

**Florida Bar Business Law Section
Computer Law and Technology Committee
Hot Topics**

*February 6, 2020 Meeting
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1) Notifying Twitter of Terms of Service Violation is not Tortious Interference.

- *Illoominate Media, Inc. v. Cair Found.*, 2019 U.S. Dist. LEXIS 201419
- Plaintiffs brought a claim against Twitter for tortious interference based on CAIR's orchestration of Twitter's deletion of Loomer's account based on a violation of Twitter's terms of service. The deletion eliminated her expected financial gain from the use of her Twitter handle.
- The Court found that, with respect to Loomer and her followers, the Plaintiffs failed to establish a relationship with identifiable customers, and that "a business relationship does not lie where the business relationship alleged is one with the 'community at large' as opposed to one with identifiable customers."
- In addition, the Court held that "even if Plaintiffs had established a business relationship between Loomer and Twitter, Section 230 of the Communications Decency Act ("CDA"), 47 U.S.C. § 230(b)(1)-(2), insulates internet providers, such as Twitter, from exactly the kind of liability Loomer now seeks to impose upon Defendant. Under the CDA, Twitter cannot be held liable for its decision to exercise traditional editorial functions, such as moderating content on its platform."

2) Ninth Circuit Restricts Protection under §230 when Blocked Content has Anti-Competitive Effects.

- *Enigma Software Grp. USA, LLC v. Malwarebytes, Inc.*, 2019 U.S. App. LEXIS 38784
- Ninth had previously recognized that the "Good Samaritan" provision of §230(c)(2), which immunizes computer-software providers from liability for actions taken to help users block certain types of unwanted, online material, establishes a subjective standard whereby internet users and software providers decide what online material is objectionable.
- Here, both parties were software providers used to filter unwanted content, and were competitors. Malwarebytes blocked Enigma's content, which Enigma claimed was anti-competitive. Malwarebytes countered that it had separate reasons, other than competition, to block Engima's content.
- The Court concluded that Enigma's allegations of anticompetitive animus are sufficient to withstand dismissal.

3) First DCA Sends Case to Florida Supreme Court to Decide Whether a Suspect can be Compelled to Give a Password to Permit Search of a Device Otherwise Subject to a Search Warrant.

- *Pollard v. State*, 44 Fla. L. Weekly D 3050 (Fla. 1st DCA December 23, 2019)
- Certifies to the Supreme Court the following question as of great public importance:

What is the Proper Legal Inquiry when the State seeks to compel a suspect to provide a password to the suspect's cellphone if the suspect has not previously given up his fifth amendment privilege in the password? What legal standard applies in determining whether the foregone conclusion applies to compelled production of passwords in these situations?
- The majority of the First DCA panel adopted the view that: “the expansion of governmental powers to compel disclosures of personally-held information to search person’s homes and personal effects, as reflected in [*State v. Stahl*, 206 So. 3d 124 (Fla. 2d DCA 2016)] and our dissenting colleague's view, is the antipode of the original understanding of the Fifth Amendment, which protected individual freedom by prohibiting compelled disclosures used to incriminate an accused.”
- The dissent concurred in submitting the issue to the Florida Supreme Court, but instead opined that the dissemination of the password was more akin to being forced to surrender a key to a strongbox, rather than a combination to a safe. It did not require the assembly of information, nor did it embark on a fishing expedition for unknown information .

4) Southern District of Florida Judge Weighs In on When Contract to Purchase Airline Ticket is Formed.

- *Schultz v. Am. Airlines, Inc.*, No. 18-80633-CIV, 2020 U.S. Dist. LEXIS 1136, at *1 (S.D. Fla. Jan. 2, 2020)
- Schultz filed a putative class action against AA for breach of contract because she claimed an advertised airline ticket price was not honored, despite her clicking the “Pay Now” button on AA’s site.
- The Court considered AA’s online ticketing system, evidence about the fares on offer at the time of the purchase, and testimony from Plaintiff about her interaction with the website.
- The Court found not only that the evidentiary record contradicted the Plaintiff’s story, but that there was no contract between Plaintiff and AA.
- The Court found that even though Plaintiff clicked “Pay Now,” she did not complete the final screen of AA’s ticketing process, and was not cleared and issued a ticket by AA. Partially completing AA’s ticketing process was not sufficient to create a contract between them.