



LAW FIRM'S WEBSITE LANDS IT IN COURT, by Attorney Jack Greiner, Graydon Head and Richey LLP

As with any other business, law firms and lawyers increasingly market their services. And they use their websites as one tool in that effort. But there is a fine line between aggressive marketing and defamation. And a Connecticut based firm may have crossed it recently.

Lemberg Law, LLC is a Connecticut based, national law firm that serves clients in Arizona. On its website it touts the following expertise:

"Lemberg Law represents consumers nationwide in debt collection abuse, telephone harassment, lemon law, auto fraud, personal injury, wage overtime and class action cases."

So far, so good. There's nothing wrong with a law firm letting potential clients know what it's good at. But the website went on to say:

"Scary Harassment from 602-490-3955 / 60224903955 Is NOT forever"

"Delivery Financial Services may be harassing illegally. Sue for \$500-\$1,500 per call from 602-490-3955."

To drive the point home further, the website included an example, where a woman set

her alarm clock for 9:00 to make 10:15 Sunday Services. But Delivery Financial Services wakes her up with a call at 6:45 looking to collect a debt. According to the website, "Delivery Financial Services likely is going against the FDCPA because debt collectors can only phone between 8:00 a.m. and 9:00 p.m. in your time zone."

The FDCPA is the Fair Debt Collection Practices Act, which regulates the behavior of debt collectors. And as you may have guessed, Delivery Financial is a debt collector.

Delivery Financial filed a lawsuit alleging that the website defamed it by alleging that it engaged in conduct that violated the FDCPA. Among other reasons Delivery Financial contended the statements were false is because they're closed on weekends, so a Sunday morning call wasn't really a possibility.

In its motion, Lemberg argued that its website never actually accused Delivery Financial of anything – it used the qualifier "may" when talking about Delivery Financial's harassment. And the example that talked about the Sunday morning call was presented as a hypothetical, not a factual *Cont. on p. 4*

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Hamilton County Law Library

Hamilton County
Courthouse
1000 Main Street
Room 601
Cincinnati, OH 45202
T:513.946.5300
F:513.946.5264

Open Monday-Friday 8 - 4

<http://lawlibrary.hamilton-co.org>

Tech Tip: HathiTrust Digital Library overview

Julie Koehne, Systems Librarian

HathiTrust is one of our go to databases when looking for older publications. HathiTrust is a not-for-profit collaborative of academic and research libraries preserving 17+ million digitized items. <https://www.hathitrust.org/>

The screenshot shows the HathiTrust Digital Library homepage. At the top left is the HathiTrust logo. To its right is a search bar with the text "Search words about or within the items" and a dropdown menu set to "All Fields". Below the search bar are radio buttons for "Full-text", "Catalog", and a checked "Full view only" option. Navigation links include "Advanced full-text search", "Advanced catalog search", and "Search tips". A secondary search bar on the right says "Search website" with a "Find" button. The main content area has a breadcrumb trail: "About > Our Membership > News and Publications". The "News and Publications" section is split into two columns: "Update on Activities: November 2019" and "Press Releases and Announcements". The "Update on Activities" column lists "Read the Full Update" and "Subscribe to receive email update", followed by "Top News" with links for "2020 HathiTrust Budget Approved", "Graham Dethmers Joins HathiTrust as Metadata Analyst", "NEW Member Toolkit: Promote HathiTrust at Your Library", and "Introducing the New Responsive Website HTRC Workshop Series: Spring 2020". The "Press Releases and Announcements" column lists several recent releases with dates, such as "Welcome Graham Dethmers, Metadata Analyst - November 14, 2019". The "Our Membership" section on the right lists links for "Member Community", "Mission and Goals", "Functional Objectives", "Functional Framework", "Governance", "HathiTrust Staff", "Working Groups and Committees", "Features and Benefits", "Eligibility and Agreements", "Contact", "Charting HathiTrust's Strategic Directions", and "News and Publications".

There are several ways to search works in HathiTrust:

1. Catalog Search: Search bibliographic fields such as Title, Author, Publication Date.
2. Full-text Search: Use keywords to search the full-text of all works in HathiTrust.
3. Collection Builder: Search inside a collection of materials that you or others have created
4. Single-volume Search: When viewing a work in the page-viewing application, use keywords to search inside that volume alone.

Printing and Downloading:

Members of HathiTrust partner institutions are able to download public domain works in their entirety as well as works made available in under Creative Commons licenses.

Guest users can download one page at a time of all public domain works or an entire work that doesn't have download restrictions (e.g., works digitized by Internet Archive and other organizations, works that have been opened with a Creative Commons license). See "Why isn't full-PDF download publicly available for all viewable items" below. There is significant overlap of volumes in HathiTrust and Google Book Search, and if a work is "full view" in HathiTrust, it is possible that the work can be downloaded from Google Book

Remote Research

As the weather gets colder and the idea of venturing out through snow and wind to come to the courthouse becomes less appealing, keep in mind that all of our subscribers can access certain Law Library services from the warmth of their homes or offices. Need remote research assistance or document delivery via email? Contact our reference staff at reference@cms.hamilton-co.org or 513-946-5300. And note that while subscriber access to Westlaw is not available off-site for subscribers, our librarians are able to provide research assistance and documents from Westlaw for you.

All subscribers also have access to our ebooks collection via OverDrive, which features a large collection of legal practice materials from Matthew Bender and West Academic. Browse the collections, check out materials and read them from your computer at the office or on your laptop or tablet while warming up with a cup of coffee at your local coffee shop.

Solo practitioners and firm attorneys whose whole firm subscribes to the Law Library also have access to a robust collection of legal information via our website, including access to Fastcase for case law and statutes from all 50 states and federal, tax and business content via Wolters Kluwer Cheetha, among many others.

And, if you want or need to brave the elements please feel free to stop in to see us for a coffee, tea or hot chocolate and a warm place to work and watch the snow (or sun, or rain, or ice, depending on the day!)



Topical Updates

If you have not signed up before and would like to start receiving substantive bi-weekly updates in one or more practice areas, please visit the topical updates page on our website to sign up. You can select from the following areas of law:

- Criminal
- Employment
- Estates and Trusts
- Family Law
- Intellectual Property
- Pension Benefits
- Real Estate
- Tax
- Torts

If you have any questions about this please feel free to contact our Reference Librarian, [Amy Kurlansky](#).



Inclement Weather

The Law Library rarely closes due to inclement weather but, as winter approaches, we want you to know how to find out about unplanned closings. When we close for bad weather, we announce it on our [Facebook](#) and [Twitter](#) feeds and will put a banner on the Law Library [website](#). The Law Library also generally follows Board of County Commissioner snow closing decisions so one can phone 513.946.SNOW for recorded BOCC suspended operations announcements.

scenario.

The court was unpersuaded. It found that “[a] communication is libel per se if on its face it tends to impeach one’s honesty, integrity, or reputation.” In its view, the complaint set out enough facts to survive dismissal right out of the gate. The opinion did not elaborate, but presumably must have concluded that while the example was a hypothetical, the specific reference to Delivery Financial making a call on a Sunday morning at least implies that it routinely engages in such conduct. For purposes of a motion to dismiss, that implication was sufficient.

So the case lives on. It is a long way from the finish line, and Lemberg may ultimately prevail. But it is a cautionary tale. If you want to tout your expertise on your website, you may want to avoid naming names.

IS FACEBOOK ADVERTISING DISCRIMINATORY?

A recently filed case in California federal court alleges that Facebook’s highly sophisticated advertising service, which allows advertisers to include and exclude specific classes of users from the advertisement’s audience violates the federal fair housing act. The plaintiffs are asking the court to certify a nationwide class action to allow potentially thousands of plaintiffs to join the suit.

According to the complaint, Facebook’s Ad Platform has an “Exclude People” and an “Include People” feature. This means that an advertiser can work with Facebook to create an audience that is more likely receptive to the advertisement. So, if the ad is for infant diapers, the advertiser would ask Facebook to hone in on young parents. The advertiser may at the same time ask Facebook to exclude older users. There is nothing inherently wrong about that use of the feature.

But advertising is not a one size fits all proposition. And advertisements for housing are subject to more scrutiny than other advertisements. The Fair Housing Act of 1968 makes it unlawful:

“To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement,

with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or any intention to make any such preference, limitation, or discrimination.”

And regulations promulgated under the Act include in the definition of discriminatory conduct:

“Selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, handicap, familial status, or national origin.”

This means that targeted advertising, which may be innocuous for infant diaper ads is more problematic for housing advertisements. And plaintiffs are using Facebook’s own description of the Ad Platform product against it. The complaint includes this passage from the Facebook website:

Why you see a particular ad

Our ad system prioritizes what ad to show you based on what advertisers tell us their desired audience is, and we then match it to people who might be interested in that ad. This means we can show you relevant and useful ads without advertisers learning who you are. We don’t sell any individual data that could identify you, like your name.

When an advertiser wants to reach...

- Bike enthusiasts
- Between 18 – 35 years old
- Female
- Within 20 miles of my store
- Interested in bicycling
- Mobile users

We show their ad to people like...

- Facebook user 30 years old
- Female
- Menlo Park, CA
- Interested in bicycling, movies, cooking
- iPhone user, car shopper, gamer

Plaintiffs contend that this capability has allowed Facebook, “as recently as 2019, [to mine] user data to create categories of users defined by race or skin color other than

white and permitted advertisers to exclude those categories from the audience of housing advertisements.” It also contends that “Facebook approved and published housing advertisements for sale and rental properties which excluded African Americans and single parents and/or that were based on sex, familial status and other protected classes from the ad’s target audience.”

If plaintiffs can prove these allegations, Facebook could have a problem. Facebook may argue, however, that it is immune from liability under the Communications Decency Act. That federal law provides that an internet service provider is not considered the publisher of content submitted by a third party. But typically, that protection does not apply when the internet service provider is involved in the content creation.

Plaintiffs seem to anticipate that defense in their complaint. A large portion of the complaint focuses on the extent of Facebook’s involvement in the creation of the Ad Platform and its efforts to assist advertisers with creating the criteria for defining the audience. Those allegations are no doubt directed at the CDA defense.

This one will be interesting to watch unfold. As is often the case, it’s not so much the tool, as it is the way it’s used.

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Attorney Jack Greiner is a commercial litigator with an emphasis on communications and media law. He is one of the region’s leading advocates for governmental transparency, having argued numerous cases in the Supreme Courts of Ohio and Kentucky and in appellate courts in the tri-state area. His clients have included The Cincinnati Enquirer, the Associated Press, ESPN, Vogue Magazine, Courthouse News Service, NBC Universal, and television stations in 16 markets. He also serves as Graydon’s Managing Partner.



Upcoming CLEs

Free to subscribers; \$50 for non-subscribers
Registration is required.

To register, call 513.946.5300, email reference@cms.hamilton-co.org, or register via the website <http://lawlibrary.hamiltoncountyohio.gov/classes/calendar/>

Video Replay Day

December 16, 2019, 8:30-12:00

8:30 am—9:30 am Advertising and Promotional Law

by Attorney Jonathan Daugherty

This course has been approved by the Supreme Court of Ohio Commission on Continuing Legal Education for 1.00 total hour instruction. 1.0 hour of general credit approved for Kentucky.

9:45 am-10:45 am CLE: Professionalism: Stress and the Legal Profession
by Attorney Tabitha Hochscheid, of Hochscheid & Associates

This course has been approved by the Supreme Court of Ohio Commission on Continuing Legal Education for 1.00 total CLE hour, with 1.00 of attorney professional conduct instruction. 1 hour of general credit approved for Kentucky.

11:00 am-12:00 pm Title IX
by Attorney Jon Sinclair

This course has been approved by the Supreme Court of Ohio Commission on Continuing Legal Education for 1.00 total hour instruction. 1.0 hour of general credit approved for Kentucky.

Please note: pursuant to Ohio and Kentucky CLE requirements, anyone who has previously attended the live presentation of a CLE may not receive credit for the video replay.

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to six weeks at a time

Access to extensive legal information databases from the Law Library, including Westlaw, IntelliConnect, Bloomberg Law[®], Overdrive e-books, HeinOnline, and Loislaw treatises

Wireless network throughout the Law Library

Polycom videoconferencing

Five meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

CLE seminars throughout the year, on legal research and substantive topics

Subscribers' lounge, magazines, daily newspapers, and coffee

Bi-weekly news alerts by practice area

Discounted rates for photocopying

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/LOISLaw treatises, HeinOnline (for under 50 attorney firms), EBSCOhost, and IntelliConnect Law, Business, Tax, and Accounting

Subscriber Renewals for 2020

We mailed invoices for Hamilton County Law Library's 2020 services for subscribers in late November. We hope that you will renew without a moment's hesitation, given the many services and resources offered by the Law Library. You are welcome to pay in December or wait until January – your choice.

Our librarians appreciate your calls and emails for research support. Subscribers and county officials may request cases, chapters, KeyCite reports, forms, and more. We will send the items you need quickly via email. This service is available to you at no additional charge. We also offer CLEs and training, video conferencing, meeting room use, (including our newly renovated subscriber lounge and conference room suite!) loan of books, coffee, and low-cost photocopying. Our solo attorney and 100% firm subscribers benefit from off-site access to a number of legal information databases.

Thanks for your continued use of the Law Library, whether on-site or from the convenience of your home or office. If you have questions about the invoice or about making the most of your investment, please contact [Lauren Morrison](#) or [Vanessa Seeger](#).

Payments by Credit Card: Just a reminder – we **are able and happy to take your payment by credit card if you prefer.** Simply contact us by phone at 513-946-5300 or email at reference@cms.hamilton-co.org and we'll send you the secure payment link.



HCLL/CBA Bundled Membership:

The CBA and the Law Library offer a bundled membership that could provide a discount when you join both organizations. You can enroll in this during the CBA renewals in the next few months. If you are interested in taking advantage of this, please contact us for more information before you renew your Law Library subscription.

Lawyer Wellness Resources

Law Library subscribers have access to a variety of resources on Lawyer Wellness, including those listed below. If you have questions about these resources, contact the reference staff at reference@cms.hamilton-co.org or 513.946.5300

Decision-making for lawyers: distraction, deception, and drunkenness
KFO76.5.A2.Z9 D42 2018

Fall professional conduct seminar: stress management for lawyers

Flying solo: a survival guide for the solo and small firm lawyer
KF300 .F58 2005

Lawyers, anger, and anxiety: dealing with the stresses of the legal profession
KF300 .N46 2010

Making better decisions, managing information, and improving productivity
KFO 300.Z9 M248 2011

Staying happy and being productive to combat the stress of the legal profession
KF300 .Z9 S73 2016

Stress management for lawyers: how to prevent malpractice and ethical violations, as well as burnout, depression, and substance abuse, while achieving true professionalism
KFO76. S87 2013

Westlaw (Journal Articles)

7 Stress-Relief Strategies When You Have 10 Minutes or Less

Achieving a Balance—Life and Work

The Art of Being Mindful in the Attorney Wellness in a Nutshell

Legal World: a Challenge for Our Times

Balancing Life in a High-Stress Job

Beating Lawyer Stress

Breathing Lessons

Dealing with Compassion Fatigue

Dealing with Stress: Techniques for Seden-

tary Work

The Enlightened Lawyer: Overcoming Stress and Creating Balance

How Lawyers Can Cope with Stress

Just Breathe

Keeping Your Balance

Lawyer Resilience©

The Lawyer's Guide to balancing Life & Maintaining Balance: Stress Management for Lawyers

Managing Daily Stress: Live Longer and Healthier

Physical Fitness as it Relates to Professionalism: Maintaining the Machine and Getting into the Locker Room

Reducing Stress in Your Workplace

Strategies to Reduce Litigation Stress (Before It Reduces You)

Stress Avoidance and Stress Control for Lawyers: A Checklist

Stress and Burn Out in the Workplace: Some Common Sense Advice

Stress Hardiness and Lawyers

Stress Management

Stress Management for Lawyers, 2ded.

Stress Management for Lawyers: an Ounce of Prevention

Stress Relief

Stressed? Make Time for Healthier Habits in the New Year

Take Time to Care

Taking Care of Yourself

Taming the Stress Reaction: An Expansion of Methods

Toward a Less Stressful Workplace

Using Exercise to Reduce Corporate Law

Practice Stress: It's a Marathon, not a Sprint

Want to Sharpen Your Mind? Cut Your Stress

We aren't Machines: Dealing with Stress and Anxiety

Wellness and Balance are Key to a Sustained Career

What is Your Self-Care Plan?

When Good Stress Turns Bad

When "Stress Management" Fails

With a Little Help from Our Friends

Work: Taking the Stress Out of Success

Upcoming Events:

December 16, 2019: CLE Replay Day

December 25, 2019: Library closed for Christmas

January 1, 2020: Library closed for New Year's Day



December 2019 Law Library Newsletter

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