

BETWEEN:

MILORAD (aka MICHAEL) TRKULJA

Appellant

AND:

GOOGLE INC.

Respondent

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APPELLANT'S SYNOPSIS OF ARGUMENT

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Part I: Certification

1. It is certified that this outline is in a form suitable for publication on the internet.

Part II: Outline of oral argument

1. Introduction

2. Relevant legal principles

- (a) characteristics of the ordinary reasonable person: standard directions to jury:

- (i) reads between the lines;
- (ii) reads/views (etc) in the light of their general knowledge;
- (iii) is neither unduly suspicious nor naïve nor avid for scandal;
- (iv) gets a general impression and does not focus on the meaning of each word under analysis;
- (v) reads (or views or listens to) the whole of the matter complained of;
- (vi) has a greater capacity for implication and inference than a lawyer;
- (vii) is prone to engage in a certain amount of loose thinking;
- (viii) can reread (or review) the publication where (as here) the publication is not transient;
- (ix) is of average intelligence;
- (x) rejects strained, forced and utterly unreasonable interpretations.

- (b) whether meanings conveyed [jury question]: standard directions to jury:

- (i) intention of publisher to publish particular meaning irrelevant: [670];
- (ii) the publication may convey the imputation in direct or express terms or by implication;
- (iii) jury may take into account as extrinsic facts any fact which the judge has directed them is within the knowledge of the ordinary, reasonable person;
- (iv) hearsay (i.e. quote of a third party's statement) same as direct statement by publisher (although the meaning in fact conveyed may be affected by whether the publisher adopts, repudiates or discounts the third party's statement);

- (c) standard questions for jury:

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- (i) re natural and ordinary meaning imputation: has the plaintiff established that the publication conveyed the imputation (or one no different in substance) of and concerning the plaintiff to an ordinary reasonable person;
 - (ii) re a true innuendo imputation: has the plaintiff established that the publication conveyed the imputation (or one no different in substance) of and concerning the plaintiff to an ordinary reasonable person with knowledge of the extrinsic fact.
- (d) *Hore-Lacy* meanings: *Setka v Abbott*
- (e) aspects of strike out test: different from issue before jury
- 20 (f) extrinsic facts in relation to meaning
- (g) the hypothetical referee: the ordinary reasonable person

3. First Publication “images matter”: Trkulja’s case as pleaded

- (a) Two categories of matter (one publication) - image searches: AB 20-32, 34-39
- one autocomplete: AB 33
- (b) pleaded meanings
 - (i) ASOC [18]: natural and ordinary meaning imputations: AB 12
 - (ii) ASOC [21]: gist imputation: AB 13
 - (iii) ASOC [19]: innuendo imputations: AB 12-13
 - 30 (iv) ASOC [20]: extrinsic facts for innuendo imputations: AB 13
- (c) Principal meanings:
 - (i) Melbourne criminal
 - (ii) Melbourne criminal underworld figure
 - (iii) associate of Melbourne criminals (with or without specification of identity)
 - (iv) associate of Melbourne underworld figures (with or without specification of identity)

4. First publication: meanings capable of being conveyed: Trkulja’s case

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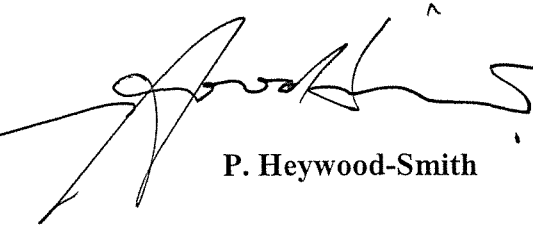
5. First publication: CA reasoning re image searches: difficulties: CA [389]-[391], [25], [145]-[151]


- 10 6. First publication: CA reasoning re one autocomplete: CA [393]-[395] difficulties
7. Second publication: Trkulja's case as pleaded
- (a) three categories of publication
 - post: AB 41
 - web searches: AB 42-44
 - autocompletes: AB 45-47
 - (b) pleaded meanings
 - (i) ASOC [18]: natural and ordinary meaning imputations: AB 12
 - (ii) ASOC [22]: gist imputation: AB 14
 - (iii) ASOC [18] and [20]: innuendo imputations: AB 12-13
 - 20 (iv) ASOC [20]: extrinsic facts for innuendo imputations: AB 13
 - (c) principal meanings:
 - (i) Melbourne criminal
 - (ii) Melbourne criminal underworld figure
 - (iii) associate of Melbourne criminals (with or without specification)
 - (iv) associate of Melbourne underworld figures (with or without specification)
8. 2nd publication: Trkulja's case and difficulties in CA reasoning:
- (a) autocompletes: pages 5-7: CA [397], [393], [39]
 - 30 (b) post: page 1: CA [398] and [35]
 - (c) web search: page 2: CA [399] and [36]
 - (d) web search: page 3: CA [400], [37]
 - (e) web search: page 4: CA [401]-[403], [38]
 - (f) pages viewed in their entirety: CA [404]

Dated: 20 March 2018

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