

Do my online complaints constitute defamation?

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The Bullet Point is a biweekly update of recent, unique, and impactful cases in Ohio state and federal courts in the area of commercial litigation.

Standing to Sue Under Clayton Act (Antitrust)

Apple Inc. v. Pepper et. al., Slip Op. No. 17-204 (May 13, 2019).

In this appeal, the United States Supreme Court held that iPhone users could sue Apple for alleged monopolization. The case began regarding Apple's sale of apps through its App Store, the only place where iPhone users may lawfully purchase apps. Apple charges app creators an annual fee, as well as a 30% commission on every app sale. A number of iPhone users sued Apples alleging the company unlawfully monopolized the aftermarket for iPhone apps.

Apple moved to dismiss the lawsuit and the District Court agreed finding iPhone users were not a "direct purchaser" under Supreme Court precedent. The Ninth Circuit Court of Appeals reversed and on appeal, the Supreme Court affirmed.

The Bullet Point: Section 4 of the Clayton Act provides that "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue." 15 U. S. C. §15(a). This covers consumers who purchase goods or services at higher-than-competitive prices from an allegedly monopolistic retailer. Applying this provision, the Supreme Court has routinely held that "the immediate buyers from the alleged anti-trust violators" may maintain a suit against the antitrust violators, but has ruled that indirect purchasers who are two or more steps removed from the violator in a distribution chain may not sue.

FCRA Article III Standing

Huff v. TeleCheck Servs., 6th Cir. No. 19a0085 (May 3, 2019).

This case involved a Fair Credit Reporting Act (FCRA) dispute with a check verification company. The plaintiff requested a copy of his file under FCRA from a check verification company. The report he received omitted that his license was linked to six different bank accounts and omitted two transactions from those accounts. Plaintiff filed suit but the district court granted the defendant's motion to dismiss for lack of standing. Plaintiff appealed

and on appeal the Sixth Circuit Court of Appeals affirmed, finding he lacked the requisite standing to sue because the incomplete report did not injure him in any way.

The Bullet Point: Article III of the United States Constitution limits the “judicial Power” of the federal courts to deciding “cases” and “controversies.” To establish standing, a plaintiff must show three things: (1) that he suffered an injury, (2) caused by defendant, (3) that a judicial decision could redress. As the United States Supreme Court noted in *Spokeo, Inc. v. Robins*, 136 S.Ct. 1540 (2016), an injury in fact must be real, not abstract; actual, not theoretical; concrete, not amorphous. To proceed in federal court, standing must be shown above and beyond the elements of a federal violation. As the Sixth Circuit noted: “[t]here is a difference between failing to establish the elements of a cause of action and failing to show an Article III injury. One is a failure of proof. The other is a failure of jurisdiction. Yes, there can be overlap between the two inquiries. But they are not one and the same.”

Online Defamation

***Maddox Defense, Inc. v. Geodata Systems Management, Inc.*, 8th Dist. Cuyahoga No. 107559, 2019-Ohio-1778.**

This was an appeal of the trial court’s decision to grant summary judgment to the plaintiff in a breach of contract dispute. Both companies in the lawsuit specialized in manufacturing products to the military. The plaintiff entered into an agreement with the defendant to purchase a number of gunnery targets that would then be sold to the military. Defendant required the sale price up front. After plaintiff paid, defendant failed to deliver the gunnery targets in a timely manner, leading plaintiff to cancel its order and demand its money back. When it was not paid back, plaintiff sued for breach of contract. Defendant filed various counterclaims, including for tortious interference with a contract and business relationship and a defamation claim related to online postings made about the defendant. Ultimately plaintiff was awarded summary judgment and defendant appealed. On appeal, the Eighth District affirmed finding that the plaintiff’s online postings about its business dealings with the defendant were opinion and not fact, and thus not actionable defamation.

The Bullet Point: The elements of a defamation claim are: “(1) that a false statement of fact was made; (2) that the statement was defamatory; (3) that the statement was published; (4) that the plaintiff suffered injury as a proximate result of the publication; and (5) that the defendant acted with the requisite degree of fault in publishing the statement. If a statement is defamatory per se, in that it tends to injure a person in his or her trade or occupation, damages are generally presumed. Truth is a defense to defamation. Moreover, when confronted with a statement published online, an opinion (as opposed to a fact statement) is typically protected from such a claim. In making this determination, courts consider the totality of the circumstances, including (1) the specific language used; (2) whether the statement is verifiable; (3) the general context of the statement; and (4) the broader context in which the statement appeared.

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