Trends In Protection Of Anonymous Online Speech

By **Margaret Krawiec and Thomas Parnham** (August 13, 2018, 11:27 AM EDT)

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It is estimated that more than 280 billion emails will be sent and received each day in 2018.[1] The number of Yelp reviews surpassed 150 million at the beginning of this year.[2] Nearly 70 percent of Americans use at least one social media platform,[3] and 25 percent of internet users have made at least one anonymous online comment.[4]

This swell of online communication has forced companies and courts to wrestle with just how far First Amendment protections reach. The historical role of anonymous speech as a political and social tool is well-established,[5] as is the First Amendment's applicability to online speech.[6] But the protections afforded by First Amendment are not absolute — online or off — and sometimes will be forced to give way to countervailing interests.[7]

For more than a decade, an energetic debate has been playing out in state and federal courts over how best to balance the right to speak anonymously on the internet with the need for protection against allegedly defamatory emails, business reviews, social media posts and other online commentary. For example, next month the Texas Supreme Court — in a case that has drawn the attention of many technology firms — will consider under what circumstances Glassdoor Inc., which operates a website that allows current and former employees to anonymously review companies and their management, should be compelled to reveal the identities of those reviewers.[8]

In this article, we briefly addresses how courts have answered the fundamental First Amendment question of whether to unmask an internet user who chooses to speak anonymously. First, we identify common factual scenarios in which companies have sought to compel the disclosure of an unknown online speaker's identity. Next, we provide a historical overview of the development of balancing tests employed by courts when faced with such a request. Finally, we discuss a few emerging trends in this area.

Common Fact Patterns

The internet has "expanded the cape of anonymity" to a veritable "army" of speakers, who can quickly and inexpensively voice their views to a world-wide audience.[9] The internet "troll," who intentionally makes highly "disruptive or inflammatory comments online in order to provoke fellow readers," is an unfortunate and frequently commented-upon

feature of the anonymity inherent in online communication.[10] But while trolls receive the most publicity, they are far outnumbered by ordinary citizens interacting with other individuals, the government, and the business community.

It is this final type of online communication, between individual and business, that has most frequently been the subject of First Amendment litigation. In particular, courts are frequently called upon to determine whether a company should be permitted to unmask an anonymous speaker who has criticized the company in some manner. That criticism may take the form of a customer's negative review of the company's products or services,[11] an employee's complaints about management or corporate policies,[12] a whistleblower's allegations of potential misconduct or criminal activity,[13] or a concerned citizen's opposition to a controversial business activity.[14]

Companies have good reason to seek to challenge such unfavorable online commentary. More than 80 percent of U.S. adults at least "sometimes" read online reviews before purchasing items for the first time, and 40 percent of U.S. adults "always" do so.[15] Harmful reviews or other derogatory comments regarding a company not only can affect the company's bottom line, but also may dissuade potential job applicants and lead to other harmful consequences.[16] Nevertheless, harmful though its affects may be, such speech generally is protected by the First Amendment and, as discussed in the next two sections of this article, most courts have been hesitant to permit companies to use legal process to unmask their anonymous critics.

Setting Standards in State Courts

Standards set in two early state court cases have become important touchstones for this debate. In 2001's Dendrite International Inc. v. Doe No. 3[17] the Appellate Division of the Superior Court of New Jersey set forth a four-prong test that a plaintiff must satisfy to compel disclosure of the identity of an anonymous online speaker. The plaintiff must notify the defendant of the request, identify the statements alleged to be defamatory, and provide evidence that establishes a prima facie case. If these first three elements are satisfied, the court must balance the defendant's First Amendment right with the plaintiff's right to redress. A few years later, in 2005's Doe No. 1 v. Cahill,[18] the Delaware Supreme Court adopted the first and third prongs of the Dendrite test, noting that the other two prongs were inherently part of the third prong's summary judgment inquiry.

Since 2001, many states have adopted some form of the Dendrite and Cahill tests, albeit with subtle variations in the standard of review and evidentiary requirements that must be met by plaintiffs.[19] For example, in Pilchesky v. Gatelli,[20] the Pennsylvania Superior Court adopted a "modified" Dendrite/Cahill standard, maintaining Dendrite/Cahill's notification requirement, summary judgment standard, and balancing test, but also requiring the plaintiff to submit an affidavit of good faith and necessity. In Independent Newspapers Inc. v. Brodie,[21] the Maryland Court of Appeals adopted a Dendrite/Cahill test with a lessened burden of proof that requires only a prima facie showing of defamation; the court rejected the summary judgment standard as too burdensome. And in Indiana, where defamation requires proof of actual malice, courts have limited the evidence required to "only those elements of [the] cause of action that are not dependent on the commenter's identity."[22]

Rejecting all forms of the Dendrite/Cahill standard, some states rely instead on existing procedural rules. In Yelp v. Hadeed, the Virginia Court of Appeals applied a less stringent "good faith" standard articulated by the state's legislature.[23] While the judgment in Yelp was ultimately vacated by the Virginia Supreme Court on other grounds, the Court of Appeals' six-part legislative test has survived.[24] Similarly, the Supreme Court of Illinois applied that state's motion to dismiss standard. Addressing the constitutional considerations inherent in disclosing a speaker's identity, the court maintained that a motion to dismiss standard was sufficiently stringent given that defamatory speech is not

entitled to First Amendment protection.[25]

As state courts continue to encounter variations of this First Amendment question, even existing standards remain subject to change. In Thomas M. Cooley Law School v. Doe 1, the Michigan Court of Appeals declined to adopt the Dendrite/Cahill tests, instead finding the state's procedural protections sufficient.[26] However, the next year, the same court adopted the Dendrite/Cahill notification requirement, and urged the state legislature and supreme court to consider the First Amendment question anew and adopt the full Dendrite/Cahill test instead.[27]

Learning to Apply the Tests

As cases seeking to unmask anonymous online critics have become more common, certain trends have developed in the application of the tests outlined above. As a result, there have been a few key developments that parties must consider when bringing or defending against a claim involving anonymous online speech.

Notification

Generally, the notification requirement has not presented much of a hurdle. In fact, the Cahill court noted that it "imposes very little burden on a defamation plaintiff."[28] Courts generally look for "reasonable effort," requiring as little as posting a message to the website at issue.[29] In one case, the plaintiff satisfied this requirement by posting a subpoena under each relevant comment — even though the speaker would only see the subpoena if he or she happened to log in.[30] Although this requirement is not particularly burdensome, a legitimate effort must be made to notify the anonymous speaker of the proceedings, and should be demonstrated to the court through affidavits or pleadings. For example, in Ghanam v. Does, the Michigan Court of Appeals protected an anonymous poster's identity because the plaintiff failed to show that any effort was made to contact him or her.[31]

Constitutional Balancing

The balancing act prescribed by Dendrite and adopted in other states is inherently fact-specific. However, the First Amendment right to anonymous speech generally weighs heavily in the analysis, favoring protection of anonymity particularly for speech on matter of public concern.[32] Nevertheless, the balance may shift in the plaintiff's favor when the content or circumstances of the speech suggest that it merits diminished First Amendment protection. For example, in New Jersey, one court noted that "accusing individuals of adultery in a public forum is not the kind of robust, publicly-spirited debate entitled to the protections of the First Amendment," finding that the content of the speech weighed in favor of disclosing the poster's identity.[33]

In another case, the same court ordered the unmasking of individuals who hacked into a hospital email server and sent defamatory emails to hospital employees.[34] In this case, the court allowed for a less stringent application of the Dendrite test due to the illegal nature of the communication. Finally, in a recent case involving a request to unmask an anonymous speaker already found liable for copyright infringement, the Sixth Circuit directed the trial court to apply "a presumption in favor of unmasking anonymous defendants when judgment has been entered for a plaintiff," explaining that the speech at issue was "beyond the protection of the First Amendment" and that "countering the presumption will [therefore] require a showing that the Doe defendant participates in a significant amount of other, non-infringing anonymous speech that would be chilled if his identity were revealed."[35]

Good Faith and Necessity

Courts acknowledge the risk of harassing suits meant to chill free speech.[36] To mitigate this, some courts require plaintiffs to demonstrate that they are acting in good faith. When applied, this "good faith" has been understood to require that unmasking be "related to the claim" and "necessary" for relief.[37] Whether identification of a plaintiff is "necessary" may depend on whether alternative avenues for relief have been exhausted. For example, in Juzwiak v. Doe, a teacher sued to disclose the identity of the person sending emails to him and other community members arguing that he not continue as a teacher.[38] The court determined that the plaintiff did not show that unmasking was necessary, noting no indication of actions "such as examination of a local telephone book or voting records, examination of the names of individuals who had been active in affairs at Hightstown High School, or the names of students with whom plaintiff may have experienced difficulties in the past. And in Kuwait & Gulf Link Transport Co. v. Doe, the trial court denied plaintiffs' request for discovery into an online speaker's identity in part because such discovery was not "fundamentally necessary to secure relief" where alternative discovery procedures, including a deposition of the anonymous speaker's employer (and co-defendant), were available.[39]

Comity

As litigation over this First Amendment issue has increased, questions of comity have also naturally arisen. In Gunning v. Doe, the plaintiff was estopped from pursuing a subpoena to reveal identities of online critics in Maine because the subpoena was already quashed in California. Even though Maine had not yet adopted the heightened standard of Dendrite — or any other standard to address this First Amendment issue — the court deferred to California "[b]ecause the issue decided by the California court in a final judgment was the same issue that [the plaintiff sought] to have a Maine court revisit."[40] This case sparked an important policy debate, with the dissent arguing that Maine's interest in establishing a standard for assessing these kinds of claims was more important than preventing the anonymous defendant from relitigating the issue.[41] A similar issue arose in Yelp v. Hadeed, in which the Supreme Court of Virginia determined that "enforcement of a subpoena seeking out-of-state discovery is generally governed by the courts and the law of the state in which the witness resides or where the documents are located."[42]

Standing

It has long been established that third parties have standing, at least in some circumstances, to raise First Amendment objections to the disclosure of an anonymous speaker's identity. The first cases to address the issue of third-party standing arose in the context of Internet service providers objecting to the disclosure of their subscribers' information.[43] More recently, courts have permitted First Amendment claims to be raised by newspapers and blogs on behalf of their commenters,[44] companies on behalf of their employees,[45] and social media platforms and consumer review websites on behalf of their users.[46] Although is not clear where the outer limits of such third-party standing may lie, courts have noted that the objecting party must have a "sufficiently close relationship to the anonymous user" to permit such claims to be raised.[47]

Conclusion

As the scope and scale of online communications continue to evolve, it is likely that the number of John Doe defamation cases will grow and states' standards will further develop. Companies concerned about anonymous online criticism must stay apprised of the courts' ongoing considerations of this question, adjust litigation plans to meet the requirements of their particular jurisdiction, and plan to satisfy a standard like summary judgment. Companies may also wish to continue to monitor potential legislative developments in this area, such as the Consumer Review Fairness Act of 2016,[48] which prohibits businesses from requiring customers to enter into any contract that would restrict their ability to

review the company's products, services, or conduct.

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[1] The Radicati Group, Inc., Email Statistics Report, 2017–2021—Executive Summary, at 2–3, http://www.radicati.com/wp/wp-content/uploads/2017/01/Email-Statistics-Report-2017-2021-Executive-Summary.pdf.

[2] An Introduction to Yelp Metrics as of March 31, 2018, https://www.yelp.com/factsheet.

[3] Pew Research Center, Social Media Fact Sheet (Feb. 5, 2018), http://www.pewinternet.org/fact-sheet/social-media/.

[4] Pew Research Center, Report: Anonymity, Privacy, and Security Online (Sept. 5, 2013), http://www.pewinternet.org/2013/09/05/anonymity-privacy-and-security-online/.

[5] McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 342–43 (1995) ("[E]ven in the field of political rhetoric, where the identity of the speaker is an important component of many attempts to persuade, the most effective advocates have sometimes opted for anonymity.").

[6] Reno v. ACLU, 521 U.S. 844, 870 (1997) ("Our cases provide no basis for qualifying the level of First Amendment scrutiny that should be applied to this medium.").

[7] Chaplinsky v. State of New Hampshire, 315 U.S. 568, 571 (1942) ("[I]t is well understood that the right of free speech is not absolute at all times and under all circumstances.").

[8] See Jess Krochtengel, "Texas Justices Take Up Glassdoor's Bid To Shield Reviewers," Law360 (June 1, 2018), https://www.law360.com/articles/1049443/texas-justices-take-up-glassdoor-s-bid-to-shield-reviewers; Jess Krochtengel, "Tech Cos. See High Stakes In Row Over Anonymous Reviews," Law360 (Apr. 6, 2018), https://www.law360.com/articles/1030671/tech-cos-see-high-stakes-in-row-over-anonymous-reviews.

[9] Nathaniel Gleicher, John Doe Subpoenas: Toward a Consistent Legal Standard, 118 Yale L.J. 320, 323 (2008); see also Lyrissa B. Lidsky & Thomas F. Cotter, Authorship, Audiences, and Anonymous Speech, 82 Notre Dame L. Rev. 1537, 1555–56 (2007) ("[T]he architecture of the internet makes it easy to speak anonymously, or at least pseudonymously. As a result, there are more anonymous speakers than ever before using the freedom anonymity provides.").

[10] Tomas Chamorro-Premuzic, "Behind the online comments: the psychology of internet trolls," The Guardian (Sept. 18, 2014), https://www.theguardian.com/media-

network/media-network-blog/2014/sep/18/psychology-internet-trolls-pewdiepie-youtube-mary-beard; see also Julie Zhou, Opinion: Where Anonymity Breeds Contempt, N.Y. Times (Nov. 29, 2010), https://www.nytimes.com/2010/11/30/opinion/30zhuo.html.

[11] See, e.g., Yelp, Inc. v. Hadeed Carpet Cleaning, Inc., 752 S.E.2d 554 (Va. Ct. App. 2014) (Yelp reviews critical of a local business), vacated, 770 S.E.2d 440 (Va. 2015); Thomas M. Cooley Law School v. Doe No. 1, 833 N.W.2d 331 (Mich. Ct. App. 2013) (website dedicated to disparaging the quality of a private law school); Directory Assistants, Inc. v. Does No. 1-10, No. MC 11-00096, 2011 WL 5335562 (D. Ariz. Nov. 4, 2011) (online review advising against entering into a contract with a company); SaleHoo Grp., Ltd. v. ABC Co., 722 F. Supp. 2d 1210 (W.D. Wash. 2010) (website dedicated to complaints about a company).

[12] See, e.g., Mortg. Specialists, Inc. v. Implode-Explode Heavy Indus., Inc., 999 A.2d 184 (N.H. 2010) (comments about the financial fitness of a mortgage lender posted on a mortgage industry website); Krinsky v. Doe No. 6, 72 Cal. Rptr. 3d 231 (Cal. Ct. App. 2008) (comments about corporate officers posted on an online financial message board); Mobilisa, Inc. v. Doe No. 1, 170 P.3d 712 (Ariz. Ct. App. 2007) (email forwarding a CEO's personal emails to his company's board of directors in questioning his fitness to lead the company); Dendrite Int'l, Inc. v. Doe No. 3, 775 A.2d 756 (N.J. Super Ct. App. Div. 2001) (Yahoo message board posting regarding changes in a company's revenue recognition accounting and efforts by the CEO to sell the company).

[13] See, e.g., Kuwait & Gulf Link Transp. Co. v. Doe, 92 A.3d 41 (Pa. Super. Ct. 2014) (email accusing government contractor of maintaining business ties with sanctioned Iranian companies); In re Ind. Newspapers, Inc., 963 N.E.2d 534 (Ind. Ct. App. 2012) (online newspaper comments accusing former CEO of foundation of misappropriating grant money); Solers, Inc. v. Doe, 977 A.2d 941 (D.C. 2009) (allegations of copyright infringement transmitted to a trade association); Doe v. 2TheMart.com, Inc., 140 F. Supp. 2d 1088 (W.D. Wash. 2001) (accusations on an investor website that a company was operating a Ponzi scheme).

[14] See, e.g., Koch Indus., Inc. v. Does No. 1-25, No. 2:10-CV-1275, 2011 WL 1775765 (D. Utah May 9, 2011) (website critical of company's stance on global climate change); Indep. Newspapers, Inc. v. Brodie, 966 A.2d 432 (Md. 2009) (online newspaper comments complaining about a developer's demolition of a historic home).

[15] Pew Research Center, Report: Online Shopping and E-Commerce, "Online reviews" (Dec. 19, 2016), http://www.pewinternet.org/2016/12/19/online-reviews/.

[16] Jayson DeMers, "How Negative Online Company Reviews Can Impact Your Business And Recruiting," Forbes (Sept. 9, 2014), https://www.forbes.com/sites/jaysondemers/2014/09/09/how-negative-online-company-reviews-can-impact-your-business-and-recruiting/#2e1245a81d9b; see also Wes Gerrie, Say What You Want: How Unfettered Freedom of Speech on the Internet Creates No Recourse for Those Victimized, 26 Cath. U.J.L. & Tech. 1, 2–4 (2017) (providing examples of the "powerful and lasting impact" of "the highly influential medium of online consumer comments and reviews ... through sites such as Yelp, Google, and Amazon"); Lindsey Cherner, None of Your Business: Protecting the Right to Write Anonymous Business Reviews Online, 40 Colum. J.L. & Arts 471, 472 (2017) ("As a consequence of the high value placed on online business reviews, [ISPs] like Yelp and TripAdvisor receive subpoenas to unmask the identities of anonymous authors of negative business reviews at unprecedented rates.").

[17] 775 A.2d 756 (N.J. Super. Ct. App. Div. 2001).

[18] 884 A.2d 451 (Del. 2005).

[19] See generally Jess Lively, Can a One-Star Review Get You Sued?, 48 J. Marshall L. Rev. 693, 701 & n.50 (2015) (listing more than a dozen state courts that have adopted the Dendrite standard).

[20] 12 A.3d 430 (Pa. Super. Ct. 2011).

[21] 966 A.2d 432 (Md. 2009).

[22] In re Indiana Newspapers Inc., 963 N.E.2d 534, 552 (Ind. Ct. App. 2012) ("[P]roof of actual malice would be impossible without identifying the commenter. Thus, a pure Dendrite test is not workable in Indiana.").

[23] Yelp, Inc. v. Hadeed Carpet Cleaning, Inc. , 752 S.E.2d 554, 565 (Va. Ct. App. 2014) ("Code § 8.01–407.1 provides the test for uncovering the identity of an anonymous Internet communicator in Virginia. We are 'reluctant to declare legislative acts unconstitutional, and will do so only when the infirmity is clear, palpable, and practically free from doubt.'"), vacated, 770 S.E.2d 440 (Va. 2015).

[24] In fact, the legislative test adopted in Yelp was applied later in another case. Geloo v. Doe , No. 2013-9646, 2014 WL 8239928, at *2 (Va. Cir. Ct. 2014).

[25] Hadley v. Doe , 34 N.E.3d 549, 556 (Ill. 2015).

[26] 833 N.W.2d 331, 343–45 (Mich. Ct. App. 2013).

[27] Ghanam v. Does , 845 N.W.2d 128, 141 (Mich. Ct. App. 2014). Despite this suggestion, the existing Cooley test continues to be used. Sarkar v. Doe , 897 N.W.2d 207, 218 n.9 (Mich. Ct. App. 2016) ("In Cooley, ... a panel of this Court expressly refused to adopt Dendrite, reasoning that any expansion beyond the Michigan rules of civil procedure would be better accomplished by the Legislature.").

[28] Doe v. Cahill , 884 A.2d 451, 461 (Del. 2005).

[29] Id. at 460–61; see also Trawinski v. Doe , No. A-0312-14T1, 2015 WL 3476553, at *3 (N.J. Super. Ct. App. Div. June 3, 2015) ("Plaintiff satisfied the first prong of the analysis because her attorney attempted to contact "EPLifer2" through the website to notify him or her that a subpoena was being sought.").

[30] Somerset Dev., LLC v. Cleaner Lakewood , No. A-2819-10T3, 2012 WL 4370271, at *3 (N.J. Super. Ct. App. Div. Sept. 26, 2012).

[31] Ghanam v. Does , 845 N.W.2d 128, 142 (Mich. Ct. App. 2014)

[32] Kuwait & Gulf Link Transp. Co. v. Doe , 92 A.3d 41, 46 (2014) ("Under the First Amendment, different types of speech receive different levels of protection. The United States Supreme Court has held, for example, political speech receives extensive constitutional protection; commercial speech receives an intermediate level of protection; and obscene speech receives no First Amendment protection. ").

[33] Mauro v. Intellectual Freedom Found., Inc. , No. A-0004-15T2, 2015 WL 10372230, at *4 (N.J. Super. Ct. App. Div. Feb. 26, 2016).

[34] Warren Hosp. v. Does 1-10 , 63 A.3d 246, 250 (N.J. Super. App. Div. 2013) ("Plaintiffs have presented sufficient facts from which we may assume that what John Does One and Two did electronically was no different than if they had broken into the hospital and spray painted their messages on the hospital's walls. We reject the argument that

those who engage in this type of conduct are entitled to cling to their anonymity through a strict or overly-formulaic application of the Dendrite test.").

[35] Signature Mgmt. Team, LLC v. Doe , 876 F.3d 831, 837 (6th Cir. 2017). A dissenting judge in Signature Management Team argued that because the anonymous speech was already found to be "not protected," "no balancing is required" and the court should simply "reveal Doe's identity" post-judgment. Id. at 839 (Suhrheinrich, J., dissenting).

[36] See, e.g., Warren Hosp. v. Does 1-10 , 63 A.3d 246, 249–50 (N.J. Super. Ct. App. Div. 2013) ("In crafting an appropriate remedy, courts must sail between the Scylla of unmasking those who have said nothing actionable, leaving them vulnerable to powerful and vindictive plaintiffs with the ability to 'seek revenge or retribution,' and, on the other hand, the Charybdis of permitting anonymity to become an impenetrable shield, leaving a defamed plaintiff without a remedy.").

[37] See, e.g., Pilchesky v. Gatelli , 12 A.3d 430, 447 (Pa. Super. Ct. 2011).

[38] Juzwiak v. Doe , 2 A.3d 428, 435 (N.J. Super. App. Div. 2010).

[39] Kuwait & Gulf Link Transport Co. v. Doe, 2015 WL 10384304, at *4 (Pa.Com.Pl. Dec. 2015).

[40] Gunning v. Doe , 159 A.3d 1227, 1234 (Me. 2017).

[41] Id. at 1240 (Jabar, J., dissenting) ("Because the public interest in Maine courts establishing our own framework for balancing the rights at stake in this case outweighs Doe's interest in not relitigating the issue of whether Doe's speech constitutes defamation, I cannot join the Court's decision.").

[42] Yelp, Inc. v. Hadeed Carpet Cleaning, Inc. , 770 S.E.2d 440, 444 (Va. 2015).

[43] See, e.g., In re Subpoena Duces Tecum to Am. Online, Inc. , 52 Va. Cir. 26 (2000), rev'd on other grounds sub nom. Am. Online, Inc. v. Anonymous Publicly Traded Co., 542 S.E.2d 377 (Va. 2001); In re Verizon Internet Servs., Inc., 257 F. Supp. 2d 244 (D.D.C.), rev'd on other grounds sub nom. Recording Indus. Ass'n of Am., Inc. v. Verizon Internet Servs., Inc., 351 F.3d 1229 (D.C. Cir. 2003).

[44] See, e.g., In re Indiana Newspapers Inc., 963 N.E.2d 534 (Ind. Ct. App. 2012); McVicker v. King , 266 F.R.D. 92 (W.D. Pa. 2010); Enterline v. Pocono Med. Ctr. , 751 F. Supp. 2d 782 (M.D. Pa. 2008).

[45] See, e.g., Kuwait & Gulf Link Transp. Co. v. Doe, 92 A.3d 41 (Pa. Super. Ct. 2014).

[46] See, e.g., In re Grand Jury Subpoena Issued to Twitter, Inc., No. 3:17-MC-40-M-BN, 2017 WL 9485553 (N.D. Tex. Nov. 7, 2017), report and recommendation adopted, No. 3:17-MC-40-M-BN, 2018 WL 2421867 (N.D. Tex. May 3, 2018); Yelp Inc. v. Superior Court , 224 Cal. Rptr. 3d 887 (Cal. Ct. App. 2017); Glassdoor, Inc. v. Superior Court , 215 Cal. Rptr. 3d 395 (Cal. Ct. App. 2017).

[47] See Matrixx Initiatives, Inc. v. Doe , 42 Cal. Rptr. 3d 79, 85 (Cal. Ct. App. 2006); see also Quixtar Inc. v. Signature Mgmt. Team, LLC , 566 F. Supp. 2d 1205, 1215 (D. Nev. 2008) (citing Matrixx, 42 Cal.Rptr.3d 79).

[48] Pub. L. No. 114-258, 130 Stat. 1355 (codified at 15 U.S.C. § 45b).