

Lawsuit Against GuideStar Gets Tossed

04.04.18 | Linda J. Rosenthal, JD



In [GuideStar, 'Hate Groups,' Death Threats & A Lawsuit](#), we told you about that prominent organization's long hot summer of 2017.

GuideStar is a 501(c)(3) whose purpose is “to encourage philanthropy by [providing information about nonprofits](#) that members of the public can use to make educated and informed decisions about their relationships with and donations to these nonprofits.”

Concerned about the well-documented [rise of hate groups](#) – some of which have managed to snag 501(c)(3) status – GuideStar made a bold but somewhat controversial – and definitely risky – move in its publication issued in June 2017. Using the information from the “Hatewatch” database of the Southern Poverty Law (SPLC), GuideStar placed [warning labels](#) across the top of the profiles of 46 organizations.

Threats and a Lawsuit

This action set off a fierce response from the targeted organizations including a demand for immediate removal of the warning banners. More troubling was a steadily escalating campaign of serious harassment and threats of violence against GuideStar personnel and their families. By about the third week of June, GuideStar backed down somewhat by promising to remove the labels but keeping open the option to respond to user requests for information about hate-group designations in connection with any 501(c)(3)s.

The reaction by many in the nonprofit community was generally positive, but there was some Monday-morning-quarterback sniping about how GuideStar had violated its own neutrality principles and then badly mishandled the all-but-certain blowback from the alt-right movement. The Southern Poverty Law Center expressed understanding of GuideStar's reversing course in the face of threats of violence, but cautioned that “[a]t a time when hate groups increasingly present a mainstream veneer, the public deserves such information.”

As expected, the hate-group-labeled organizations, headed up by plaintiff Liberty Counsel, fought back in court. They quickly filed a federal lawsuit in the Eastern District of Virginia.

The primary legal claim is unusual but intriguing. It's based on the federal trademark protection statute, the Lanham Act. That statute "prohibits false or misleading descriptions of fact or representations of fact in a commercial or advertising promotion"; it includes misrepresentations of the "nature of ... goods, services, or commercial activities." Specifically, these plaintiffs argue that "the hate-group designations" are made "in reference to the organization's services" and designed to "influence donors' decisions." They claim they have already suffered damages in the form of diminishing donations. The plaintiffs also assert state claims for defamation and interference with business expectancy; namely, the ability to attract donations.

The Lawsuit is Dismissed

Months later, in late January 2018, GuideStar won a dismissal of the lawsuit. Judge Raymond A. Jackson, in a 10-page ruling, explained that the plaintiffs had failed to state a legal claim under the Lanham Act.

GuideStar's defense was that the hate-group warning labels on the plaintiffs' profiles were not "commercial speech" as required to make a case under the federal statute. The judge agreed; the "notation" on the profile was "an informative statement" instead of "commercial speech":

”

Plaintiff did not sufficiently plead facts to satisfy the first element of a Lanham Act violation because ... Defendant's statement is not commercial speech.... The Court finds that Defendant's use of SPLC's notation is not commercial speech because the notation does not fall under the type of speech that violates the Lanham Act. Defendant's review of [the plaintiff organizations] would fall under the laws of the First Amendment, not that of the Lanham Act.”

Because there was no valid federal claim, the court did not consider the additional state claims of defamation and interference with business expectancy.

Conclusion

The judge's ruling is not the end of this saga. There will be an appeal, according to a statement on behalf of Liberty Counsel, which is coordinating with representatives of the other targeted organizations. They may also pursue the defamation claims in state court in Virginia.

Another possible avenue of relief may be a lawsuit against the Southern Poverty Law Center (which was not named in the federal lawsuit against GuideStar) on the basis of SPLC's own designation of these organizations as hate groups.