

Attachment B

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

HADEED CARPET CLEANING,)
INC.)
3206 Duke St.,)
Alexandria, VA 22314)

Plaintiff,)

v.)

JOHN DOE #1)
Whereabouts unknown)

JOHN DOE #2)
Whereabouts unknown)

JOHN DOE COMPANY)
Whereabouts Unknown)

Defendants.)

Case No. CL12003401

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**NOTICE OF FILING SUPPORTING MATERIAL
PURSUANT TO § 8.01-407.1 OF THE VIRGINIA CODE**

Plaintiff Hadeed Carpet Cleaning, Inc. (“Hadeed”) seeks information from Yelp, Inc. (“Yelp”), identifying John Doe #1, John Doe #2 and John Doe Corporation (collectively, “Defendants”). Pursuant to Va. Code Ann. § 8.01-407.1(A)(1) (2012), Hadeed respectfully submits this Notice of Filing Supporting Material Pursuant to § 8.01-407.1 of the Virginia Code (“Notice”) alongside its Subpoena Duces Tecum and, in good faith, states the following:

1. Hadeed is a Virginia corporation doing business in the City of Alexandria, Virginia.
2. John Doe #1, John Doe #2 and John Doe Company are unknown persons or entities whose whereabouts are unknown.

3. Yelp, Inc. (“Yelp”) is a Delaware corporation with its principal place of business in California. Yelp operates www.yelp.com, a social networking site that allows users to review businesses all over the country and search for such reviews. www.yelp.com has approximately 54 million unique visitors.
4. As of June 29, 2012, Yelp maintains two files that relate to Hadeed on www.yelp.com: Hadeed Rug Cleaning and Hadeed Oriental Rug Cleaning. A true and accurate copy of the search for Hadeed is attached as **Exhibit 1**. True and accurate copies of screenshots of the files that relate to Hadeed Rug Cleaning and Hadeed Oriental Rug Cleaning are attached as **Exhibit 2** and **Exhibit 3** respectively.
5. Although Yelp invites users to post their real names and other identifying information in creating an account on www.yelp.com, Yelp states in its privacy policy that it does not require users to provide anything other than a valid email address during registration. A true and accurate copy of Yelp’s privacy policy as it appeared on July 27, 2012, is attached as **Exhibit 4**. Upon information and belief, most of Yelp’s users write reviews under pseudonyms or “screen names,” in effect rendering their posts anonymous.
6. Upon information and belief, between December 2011 and April 2012, John Doe #1, John Doe #2 and John Doe Company, representing themselves as customers of Hadeed, anonymously wrote a series of negative reviews of Hadeed on www.yelp.com. A copy of Defendants’ reviews and user profiles as they appeared on July 27, 2012, is attached as **Exhibit 5**.
7. The reviews in Exhibit 5 can be accessed and viewed by anyone with an Internet connection, even those who are not registered users of www.yelp.com. In fact, Yelp states in its privacy

policy that reviews on its site are intended to be public. As of July 27, 2012, these reviews are still visible under Hadeed's "Hadeed Rug Cleaning" listing at www.yelp.com.

8. After conducting an independent investigation in an attempt to match the negative reviews contained in Exhibit 5 with customers on the Hadeed customer database, Hadeed determined that it simply had no record that the negative reviewers were ever actually Hadeed customers.
9. Consequently, Hadeed believes that the reviews contained in Exhibit 5 are not the opinions of its customers, but were made by Defendants falsely representing themselves as customers of Hadeed.
10. The negative reviews in Exhibit 5 are false and defamatory. For example, user "Bob G." from Oakton allegedly relates how he was in a desperate need of emergency carpet cleaning and was ripped off. User "Chris H." from Washington reported that his precious rugs were shrunk. User "JS." from Falls Church reports that he was charged for work never performed. User "YB." from Fairfax reports that unauthorized work was performed and his rug was stained. One user, "Aris P." from Haddonfield, N.J. reports that the price was double the quote and that Hadeed was once bankrupt. Many of the negative reviews report that the price was double what was charged. After combing it customer records, Hadeed was at a loss to find record of these allegations. Regarding Aris P., in particular, Hadeed conducts no business in New Jersey.
11. Not only was Hadeed unable to find any evidence that the negative reviewers were ever Hadeed customers, but many of the negative reviewers use the same theme. For example, negative reviewers Bob G., YB, and Aris P. use the theme that Hadeed doubled the price. Negative reviewers Bob G., Chris H., MP., Mike M., and Aris P. criticize Hadeed's advertising.

12. The negative reviews in Exhibit 5 allege or imply that Hadeed is dishonest, unprofessional, and/or takes advantage of its customers, which would tend to prejudice Hadeed in its profession or trade of cleaning rugs. Good customer service, honesty and fair dealing are crucial to Hadeed's business. Such statements are therefore "defamatory per se" under Virginia law, and are presumed to cause damage to Hadeed's business and reputation.
13. Consequently, Defendants are liable to Hadeed for defamation under Virginia law if they were not in fact customers of Hadeed, and determining whether or not Defendants were customers of Hadeed is centrally necessary for Hadeed to advance any defamation claim.
14. On June 5, 2012, Hadeed, by counsel, emailed to Yelp a list of alleged customers who had submitted negative reviews that Yelp had published, and requested the identity of these alleged customers. A copy of the email is attached as Exhibit 6.
15. On June 6, 2012, Yelp responded and refused to disclose the identities of the alleged customers, citing its privacy policy.
16. Yelp's privacy policy states that it retains certain information it may collect for a period of five years. This information includes, but is not limited to, a user's full name, gender, birth date, email address and location. Further, Yelp states that it is entitled to collect certain kinds of information about its users, including their IP addresses, and requires a valid e-mail address from those who register on its website..
17. Since Yelp stores the information contained in paragraph 16, and given the dates on which the reviews in Exhibit 5 were posted, there is a strong and reasonable likelihood that Yelp has such information regarding Defendants.
18. The information contained in paragraph 16 could be used to identify Defendants. Defendants' IP addresses in particular would allow Hadeed to identify one or more of the

Defendants' internet service providers, such as Comcast or Verizon ("ISPs"). An IP address is a unique number code, typically owned and assigned to customers by an ISP. If Hadeed acquires Defendants' IP addresses, it would be able to issue subpoenas on Defendants' ISPs, who would most likely be able to identify Defendants. Absent an IP address, Hadeed lacks knowledge of Defendants' ISPs and therefore has no basis for issuing a subpoena on them

19. On July 2, 2012, Hadeed attempted to collect identifying information from Yelp by issuance of a subpoena. A true and accurate copy of this subpoena is attached as **Exhibit 7**

20. In a letter dated July 19, 2012, Yelp issued its objections to the requests made in the subpoena, alleging, among other things, that service on its registered agent in Virginia had been improper and that Hadeed failed to comply with Va. Code Ann. § 8.01-407.1. A true and accurate copy of Yelp's objections to the subpoena is attached as **Exhibit 8**.

21. In response to Yelp's objections, Hadeed's counsel exchanged e-mails with Aaron Schur, counsel for Yelp, as well as Paul Alan Levy, counsel for at least one of the Defendants, inquiring as to how the subpoena might be corrected and objecting to Yelp's contention that service on its registered agent in Virginia had been improper. A true and accurate copy of these e-mails is attached as **Exhibit 9**.

22. Hadeed also sent counsel for Yelp a report from the Boyd-Graves Conference, written by a committee the Supreme Court of Virginia appointed to examine whether service of a subpoena duces tecum on a foreign non-party's Virginia Registered Agent was proper and in accordance with Virginia law. The report concluded that such service was proper. A true and accurate copy of this report is attached as **Exhibit 10**.

23. In Exhibit 9, Paul Alan Levy, counsel for at least one of the Defendants, stated that "what information [Yelp] [has]" about each of its users can be seen on their user profiles,

notwithstanding that Yelp's privacy policy states the only account information publicly available on www.yelp.com is a user's first name and last initial. See [Exhibit 4](#).

Nevertheless, Hadeed, through counsel, logged onto Defendants' profiles in an attempt to collect identifying information. See [Exhibit 5](#). However, Hadeed was unable to view any information beyond each Defendant's location. Absent other information, Hadeed is unable to confirm that such location information is accurate.

24. Regardless of the information Yelp's users choose to provide Yelp, Yelp states in its privacy policy that it is entitled to collect its users' IP addresses. See [Exhibit 4](#). Websites like www.yelp.com regularly collect such information about their users in the regular course of business as a means of policing and enforcing their terms of service, as well as complying with legal obligations. A true and accurate copy of Yelp's terms of service as they appeared on July 27, 2012 is attached as [Exhibit 11](#).

25. Given the facts stated in paragraphs 1-24 of this Notice, Hadeed has concluded that it has no way of reasonably ascertaining identifying information about Defendants, other than through issuance of a subpoena to Yelp.

26. In order to advance its defamation claim, Hadeed must ascertain whether or not Defendants were in fact customers. If they were not customers, then the statements cannot be protected opinions and are false and defamatory per se under Virginia law for the reasons stated in paragraphs 8-13. Thus, obtaining Defendants' identifying information from Yelp is centrally necessary to Hadeed's Virginia defamation claim.

27. No motion to dismiss, motion for judgment on the pleadings, or judgment as a matter of law, demurrer or summary judgment-type motion challenging the viability of any defamation claim by Hadeed and against Defendants is currently pending.

Respectfully Submitted,

HADEED CARPET CLEANING, INC.
By Counsel



Raighne C. Delaney, VSB No. 38787
Bean, Kinney & Korman, P.C.
2300 Wilson Blvd.
Seventh Floor
Arlington, VA 22201
(703) 525-4000
(703) 525-2207 [fax]
rdelaney@beankinney.com
Counsel for Plaintiff

Attachment A

Subject to the definitions and instructions, you are requested to produce the following documents:

Definitions

- A. "Document" or "documents" means all written, printed, typed or other graphic matter or any other medium in which information may be stored and retrieved (including, without limiting the generality of the foregoing, tape recordings, video tapes, computer diskettes, floppy disks, hard disks and laser disks) in your possession, custody or control, whether or not prepared by you. "Document" or "documents" include, but are not limited to, all agreements, memoranda, reports, notes, diaries, calendars, internal communications, inter-office communications, telegrams, letters, datebooks, manuals, directives, bulletins, accounts, reports, vouchers, invoices, bills, ledgers, minutes, and summaries of meetings, conversations or communications of any type, including telephone conversations. "Document" or "documents" also includes all copies which are not identical with the original.
- B. "Communication" or "communications" means all oral, visual or other sensory means of transmitting information, messages or statements.
- C. "You" refers to Yelp! Inc. as well as its attorneys, partners, members, employees, agents, successors or assigns.
- D. "Lawsuit" refers to the lawsuit filed by Hadeed Carpet Company in Alexandria Circuit Court, Case No. CL 12003401.
- E. "List" is the list of Unknown Negative Reviews attached as Exhibit 1 hereto.

Instructions

1. Please produce the documents in pdf format.

Documents Requested

Bob G.

1. Yelp's document(s) that contains the full name, gender, birth date and email address of user shown on the List as "Bob G."
2. Yelp's document(s) that contains Bob G.'s credit card information.
3. Yelp's document(s) that contains the list of Bob G.'s purchases.
4. Yelp's document(s) that contains the tracking of Bob G.'s locations.
5. Yelp's document(s) that contains the list of Bob G.'s activities, including but not limited to Bob G.'s use of Yelp's site and Bob G.'s interaction with others on the site.
6. Yelp's document(s) that contains information regarding the tracking devices, or cookies, that have been placed on Bob G.'s computers.
7. Yelp's document(s) that contains information regarding Bob G.'s use of Facebook and Twitter.
8. Bob G.'s postings that relate, in any way, to the Hadeed Carpet Cleaning, Inc.
9. Yelp's document(s) relating to any communications between Bob G. and Yelp.

JS.

10. Yelp's document(s) that contains the full name, gender, birth date and email address of user shown on the List as "JS."
11. Yelp's document(s) that contains JS.'s credit card information.
12. Yelp's document(s) that contains the tracking of JS.'s locations.
13. Yelp's document(s) that contains the list of JS.'s activities, including but not limited to JS.'s use of Yelp's site and JS.'s interaction with others on the site.

14. Yelp's document(s) that contains information regarding the tracking devices, or cookies, that have been placed on JS.'s computers.
15. Yelp's document(s) that contains information regarding JS.'s use of Facebook and Twitter.
16. JS.'s postings that relate, in any way, to the Hadeed Carpet Cleaning, Inc.
17. Yelp's document(s) relating to any communications between JS. and Yelp.

Chris H.

18. Yelp's document(s) that contains the tracking of Chris H.'s locations.
19. Yelp's document(s) that contains the list of Chris H.'s activities, including but not limited to Chris H.'s use of Yelp's site and Chris H.'s interaction with others on the site.
20. Yelp's document(s) that contains information regarding the tracking devices, or cookies, that have been placed on Chris H.'s computers.
21. Yelp's document(s) that contains information regarding Chris H.'s use of Facebook and Twitter.
22. Chris H.'s postings that relate, in any way, to the Hadeed Carpet Cleaning, Inc.
23. Yelp's document(s) relating to any communications between Chris H. and Yelp.

YB.

24. Yelp's document(s) that contains the tracking of YB.'s locations.
25. Yelp's document(s) that contains the list of YB.'s activities, including but not limited to YH.'s use of Yelp's site and YB.'s interaction with others on the site.
26. Yelp's document(s) that contains information regarding the tracking devices, or cookies, that have been placed on YB.'s computers.

27. Yelp's document(s) that contains information regarding YB.'s use of Facebook and Twitter.
28. YB.'s postings that relate, in any way, to the Hadeed Carpet Cleaning, Inc.
29. Yelp's document(s) relating to any communications between YB. and Yelp.

Mike M.

30. Yelp's document(s) that contains the tracking of Mike M.'s locations.
31. Yelp's document(s) that contains the list of Mike M.'s activities, including but not limited to Mike M.'s use of Yelp's site and Mike M.'s interaction with others on the site.
32. Yelp's document(s) that contains information regarding the tracking devices, or cookies, that have been placed on Mike M.'s computers.
33. Yelp's document(s) that contains information regarding Mike M.'s use of Facebook and Twitter.
34. Mike M.'s postings that relate, in any way, to the Hadeed Carpet Cleaning, Inc.
35. Yelp's document(s) relating to any communications between Mike M. and Yelp

Aris P.

36. Yelp's document(s) that contains the tracking of Aris P.'s locations.
37. Yelp's document(s) that contains the list of Aris P.'s activities, including but not limited to Aris P.'s use of Yelp's site and Aris P.'s interaction with others on the site.
38. Yelp's document(s) that contains information regarding the tracking devices, or cookies, that have been placed on Aris P.'s computers.
39. Yelp's document(s) that contains information regarding Aris P.'s use of Facebook and Twitter.
40. Aris P.'s postings that relate, in any way, to the Hadeed Carpet Cleaning, Inc., Inc.

41. Yelp's document(s) relating to any communications between Aris P. and Yelp.

MP.

42. Yelp's document(s) that contains the tracking of MP.'s locations.

43. Yelp's document(s) that contains the list of MP.'s activities, including but not limited to MP.'s use of Yelp's site and MP.'s interaction with others on the site.

44. Yelp's document(s) that contains information regarding the tracking devices, or cookies, that have been placed on MP.'s computers.

45. Yelp's document(s) that contains information regarding MP.'s use of Facebook and Twitter.

46. MP.'s postings that relate, in any way, to the Hadeed Carpet Cleaning, Inc.

47. Yelp's document(s) relating to any communications between M P. and Yelp.