

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KAREN HEPP,

Plaintiff,

v.

FACEBOOK, INC., ET AL.,

Defendant.

§
§
§
§
§
§
§
§
§
§

Civil Action No. 19-cv-4034-JMY

**DEFENDANT FACEBOOK, INC.'S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION TO DISMISS AMENDED COMPLAINT**

TABLE OF CONTENTS

INTRODUCTION 1

SUMMARY OF PLAINTIFF’S ALLEGATIONS 2

ARGUMENT 3

 I. Applicable Standard of Review 3

 II. Facebook Is Immune From Liability For Hosting Content Provided by
 Third Parties..... 4

 A. Plaintiff’s Right of Publicity Claims Are Barred By the CDA..... 5

 B. Facebook Meets the Criteria for CDA Immunity. 7

 1. *Facebook is an Interactive Computer Service.* 7

 2. *Plaintiff Does Not Allege That Facebook is the Content
 Provider.* 8

 3. *Plaintiff’s Claims Treat Facebook as a Publisher or
 Speaker.*..... 10

 III. Even Absent Application of the CDA, Facebook Is Immune from
 Liability for Plaintiff’s Statutory Right of Publicity Claim. 11

 IV. Plaintiff Fails to Allege Facts Sufficient to Sustain Her Common Law
 Right of Publicity Claim. 12

TABLE OF AUTHORITIES**Cases**

<i>AFL Phila. LLC v. Krause</i> , 639 F. Supp. 2d 512 (E.D. Pa. 2009)	13
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)	3, 4
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007)	3, 14
<i>Brennerman v. Guardian News & Media Ltd.</i> , No. 14-188-SLR/SRF, 2016 WL 1271461 (D. Del. Mar. 30, 2016)	10
<i>Cabaniss v. Hipsley</i> , 151 S.E.2d 496 (Ga. Ct. App. 1966)	15
<i>Caraccioli v. Facebook, Inc.</i> , 167 F. Supp. 3d 1056 (N.D. Cal. 2016)	6, 9
<i>Carafano v. Metrosplash.com, Inc.</i> , 339 F.3d 1119 (9th Cir. 2003)	6
<i>Delfino v. Agilent Techs., Inc.</i> , 52 Cal. Rptr. 3d 376 (Cal. Ct. App. 2006)	7
<i>Dimeo v. Max</i> , 433 F. Supp. 2d 523 (E.D. Pa. 2006)	4, 5, 8, 9
<i>Doe v. MySpace, Inc.</i> , 528 F.3d 413 (5th Cir. 2008)	8
<i>Evancho v. Fisher</i> , 423 F.3d 347 (3d Cir. 2005)	4
<i>Evans v. Wurkin Stiffs, Inc.</i> , No. 15-61934-CIV, 2016 WL 8793339 (S.D. Fla. Mar. 21, 2016)	12
<i>Facenda v. N.F.L. Films, Inc.</i> , 488 F. Supp. 2d 491 (E.D. Pa. 2007)	13
<i>Faegre & Benson, LLP v. Purdy</i> , 367 F. Supp. 2d 1238 (D. Minn. 2005)	7
<i>Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC</i> , 521 F.3d 1157 (9th Cir. 2008)	5

<i>Gabriel v. Giant Eagle, Inc.</i> , 124 F. Supp. 3d 550 (W.D. Pa. 2015).....	14
<i>GoDaddy.com, LLC v. Toups</i> , 429 S.W.3d 752 (Tex. App. 2014).....	7
<i>Green v. Am. Online (AOL)</i> , 318 F.3d 465 (3d Cir. 2003)	5, 8, 10
<i>Inman v. Technicolor USA, Inc.</i> , No. 11-666, 2011 WL 5829024 (W.D. Pa. Nov. 18, 2011).....	11
<i>Jurin v. Google Inc.</i> , 695 F. Supp. 2d 1117 (E.D. Cal. 2010)	11
<i>Kabbaj v. Google, Inc.</i> , No. CV 13-1522-RGA, 2014 WL 1369864 (D. Del. Apr. 7, 2014)	9, 10
<i>Kimzey v. Yelp! Inc.</i> , 836 F.3d 1263 (9th Cir. 2016)	11
<i>La'Tiejira v. Facebook, Inc.</i> , 272 F. Supp. 3d 981 (S.D. Tex. 2017)	9
<i>Mmubango v. Google, Inc.</i> , No. 12-1300, 2013 WL 664231 (E.D. Pa. Feb. 22, 2013).....	9
<i>Newcombe v. Adolf Coors Co.</i> , 157 F.3d 686 (9th Cir. 1998)	15
<i>Parker v. Google, Inc.</i> , 422 F. Supp. 2d 492 (E.D. Pa. 2006)	5, 6, 9
<i>Perfect 10, Inc. v. CCBill LLC</i> , 488 F.3d 1102 (9th Cir. 2007)	7
<i>Sahoury v. Meredith Corp.</i> , No. 11-5180 (KSH), 2012 WL 3185964 (D.N.J. Aug. 2, 2012)	14
<i>Saliba v. Att'y Gen. of U.S.</i> , 828 F.3d 182 (3d Cir. 2016)	4
<i>Saponaro v. Grindr, LLC</i> , 93 F. Supp. 3d 319 (D.N.J. 2015).....	4
<i>Scott v. Moon</i> , No. 2:19CV5, 2019 WL 332415 (W.D. Va. Jan. 24, 2019)	6

Shulman v. Facebook.com, No. 17-764 (JMV) (LDW),
2018 WL 3344236 (D.N.J. July 9, 2018)..... 9

The Choice Is Yours, Inc. v. The Choice Is Yours,
No. 14-CV-1804, 2015 WL 5584302 (E.D. Pa. Sept. 22, 2015)..... 13

Worthy v. Carroll,
No. 02-6882, 2003 WL 25706359 (E.D. Pa. July 16, 2003) 14

Zeran v. Am. Online, Inc.,
129 F.3d 327 (4th Cir. 1997) 5, 10, 11

Statutes

42 Pa. Cons. Stat. § 8316(a)..... 11

42 Pa. Cons. Stat. § 8316(d) 1, 12

47 U.S.C. § 230..... passim

47 U.S.C. § 230(b)(2) 8

47 U.S.C. § 230(c) 5, 6

47 U.S.C. § 230(c)(1)..... 5, 8

47 U.S.C. § 230(e) 5

47 U.S.C. § 230(e)(1)..... 6

47 U.S.C. § 230(e)(2)..... 6

47 U.S.C. § 230(e)(3)..... 5, 6

47 U.S.C. § 230(e)(4)..... 6

47 U.S.C. § 230(e)(5)..... 6

47 U.S.C. § 230(f)(2) 8

47 U.S.C. § 230(f)(3) 9

Restatement (Second) of Torts § 652C..... 13

Rules and Regulations

Fed. R. Civ. P. 12(b)(6)..... 3, 4

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.