

Attorney No. 45901

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

|  |   |               |
|--|---|---------------|
| LISA STONE, as mother and next friend of | ) |               |
| Jed Stone, a minor,                      | ) |               |
|  | ) |               |
| Petitioner,                              | ) |               |
|  | ) |               |
| v.                                       | ) | No. 09 L 5636 |
|  | ) |               |
| PADDOCK PUBLICATIONS, INC., d/b/a The    | ) |               |
| Daily Herald,                            | ) |               |
| Respondent.                              | ) |               |

**PETITIONER'S MOTION TO DISCLOSE  
COMCAST'S RESPONSE TO SUBPOENA**

Petitioner, Lisa Stone, mother and next friend of Jed Stone, a minor, by and through her attorneys, Tyma O'Connor, P.C., hereby requests that this Court disclose to Petitioner the information provided to the Court *in camera* by Comcast pursuant to the Court's Order of September 25, 2009. In support of her Motion, Petitioner represents as follows:

1. On May 12, 2009 Petitioner initiated this proceeding as a Petition for Discovery pursuant to Ill. Sup. Ct. Rule 224 to obtain information regarding the identity of a user who posted statements on Respondent's on-line public forum using the name "Hipcheck16."
2. On June 19, 2009, this Court entered an order permitting Petitioner to issue discovery requests to obtain the requested information and required Respondent to respond to these requests.
3. On July 10, 2009, Respondent answered the discovery requests and in so doing indicated that it could only provide an e-mail address for the user in question and identified the Internet Protocol or "IP" address from which "Hipcheck16" posted statements on Respondent's public forum. The e-mail address which Respondent provided was "hipcheck16@yahoo.com," and Respondent identified the IP address from which Hipcheck16 posted statements as 24.1.3.203.

4. Petitioner issued a subpoena to Yahoo to determine the identity of the person who obtained the e-mail address “hipcheck16@yahoo.com,” and Yahoo’s response indicated that the person who obtained that e-mail address used a fictitious name, address and birth date to do so.

5. Petitioner determined that the IP address 24.1.3.203 is controlled by a subsidiary of Comcast Communications. A legal analyst at Comcast, Victoria Gonzalez, confirmed to Respondent that a Comcast internet service subscriber had used IP address 24.1.3.203 on the dates mentioned in Petitioner’s subpoena and that Comcast possessed information about the identity and address of that subscriber.

6. Petitioner then obtained and served on Comcast a subpoena directing it to provide, among other things, the identity and information related to the identity of the user or subscriber of the IP address in question.

7. Comcast acknowledged receipt of the subpoena but erroneously believed that a provision in the federal Electronic Communication Privacy Act, 18 U.S.C. § 2702, imposed on it the obligation to notify the subscriber prior to disclosing the subscriber’s identity Petitioner and required Petitioner to secure this Court’s order to release the information requested.

8. On July 21, 2009, this Court entered the order which Comcast felt was required with respect to the subpoena and Comcast notified the subscriber of the Petitioner’s request for the subscriber’s identity.

9. After receiving notification from Comcast, the subscriber, as a John Doe, moved to quash Petitioner’s subpoena to Comcast. This motion was fully briefed and argued before this Court on September 25, 2009.

10. After reviewing the briefs and hearing arguments, this Court entered an order on September 25, 2009 requiring Comcast to produce the identity of the subscriber directly to the Court

*in camera* after John Doe suggested that the First Amendment to the United States Constitution provided protection of his anonymity in certain circumstances.

11. On September 30, 2009, Comcast notified counsel for Petitioner and for John Doe that it had complied with the Court's September 25, 2009 Order by providing the requested information to this Court *in camera*.

12. The disclosure to Petitioner of the subscriber's information which Comcast provided to this Court is required, as that subscriber is a potential defendant for remarks made publicly and directed to Petitioner's next friend herein. Those remarks are defamatory of Petitioner's next friend and maliciously cast him in a false light as a child who solicits and engages in sex with male pederasts.

13. Some of the remarks in question were made in the public comment section of an online article which Respondent's *Daily Herald* published on the internet on April 6, 2009 entitled "Does Campaign Flier Misrepresent Buffalo Grove Endorsement?" Respondent's article was concerned only with whether a candidate in an election for Village Trustee of Buffalo Grove had distributed campaign literature which mischaracterized the effect of an endorsement given in that election.

14. As an example, the person using the name "Hipcheck16" on April 9, 2009 at 10:53 a.m. posted on Respondent's public forum the following as public comment:

...

Thanks for the invitation to visit you, but I'll have to decline. Seems like you're very willing to invite a man you only know from the internet over to your house -- have you done it before, or do they usually invite you to their house?

Plus now that you stupidly revealed yourself, you may want to watch what you say here . . .

Appended hereto as Exhibit A is a copy of the actual article and the posted statement. The statement was explicitly directed toward Petitioner's next friend, who, using the name "Uncle W.," previously had identified himself on Respondent's public forum as a minor related to a candidate in the election in Buffalo Grove. The offensive comment refers specifically to that candidate as Uncle W.'s "mommy," which confirms that the person using the name Hipcheck16 was aware that he was communicating to and about a minor.

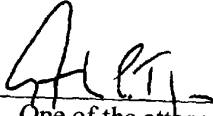
15. The statement set out above is not protected free speech. It was not made to or about a public official and is not in any way political speech. This public comment was made to a child on a public forum for which there could be no expectation of privacy or anonymity. The statement was made not to advance the political standing or platform of any candidate and was instead on its face a statement made with intent to injure Petitioner's next friend, to defame him, and to cast him in a false light.

16. No just cause or reason exists to protect or withhold the identity of the subscriber. That person either posted the injurious statements himself, assisted the person who used the "Hipcheck16" name in posting those statements, or gave that person license to publish statements through his internet connection and through the internet service provided by Comcast. Discovery of information about the identity of the subscriber who either is Hipcheck16 is precisely what Ill. Sup. Ct. Rule 224 is designed to permit.

For the foregoing reasons, Petitioner, Lisa Stone, mother and next friend of Jed Stone, a minor, prays that this Court disclose the information provided to the Court *in camera* by Comcast in response to the subpoena issued seeking the identity of the subscriber of the IP address provided by the Respondent herein.

Dated: October 7, 2009

LISA STONE, mother and next friend of Jed Stone,  
a minor,

By:   
One of the attorneys for Petitioner

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