

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

2014L012713
CALENDAR/ROOM E
TIME 00:00
Discovery

FREDDY’S FOOD AND PIZZA, INC.)
)
 Petitioner,)
) Case No.
 v.)
)
 GOOGLE, INC., and YOUTUBE, LLC.)
)
 Respondent.)

**VERIFIED EMERGENCY PETITION FOR DISCOVERY TO IDENTIFY
RESPONSIBLE PERSONS PURSUANT TO
ILLINOIS SUPREME COURT RULE 224**

NOW COMES the Petitioner, Freddy’s Food and Pizza, Inc. (hereinafter “Freddy’s
“Petitioner”), by its attorneys, Ice Miller, LLP, and in support of its Verified Emergency Petition
for Discovery to Identify Responsible Persons Pursuant to Illinois Supreme Court Rule 224
(hereinafter “Petition”), states as follows:

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INTRODUCTION

1. This Petition seeks discovery from the Respondents which will help identify certain individuals who have posted or uploaded videos to YouTube. The videos in question contain false and misleading information concerning the Petitioner’s business, and, as a result, are causing Petitioner great harm and loss of goodwill amongst its customers. This Petition is brought on an emergency basis because the harm that is occurring is ongoing and if not stopped will cause even greater loss of business. Without the relief requested, Petitioner has no way of identifying the individuals who have posted the videos which contain the false information.

PARTIES

2. Freddy’s is a well-known Italian restaurant and food shop located in the Town of Cicero, Illinois.

3. Respondent, Google, Inc. ("Google") is a Delaware Corporation with its principal place of business located at 1600 Amphitheatre Parkway, Mountainview, CA 94043 and whose registered agent is Illinois Corporation Service C, 801 Adlai Stevenson Dr., Springfield, IL 62703. Google conducts business within the State of Illinois.

4. Defendant, YouTube, LLC, ("YouTube") was purchased by Google and now operates as a Google subsidiary headquartered in San Bruno, California. YouTube also conducts business in the State of Illinois. Specifically, YouTube is a video sharing website which allows registered users, including users in Illinois, to post videos to YouTube's website which the public can then access and view.

FACTS

5. Since approximately October 28, 2014, various unknown individuals have posted videos on YouTube which depict, list, or otherwise show Petitioner's business information including its business' telephone number.

6. Currently, there are at least five (5) videos posted to YouTube's website (hereinafter "videos") which list or mention Freddy's Pizza's telephone number. See videos posted on YouTube at:

<http://www.youtube.com/watch?v=I9HxeI1JYr0>;

<http://www.youtube.com/watch?v=706fD8KIPAI>;

<http://www.youtube.com/watch?v=FGJvc3PXnoY>;

<http://www.youtube.com/watch?v=aPTkBjci3jM>; and

<http://www.youtube.com/watch?v=LeUVg47QgkE>.

7. Each of the five (5) videos incorrectly associate Freddy's Pizza with a popular video game called *Five Nights at Freddy's* (hereinafter "*Five Nights*"). *Five Nights* is a survival

horror video game that centers on a fictional pizza restaurant called Freddy Fazbear's Pizza. The game's sequel, *Five Night's at Freddy's 2*, was released on November 11, 2014.

8. Each of the five (5) YouTube videos depict someone, purportedly the person who uploaded the video to YouTube, calling Freddy's Pizza and inquiring in some form or fashion whether Freddy's Pizza is associated with *Five Nights* and Freddy Fazbear's Pizza. One video alone, <http://www.youtube.com/watch?v=LeUVg47QgkE>, has generated over 122,000 views or hits. Upon information and belief, each time the video is accessed or watched, it generates a new hit.

9. The videos are infringing upon the goodwill associated with Freddy's Pizza by linking it to a fictitious pizza parlor in a video game and by creating a likelihood of confusion between the Freddy Fazbear's Pizza location in the video game and the Freddy's restaurant in Cicero, Illinois. Just so that it is clear, Freddy's Pizza in Cicero, Illinois has nothing to do with *Five Nights at Freddy's* or Freddy Fazbear's Pizza.

10. As a direct result of the confusion created by the videos posted to YouTube, Freddy's Pizza has received approximately 500-700 telephone calls per day from telephone numbers from all over the world. These telephone calls are harassing in nature and have no legitimate business purpose as the vast majority of the callers ask to speak to Freddy's Fazbear or ask if Freddy's is a "real place". The callers often indicate that they are calling Freddy's Pizza because they saw Freddy's telephone number in one of the subject videos posted on YouTube.

11. The telephone calls become more frequent during non-school hours. This past week was especially bad as there was no school because of Thanksgiving. The volume of the telephone calls has crippled Freddy's Pizza's business in that its telephone line is constantly in

use as a result of these “prank” calls. The prank calls are occurring as a direct result of YouTube allowing users to post or upload videos which falsely associate Freddy’s Pizza with *Five Nights*.

12. Freddy’s has filed a police report with the Town of Cicero’s police department as the phone calls related to the videos posted to YouTube are criminal in nature in that they are meant to harass and damage Freddy’s business.

13. Freddy’s Pizza has also contacted YouTube and Google to notify them of the problem associated with the videos posted to YouTube but Google and YouTube have done nothing to address the issue. Specifically, Freddy’s Pizza has requested from YouTube that it remove or disable access to the videos in question but YouTube has refused. See response from YouTube attached hereto as Exhibit A.

DISCOVERY REQUESTED

14. Upon information and belief, prior to uploading a video to YouTube, the individual is required to provide YouTube with their name, address, email address, date of birth, and other personal information.

15. This personal information is not accessible to the public. As a result, Freddy’s Pizza is unable to identify the users who posted the five (5) videos listed above as this information is only held by YouTube and/or Google.

16. Freddy’s Pizza needs the personal information of the individuals who posted the five (5) videos to YouTube so that it can pursue legal claims against those individuals. The statements made in the videos and the content listed on the YouTube website where the videos can be seen are false and misleading, are not privileged, and are causing great harm to Freddy’s business. As such, Freddy’s intends to pursue causes of action for defamation and trademark infringement against each of the individuals who have created and published the subject videos.

17. Freddy's Pizza thus seeks an order pursuant to Illinois Supreme Court Rule 224 requiring Google and/or YouTube to disclose certain information regarding the individuals who posted the videos listed above. Illinois Supreme Court Rule 224(a)(1)(i) provides that "[a] person or entity who wishes to engage in discovery for the sole purpose of ascertaining the identity of one who may be responsible in damages may file an independent action for such discovery." Further, the Illinois Appellate Court has interpreted Rule 224 as authorizing a party who, like Freddy's Pizza, seeks to file a defamation suit against an unknown individual using an anonymous account to discover that individual's identity. *See Maxon v. Ottawa Publishing Co.*, 402 Ill. App. 3d 704 (3d Dist. 2010).

18. Freddy's Pizza seeks the identity of the individuals who posted the five (5) videos listed above for the sole purpose of filing a lawsuit against said users and does not know their identities and cannot independently learn this information without the requested pre-suit discovery.

19. An order immediately compelling Google or YouTube to disclose the name, mobile phone number, date of birth, gender, email address and IP addresses associated with the users who uploaded the videos to YouTube would not impose an undue hardship or expense on Google or YouTube because, upon information and belief, this information is maintained by Google and YouTube in the ordinary course of business and is readily accessible to them.

20. Freddy's Pizza needs the various users' personal information on an immediate basis so that it can stop the hundreds of illegal telephone calls that it receives every day and has been receiving for the past several weeks. The increase in telephone calls to Freddy's is directly related to the date the videos were originally posted to YouTube.

21. As result of the videos and the subsequent telephone calls, Freddy's Pizza has suffered and will continue to suffer irreparable harm and injury to its business reputation, ability to procure business, and loss of good will as many of Freddy's customers have called Freddy's complaining that they cannot place orders as their telephone line is busy or is otherwise being used.

22. Freddy's Pizza's injury is irreparable because the repeated telephone calls have a long lasting effect on Freddy's relationship with its customers and will continue to harm the good will that Freddy's has built up over the more than fifty (50) years Freddy's has been in business.

23. The harm to Freddy's is immediate and ongoing as YouTube and Google have refused to take down the subject videos despite repeated requests.

24. Google and YouTube will suffer no harm if this Court grants this Petition and orders Google and/or YouTube to provide Freddy's Pizza with the requested information. This information should be provided to Freddy's Pizza immediately so that it can mitigate its damages and put a stop to the harm which is being caused by the videos and the ensuing phone calls.

25. It is rather unfortunate that Freddy's Pizza and its owners have to seek this kind of redress from the Court especially in light of the fact that YouTube's own "Community Guidelines" provide that "Things like predatory behavior, stalking, threats, **harassment**, intimidation, **invading privacy**, **revealing other people's personal information**, and inciting others to commit violent acts or to violate the Terms of Use are taken very seriously. Anyone caught doing these things may be permanently banned from YouTube." See http://www.youtube.com/t/community_guidelines.

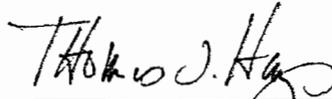
26. Unfortunately, Freddy's is left with no other alternative but to request from this Court that it enforce and make YouTube follow its own "Community Guidelines" and take down the videos. These videos are clearly meant to, in part, harass Freddy's and to incite others to call Freddy's business. There is no other reason why these users have posted or otherwise depicted Freddy's telephone number in the videos.

27. Therefore, for this reason and for all of the other reasons listed above, Freddy's requests that this Court enter an order that forces Google and YouTube to provide information which will help Freddy's identify the individuals who created and published the videos on YouTube so that Freddy's can pursue legal claims against those individuals.

WHEREFORE, Petitioner, Freddy's Food and Pizza, Inc., respectfully requests that the Court enter an order that requires the Respondents to immediately disclose the identities of the individuals who have posted the videos listed above and for such other relief that this court deems just and proper.

Respectfully submitted,

Ice Miller, LLP



One of Freddy's Food and Pizza,
Inc.'s Attorneys

Thomas J. Hayes
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Lisle Illinois 60532
(630)955-6121
Firm ID No. 44391

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil procedure (735 ILCS 5/1-109), the undersigned certifies that the statements set forth above are true and correct, except as to matters therein stated to be on information and belief as to such matter the undersigned certifies as aforesaid that she verily believes the same to be true.

Dated: December 4, 2014



Ann Marie Quercia
Ann Marie Quercia

Kruse, Janet

From: legal@support.youtube.com
Sent: Thursday, December 04, 2014 5:56 PM
To: Hayes, Thomas
Subject: RE: [4-350700005505] YouTube Legal Trademark Support

Hello,

Thank you for submitting your complaint. As a preliminary matter, please note that YouTube is not in a position to mediate trademark disputes between users and trademark owners. As a courtesy we have considered your claim, but are unable determine its merits. As a result, we are unable to comply with your request to remove the content at issue. If you have continued concerns, we encourage you to resolve the dispute with the uploader. You may be able to contact the uploader through YouTube's private messaging feature. Instructions on how to use this feature can be found at the following link:

<http://www.google.com/support/youtube/bin/answer.py?hlrm=en&answer=57955>.

We rely on our community to "flag" videos they deem inappropriate, based on our Community Guidelines:

http://www.youtube.com/t/community_guidelines

If you are concerned that a video may potentially violate our Community Guidelines, please use the flag icon located on every video page, right below the video, to bring it to our attention.

For more information on content reporting and removals, visit the following link:

<http://www.youtube.com/yt/policyandsafety/reporting.html>

For more information about our removal processes, please check out the following video: <http://goo.gl/Dt5ZDw>

Regards,

The YouTube Legal Support Team

On 12/02/14 12:59:50 noreply@google.com wrote:

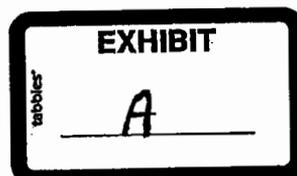


Title: Attorney

Full legal name: Thomas J. Hayes

Company name: Ice Miller, LLP

Trademark owner name: Freddy's Food and Pizza, Inc.



Relationship: Attorney

Email: thomas.hayes@icemiller.com

Brand type: Wordmark

Register status: No, I claim use rights

Jurisdiction of registration: US

Registration number: Company website

Videos:

<http://www.youtube.com/watch?v=O20biG1yeZs>
http://www.youtube.com/watch?v=7AXx_wlwWAU
<http://www.youtube.com/watch?v=l9Hxel1JYr0>
<http://www.youtube.com/watch?v=706fD8KIPAI>
<http://www.youtube.com/watch?v=FGJVc3PXnoY>
<http://www.youtube.com/watch?v=aPTkBjci3jM>
<http://www.youtube.com/watch?v=JZXP60swXDg>
http://www.youtube.com/watch?v=j556_22N46E
<http://www.youtube.com/watch?v=706fD8KIPAI>
<http://www.youtube.com/watch?v=KIYyyzoodFo>
<http://www.youtube.com/watch?v=LeUVg47QgkE>

Channels:

<https://www.youtube.com/watch?v=O20biG1yeZs>
https://www.youtube.com/watch?v=7AXx_wlwWAU
<https://www.youtube.com/watch?v=l9Hxel1JYr0>
<https://www.youtube.com/watch?v=706fD8KIPAI>
<https://www.youtube.com/watch?v=aPTkBjci3jM>
<https://www.youtube.com/watch?v=FGJVc3PXnoY>
<https://www.youtube.com/watch?v=drKnWBXcLP4>
<https://www.youtube.com/watch?v=LeUVg47QgkE>
<https://www.youtube.com/watch?v=KIYyyzoodFo>
<https://www.youtube.com/watch?v=706fD8KIPAI>

https://www.youtube.com/watch?v=j556_22N46E
<https://www.youtube.com/watch?v=JZXP60swXDg>

Clarification: Trademark Infringement (infringing upon the goodwill associated with my client's name, Freddy's Pizza, by linking it to a horror location in a video game and by creating a likelihood of confusion between the Freddy Fazbear's Pizza location in the video game and the Freddy's restaurant in Cicero, Illinois. We know consumers are confusing Freddy's Fazbear with Freddy's Pizza because my client has been receiving upwards of 500-700 phone calls per day since these videos were posted on YouTube.

These videos are causing great harm to my client's business as Freddy's Pizza is wrongfully being associated with Freddy's Fazbear. Please remove these videos immediately.

Signature: Thomas J. Hayes

[Help center](#) · [Email options](#)

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General Information

Court Illinois Circuit Court, Cook County, Law Division

Docket Number 2014-L-012713

Status Open