

CDA Found Inapplicable to Use of Names and Likenesses in Facebook's Sponsored Ads

FEBRUARY 10, 2012

A putative class action was filed against Facebook alleging that Facebook unlawfully misappropriated the plaintiffs' names, photographs, and likenesses for use in paid "Sponsored Stories" without first obtaining the plaintiffs' consent. A "Sponsored Story" is a paid advertisement that appears on a Facebook page and generally contains another friend's name, profile picture, and a statement that the person "likes" the advertiser (which communicates that the friend has used Facebook's "like" functionality to "like" the advertiser). Facebook moved to dismiss the claim on the grounds that the plaintiffs lack standing to bring the claim and that Facebook is entitled to protection under the Communications Decency Act ("CDA"), which provides immunity for "interactive computer service providers" for content posted to their websites by consumers. The District Court for the Northern District of California denied Facebook's motion, first concluding that the plaintiffs have standing because the case involved the statutory right of publicity and the economic value of an individual's commercial endorsement of a product. The court also indicated that while Facebook is an interactive computer service provider under the CDA, the plaintiffs also allege facts suggesting that Facebook is an information content provider. Specifically, the court pointed to the plaintiffs allegation that Facebook edited user-created content into "a commercial endorsement to which they did not consent."

TIP: It is important to keep in mind that you may not be entitled to immunity under the CDA for user-generated content on your website if you modify or repurpose the content. In addition, advertisers who solicit user-generated content should be careful not to use the content in a manner that exceeds the authorization given by the person who submitted the content.

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