



Court Determines Requests for Defendant's Social Media Posts Were Overly Broad

October 5, 2012

Mailhoit v. Home Depot USA Inc., No. CV 11-03892 DOC, (C.D. Calif. Sept. 7, 2012)

On September 7, 2012, the U.S. District Court for the Central District of California determined that a majority of a Defendant's discovery request were not reasonably calculated to lead to the discovery of admissible evidence because they did not meet the "reasonable particularity" requirement of Federal Rules of Civil Procedure 34(b)(1)(A).

The decision in *Mailhoit v. Home Depot USA Inc.*, No. CV 11-03892 DOC, (C.D. Calif. Sept. 7, 2012), was issued by Magistrate Judge Suzanne Segal after Home Depot filed a motion to compel four categories of documents related to the Plaintiff's social media networks. In particular, the requests asked for:

- (1) Any profiles, postings or messages (including status updates, wall comments, causes joined, groups joined, activity streams, blog entries) from social networking sites from October 2005 (the approximate date Plaintiff claims she first was discriminated against by Home Depot), through the present, that reveal, refer, or relate to any emotion, feeling, or mental state of Plaintiff, as well as communications by or from Plaintiff that reveal, refer, or relate to events that could reasonably be expected to produce a significant emotion, feeling, or mental state;*
- (2) Third-party communications to Plaintiff that place her own communications in context;*
- (3) All social networking communications between Plaintiff and any current or former Home Depot employees, or which in any way refer [or] pertain to her employment at Home Depot or this lawsuit; or*
- (4) Any pictures of Plaintiff taken during the relevant time period and posted on Plaintiff's profile or tagged or otherwise linked to her profile.*

These requests were made after the Plaintiff filed suit against Home Depot alleging unlawful gender discrimination, as well as failing to accommodate her physical disability. In support of the requests, the Defendant argued that social network communications are particularly likely to contain relevant information because "in this day and age, many communications between friends and/or about an individual's emotional state are communicated via social media."

Under Rule 34(a), parties may request documents "in the responding party's possession, custody, or control." Rule 34(b) serves to prevent parties from making overly broad requests by requiring the requesting party to describe the items to be produced with "reasonable particularity" and specify a reasonable time, place, and manner for the inspection.[1] As noted by the Court, "the test for reasonable particularity is whether the request

places a party upon ‘reasonable notice of what is called for and what is not.’ *Bruggeman ex rel. Bruggeman v. Blagojevich*, 219 F.R.D.430, 436 (N.D. Ill. 2004) (quoting *Parsons v. Jefferson–Pilot Corp.*, 141 F.R.D. 408, 412 (M.D.N.C. 1992)).”

In applying this standard to the Defendant’s requests, the Court held that categories 1, 2, and 4 were vague and overly broad. For example, as noted by the Court, the request seeking all communications relating to any emotion could be understood to encompass “communications containing specific emotive words (which the request does not identify),” which would require the Plaintiff to produce irrelevant posts such as, “I hate it when my cable goes out.” Additionally, the requests would also fail to meet the reasonable particularity standard because it could arguably require the Plaintiff to produce all posts made by the Plaintiff that reference watching a sports event or a movie.

Because the language of requests 1, 2 and 4 did not provide sufficient notice to the responding party of what should be considered responsive material, the Court held that the Defendant failed to show that the requests were reasonably calculated to lead to the discovery of admissible evidence. The request for communications between the Plaintiff and current or former Home Depot employees, however, was sufficiently tailored since the Plaintiff had already responded to the request by providing social media communications for sixteen different current or former Home Depot employees.

A special thanks to Sean R. Gajewski, a law clerk at Cullen and Dykman, for help with this post.

[1] Fed. R. Civ. P.34(b)(1-2).