

Yelp Escapes Privacy Suit Over Recording Sales Calls

By **Joyce Hanson**

Law360 (April 19, 2018, 7:23 PM EDT) -- A San Francisco judge has thrown out a proposed class action accusing Yelp Inc. of illegally monitoring and recording conversations between the named plaintiff and Yelp sales representatives, ruling that there's no evidence the online review company eavesdropped on any calls.

Superior Court Judge Mary E. Wiss granted Yelp's motion for summary judgment on April 16, saying the claims of named plaintiff Eric Gruber, a solo attorney practicing personal injury and employment law, failed as a matter of law because the company didn't record or monitor calls and because he lacks standing to bring suit since he hasn't suffered an injury that violates the California Invasion of Privacy Act.

"The court finds that no triable issues of material fact exist, and Yelp is entitled to summary judgment as to all claims asserted against it," Judge Wiss said. "Plaintiff has not alleged facts or evidence that plaintiff's conversations with Yelp were wiretapped."

Yelp on March 23 **asked Judge Wiss to dismiss the suit** alleging it illegally recorded sales calls to potential advertisers, saying none of Gruber's phone conversations were recorded. When Yelp does monitor sales calls without warning the customer, it only records the representative's side of the conversation, Yelp said.

Gruber claims that Yelp contacted him many times about advertising his firm's services on the site. He says he discussed his business practices and financial state with Yelp sales representatives and was never notified the calls could be recorded.

But Yelp attorney Nicholas Weiss of Mintz Levin Cohn Ferris Glovsky and Popeo PC told Judge Wiss at a hearing in San Francisco that discovery had shown none of Gruber's conversations were recorded. The court shouldn't allow Gruber to substitute in additional class representatives, Weiss said, but even if it did, if Yelp recorded a call without giving the customer a warning, only the salesperson's voice was taped.

Gruber had pivoted "in a last-ditch effort to save his claims" by invoking the California Invasion of Privacy Act, Weiss said. But CIPA protects "private communications," and Weiss argued a plaintiff couldn't invoke his privacy rights for one side of a conversation, especially when he wasn't the one being taped and the company was recording its side of a call for quality control purposes.

The suit, filed in 2016, alleges Yelp company policy has allowed managers to "barge in" on sales representatives' calls to prospective clients by monitoring and recording them without consent. Gruber sought to represent a class of California business owners Yelp has called since 2015, alleging the online review site violated state laws against recording and intercepting communications and wiretapping.

Gruber's attorney, Matthew Fisher of Da Vega Fisher Mechtenberg LLP, said at the hearing that the question of whether one-sided conversations were covered by CIPA is an issue of first impression. Potential customers like Gruber engaged in long private conversations with Yelp sales representatives, Fisher said, and sensitive information and colorful language could still be revealed even if only one side of the conversation was recorded.

"There's a reason why this specific issue has not been addressed until now. That's simply [that] the development of technology allows corporations to do things they have not done in the past," he said.

Fisher said in an email to Law360 on Thursday, "Plaintiff disagrees with the court's interpretation of CIPA and intends to appeal the ruling."

Yelp representatives did not respond immediately to a request for comment.

Gruber is represented by Matthew Fisher of Da Vega Fisher Mechtenberg LLP and David Zelenski of Jaurigue Law Group.

Yelp is represented by Nicholas Weiss, Joshua Briones and Crystal Lopez of Mintz Levin Cohn Ferris Glovsky and Popeo PC.

The case is Eric Gruber v. Yelp Inc. et al., case number CGC16554784, in California Superior Court for the City and County of San Francisco.

--Additional reporting by Cara Bayles. Editing by Alanna Weissman.

Update: This article has been updated to include additional counsel information for Mintz Levin.