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Litigation

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# Wozniak's Success in YouTube Case May Cue Blue Check Liability

By Maia Spoto

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A California court will weigh whether social media platforms' verification badges are platform-created speech that could trigger liability for companies like Google's YouTube and X over harmful content created by others.

California's Sixth Circuit Court of Appeal ruled in a March 15 published opinion that YouTube isn't responsible for a hoax that altered footage of Apple Inc. co-founder Steve Wozniak and other tech icons to sell a fake Bitcoin giveaway—with one potential exception.

YouTube's verification badges, present on content creators' channels where the hoax ads appeared, might count as YouTube's speech and could be enough to put the tech company on the hook, the appeals court said, remanding the case back to a trial court to decide.

Wozniak's attorney, Brian Danitz, said the ruling is recognition that the federal law that protects internet companies from liability for third-party speech on their platforms—Section 230 of the Communications Decency Act—"is not a get out of jail free card."

"It's very difficult to get these cases against these social media companies past go because Section 230 is read so broadly by courts," said Danitz, of Cotchett, Pitre & McCarthy LLP. "That's why this is such an important decision."

The idea that verification badges could be considered a form of first-party speech could threaten Elon Musk's X, the social media platform formerly known as Twitter. As part of a trend of spoofs in 2022, an X user who paid for a blue check posed as Eli Lilly & Co. and posted, "We are excited to announce insulin is free now." The pharmaceutical giant's stock subsequently fell more than 4%.

"If the court really does come back and say any service that uses verification is essentially holding out that account as legitimate and therefore adopts, in part, the content the account is putting out there, that's going to serve as quite a big problem for Musk, who allows anyone to become verified," said Jess Miers, Senior Counsel at Chamber of Progress. Chamber of Progress is a trade group that represents technology companies.

### **'An Easy Case'**

Section 230 of the Communications Decency Act has been considered a very strong protection for technology companies—and has been interpreted as such to allow companies on the internet to grow rapidly. The bulk of this opinion confirms the strength of Section 230, said Eric Goldman, a professor at Santa Clara University School of Law and co-director of the High Tech Law Institute.

The federal law applied "in the face of a very vigorous attempt by the plaintiffs to overcome it, and in a circumstance where consumers suffered substantial harm," Goldman said. "And yet, the court treated it as an easy case."

The appeals court didn't rule or make any findings about whether the badges actually contributed to the Bitcoin scam's harms. It only returned the case to the trial court, where Wozniak can amend his claim about the badges and try again.

There, it's likely that Wozniak will have a hard time making his argument stick, said Felix Wu, a professor at the Benjamin Cardozo School of Law. Wu is also the faculty director of the Cardozo Data Law Initiative.

Wozniak will need to convince the court that harm arises from the interaction between a badge that wrongly states an account is his and the content of the scam, Wu said.

"There's some skepticism about the extent to which the plaintiffs' claims are really hinging on the existence of the verification badges, as opposed to the existence of the scam itself, which the court says YouTube is not ultimately responsible for," Wu said.

### **Social Media Addiction Cases**

The opinion comes as hundreds of social media addiction lawsuits allege that companies like Meta Platforms Inc. bear responsibility for a youth mental health crisis.

The social media defendants in Los Angeles County Superior Court, including YouTube, Google LLC, and Alphabet Inc., pointed to the Wozniak opinion in a Monday court filing, saying the appeals court's ruling shows plaintiffs can't avoid Section 230 by presenting negligent design claims.

These kinds of claims typically argue that the underlying content isn't responsible for harming users, but instead point blame at the design of the service, like its recommendation algorithm.

When presented with this argument during a hearing Wednesday, Judge Carolyn B. Kuhl was skeptical that the Wozniak ruling helped the social media platforms in the case before her.

The fact that the appeals court didn't strike every one of Wozniak's claims and let him take another shot at the negligent design argument shows that at least some of these claims can be viable against Section 230, she said.

The appeals court opinion suggests, Kuhl said, that YouTube could be liable for harm that "flows at least in large part from what was done by the third party content."

Wilson Sonsini Goodrich & Rosati is representing YouTube.

The case is Wozniak v. YouTube LLC, Cal. Ct. App., 6th Dist., No. H050042, opinion published 3/15/24.

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