

**IN THE COURT OF APPEALS
STATE OF GEORGIA**

MATTHEW CHAN,
Appellant

v.

LINDA ELLIS,
Appellee.

DOCKET NO.: A14A0014

LOWER COURT NO.:
SU13DM409

**BRIEF OF AMICUS CURIAE
TIMOTHY B. McCORMACK**

Respectfully Submitted,

Timothy B. McCormack
(Courtesy Admission)
WSBA #28074
McCormack Intellectual Property
Law Business Law PS
617 Lee St
Seattle, WA 98109
p. 206-381-8888 / f. 206-381-1988

I. Statement of Interest

Pursuant to Rule 26, Mr. Timothy B. McCormack hereby submits this Brief of Amicus Curiae in support of Appellee Linda Ellis (“Ellis”). Mr. McCormack is an attorney licensed in the State of Washington and other state and federal courts. Mr. McCormack was discussed during the February 28, 2013 trial court hearing.

In addition to briefing why the lower court’s decision should be upheld under state and federal law, Mr. McCormack argues for a bright line rule: that Internet harassment is illegal, regardless of physical proximity, to help reduce this type of anti-social and dangerous behavior of harassing a person on the Internet.

II. Introduction

This Amicus Brief argues for the safety of Ellis, and others like her, under both state and federal law. The issues that drive this case are simple: Whether Internet-based harassment campaigns, like the one waged against Ms. Ellis, can put someone in reasonable fear for their safety? The answer is an *easy* yes.

Likewise, whether the lower courts’ simple direction to Appellant Matthew Chan (“Chan”) for Chan to leave Ellis alone is legal? This is also an *easy* yes.

Matthew Chan, the subject of the permanent restraining order, is one of the co-founders of the notorious **ExtortionLetterInfo.com** website (referred to as “Chan’s Extortion website”). ExtortionLetterInfo.com and its administrative volunteers / employees (including Chan) have a documented history of Internet-based harassment campaigns. See PLAINTIFF’S EXHIBIT 4 - AFFIDAVIT OF ATTORNEY TIMOTHY B. MCCORMACK ¶¶ 5 – 11.

Although Chan attempts to cloak himself in sheep’s wool, the First Amendment, and the Communications Decency Act, he actually characterizes his actions as Internet SCAR tactics (“Strategic Complaints Attacks & Retaliation”).¹

¹ Chan states, “Remember, one of the strongest ways to get them off is to hit back very hard where it counts using the “SB-AG SCAR (Strategic Complaint / Attorney Retaliation)” attack. See e.g.:

<http://www.extortionletterinfo.com/forum/getty-images-letter-forum/photo-attorney-leslie-j-burns-settlement-demand-letter-for-phototake/> (posted May 24, 2012). Chan has done this to at least 72 individuals and companies. An Internet version of SLAPP lawsuits, Chan encourages people without all the facts to file SCUM complaints (Strategic Complaints for Ulterior Motive) with local regulatory

Matthew Chan is not a sheep. He is a wolf using Internet-based Search Engine Optimization (also called SEO) as a weapon for his self-proclaimed SCAR tactics. Labeling Chan a wolf is apropos because his most popular SCAR tactic is the so-called the WOLF attack (“Worldwide Offensive Libel Fight”) where he posts offensive content about an opposing party attempting to ruin their reputation and waive their legal claim.

Cases most similar to this situation show Chan’s behavior is more egregious than your typical stalking or defamation case because he takes it “worldwide” using Internet SEO technology to intimidate and harass individuals globally.

III. Standard of Review

This Appellate Court should review the trial court’s decision under an abuse of discretion standard when reviewing the issuance of permanent restraining bodies, such as the Attorney General and District Attorney’s offices to “hurt the pride and embarrass the attorney more than anything else.” *See* www.extortionletterinfo.com/forum/getty-images-letter-forum/getty-images-and-complaints-filed-with-the-washington-state-attorney-general (posted July 28, 2012).

order. *Quinby v. Rausch*, 300 Ga.App. 424, 424 (2009) (citing *Rawcliffe v. Rawcliffe*, 283 Ga.App. 264, 265 (2007)); *Pilcher v. Stribling*, 282 Ga. 166 (2007). The evidence must be viewed in the light most favorable to the trial court. *Quinby*, 300 Ga. App. at 425. “It is not this Court’s function to second-guess the trial court in cases such as this, which turn largely on questions of credibility and judgments. The trial court is in the best position to make determinations on these issues, and we will not overrule its judgment if there is any reasonable evidence to support it.” *Id.* (citing *Rawcliffe*, 283 Ga.App. at 265).

During a full hearing on February 28, 2013, lasting an estimated 4 to 6 hours, the trial court listened to the live testimony of both Ellis and Chan, weighed the credibility of the parties that it heard first-hand, and found that Chan put Ellis in reasonable fear of her safety. *See generally* TRANSCRIPT OF HEARING, February 28, 2013; PERMANENT RESTRAINING ORDER, dated March 4, 2013.

The trial court record is full of evidence and examples of Chan’s harassing behavior online, both through his own online posts and those of his extortionletterinfo.com (“Chan’s Extortion website”) business partners. For example, pictures of Ellis, pictures of her house, names of her family, and the location where she lives were posted on Chan’s Extortion website. HEARING

TRANSCRIPT at pp. 31, 36. Other examples include, threatening and violent language, warnings, messages meant just for Ellis to read, such as **“I predict there will be some collateral damage to innocents on her [Ellis’] side, but it doesn't matter to me. This could mean exposing information on her family members.”** *Id.* at 26-27 (emphasis added).

Ellis also provided ample evidence of her own fear for her safety, including testimony that she is scared, took the posts as a threat, her family is scared, her “mother is in tears,” and her child received threats. *Id.* at 54, 66.

Chan admits he knew Ellis was reading the posts and intended her to do so.

Q. You intended it for her, didn't you? Do you deny that?

Are you denying that to Judge Jordan? You were talking to Linda, weren't you? Are you going to deny that?

A. No, I won't deny that.

Id. at 31, lines 2-5.

Also discussed during the hearing were that Chan owns and operates the Extortion website and authors content focusing on Ellis. *Id.* at 5, 13-14. Chan moderates forums and deletes posts if he wants, in addition to participating regularly. *Id.* at 12-13, 15, & 33. Chan authored numerous posts about Ellis

himself, including direct threats and harassment, posted publicly and often wrote directly to Ellis knowing she reads it. *Id.* at 23, 27, 29, 31, 71.

Based on the extensive written record and the lengthy hearing, the trial court issued a Permanent Protective Order finding that: (1) Ellis and her family had a reasonable fear for safety; (2) Chan and his website's conduct is not constitutionally protected; (3) Chan harassed Ellis and placed her in fear for her safety; (4) Chan violated the stalking statute. HEARING TRANSCRIPT at pp. 120-122; PERMANENT RESTRAINING ORDER, dated March 4, 2013. As required by *Quinby* and *Rawcliffe*, the trial court considered the credibility of the witness testimony, reviewed numerous exhibits, including those submitted during the hearing, and issued its final order on that basis.

IV. Chan Is Responsible For The Postings Under The Doctrine Of Respondeat Superior Because He Maintains Control & Ownership Of The Website.

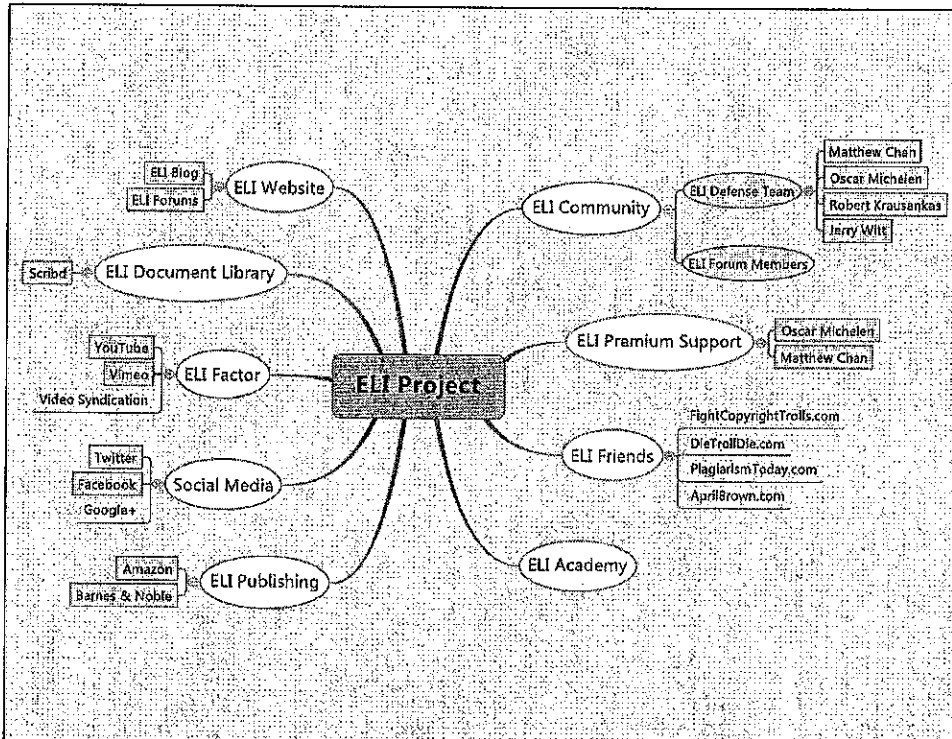
Under the doctrine of *respondeat superior*, an employer can be liable for the torts of its employees or volunteers when they are acting in furtherance of and within the scope of the employer's business. *Piedmont Hosp. v. Palladino*, 276 Ga. 612, 613 (2003); *Travis Pruitt & Associates, P.C. v. Hooper*, 625 S.E.2d 445, 448 (Ga. App. 2005); *See e.g. Baxter v. Morningside*, 10 Wn. App. 893, 948 (1974).

Chan owns the extortionletterinfo.com website. HEARING TRANSCRIPT at p. 5, lines 12-18. Chan's Extortion website is used as a business to solicit money for his book publishing, provide advice on responding to copyright infringement notifications, and also in providing "public relations" services. *Id.* at 24-25. Chan calls the website his business. *Id.* at 82, lines 19-23.

These "public relations" services are actually payments to conduct online harassment of Ellis, including posting offensive and derogatory comments, to "motivate[e] Linda [Ellis] to settle the case." HEARING TRANSCRIPT at p. 25, lines 14-22 (discussing \$300 payment by Peter Burwash). Chan's Extortion website is in the business of harassment and conducting Internet hate campaigns.

Chan also prides himself on having the "Extortion website Defense Team" consisting of several people that provide additional services, commentary, and moderator-type activities on the Extortion website. Extortion website Defense Team members include April Brown and Robert Krausankas, who also perpetrate offensive content directed at Ellis. *Id.* at 35 (discussing Krasaunkas and Chan's postings about Chan visiting Ellis' home); *Id.* at 61 (posting of video of "The Hearse Song" about Ellis by April Brown). Chan characterizes both Brown and

Krausankas as his employees of his Extortion website Defense Team, as shown in the organizational chart below.



See *Id.* at 89 (introducing Extortion website organizational chart as exhibit, but not receiving exhibit number), also visible at:

<http://www.scribd.com/doc/105997312/ELI-Copyright-Extortionists-Chart>;

<http://www.extortionletterinfo.com/forum/getty-images-letter-forum/ELI-copyright-extortionsists-chart/> (last visited September 23, 2012).

Since the Extortion website Defense Team members, including Brown and Krasaukas, are volunteers or employees of Chan through his Extortion website

business of harassment, they are acting within the scope of their employment in posting hateful messages against Ellis and others. As such, Chan is liable for the actions of the posters on his Extortion website. The order could have been broadened to include those people under Chan's control.

V. **There Is No Violation Of First Amendment Rights Because The Order Is Narrowly Tailored To Only Apply To Ellis.**

The order is proper and upholds the First Amendment because Chan's speech is not protected speech, is narrowly tailored, and the Communications Decency Act does not protect Chan because his forum is not content neutral.

A. The Restraining Order Is Valid Because Chan's Activity, Threats and Intimidation, Are Not Protected "Speech."

Chan's harassing activity is not protected by the First Amendment, so a content based restriction is permissible. The First Amendment of the Constitution protects the right to freedom of speech, which includes protection for the right to stay silent,² to use offensive words to convey a political message,³ to advertise,⁴ and to engage in symbolic speech.⁵

² *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943).

³ *Cohen v. California*, 403 U.S. 15 (1971).

The First Amendment does not protect all speech. For example, the First Amendment does not protect incitement of illegal activity,⁶ fighting words,⁷ obscenity,⁸ and threats.⁹ Tort law also restricts speech by prohibiting defamation,¹⁰ invasion of privacy,¹¹ and intentional infliction of emotional distress.¹²

⁴ *Virginia Board of Pharmacy v. Virginia Consumer Council*, 425 U.S. 748 (1976).

⁵ Such as burning the flag in political protest. *Texas v. Johnson*, 491 U.S. 397 (1989); *United States v. Eichman*, 496 U.S. 310 (1990).

⁶ See e.g. *Schenck v. United States*, 249 U.S. 47 (1919)(creating the clear and present danger test that speech will create the danger proscribed against, e.g. shouting fire in a crowded theater). Chan urges people to visit Ellis, and others, at their homes to intimidate. Intimidation is prohibited by law.

⁷ *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942) (defining fighting words as those with a “direct tendency to cause acts of violence by the persons to whom, individually, the remark is addressed”). Chan’s statements have directly caused harassing activities against Ellis both before and after entry of the restraining order.

⁸ *Miller v. California*, 413 U.S. 15 (1973)(defining obscenity by a three-prong test: appealing to the prurient interest considering contemporary community standards;

Chan's activity is not conveying a political message, advertising, engaging in symbolic speech, or remaining silent so it is not protected by the First Amendment. Rather, his speech is aimed at a specific individual for purposes of

depicts or describes, in a patently offensive way, sexual conduct defined by state law; and lacks serious literary, artistic, political, or scientific value). Chan's remarks about Ellis' "shaven parts" have no literary, artistic or other value, appeal to indecent interests, and offensively describes Ellis.

⁹ See detailed discussion below.

¹⁰ See e.g. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974)(finding unnecessary to prove actual malice in defamation of a private individual [like Ellis] and lessening degree of constitutional protection for such speech).

¹¹ *Time Inc. v. Hill*, 385 U.S. 374 (1967)(explaining false light privacy is publicity that inaccurately places a person in false light, applying an actual malice standard).

¹² *Hustler Magazine v. Falwell*, 485 U.S. 46 (1988)(limiting the allowance patently offensive and distressing speech to public figures). Ellis is a private figure, so the tort of intentional infliction of emotional distress applies.

harassment and a personal vendetta. Although all of the above exceptions to First Amendment protection are present here, we review it under the threat rationale.

Under the “true threats” doctrine, threatening speech loses its First Amendment protection based on the victim’s fear from that speech. *See Virginia v. Black*, 538 U.S. 343 (2003). True threats are statements where the speaker intends to communicate a serious expression of an intent to commit an act of violence on a specific person or group. *Id.* at 359 (citing *Watts v. United States*, 394 U.S. 705, 708 (1969)). Ellis testified that she is fearful. Chan testified he intended to direct his speech at Ellis. The court found Chan put Ellis in reasonable fear of her safety.

Statements are a true threat even if the speaker does not carry out the threat. *Virginia*, 538 U.S. at 359. Intimidation is a true threat not protected by the First Amendment, if “a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.” *Id.* at 360. Prohibiting true threats “protect[s] individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur.” *Id.* (internal quotations omitted).

In *Virginia*, the Supreme Court held that a “ban on cross burning carried out with the intent to intimidate is...proscribable under the First Amendment.” but not

necessarily all cross burnings if they only arose a sense of anger, such as at a political rally. *Id.* at 363, 366. *Virginia* shows that the speaker need not actually complete his threatened activity to restrict the speech, but it is enough if he intends to place the victims in fear of violence against themselves.

In one of the leading cases involving a true threat, the Ninth Circuit focuses on the victim's frame of mind, namely, "what a *reasonable speaker* would foresee the *listener's* reaction to be under the circumstances." *Planned Parenthood of the Columbia/Willamette, Inc. v. Amer. Coalition of Life Activists*, 290 F.3d 1058, 1076 (9th Cir. 2002) (hereafter "PPCW") (emphasis in original). Threats must be considered "in light of their entire factual context, including the surrounding events and reaction of the listeners." *Id.* at 1075 (internal citations omitted). Courts must consider proscribing speech based on the totality of the circumstances and a reasonable person standard, not based on what a delusional speaker may think.

Proximity to the victim is not required to have a true threat, rather true threats can occur over the Internet and other digital media. In *PPCW*, a pro-life group posted the names and addresses of abortion doctors on its website with wanted posters and crossed out names for murdered doctors. *Id.* at 1065. This was

threatening speech because, although only endorsing violence may be protected, naming specific doctors in conjunction thereto was not protected. *Id.* at 1072.

With the proliferation of the Internet and other digital media, true threats and intimidating statements are more widely disseminated than ever before. Hate groups use the Internet as a platform to reach more viewers and proffer their teachings. Yet, despite the anonymity of the Internet and its broad reach, specific individuals can become targets of true threats carried out based on the urgings of the particular website. Cyberstalking has become commonplace. *See* Catherine E. Smith, *Intentional Infliction of Emotional Distress: An Old Arrow Targets The New Head Of The Hate Hydra*, 80 DENVER U. L. REV. 1 (2002); Joshua Azriel, *First Amendment Implications For E-Mail Threats: Are There Any Free Speech Protections?*, 23 J. MARSHALL J. COMPUTER & INFO. L. 845 (2005).

Chan directs his statements at Ellis as an individual. Chan uses Ellis' real name and provided her address to users of Chan's Extortion website. Chan makes sexual references, violent comments, and suggests readers visit Ellis and others at their residences. When viewing the comments and website as a whole, there is a visible intent to intimidate Ellis with a fear of violence at her home and elsewhere. Chan's speech is a true threat that may be limited.

Even if Chan were to argue that he had no intent to cause Ellis fear, the issue is whether Ellis was in reasonable fear based on Chan's actions. During the hearing, Ellis described her fear caused at the behest of Chan, which is supported by the evidence. The trial court judge found she was in reasonable fear.

Chan admitted he knew Ellis read his posts. On the day of the hearing, Chan heard first-hand testimony by Ellis that she was afraid. Chan has documented information giving him knowledge that his actions caused fear in his target. Despite that actual knowledge, Chan continues his harassment campaign against Ellis, thinly veiling his directions toward "L.E." The Restraining Order does not run afoul of the First Amendment because Chan's actions are intended to cause fear and result in the victim experiencing fear.

B. Even If Chan's Speech Is Protected, The Order Is Proper Because It Is Content-Neutral, Narrowly Tailored, Is In The Interest Of Safety, & Leaves Open Other Forms Of Communication.

Even if Chan's speech is protected speech, the Order is proper because it is reasonably limited and content-neutral. Government restrictions on protected speech are analyzed based on being content-neutral or content-based restrictions.

Content-based restrictions occur based on the particular message being conveyed and are generally invalid under strict scrutiny. *Police Dept. of Chicago v.*

Mosley, 408 U.S. 92 (1972). A content-based restriction is acceptable if the speech falls into one of the categories not protected by the First Amendment listed above, including threats. The Order referencing Ellis is based on the content related to Ellis. Since Chan's threats are not protected speech, the Order is proper.

The validity of time, place, and manner restrictions are reviewed based on "intermediate scrutiny" and must be content neutral, narrowly tailored, serve a significant government interest, and leave open other channels of communication. See *United States v. O'Brien*, 391 U.S. 367 (1968); *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983). The present Order limits the place for speech, namely the Internet. Assuming arguendo the First Amendment protects Chan's harassment, the Restraining Order is valid because it survives the four prongs of intermediate scrutiny. The restriction is (1) content neutral because the speech would be restricted if it were about another individual; (2) narrowly tailored because it only applies to Ellis; (3) serves the interest in the safety of individuals and the community; and (4) leaves open other channels of communication for Chan to propagate his message regarding copyright infringement claims and other generalized speech. Chan's activity is not protected speech and even if it were, no

one is hurt by the Restraining Order, not even Chan. Both Georgia and the courts have a right to stop the type of abusive smear campaigns Chan conducts.¹³

Chan's violation of the Order has increased threats against Ellis, showing the Order was appropriate in scope and could have been broader. Chan still fails to follow the Order to "leave that poor woman alone."

C. The Communications Decency Act Does Not Protect Chan's Activities; Chan's Internet Activity Violates the Communications Decency Act.

Chan's Internet harassment also violates federal law. In accordance with the First Amendment, the Communications Decency Act (CDA) addresses the problem of people using the Internet as a place to bully and harass people. The CDA prohibits the anonymous utilization of a telecommunications device,

¹³ In exercising prior restraint of speech, the government must clearly define what is illegal, cover the minimum amount of speech necessary, and show that the speech would result in a "direct, immediate, and irreparable damage to ...people." *New York Times Co. v. United States*, 403 U.S. 713 (1971). The trial court has clearly defined the content relating to Ellis, covers the minimum necessary, & shows potential harm.

including the Internet, with the intent to annoy. 47 U.S.C. §223. There is a safe harbor for interactive computer services (internet service providers). *Id.* at §230.

This safe harbor provision is inapplicable if the internet service provider is providing the information or they have a role in posting, inducing, or designing the website as a portal for defamatory material. *F.T.C. v. Accusearch Inc.*, 570 F.3d 1187 (10th Cir. 2009) (holding that the website operator knowingly sought to transform virtually unknown information into a publicly available commodity and was responsible for the creation of the offensive content by developing and converting confidential telephone records into public information by soliciting and paying for such information). Like *F.T.C.*, for a fee intending to “motivate[e] Linda to settle,” Chan knowingly turned virtually unknown information (Ellis’ home address, family names, and daughter’s workplace) to public information. HEARING TRANSCRIPT at p. 25.

Immunity is also void when a service provider is responsible for the development of illegal offensive content or specifically encourages what is illegal or offensive about the content. *Fair Housing Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157 (9th Cir. 2008) (holding immunity was not applicable to a website that generated a roommate-matching questionnaire and

required answers to it that were allegedly in violation of the Fair Housing Act). In another case, the operator of a website did not have immunity under the CDA because he specifically encouraged development of offensive content on the site (including messages about a teacher that she slept with every player on the football team, had sexually transmitted diseases, named the school where she taught) and encouraged this content by adding his own comments to the postings, refusing to remove the postings upon objection, and acted as editor of the forums. *Jones v. Dirty World Entertainment Recordings, LLC*, 840 F.Supp.2d 1008 (E.D.Ky. 2012).

Like *Fair Housing Council & Jones*, Chan routinely posts offensive content, comments, and encourages others to do so by responding to pending forum posts. Chan admits he “opened up a dedicated discussion forum [about Ellis] to solicit information and invite discussion ELI [Extortion website] reported and commented on [Ellis’ letters] and continues to do so until today.” HEARING TRANSCRIPT at 85, lines 11-13, 19-21. Chan adds his own offensive postings about Ellis, alludes to stalking Ellis in her neighborhood, and posts “commentaries and editorials.” *See e.g. Id.* at 31, 74 (Chan stating, “everything I have published about you....” and he was the first person to post her address); *Id.* at 91. Chan is proud to say, that “I myself have engaged in many of [the euphemisms, slang, and other forum

topics]....There's name calling, there's insults and profanity. I admit I've done my share of that." *Id.* at 92, lines 14-20. Chan continues, "[t]here are 20,000 posts...clearly I wrote some of those, there's no question." *Id.* at 110. Including the post, "there are people who hate you [Ellis] and looking to put you in the ground....I [Chan] wrote it." *Id.* at 30, lines 3-7.

Chan encourages this by promoting forum members engaging in similar activity to the "Extortion website Defense Team." Chan provides negative SCAR services for a fee. *Id.* at 25, lines 14-22. Chan initiates postings of Ellis' letters and other information. *Id.* at 88 (stating, "On December 1, 2012, we received – I received a...lawsuit threat...and of course I posted it for everyone to see, and the ELI [Extortion website] community was morally outraged."). Chan has even written an "open letter" to Ellis posted on his Extortion website. *Id.* at 63, lines 2-5.

Chan is the editor of his Extortion website and admits he has editorial control, including the ability to remove posts. HEARING TRANSCRIPT at p. 12-13, lines 10-9). Yet, even upon court order, Chan refused to remove the offensive content about Ellis.

Q. And it's been up there since two weeks ago when you got served with this temporary protective order, because you just said it's still up there now.

A. It is, because I figured the Court would want to preserve whatever it is. So there has been --

MR. CHAN: There has been no deletions,
Your Honor, intentionally, good or bad,
because I respect the courts.

Id. at p. 37, lines 5-12 (discussing posts about Ellis, including photos of her home).

Q. And you have not taken down any of those postings I've showed you, since you got [the Temporary Restraining Order]?

A. I -- I feel that it would be much more inappropriate if I did take it down, in light of this upcoming court case. That -- it could have been spun the other way around, oh, okay, he decided to take it down. So I chose to leave it up.

Id. at p. 51, lines 17-23.

Since the immunity provision is inapplicable to Chan and his business partners, the provisions of the CDA that prohibit the anonymous¹⁴ utilization of a telecommunications device, including the Internet, with the intent to annoy are applied to the content. 47 U.S.C. §223.¹⁵ The trial court found the online electronic postings to be harassing and intimidating and Ellis testified that she was scared. HEARING TRANSCRIPT at p. 54. The conduct on Chan's Extortion website moderated by Chan meets and exceeds cyberstalking criteria.

Internet threats have come to fruition in the real world multiple times. Via the Internet, "access to vast numbers of people makes it easier to disseminate a

¹⁴ Use of screen name can be considered anonymous under this act. 47 U.S.C. §223(C); *Zeran v. America Online, Inc.*, 129 F.3d 327 (4th Cir. 1997)(discussing online bulletin board posts as anonymous). Screen names like "Stinger," "SoylentGreen," "Khan," and "Peeved" are used on Chan's Extortion website.

¹⁵ States, including Georgia, have laws criminalizing cyberstalking without requiring physical pursuit. *See e.g.* GA. Code Ann. §16-5-90; N.Y. Penal Law §240.30; & Rev. Code WA. §9.61.260.

message, and it also makes it easier to encourage third parties, in any location, to engage in behavior that harms others.” Smith, 80 DENVER U. L. REV. 1, 22 (2002).

For example, a frequent visitor of a neo-Nazi hate group website went on a shooting rampage in Illinois and Indiana killing 2 people and injuring eight others, explaining that “it wasn’t really ‘til I got on the Internet, read some literature of these groups, that...it really all came together.” *Id.* at 22-23. In another example, two brothers killed a gay couple and committed arson against three synagogues based on white power websites and reading radical right philosophies online. *Id.* at 23. In Bonnie Jouhari’s case, the Internet campaign of harassment against her caused Ms. Jouhari to move across the country after receiving threatening phone calls, vans circling her home, and other harassing activity due to the Internet campaigns against her causing her to be in constant fear. *Id.* at 35-39.

Since posting on the Internet can manifest in real world harm and cause fear, as shown in the above examples, the Court must consider Chan’s statements in this context. Chan uses obscene images and inflammatory language to incite his readers to illegal harassing activity. Chan also suggests that he and/or his readers visit their targets in person at her home and routinely posts the residential addresses of his targets. This activity is clearly in violation of the Communications Decency Act

and other applicable civil and criminal laws and is not protected by the First Amendment. It is obvious that Chan simply cannot leave Ellis alone.

VI. SCAR & WOLF Bullying Online Is Dangerous To Public & Must Stop.

“Google Bombing” (creating large numbers of links that cause a webpage to have a high search ranking) is another term for Chan-style SCAR and WOLF bullying prevalent online. Discussed in the Introduction, Chan uses **SCAR tactics** (“Strategic Complaints, Retaliation & Attacks”), **WOLF attacks** (“Worldwide Offensive Libel Fights”) and **SCUM complaints** (“Strategic Complaints for Ulterior Motive”) to *hurt, harass and intimidate people*. Bullying and harassment are just as harmful online as they are in “real life.” The difference is that the Internet allows people like Chan engage in this hurtful behavior without risk. Without risk, people like Chan do what they want, without regard to what is right, moral, or legal, because they do not perceive the risk of consequences they would face for the same behavior in “real life.” Chan does not “get it” and fails to follow the trial court’s simple directive to leave Ms. Ellis alone.

The below example of “Google Bombing” shows Chan’s ExtortionLetterInfo.com website community posting hateful and defamatory remarks about a woman. Repeatedly writing her name in bold on a public website,

intending to harass, frighten, and damage her reputation, ensured that anyone searching online for her name would be led directly to the hateful comments.

Greg, this is already happening with **paralegal** [REDACTED] as a quick Google search with the bolded keywords will reveal:

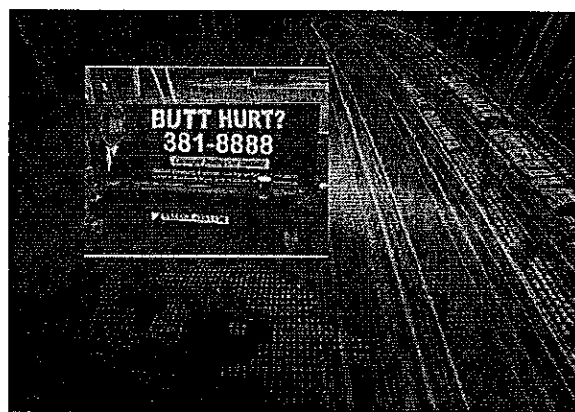
Two days with a little ELI attention, and she's branded on the Internet forever as a nasty copyright troll.

Below is another example of Chan's patterned behavior. The first image shows what Chan's group has done with one image against one target. There are dozens of similar images focused on the same target that have also been Search Engine Optimized to effectuate Chan's Google Bomb or SCAR-WOLF attack, like the one on Ellis. If this same behavior occurred in "real life," it would be clearly illegal. So, why does Chan believe his actions are lawful?

Example Of Chan's Internet Google Bomb / SCAR Tactics & WOLF Attacks



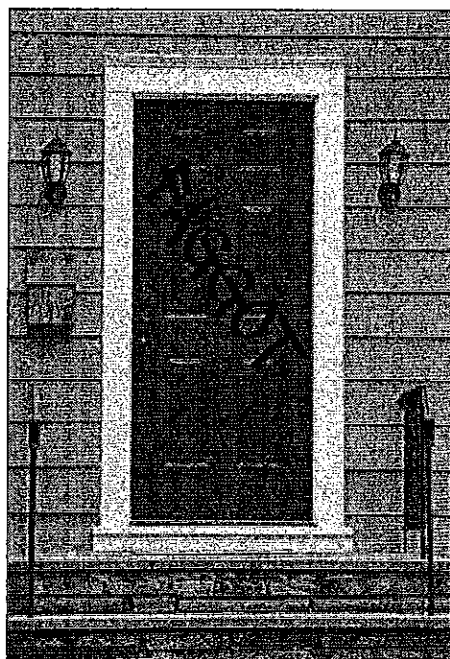
Blurred Image From Chan's Extortion Website (WOLF attack)



WOLF Attack Seen World Wide

The name of this person has been removed, but anyone who Googles the target's name gets this image. Because it is viewed worldwide, this is worse than spray-painting the same message on the target's front door, which is clearly illegal.

“Real Life” Examples of The Same Message Have A “Limited” Local Effect



According To Appellant This Type Of Behavior Is Protected!??!

It is important to draw a clear line that says if you take someone's name or image and use technology to damage, harass, or intimidate them online it is the same as if you did those things to their face – and in some cases, it is even worse.

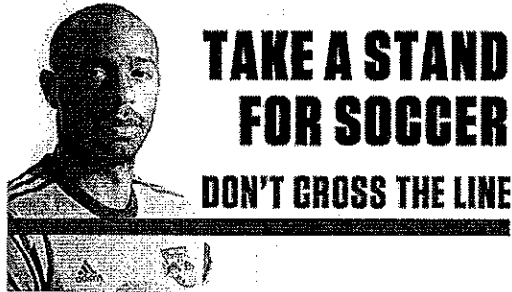
Sadly, for those people being bullied, the difficulty lies in obtaining recourse or protection when the bullies operate across state lines and under the anonymity of

the Internet. Meanwhile, the bullies themselves may believe they are outside the scope of the law, or that the Internet does not need to be governed by the same everyday standards of ethics applicable to our society. Like Chan, they may not even realize that their actions rise to the level of illegal and criminal behavior.

The issue of legality aside, bullying of any kind is detrimental to our society. It is important to shape our rules and norms concerning online behavior to reflect this important value. Reports of adolescent depression and suicide resulting from online bullying continue to fill national news headlines over the years, highlighting the dangers of online hate speech for future generations. For better or worse, the next generation of children will grow up in a digital world. The law and society must engage in meaningful discourse now about Internet use to bully and harass!

There are some great strides being made in this endeavor. For example, the It Gets Better Project seeks to provide hope for lesbian, gay, bisexual, transgender, and other bullied teens by letting them know that it gets better, and to create and inspire changes to make it better for them. Major League Soccer also has a campaign called "Don't Cross The Line," promoting unity, respect, fair play, equality, and acceptance. People are encouraged to take a pledge to not tolerate discrimination, bias, prejudice, or harassment of any kind.

Don't Cross The Line



We Shouldn't Tolerate "Crossing The Line" Online

Chan and his cohorts in crime have "crossed the line." The law cannot allow this type of behavior to continue unchecked. It is important to draw a clear legal line that says if you take someone's name and use technology to damage, harass, or intimidate them online it is the same as if you did those things to their face, and sometimes even worse.

CONCLUSION

The trial court's finding that Chan's outrageous conduct put Ellis in reasonable fear of her safety should be upheld on appeal for several reasons. First, the permanent restraining order was based on ample evidence in the record and was not an abuse of discretion. Second, there is legal basis for the order because Chan is responsible for the offensive posts as the website owner. Third, there is no restriction of Chan's First Amendment rights because the order is narrowly tailored and Chan's harassment is not protected "speech." Finally, and most importantly for

society, this Appellate Court has the opportunity to take a stand against online violence, threats, SCAR and WOLF attacks to better society and protect our children. We encourage the Court to draw a bright line making it clear to Chan and others that this behavior has no place in civil society, on the Internet or elsewhere.

Respectfully submitted this 18th day of October, 2013.



Timothy B. McCormack
WSBA #28074
McCormack Intellectual Property Law
Business Law PS
617 Lee St
Seattle, WA 98109
p. 206-381-8888 / f. 206-381-1988
tim@McCormackLegal.com

CERTIFICATE OF SERVICE

This is to certify that pursuant to Rule 6 of the Uniform Rules For the Courts Of Appeals Of The State Of Georgia, I have this date served a copy of the foregoing BRIEF OF AMICUS CURIAE TIMOTHY B. McCORMACK by depositing a copy of the same in the United States Mail with sufficient postage attached to insure delivery to the following:

Oscar Michelen
Counsel for Appellant
Cuomo LLC
9 East 38th St.
New York, NY 10016

William J. McKenney
Counsel for Appellant
McKenney & Froehlich
50 Polk Street NW
Marietta, Georgia 30064

DATED this 7th day of October, 2013.



Timothy B. McCormack
WSBA #28074
McCormack Intellectual Property Law
Business Law PS
617 Lee St
Seattle, WA 98109
p. 206-381-8888 / f. 206-381-1988
tim@McCormackLegal.com