

IS FOX NEWS LIABLE FOR CORONAVIRUS REPORTING?

By: Jack Greiner on April 8, 2020 on graydon.law

The Washington League for Increased Transparency and Ethics (“Washlite”), a public interest group in Washington state is [suing Fox News](#) under the Washington Consumer Protection Act for its alleged “campaign of deception and omission regarding the danger of the international proliferation of the novel Coronavirus.” According to the complaint, Fox knowingly disseminated false, erroneous, and incomplete information . . . , [which] created an ongoing uncertainty amongst some members of the public as to the dangers of the virus and the rapidity with which the virus spreads.”

The Consumer Protection Act prohibits deceptive practices. According to the complaint, Fox’s “representations were deceptive because they caused consumers to fail to take appropriate action to protect themselves from the virus, mitigate its spread, and contributed to a public health crisis and preventable mass death.”

All of that may be true, but this still feels like a tough case for Washlite for several reasons. First, the complaint itself is pretty vague. It really doesn’t lay out the precise statements that were deceptive. The complaint paints in broad strokes. The closest it comes to a specific claim is this: “In February and March of 2020, at various times that will be shown, including the March 9, 2020 broadcasts of Sean Hannity and Trish Reagan, Defendants acted in bad faith to willfully and maliciously disseminate false information denying and minimizing the danger posed by the spread of the novel Coronavirus, or COVID-19, which is now recognized as an international pandemic.” The court is likely going to demand more precision than what’s currently offered here.

Second, there is the question of duty. In any lawsuit, the defendant must owe a specific duty to the plaintiff. If I buy a product that seller owes me a duty not to deceive me about the product features. The duty arises from the transaction. But typically, broadcasters don’t

owe a duty to the general public, or to those members of the general public who happen to watch. The Federal Trade Commission and similar state agencies may have authority to investigate, but typically individuals don't have standing.

Third, there is the First Amendment. People have the right to express their opinions. And that right exists no matter how ill-informed the opinion happens to be. Indeed, in a 2012 case, The United States Supreme Court ruled that the Stolen Valor Act, which made it a crime to lie about one's military record, was unconstitutional. That effectively said the First Amendment permits lying, so long as it's not done to defraud or libel someone.

I understand Washlite's frustration, but I think this case will have a short shelf life.