

Grindr Should Be Liable For Impersonation, 2nd Circ. Told

By **Rachel Graf**

Law360 (May 31, 2018, 3:57 PM EDT) -- A man accusing the online dating app Grindr LLC of lacking safety features that would have prevented a "malicious" impersonation scheme by his ex-boyfriend urged the Second Circuit to revive his allegations, saying in a brief made public Wednesday that providers of "interactive computer services" should be liable for fraud by users.

Matthew Herrick argued that he adequately alleged Grindr marketed a dangerous and faulty product and the company should therefore be held responsible under product liability law. U.S. District Judge Valerie Caproni improperly granted Grindr limited immunity under the Communications Decency Act of 1996, which prevents providers of interactive computer services from being held liable as publishers of information posted by a third party, Herrick contended in the May 24 filing.

Herrick's counsel Tor Ekeland of Tor Ekeland PC said they aren't alleging that Grindr is merely republishing third-party content and pointed to Grindr's use of geolocation services to connect users with others in their area.

"How that constitutes traditional publisher content is beyond me," Ekeland said. "The New York Times as far as I'm aware doesn't geolocate anybody."

Herrick's ex-boyfriend began to impersonate him on Grindr starting in October 2016 and suggested that Herrick wanted to meet potential partners at his location, which the app transmitted between parties, according to court documents. About 1,100 people responded to the impersonating profile, Herrick alleged, noting that Grindr hasn't addressed the issue beyond an automated response.

Grindr's public statements on its website and in its terms of service led Herrick to believe that the company would prevent harassment, the suit said.

Judge Caproni **ruled in January** that the CDA barred the bulk of Herrick's allegations.

The CDA became law in 1996 in part to protect children from offensive content, but has evolved into a "near blanket immunity for interactive computer services" such as Grindr, Herrick said in the filing.

He argued that his allegations don't involve Grindr's failure to conduct traditional publishing functions such as editing third-party content but rather its failure to prevent "known stalkers and abusers" from using its geolocation abilities for criminal activity.

Ekeland addressed the potential counterargument that interactive computer services can't monitor all the information on their platforms. Facebook and Google make their money by scanning users' data, he said.

"To say in 2018 these internet companies can't hire reams of people to look at all the content coming in is to know nothing about the internet," Ekeland said.

Herrick also argued that Judge Caproni's ruling was "improper and premature" and should have involved discovery, expert testimony and other proceedings. The CDA is an affirmative defense that is "generally improper for resolution at the motion to dismiss stage," he said in the filing.

Counsel for Grindr and Herrick didn't immediately respond to request for comment on Thursday.

Herrick is represented by Tor Ekeland of Tor Ekeland Law PLLC, and Carrie Goldberg of C.A. Goldberg PLLC.

Grindr is represented by Courtney Peterson of Bryan Cave Leighton Paisner LLP.

The case is Matthew Herrick v. Grindr LLC et al., case number 18-396, in the U.S. Court of Appeals for the Second Circuit.

--Editing by Stephen Berg.