



# the Advocate

THE LEGAL NEWSLETTER OF  
LEONARD S. DEPALMA, L.L.C., ATTORNEYS AT LAW

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## Courts Unmask Nameless Internet Attackers

A person that publishes a defamatory statement over the internet can be held liable for resulting damages. The law protects individuals, corporations and business entities from wrongful internet-based attacks for such causes as breach of employment agreements, breach of confidentiality agreements, breach of fiduciary duties, misappropriation of trade secrets, interference with a prospective advantage, and defamation.

But what legal protection is available in the case of an anonymous internet user posting messages that attempt to defame you, your employees, or your company's reputation? What can you do against the efforts of an anonymous and "hidden" internet assailant? How can you protect the reputation of your business and curtail disruption of your business relationships in the face of anonymous dissemination of misinformation? How can you enforce an employment contract and seek damages for breach against a former employee you suspect may be damaging your business? Under a recent Appellate Division case, Dendrite v. Doe, 342 N.J. Super. 134 (App. Div. 2000), the Courts of New Jersey can force the disclosure of the name of an anonymous internet user to permit wronged individuals and businesses to pursue a lawsuit for damages against the "unmasked" attacker.

*This article was written by Kathleen A. La Vallie, Esq. an associate with the firm of Leonard S. DePalma, L.L.C., Attorneys at Law.*

In the Dendrite case, the Plaintiff was a New Jersey corporation based in Morristown in the business of providing highly specialized integrated products and services to the pharmaceutical and consumer package goods industries. Dendrite was publically traded and had offices in twenty-one countries. During the period from March 2000 through June 2000, John Doe No. 3 posted nine comments on the Yahoo! Dendrite bulletin board under the pseudonym "xplr." Three of the statements were as follows:

### The Hidden Internet Assailant

1. "John (Dendrite President John Bailye) got his contracts salted away to buy another year of earnings-and note they're changing revenue

*Continued on reverse page...*

### **Law Firm Briefs**

#### Since Our Last Issue ...

Kathleen A. La Vallie completed the 1st year of her return to the firm in October 2001. She was also with the firm during 1995 and 1996.

#### Great Quotations ...

"Leadership is to be both a speaker of words and a doer of deeds."

- Homer

"Choose a job you love, and you will never have to work a day in your life."

- Confucius

2. "Bilye has his established contracts structured to provide a nice escalation in revenue. And then he's been changing his revenue-recognition accounting to further boost his earnings..."

3. "Dendrite signed multi year deals with built in escalations in their revenue year-over-year (Pharma cares most about total price of the contract, so they don't care; nor do they care if the price is in software or services). They have also been able to restructure their contracts with Pfizer and Lilly the same way."

Dendrite filed a Verified Complaint in May 2000 against numerous John Doe defendants alleging that certain postings on Yahoo! Dendrite's bulletin board constituted breaches of contract, defamatory statements and misappropriation of trade secrets. In its lawsuit, Dendrite sought an order to force the internet service provider (ISP) involved to disclose the true identity of the anonymous internet users that had posted the defamatory statements. At an Order to Show Cause Hearing, the trial Judge granted an Order allowing Dendrite limited discovery to ascertain the identities of John Doe Nos. 1 and 2, but denied relief as to John Does No. 3 and 4.

The Court opined that it "has been called upon to balance individuals right to anonymously voice their opinions against a plaintiff's right to confront his accusers... Dendrite has not a made a Prima Facie case of defamation against John Doe No. 3, as Dendrite has failed to demonstrate that it was harmed by any of the posted messages. Dendrite has also failed to provide this Court with ample proof from which to conclude that John Doe No. 3 and 4 have abused their constitutional protections in order in a manner that is unlawful or that would warrant this court to revoke their constitutional protections." Therefore, Dendrite's request for limited expedited discovery was denied. The decision was appealed.

The Appellate Division affirmed and clarified the lower court's decision. The Appellate Division offered guidelines to trial courts faced with an application for expedited discovery seeking an Order compelling an ISP to honor a subpoena or disclose the identity of anonymous internet posters, who are allegedly violating the rights of the individuals corporations or businesses. The Appellate Division stated that the trial court must "balance the first amendment rights of the individual to speak anonymously and the rights of the plaintiff to protect his proprietary interest and reputation."

The Appellate Division affirmed that an ISP can be ordered to divulge the name of the anonymous internet poster when the court is convinced that the following criteria has been met:

1. The plaintiff must first undertake measures to notify the anonymous poster that they are the subject of an subpoena or an application for an Order of Disclosure.

2. Withhold action to afford the fictitiously-named defendants a reasonable opportunity to file and serve opposition to the application. This notification should be placed on the ISP board, which the defendant used to make its tortious allegations.

3. The plaintiff must identify and set forth the exact statement reportedly made by each anonymous poster that plaintiff alleges constitutes actionable speech.

4. The plaintiff must set forth in its complaint a Prima Facie cause of action against the defendants. The plaintiffs must produce significant evidence supporting each element of its cause of action prior to a court ordering disclosure of the identity of the unnamed defendant.

5. Finally, the court must balance the defendant's first amendment right of anonymous free speech against the strength of the Prima Facie case presented and the necessity for the disclosure of the anonymous defendant's identity to allow the plaintiff to properly proceed.

Based upon the Appellate Decision's findings in the Drendite decision, anonymous internet posters who make defamatory statements can be identified by court ordered discovery. Once these individuals are identified they can be named as defendants in a court action. These individuals may be former employees, competitors, or malicious people seeking to engineer the downfall of companies or individuals. If the criteria set forth under Dendrite can be shown, such wrongdoers may now be identified and ultimately held liable for the damage caused by their actions.



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