

Section 230 Applies to Trade Secret Claims in Craft Beer Franchisor Suit Against Glassdoor

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Craft Beer Stellar, LLC (CBS), a franchisor of craft beer, filed suit against the operator of the website Glassdoor, where users can anonymously post comments about their employers. At issue were several postings of negative reviews of one of CBS's franchisees, which CBS alleged contained its confidential information.

Because Glassdoor initially removed one such post at CBS' request, but permitted the reposting of a revised version, CBS asserted that: (i) Glassdoor was responsible for developing the content and therefore no longer enjoyed internet publisher immunity under 47 U.S.C. § 230(c); (ii) § 230 immunity was inapplicable anyway because subsection (e)(2) contains a carve-out for "any law pertaining to intellectual property;" and ultimately (iii) Glassdoor violated the federal Defend Trade Secrets Act (DTSA), among other claims.

The United States District Court for the District of Massachusetts dismissed all these causes of action for plaintiff's failure to state a claim. On the first two issues, the court concluded that Glassdoor did enjoy immunity and that claims under the DTSA are not excepted under § 230(e)(2).

Although trade secrets are commonly considered to be a form of intellectual property, the DTSA on its face was **not** a "law pertaining to intellectual property," as it itself provides that it "shall not be construed to be a law pertaining to intellectual property for purposes of any other Act of Congress." DTSA, § 2(g). As a result, the interactive computer service provider was shielded under § 230(c) from liability for the alleged DTSA violation.

TIP: This decision serves as a reminder that the DTSA is not a law that pertains to IP, with respect to any other federal statutes, and therefore online publishers posting or hosting third party-provided content may still avail themselves of Section 230 immunity. It remains an open question, however, whether or not the federal statutory provision immunizes one against state law trade secret misappropriation claims.

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