



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Apple Co-Founder Asks To Revive Scam Suit Against YouTube

By **Bonnie Eslinger**

Law360 (January 9, 2024, 8:26 PM EST) -- Counsel for Apple co-founder Steve Wozniak on Tuesday urged a California appeals court to revive his lawsuit accusing YouTube and parent company Google of contributing to a cryptocurrency scheme that fraudulently used his image, saying the tech giants promoted the scam videos, including allowing false verification of channels carrying the videos.

Brian Danitz of Cotchett Pitre & McCarthy LLP, who represents Wozniak and 17 other plaintiffs, told the three-judge panel of the Court of Appeal, Sixth Appellate District, that a lower court judge erred in holding that the suit's claims are barred by Section 230 of the Communications Decency Act — a federal law that shields online platforms from liability for user-posted content.

"Plaintiffs' causes of actions are independent of YouTube and Google's role as a publisher or speaker of third-party content," Danitz told the judges in Tuesday's oral arguments.

Wozniak was in court for the appellate proceedings, sitting in the front row behind his lawyer and wearing a playful protective mask that displayed an image of the bottom half of his famously bearded face.

The suit stems from an online fraud in which scammers use YouTube channels to broadcast videos using existing footage of a well-known person, like Wozniak, who promotes a cryptocurrency "giveaway," according to the plaintiffs. Viewers are told if they transfer cryptocurrency to a designated account, they'll receive double the amount back — but the giveaway is a hoax.

The complaint filed by Wozniak and the other plaintiffs claimed YouTube has known security flaws that allow popular channels to be "hijacked" by these scammers and that YouTube and Google place targeted ads online that draw viewers to the videos.

Judge Charles E. Wilson asked Danitz to tell the court more about the complaint's allegations regarding the channels on which YouTube displays a "verification badge," which the plaintiffs say assures viewers the channel has been vetted. By doing so, YouTube has contributed to the fraud, according to the plaintiffs.

The verification badges were negligently designed, and people took advantage of the security flaws to take over the channels, Danitz told the court.

"The material contribution comes from knowing that there were these intrusions, knowing that the verification badges were being falsified and knowing that people were relying on their promises about security on the platform," Danitz said. "All of those go to a duty that is separate and apart from the content."

Judge Wilson asked what the plaintiffs would want in addition to a remand order if the panel were to agree that the verification badges are outside of Section 230.

Danitz said discovery in the case had been stayed from the start, so the panel should direct the trial court to allow plaintiffs an opportunity for discovery.

"We state legal theories and claims that are outside the bounds of Section 230," the lawyer said, adding that the verification badge problem is just one example of how YouTube contributed to the

fraud.

"We should be able to explore exactly what went wrong with those verification badges and also the extent of YouTube's participation in the targeted ads that actually steered the most vulnerable to these frauds," Danitz said.

Judge Daniel H. Bromberg asked if the plaintiffs were suggesting that YouTube contributed to the development of the scam videos.

Danitz said in addition to the negligence claims, the suit does allege that YouTube was a content provider, "given their role in serving up targeted ads."

Judge Bromberg asked for more specifics on what he meant by that. "You're being very abstract right now; I'd like you to be a little bit more concrete," the judge said.

The lawyer for the plaintiffs said it was difficult to be more concrete because of the lack of discovery.

"We know that they put together the targeted ads but do not know exactly the mechanism," Danitz told the court, later adding: "All of those things contributed to the fraud and made it possible."

YouTube knew about the fraud, its security flaws and the problems with the verification badges, he argued.

"This is misfeasance, active negligence," Danitz said. "It's YouTube's own conduct and negligence that we are seeking relief from and that is a separate duty that does not go to the content, it's content-neutral."

A lawyer for Google and YouTube, Mark Yohalem of Wilson Sonsini Goodrich & Rosati PC, began his arguments by zeroing in on the court's questions about the verification badges.

He pointed to the Fourth Appellate District's 2002 decision in [Gentry v. eBay](#), which examined eBay's use of a label — deeming some vendors "power sellers" — and rejected calls to hold the platform responsible for the sale of inauthentic sports memorabilia by third parties.

"The logic of the claims in Gentry is remarkably similar to the logic of the claims put forward by my friend on the other side," Yohalem told the judges during Tuesday's hearing. "It's a venerable, well respected case."

Similarly, the plaintiffs in that case argued that the eBay label gave customers a false sense of confidence, Yohalem said. And in that case, there were also claims eBay had received numerous warnings about the sports memorabilia.

"The court rejected all of that under Section 230," Yohalem said.

The fraudulent content was not created by YouTube, he later added.

"If it's enough to simply cursorily say that content is co-created by the platform, Section 230 immunity will evaporate because in every case, the plaintiff will include that allegation," Yohalem said.

Judge Bromberg asked Yohalem to respond to the plaintiffs' position about lifting the stay on discovery at this stage of the litigation.

"If you're asking if there is a remand, I think the answer is the stay should remain in place until plaintiffs can articulate specific discovery that they need in order to plead around Section 230," he replied.

Enacted in 1996, Section 230 provides a website immunity from civil liability for claims when the website acts as the publisher of information provided by a third party.

The lawsuit, first filed in July 2020, claims that the giveaway scammers typically use YouTube

accounts with deceptive names to post "live" videos featuring images of Wozniak and other well-known technology industry figures.

Wozniak said he had tried to get YouTube to take action to stop such scams that use his likeness. But, he said in his complaint, the Silicon Valley behemoth "consistently failed or refused to timely intervene, or even to have a human being respond, to stop the scam videos and promotions, and to stop selling ads to the scammers."

In a June 2021 decision, Santa Clara County Superior Court Judge Sunil R. Kulkarni held that the immunity provided by Section 230 protects Google and YouTube against the complaint.

After Tuesday's hearing, Danitz noted to Law360 how engaged the court was in the discussion about whether Section 230 applied to the suit's claims.

"It was a very hot bench," he said "The court is obviously very interested in this question."

Counsel for YouTube and Google declined to comment on the matter.

Judges Charles E. Wilson, Allison M. Danner and Daniel H. Bromberg sat on Tuesday's panel.

Steve Wozniak and the other plaintiffs are represented by Joseph W. Cotchett, Brian Danitz and Andrew F. Kirtley of Cotchett Pitre & McCarthy LLP.

Google and YouTube are represented by Amit Q. Gressel, David H. Kramer, Mark R. Yohalem and Ariel C. Green of Wilson Sonsini Goodrich & Rosati PC.

The case is Steve Wozniak et al. v. YouTube LLC et al., case number H050042, in the Court of Appeal of the State of California, Sixth Appellate District.

--Editing by Kristen Becker.