

Duff on Hospitality Law

## **TripAdvisor Doesn't Have to Disclose Anonymous Identity of Bad Reviewer Due to Oregon's Shield Law**

on 1.5.15 | Posted in Hotels, Technology

The latest skirmish between businesses and negative on-line reviewers resulted in a win for TripAdvisor. On December 30, 2014 an Oregon trial court ruled that [Oregon's Shield Law](#) protects TripAdvisor from having to disclose the true identity of a poster on its on-line reviewing service. [The Ashley Inn](#), from Lincoln City, sued TripAdvisor reviewer, "12Kelly," who posted several scathing reviews about the Inn. The Ashley Inn sought to compel the identity of "12Kelly." A Multnomah County circuit judge refused to do so by applying Oregon's Media Shield Law, ORS 44.520. That statute protects a reporter from having to disclose the source for information used to prepare a news report. The court found that the Shield Law protected TripAdvisor because it is a "medium of communication." Hence, TripAdvisor did not have to disclose the identity of its "source" - "12Kelly."

This case is significant because this is one of the first rulings to apply a state media shield law to preclude the identification of an anonymous on-line reviewer. Traditionally, a shield law protects reporters from compelled disclosure of confidential information or sources in state court. (There is no federal shield law yet.) The policy behind a shield law is to further First Amendment goals by protecting the news gathering process, thereby enhancing the free flow of information. This process can depend upon information from anonymous sources. Without protection against disclosure, such sources may not come forward with information of great public concern.

As a result of the trial court's ruling, the Ashley Inn cannot proceed with its defamation case because it cannot discover the party responsible for the alleged defamation in the bad review. The Inn's owners contend that 12Kelly's negative statements were false, because 12Kelly never registered as a hotel guest, based upon what could be learned about him from the on-line reviews.

The Oregon ruling contrasts with one from Virginia currently pending at the Virginia Supreme Court. That case [Yelp!, Inc., v. Hadeed Carpet Cleaning, Inc.](#), is being closely watched because the issue in that case is whether a business owner can unmask an anonymous blogger that posted specific critical reviews of his carpet cleaning company. However, the Virginia ruling appears based on a Virginia statute, and not upon a shield law. That Virginia statute requires

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only that a business prove that a negative review is, or “may be defamatory,” or that it has a legitimate good-faith basis for believing that the review is defamatory in order to learn the identity of the reviewer. Hadeed Carpet Cleaning presented evidence that could prove that the seven negative reviewers were not actual customers of the carpet cleaners, which the court found could mean that the reviews *could* be defamatory.

We will report the Virginia Supreme Court ruling once it is handed down, but the Virginia case may be an anomaly because courts seem more inclined to do what it takes to preserve the freedom of on-line reviewers to post comments, as in the recent Oregon decision.

Please contact [Greg Duff](#) if you have any questions.

**Tags:** Ashley Inn, Media, Online Reviews, Oregon's Shield Law, TripAdvisor