remove Brenda's post, explaining to Douglas that Brenda's post does not violate any site guidelines or rules.

On November 20, YR-02, Douglas (through his attorney, Pete Bull), filed a lawsuit against Jane personally and against the business pissedproducer.com in the federal district court for the Eastern District of California (here in Fresno), alleging Defamation, two separate Invasion of Privacy causes of action -- (1) Publication of Private Facts, and (2) Appropriation of Name or Likeness (the appropriation count both under the common law and under California statute- California Civil Code §3344), and Intentional Infliction of Emotional Distress. Jane was properly served with the complaint on November 22.

On November 27, YR-02, Jane called us and asked her to help her defend against this action. She told us that since the action is in Fresno, she wants attorneys from Fresno to represent her. She came down to our office for a meeting on November 29 and formally retained our services. On December 6 (less than a month ago), we asked for and received from Plaintiff's attorney an extension of sixty days to answer or otherwise move with regard to the Complaint.

First and foremost, it's ridiculous for Jane to have to come all the way from Portland to Fresno to have to defend against this action. Arguably, Jane never set foot in California and Douglas should have to sue her, if at all, in Oregon. Although that would mean that we cannot handle the case since we are not licensed to practice law in Oregon, we do owe it to Jane to consider whether we can have the case dismissed here in California on jurisdictional grounds.

Anyway, for now just get settled into your office and think about this case a little bit and I'll be in touch with your shortly with more information and maybe a request or two (or six).