Digest: Kleffman v. Vonage Holdings Corp.

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Opinion by Chin, J., with George, C.J., Kennard, Baxter, Werdegar, Moreno, and Corrigan, JJ.

Issue

Does the transmission of e-mail advertisements from multiple domain names, with the intent of bypassing a spam filter, violate a state statute regulating falsified header information in commercial e-mail advertisements?

Facts

Craig E. Kleffman had received eleven unsolicited email advertisements from eleven different domain names that all advertised Vonage and its broadband telephone service.[1] While none of the domain names specified Vonage as its sender, instead using such domain names as "superhugeterm.com; formycompanysite.com; ursunrchcntr.com; urgrtquirkz.com; countryfolkgospel.com; lowdirectsme.com; yearnfrmore.com; openwrldkidz.com; ourgossipfrom.com; specialdlvrguide.com; and struggletailssite.com," each of them can be traced back to the same physical address.[2]

Subsequently, Kleffman filed a class action lawsuit against Vonage Holdings Corporation.[3] He asserted a claim under section 17529.5(a)(2) of the Business and Professions Code, which "makes it unlawful to advertise in a commercial e-mail advertisement that 'contains or is accompanied by falsified, misrepresented, or forged header information.'"[4]

A traditional Internet service provider (ISP) uses domain names to identify a sender, and then can use the spam filter to block high volumes of advertisements from a particular sender before it reaches the inbox of an ISP client.[5] Additionally, a client can label a certain sender as spam, which will serve to

1 Kleffman v. Vonage Holdings Corp., 232 P.3d 625, 627 (Cal. 2010).
2 *Id.* at 627.
3 *Id.*
4 *Id.* (quoting CAL. BUS. & PROF. CODE § 17529.5(a)(2) (West 2010)).
5 *Id.*

block future e-mails from that sender or company.[6] Kleffman asserted in his lawsuit that if Vonage had sent their advertisements from the same single e-mail address, then it would have been less expensive and time consuming than using multiple domain names.[7] He further contended that Vonage's only reason for e-mailing from multiple addresses was to intentionally bypass the spam filters of ISPs and that it was a deliberate strategy to trick the email provider and the client.[8] Kleffman alleged that "[t]he multitude of 'from' identities falsifies and misrepresents the true sender's identity and allows unwanted commercial email messages to infiltrate consumers' inboxes," and therefore that it would "constitute falsified and misrepresented header information prohibited by section 17529.5(a)(2)."[9]

Vonage removed the case to federal court, and the district court granted their motion to dismiss for failure to state a claim under the code section 17529.5(a)(2), without leave to amend.[10] The district court held that Kleffman did not claim that the content of the e-mails from Vonage was false or forged, and while the headers did not specify that the sender was Vonage, they were truthful in their identification of the sender.[11] The plain language of the statute requires falsified headers, and it does not prohibit failing to send e-mails from a single domain name.[12] The court also found that if such conduct were prohibited by the statute, then it would be preempted by the federal "CAN-SPAM Act," so it is not for the court to decide.[13] Kleffman appealed, and under California Rules of Court rule 8.548,[14] the Ninth Circuit asked the California Supreme Court to decide the question: "Does sending unsolicited commercial e-mail advertisements from multiple domain names for the purposes of bypassing spam filters constitute falsified, misrepresented, or forged header information under [section] 17529.5(a)(2)?"[15]

Analysis

The court found that the central issue was the scope of section 17529.5(a)(2), and what is unlawful regarding "falsified,

6 *Id.* at 627–28.
7 *Id.* at 628.
8 *Id.*
9 *Id.*
10 *Id.*
11 *Id.*
12 *Id.*
13 *Id.* at 628 n.3. *See also* 15 U.S.C. §§ 7701–7713 (2006).
14 *Kleffman*, 232 P.3d at 628 n.4.
15 *Id.* at 628.

misrepresented, or forged header information."[16] The court reasoned that the essential goal in statutory interpretation is to establish the legislative intent in order to determine the purpose of the law, especially in terms of language choice.[17] The court noted that the parties agreed on certain subjects, such as the fact that domain names are considered part of e-mail header information for the purposes of the statute.[18] The court also found no dispute that the e-mails were from Vonage or that the domain names used were accurate and fully traceable back to that company.[19] There was no dispute that the question in this case was whether or not the e-mails in question contained falsified or misrepresented header information under the statute.[20]

The court found that the dispute centered on the language of the statute and the meaning of the word "misrepresented" as it applies to header information.[21] Vonage contended that the header information would need to be "a false representation of fact" in order to be misrepresented.[22] The court looked to *Cooley v. Superior Court*, which articulates the rule of statutory construction that courts should give meaning to every word in the statute, if possible, and should avoid surplusage.[23] The court applied this reasoning to the instant case in order to determine if falsified and misrepresented had different meanings under the statute, and found that the legislature must have meant the words to have separate meanings.[24] Kleffman asserted that header information, defined as "source, destination and routing information," is unlawful under the federal CAN-SPAM Act if it is materially false or misleading, and that the same definition should be applied in this case.[25] However, this definition was not adopted during the legislative process behind adopting section 17529.5(a)(2).[26] The court rejected Kleffman's assertion that "misrepresented" should be given the meaning that was used in Business and Professions Code sections 17200 and 17500, which prohibit advertising that is "likely to mislead or deceive, or is in fact false,"[27] or the meaning from a "lay" dictionary that defines

16 *Id.*
17 *Id.* (citing People v. Cole, 135 P.3d 669, 674 (Cal. 2006)).
18 *Id.* at 628–29.
19 *Id.* at 629.
20 *Id.*
21 *Id.*
22 *Id.*
23 *Id.* (citing Cooley v. Superior Court, 57 P.3d 654 (Cal. 2002)).
24 *Id.* at 629.
25 *Id.* at 629 n.5 (citing 15 U.S.C. §§ 7704(a)(1), 7702(8) (2010)).
26 *Id.* at 629 n.5.
27 *Id.* at 629–30 (citing CAL. BUS. & PROF. CODE §§ 17500, 17200 (West 2010)).

misrepresent as "[t]he act of giving a false or misleading statement about something."[28] The court found that "misrepresented" and "misleading" had been given different meanings by the legislature, and that if the legislature had intended to use "misleading," then they would have done so.[29] In fact, the court found that the legislature already used "likely to mislead" separately in the next provision of the same statute, showing that the legislature used the terms differently.[30]

The court found that the legislative history for the statute was relevant to the issue, but that it did not support Kleffman's position.[31] The legislative history, as interpreted by the court, "reflects a careful and purposeful distinction between the terms 'misrepresented' and 'misleading.'"[32] An amendment made to the bill contained revised language that recognized the linguistic difference between section 17529.5 subsections (2) and (3).[33] The court held that they "must avoid interpretations that would render related provisions unnecessary or redundant."[34] Furthermore, Kleffman based his interpretation of the legislative history on a letter written by the legislative author of the bill and its amendment, which showed intent to prohibit multiple e-mail addresses to avoid a spam filter.[35] The court rejected this argument because the letter was not part of the Legislative discussion leading up to the creation of the statute.[36]

The court further found that if the legislative history is read to prohibit a domain name that did not clearly state the true identity of the sender, it would raise significant problems for federal preemption by the CAN-SPAM Act.[37] If a state law attempted to require further restrictions or labels on e-mail headers, it would undoubtedly be preempted by federal statute.[38]

The court found that a single e-mail with an "accurate and traceable domain name" does not have misrepresented or falsified header information within the meaning of the statute simply because the domain name is "random," "varied," "garbled," and "nonsensical," as argued by Kleffman.[39] Adopting

28 *Id.* at 629 n.6.
29 *Id.* at 630.
30 *Id.* (citing CAL. BUS. & PROF. CODE § 17529.5(a)(3)).
31 *Id.* at 631.
32 *Id.* at 632.
33 *Id.* (citing CAL. BUS. & PROF. CODE § 17529.5(a)(2), (a)(3)).
34 *Id.* at 632.
35 *Id.* at 634.
36 *Id.*
37 *Id.* at 632–33 (citing 15 U.S.C. § 7707(b)(1) (2006)).
38 *Id.* at 633.
39 *Id.*

a practice that prohibits multiple and random domain names, from the same original company, would be overly difficult and impractical.[40] Additionally, violating section 17529.5(a)(2) is a misdemeanor that allows for up to six months in prison, so the court was reluctant to add uncertainty to the language of the statute.[41]

Finally, the court noted that in passing section 17529.5(a)(2), the legislature remarked on spam filters and their potential limitations.[42] However, it found that such limitations do not justify altering the meaning of "misrepresented . . . header information" in the language of the statute.[43]

Holding

The court answered the question of law under California Rules of Court rule 8.548.[44] It held that, generally, commercial e-mail advertisements sent from multiple domain names with the intent to bypass spam filters were not made unlawful by section 17529.5(a)(2).[45] The court held that the emails in question did not contain or include any misrepresented header information.[46] Therefore, since the statute only governs falsified, misrepresented, or forged header information, the statute in question did not regulate the electronic advertisements, and the e-mails sent by Vonage were not unlawful.[47]

Legal Significance

The court's decision prevents a flood of potential litigation from other members of the public who are annoyed, unhappy, or bothered by the amount of commercial e-mail advertisements that they receive on a daily basis. The statute in question only governs and punishes those who send falsified or fraudulent emails. While consumers may continue to be bothered by e-mail advertisements that their spam filters cannot catch, it is not for the court to contort the language that the legislature chose to use.

40 *Id.* at 634.
41 *Id.* (citing CAL. BUS. & PROF. CODE § 17529.5(c) (West 2010)).
42 *Id.* at 635.
43 *Id.*
44 *Id.* at 628.
45 *Id.* at 635.
46 *Id.* at 633.
47 *Id.*