

DEFAMATION CASE AGAINST GOOGLE INC.

[Duffy v Google Inc \[20015\] SASC 170](#) is an extraordinary case in many respects. Dr Janice Duffy (the “Plaintiff”), a former South Australian Health Department researcher, successfully sued Google Inc. (the “Defendant”) for defamation.

The Plaintiff was defamed due to the way the Defendant auto-completed search terms which resulted in published, republished or directing users to comments which were harmful to her reputation.

The background to the case is also fascinating. The Plaintiff had aspired to a romantic involvement with a man in the United States which ultimately did not eventuate. During the course of the Plaintiff’s aspirations she consulted a website that directed her to psychics. She consulted for a fee, a number of psychics over time about her prospects for romantic success. The psychic’s predictions were without fail positive. When the Plaintiff’s romantic aspirations did not eventuate, she complained and sought a refund. Some time later she posted on the “Ripoff Report” website the names of the psychics and their incorrect predictions.

Subsequently, there were postings made about the Defendant, including that she was a “psychic stalker”. All but one of these postings were ultimately held to be defamatory. The Plaintiff requested the Defendant remove the comments which the Defendant did not do to the Plaintiff’s satisfaction.

The judgement is 144 pages long and provides a detailed background of the events that led to the defamatory publications. The judgement also covers a broad ranging and detailed discussion of cases from different jurisdictions.

The decision of the single judge, of the South Australian Supreme Court, the Honourable Justice Blue contains a helpful summary of his judgement which is reproduced here but excludes case references. The bracketed numbers e.g. [204] refer to the paragraph number in the judgement. We appreciate His Honour’s assistance in presenting the judgement in this way.

The question of damages is yet to be determined.

“Between December 2007 and January 2009, six articles were published on the Ripoff Report website about the Plaintiff. Other websites published material about the Plaintiff ostensibly derived from the Ripoff Report articles.

In September 2009, the Plaintiff notified the Defendant that searches for her name resulted in defamatory paragraphs displayed on the Defendant's websites derived from and containing hyperlinks to six defamatory webpages on the Ripoff Report website and some of the secondary websites. The Plaintiff requested removal of the paragraphs and hyperlinks from the Defendant's websites. The Defendant did not remove the material until 2011 when it removed the material relating to the six Ripoff Report webpages but not the other webpages.

In July 2011, the Plaintiff notified the Defendant that searches for her name on its websites resulted in the display by the Defendant's Autocomplete utility of the defamatory alternative search term "Janice Duffy Psychic Stalker" and requested its removal. The Defendant did not remove it.

The Plaintiff contends that after receiving notification from her the Defendant published on its websites material the subject of the notifications that was defamatory of her. The Plaintiff contends that publication was made to Ms Palumbo, Mr Trkulja and substantial numbers of persons unknown.

The Defendant denies publication and relies on defences of innocent dissemination, qualified privilege, justification and contextual truth. Other defences and issues relating to damages are to be determined at a subsequent trial.

Held:

- 1. The Defendant was a publisher of allegedly defamatory paragraphs on its websites and a republisher via hyperlinks to the Ripoff Report webpages the subject of those paragraphs being those for which the Plaintiff sues and of which the Plaintiff gave notification and which the Defendant failed to remove within a reasonable time. This applies to the first four Ripoff Report webpages and the paragraphs referring to them and several paragraphs referring to secondary websites' (at [204]-[207], [221], [226]-[230], [233], [240]-[255]).*
- 2. The Defendant published to Ms Palumbo in mid and late 2010 paragraphs relating to the first and second Ripoff Report webpages and republished the webpages themselves and in 2012 the Autocomplete words "Janice Duffy Psychic Stalker" (at [267]-[270], [273]-[274], [279]-[282], [284]).*

3. *The Defendant did not relevantly publish any material to Mr Trkulja (at [288]-[293]).*
4. *The Defendant published to substantial numbers of persons unknown in Australia the first and second Ripoff Report webpages and republished the webpages themselves. The Defendant also published two paragraphs relating to Complaints Board webpages, one paragraph relating to a 123 People webpage and the Autocomplete words “Janice Duffy Psychic Stalker” (at [313]-[319], [322]-[325], [329], [343]-[345]).*
5. *The paragraphs relating to the first and second Ripoff Report webpages and the webpages themselves and the paragraph relating to the 123 People webpage gave rise variously to imputations that the Plaintiff stalks psychics, obsessively and persistently harasses psychics; fraudulently and/or maliciously accesses other people’s electronic emails and materials; spreads lies; threatens and manipulates other people; is an embarrassment to her profession; misused her work email address for private purposes and engaged in criminal conduct. These imputations were defamatory of the Plaintiff (at [355], [359], [362], [368], [371]).*
6. *The defence of innocent dissemination is not established (at [386]-[387]).*
7. *The defence of qualified privilege is not established (at [400]-[401], [406]-[407], [410]).*
8. *The defence of justification is established in relation to the imputation that the Plaintiff misused her work email address for private purposes. The defence otherwise is not established (at [454], [460]).*
9. *The defence of contextual truth is not established (at [472]-[473]).*
10. *The trial is to proceed in relation to the remaining issues (at [481]).”*

At [481] the following is stated:-

“It is necessary to proceed to trial of the remaining issues, being the defences of triviality and time limitation, the application for an extension of time, and causation and quantum of damages.”

The Plaintiff putting the Defendant on notice and the Defendants unreasonable inaction were central to the decision for the Plaintiff.

This case highlights a number of difficulties including the expense of suing a US domiciled company and the jurisdictional complexities that arise. Further, it took the Plaintiff over 6 years to reach this point and whilst it is accepted that there will always be some tension between freedom of expression and an individual's rights, the cost, time and complexity of resolving this matter is considered undesirable.

The persistence of the Plaintiff is to be admired. However, we believe protocols or legislation should be developed to strike a reasonable balance between the rights of individuals and such a powerful vehicle as Google Inc. It was only relatively recently that in Europe Google Inc. invited people to request Google Inc. to remove certain posts or links. Google Inc. was apparently swamped with requests.

It is uncertain whether there will be substantial damages, if any or whether Google Inc. will appeal this decision. Many people will be awaiting the decision with considerable interest. For those interested in this area the judgement is a thorough consideration of the case law and well worth reading in full.

Date Published: 10 November 2015

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