

Case Summary

University Sports Publications Co. v. Playmakers Media Co.

2010 U.S. Dist. LEXIS 70361 (S.D.N.Y. July 14, 2010)

Defendant's Bad Faith Spoliation Leads to Adverse Inference Instruction

On a claim for unauthorized access of a computer system under the Computer Fraud and Abuse Act, the Southern District of New York issued an adverse inference instruction due to the defendant's bad faith spoliation of evidence.

Plaintiff University Sports Publications (USP) filed suit against several of its former employees, who had quit in order to join the co-defendant Playmakers Media Company. USP alleged that one of its former employees, Shane Pitta, had obtained unauthorized access of its customer and sales database, which was password protected and maintained by the offsite, third-party vendor, Databasaurus. Forensic analysis showed that Pitta had obtained an exact copy of a spreadsheet from the database.

At issue in the case was the method by which Pitta obtained the database information. If Pitta had accessed the database sometime after his departure from USP, his copying of the file would constitute an unauthorized access supporting the claim under the Computer Fraud and Abuse Act (CFAA). If, however, Pitta had received the spreadsheet from an employee at Databasaurus, he would not have committed an unauthorized access and could not be liable under the CFAA.

No direct evidence supported a conclusion on this dispositive issue. USP had requested that Playmakers produce the laptop Pitta used during his time at Playmakers, believing that an examination would provide evidence of Pitta's unauthorized access. Forensic analysis of the laptop Playmakers provided during discovery, however, showed that Pitta had not used that laptop. The relevant laptop remained missing.

On defendant's motion for summary judgment, the court examined whether the evidence could support USP's claim under the CFAA. By itself, the fact that Pitta had obtained a direct copy of the spreadsheet could not provide enough evidence to show his unauthorized access of USP's database. Pitta's intentional bad faith spoliation of the laptop evidence, however, justified an adverse inference that the laptop had contained evidence supporting the claim. The jury could reasonably infer that Pitta had destroyed the laptop because it would provide evidence of his unauthorized access.

Because the adverse inference provided support for the CFAA claim, the court denied the defendant's motion for summary judgment.