

SUPREME COURT OF SOUTH AUSTRALIA

Duffy v Google Inc

[2015] SASC 170

Blue J

22-26, 29 June, 6 August, 27 October 2015

Defamation — Publication — Generally — Whether generation by internet search engine of search results sufficient to constitute publication.

Defamation — Publication — Generally — Republication — Whether generation by internet search engine of hyperlinks to third party webpages constitutes republication of webpages.

Defamation — Privilege — Qualified privilege — Statements made in respect of a duty or interest — Whether users of an internet search engine and defendant providers have a mutual and reciprocal interest in information sufficient to found defence of qualified privilege at common law — Whether such interest exists sufficient to found statutory defence of qualified privilege — Defamation Act 2005 (SA), s 28(1).

The plaintiff sued the defendant for defamation. Between 2008 and 2009, a number of articles were written and posted on a website named “The Ripoff Report” discussing the plaintiff. The plaintiff alleged that they contained defamatory imputations about her, including that she stalked and persistently harassed psychics.

The defendant operated an internet search engine which, in response to words entered into a search box by a user, returned search results consisting of a portion of a title (Title), a portion of text from the underlying webpage (Snippet) and the URL of the underlying page (URL) (together, Paragraphs).

In July 2009, the plaintiff became aware that searches for her name on the defendant’s search engine resulted in the display of extracts from and hyperlinks to articles on the Ripoff Report discussing the plaintiff and to other websites reproducing that material. In September 2009 the plaintiff notified the defendant of the material which she said was defamatory of her and requested that the defendant take it down. The defendant refused to do so.

The plaintiff alleged that the defendant 1) had published Paragraphs containing hyperlinks to and text from external websites, and that the Paragraphs were defamatory of her; 2) in publishing hyperlinks had been a republisher of webpages on the Ripoff Report website; 3) had through its “autocomplete” and “related search” functions published the phrase “janice duffy psychic stalker”.

The defendant relevantly denied publication and also relied upon various defences including qualified privilege both at common law and under s 28(1) of the *Defamation Act 2005 (SA)*, which in relevant part provided:

- (1) There is a defence of qualified privilege for the publication of defamatory matter to a person (the recipient) if the defendant proves that—
- (a) the recipient has an interest or apparent interest in having information on some subject; and
 - (b) the matter is published to the recipient in the course of giving to the recipient information on that subject; and
 - (c) the conduct of the defendant in publishing that matter is reasonable in the circumstances.

The defendant submitted that the users of its search engine had an interest in accessing information relevant to the search term entered, the defendant had an interest in providing that information and that those interests were reciprocal or mutual.

Held, finding it necessary to proceed to trial of the remaining issues: (1) At common law, if the defendant is a secondary publisher of the body of work containing the passage alleged to be defamatory, the defendant must intend or know that the work contains the passage in question or is reckless or careless as to its containing such a passage. The onus of proof as to the mental element lies on the defendant. A secondary participant is not liable for a publication if he or she did not know and could not with the exercise of reasonable diligence have known of the defamatory matter. [161], [170], [178]-[179]

Lee v Wilson & Mackinnon (1934) 51 CLR 276; *Thompson v Australian Capital Television Pty Ltd* (1996) 186 CLR 574; *Dow Jones & Co Inc v Gutnick* (2002) 210 CLR 575, applied.

Emmens v Pottle (1885) 16 QBD 354; *Vizetelly v Mudie's Select Library Ltd* [1900] 2 QB 170; *McPhersons Ltd v Hickie* [1995] Aust Torts Reports 81-348, followed.

(2) To be a publisher a defendant need not expressly or implicitly authorise the publication of the defamatory matter. The appropriate test is whether the defendant has participated in the publication. [181], [184]

Godfrey v Demon Internet Ltd [2001] QB 201; *Trkulja v Google Inc LLC (No 5)* [2012] VSC 533; *Oriental Press Group Ltd v Fevaworks Solutions Ltd* (2013) 16 HKCFAR 366, followed.

Byrne v Deane [1937] 1 KB 818; *Urbanchich v Drummoyne Municipal Council* [1991] Aust Torts Reports 81-127, distinguished.

(3) It is not the case that the mental element is not made out unless the secondary publisher knew or ought to have known that the defamatory passages were false. [257]-[258]

Goldsmith v Sperrings Ltd [1977] 1 WLR 478; *Metropolitan International Schools Ltd (t/as SkillsTrain and t/as Train2Game) v Designtecnica Corp (t/as Digital Trends)* [2011] WLR 1743, discussed.

(4) As a secondary publisher of the Paragraphs, the defendant had the necessary mental element and therefore published the Paragraphs relating to the plaintiff once it acquired knowledge of the existence of the Paragraphs generated by its programs and failed to remove them within a reasonable time thereafter. [205]-[207], [210]-[213]

Tamiz v Google Inc [2013] 1 WLR 2151; *Murray v Wishart* [2014] 3 NZLR 722, discussed.

Metropolitan International Schools Ltd (t/as SkillsTrain and t/as Train2Game) v Designtecnica Corp (t/as Digital Trends) [2011] WLR 1743; *Bleyer v Google Inc LLC* (2014) 88 NSWLR 670; *Niemela v Malamas* [2015] BCSC 1024, distinguished.

(5) Where the defendant's search engine returned results containing Text, Snippet and URL that functioned as a hyperlink and the text of the title and snippets naturally invited the reader to click on the hyperlink for explanation and elaboration of those statements, the defendant was a secondary publisher of the hyperlinked webpage if and to the extent that the defendant failed to remove the paragraph incorporating the hyperlink after a reasonable time elapsed after effective notification by the plaintiff. [221], [226]-[230]

Crookes v Wikimedia Foundation Inc [2011] 3 SCR 269, discussed.

(6) The defendant was a secondary publisher of the autocomplete term "Janice duffy psychic stalker" once a reasonable time elapsed after the plaintiff's solicitors notified the defendant of the autocomplete term. [252]

Albert v Google Inc [2014] 4 HKLRD 493, discussed.

(7) The defendant's publications did not meet the requirement for occasions of qualified privilege at common law in circumstances where the defendant had published the information to anyone who chose to use its search engine to search for the defendant's name, the publication was indiscriminate as to the persons it might be made to or the purpose or interest they might have, and the information provided about the plaintiff was not confined to any specific type of information or tailored to the interests of a recipient, but was available to any recipient enquiring out of mere curiosity or for purposes of gossip. [400]

(8) The publication of the defamatory words indiscriminately to anyone who wanted to search on the web for references to the plaintiff regardless of the person's purpose or interest meant that the recipients did not have an "interest" or an "apparent interest" in having the information on the subject within the meaning of s 28(1)(a). [406]-[408]

Barbaro v Amalgamated Television Services Pty Ltd (1985) 1 NSWLR 30; *Echo Publications Pty Ltd v Tucker* [2007] NSWCA 320; *Griffith v Australian Broadcasting Corporation* [2010] NSWCA 257, discussed.

Cases Cited

- A v Google New Zealand Ltd* [2012] NZHC 2352.
Aktas v Westpac Banking Corporation (2010) 241 CLR 79.
Al-Amoudi v Brisard [2007] 1 WLR 113.
Albert v Google Inc [2014] HKCFI 1404.
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Barbaro v Amalgamated Television Services Pty Ltd (1985) 1 NSWLR 30.
Bashford v Information Australia (Newsletters) Pty Ltd (2004) 218 CLR 366.
Berezovsky v Michaels [2000] 1 WLR 1004.
Blake v Stevens (1864) 176 ER 544.
Bleyer v Google Inc LLC (2014) 88 NSWLR 670.
Bottomley v FW Woolworth & Co Ltd (1932) 48 TLR 521.
Brunswick, Duke of v Harmer (1849) 14 QB 185.
Bunt v Tilley [2007] 1 WLR 1243.
Byrne v Deane [1937] 1 KB 818.
Cassidy v Daily Mirror Newspaper Ltd [1929] 2 KB 331.
Channel Seven Adelaide Pty Ltd v Manock [2010] SASCFC 59.
Crocombe v Examiner Newspapers Ltd (1992) 15 TCL 11/11.

Crookes v Wikimedia Foundation Inc (2009) 311 DLR (4th) 647.
Crookes v Wikimedia Foundation Inc [2008] BCSC 1424.
Crookes v Wikimedia Foundation Inc [2011] 3 SCR 269.
Cush v Dillon (2011) 243 CLR 298.
David Syme & Co v Canavan (1918) 25 CLR 234.
Dow Jones & Co Inc v Gutnick (2002) 210 CLR 575.
E Hulton & Co v Jones [1910] AC 20.
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Flood v Times Newspapers Ltd [2012] 2 AC 273.
Fullam v Newcastle Chronicle & Journal Ltd [1977] 1 WLR 651.
General Steel Industries Inc v Commissioner for Railways (NSW) (1964) 112 CLR 125.
Godfrey v Demon Internet Ltd [2001] QB 201.
Goldsmith v Sperrings Ltd [1977] 1 WLR 478.
Griffith v Australian Broadcasting Corporation [2010] NSWCA 257.
Guise v Kouvelis (1947) 74 CLR 102.
Hill v Church of Scientology of Toronto (1995) 2 SCR 1130.
Hough v London Express Newspaper Ltd [1940] 2 KB 507.
Howe v Lees (1910) 11 CLR 361.
Hunt v Great Northern Railway Co [1891] 2 QB 189.
Huth v Huth [1915] 3 KB 32.
Jameel v Dow Jones & Co Inc [2005] QB 946.
Jensen v Clark [1982] 2 NZLR 268.
John Fairfax & Sons Ltd v Vilo (2001) 52 NSWLR 373.
John Fairfax Publications Pty Ltd v Obeid (2005) 64 NSWLR 485.
Johnson v Hudson (1836) 112 ER 459.
Lambert v Roberts Drug Stores Ltd (No 1) [1933] 4 DLR 193.
Lange v Australian Broadcasting Corporation (1997) 189 CLR 520.
Lee v Wilson (1934) 51 CLR 276.
Lewis v Daily Telegraph Ltd [1964] AC 234.
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McNicoll v Grandy [1932] 1 DLR 225.
McPhersons Ltd v Hickie [1995] Aust Torts Reports 62,496 (81-348).
Metropolitan International Schools Ltd (t/as SkillsTrain and t/as Train2Game) v Designtechnica Corp (t/as Digital Trends) [2011] 1 WLR 1743.
Mirror Newspapers Ltd v Harrison (1982) 149 CLR 293.
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Niemela v Malamas [2015] BCSC 1024.

Oriental Press Group Ltd v Fevaworks Solutions Ltd (2013) 16 HKCFAR 366.
Papaconstuntinos v Holmes à Court (2012) 249 CLR 534.
Parmiter v Coupland (1840) 151 ER 340.
Pritchard Englefield (A Firm) v Steinberg [2005] EWCA Civ 288.
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Radio 2UE Sydney Pty Ltd v Chesterton (2009) 238 CLR 460.
Rana v Google Australia Pty Ltd [2013] FCA 60.
Reader's Digest Services Pty Ltd v Lamb (1982) 150 CLR 500.
Reynolds v Times Newspapers Ltd [2001] 2 AC 127.
Roberts v Bass (2002) 212 CLR 1.
Sands v Channel Seven Adelaide Pty Ltd [2010] SASC 202.
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Society of Composers, Authors and Music Publishers of Canada v Canadian Association of Internet Providers [2004] SCR 427.
Sun Life Assurance Co of Canada v WH Smith & Son Ltd (1933) 150 LT 211.
Tamiz v Google Inc [2013] 1 WLR 2151.
Tamiz v Google Inc [2012] EWHC 449.
Theophanous v Herald & Weekly Times Ltd (1994) 182 CLR 104.
Thompson v Australian Capital Television Pty Ltd (1996) 186 CLR 574.
Tolley v JS Fry & Sons Ltd [1930] 1 KB 467.
Toogood v Spyring (1834) 149 ER 1044.
Trkulja v Google (No 2) [2010] VSC 490.
Trkulja v Google Inc [2010] VSC 226.
Trkulja v Google Inc LLC (No 5) [2012] VSC 533.
Trkulja v Yahoo! Inc LLC [2012] VSC 88.
Truth (New Zealand) Ltd v Holloway [1960] 1 WLR 997.
Urbanchich v Drummoynne Municipal Council [1991] Aust Torts Reports 69,190 (81-127).
Villers v Monsley (1769) 95 ER 886.
Vizetelly v Mudie's Select Library Ltd [1900] 2 QB 170.
Wake v John Fairfax & Sons Ltd [1973] 1 NSWLR 43.
Ward v Smith (1830) 130 ER 1469.
Watts v Fraser (1835) 173 ER 164.
Weldon v The Times Book Co Ltd (1911) 28 TLR 143.
Wishart v Murray [2013] NZHC 540.
Yaqoob v Asia Times Online Ltd [2008] 3 HKC 589.

Action for damages

The plaintiff appeared in person.

S Doyle SC, for the defendant.

Cur adv vult

27 October 2015

Blue J.

- 1 Dr Janice Duffy sues Google Inc for defamation.
- 2 In December 2007, two articles concerning Dr Duffy were published on the
Ripoff Report website. Two more articles were published in August 2008, with a
further article in December 2008 and one in January 2009.
- 3 Dr Duffy claims that the articles and comments thereon (*the Ripoff Report
material*) contained defamatory imputations. The pleaded imputations include
that she stalks psychics; obsessively and persistently harasses psychics;
fraudulently and/or maliciously accesses other people's electronic emails and
materials; spreads lies; threatens and manipulates other people; is an
embarrassment to her profession; misused her work email address for private
purposes and engaged in criminal conduct.
- 4 Other websites, namely Complaints Board, 123 People, Is This Your Name
and Wiki Name, published material concerning Dr Duffy ostensibly derived
from the Ripoff Report material (*the secondary material*).
- 5 In July 2009, Dr Duffy became aware that searches for her name on Google's
websites resulted in the display of extracts from and hyperlinks to the Ripoff
Report material. In September 2009, she notified Google of the Ripoff Report
material that she claimed was defamatory of her and being republished by
Google, and of extracts from the Ripoff Report material and some of the
secondary material that she claimed were defamatory of her and being
published by Google. She requested removal of that material. Google declined
the request.
- 6 In February 2011, Dr Duffy instituted this action. Between March and
November 2011, Google progressively removed the display of extracts from and
hyperlinks to the Ripoff Report material from its Australian website.
- 7 In July 2011, Dr Duffy became aware that searches for her name on Google's
websites resulted in the display by Google's Autocomplete utility of the
alternative search term "janice duffy psychic stalker". Dr Duffy notified Google
of this and claimed that the display of those words on Google's websites
amounted to publication of defamatory material. Dr Duffy amended her
pleading to incorporate this additional cause of action. Dr Duffy subsequently
became aware that Google's Related Search utility produced similar search
terms and amended her pleading to plead that this also was defamatory.
- 8 Google denies publication and in any event denies that the material displayed
on or linked from its websites gave rise to the pleaded defamatory imputations.
Google relies on defences of innocent dissemination, qualified privilege,
justification and contextual truth. The trial of the action encompassed these
liability issues, leaving for a subsequent trial defined issues relating broadly to
damages.
- 9 The issues to be decided are:
1. did Google publish the allegedly defamatory material to a third party or parties?
 2. do the pleaded imputations arise from that material?
 3. are the pleaded imputations defamatory of Dr Duffy?
 4. is the defence of innocent dissemination¹ made out?

1 At common law or under the *Defamation Act 2005* (SA), s 30.

5. is the defence of qualified privilege² made out?
6. is the defence of justification³ made out?
7. is the defence of contextual truth⁴ made out?

The plaintiff's case

- 10 Dr Duffy's case has three aspects. The first is that since 12 September 2009⁵ Google published on its websites to users searching for variations of her name paragraphs of search results that contained text from and hyperlinks to 16 external webpages which paragraphs are defamatory of her. In some cases, the precise words of the text varied depending on the variant of Dr Duffy's name entered into the search box and when the search was carried out.
- 11 The paragraphs said to have been published to users searching for "Dr Janice Duffy" are as follows:

Ripoff Report

- R1 [Ripoff Report Janice Duffy — Psychic Stalker Psychics Beware Of ...](#)⁶
 Dr Janice Duffy is truly an embarrassment to her profession as a Senior Researcher in Adelaide Australia #2 Consumer Comment. Respond to this report!..⁷
[www.ripoffreport.com/...Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm](#) Cached
- R2 [Rip-off Report Dr Janice M Duffy Stop the Australian Psychic ...](#)⁸
 Dr Janice Duffy Stop the Australian Psychic Stalker Dr. Janice Duffy!! Adelaide. South Australia Adelaide, South Australia
[www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-stop-the-aust-deb8p.htm](#) Cached
- R3 [Dr Janice Duffy | Rip-off Report #363490](#)
 15 Aug 2008...Dr Janice Duffy Senior Researcher Dr Janice Duffy Psychic Stalker from the Respiratory Function Unit, Repatriation General Hospital...
[www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-senior-researcher-c9534.html](#) United States Cached
- R9 [Ripoff Report Janice Duffy-Psychic Stalker! Psychics Beware Of](#)
 Sugarpie (1/1/2008 3:39:50 pm] Dr Janice Duffy uses her government work email address to email anti-Kasamba psychics clients Katie [1/2/2008 8:02:31 PM]...
[217.17.158.39/reports/0/295/RipOff0295712.htm](#)

123 People

- P1 [Janice Duffy — Email Address, Phone Numbers, everything! 123 people.com](#)⁹

2 At common law or under the *Defamation Act 2005* (SA), s 28.

3 At common law or under the *Defamation Act 2005* (SA), s 23.

4 Under the *Defamation Act 2005* (SA), s 24.

5 Some paragraphs are alleged to have been published between 12 September 2009 and 13 October 2010, some after 14 October 2010 and others after 12 September 2009.

6 In one variation, "Ripoff Report" is omitted and "Australian" appears at the end.

7 In one variation, the words after "Senior" are omitted.

8 In one variation, "Stop the Australian Psychic" is replaced by "#295925".

9 In one variation, the words after "Everything" are omitted.

Dr Janice Duffy Stop the Australian Psychic Stalker Dr Janice Duffy!...Dr Janice Duffy uses her government work email address to email anti-Kasamba ...¹⁰

www.123people.com/s/janice+duffy — United States

P2 Janice Duffy — Email Address, Phone Numbers, everything ...

Dr Janice Duffy Stop the Australian Psychic Stalker Dr Janice Duffy!... american man was placed there as a means of identifying this Janice person!...

www.123people.com/s/janice+person — United States

Complaints Board

C1 Dr Janice M Duffy Senior Researcher

Are you also a victim of the Dr Janice M Duffy Senior Researcher? Submit a complaint to help other consumers to be educated and don't let them get away...

www.complaintsboard.com/.../dr-janice-m-duffy-senior-researcher-a55917.html Cached

C2 Dr Janice Duffy

Are you also a victim of the Dr Janice Duffy? Submit a complaint to help other consumers to be educated and don't let them get away with it!¹¹

www.complaintsboard.com/.../dr-janice-duffy-a55921.html Cached

Miscellaneous

M1 Janice Person — WikiName

Ripoff Report: Dr. Janice Duffy Stop the Australian Psychic ...Dr. Janice Duffy Stop the Australian Psychic Stalker Dr. Janice Duffy!...

wiki.name.com/en/Janice_Person Cached

- 12 The paragraphs said to have been published to users searching for “Janice Duffy” are as follows:

Ripoff Report

R1A Ripoff Report Janice Duffy — Psychic Stalker! Psychics Beware Of...

Psychics must beware of a psychic stalker named Janice Duffy. She is a woman that comes from Australia and writes phoney rip off reports on psychics ...

www.ripoffreport.com/.../Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm Cached

R1B Janice Duffy — Psychic Stalker! Psychics Beware Of Australian...

30 Dec 2007 ... Janice Duffy Psychic Stalker! Psychics beware of Australian Psychic stalker! Janice Duffy stalked me on the computer for several months...

www.ripoffreport.com/.../Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm Cached

R2 Rip-off Report Dr Janice M Duffy Stop the Australian Psychic ...¹²

Dr Janice Duffy Stop the Australian Psychic Stalker Dr. Janice Duffy!! Adelaide, South Australia Adelaide, South Australia

www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-stop-the-aust-deb8p.htm Cached

10 In one variation, the words after “Duffy!” are replaced by “Adelaide, South Australia Adelaide, South Australia”.

11 In one variation, the words after “help” are omitted.

12 In one variation, “Stop the Australian Psychic” is replaced by “#295925”.

R3 Dr Janice Duffy Review | Rip-off Report #363490

15 Aug 2008...Dr Janice Duffy Senior Researcher Dr Janice Duffy Psychic Stalker from the Respiratory Function Unit, Repatriation General Hospital...

www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-senior-researcher-c9534.html United States Cached

123 PeopleP2 Janice Duffy — Email Address, Phone Numbers, everything ...

Dr Janice Duffy Stop the Australian Psychic Stalker Dr. Janice M Duffy!! Adelaide, South Australia Adelaide, South Australia ...

www.123people.com/s/janice+person — United States

Complaints BoardC1 Dr Janice M Duffy Senior Researcher

Are you also a victim of the Dr Janice M Duffy Senior Researcher? Submit a complaint to help other consumers to be educated and don't let them get away...

www.complaintsboard.com/.../dr-janice-m-duffy-senior-researcher-a55917.html Cached

C2 Dr Janice Duffy

Are you also a victim of the Dr Janice Duffy? Submit a complaint to help other consumers to be educated and don't let them get away with it!

www.complaintsboard.com/.../dr-janice-duffy-a55921.html Cached

C3 Dr Janice Duffy — Psychic Stalker! Psychics Beware Of Australian...

Are you also a victim of the Janice Duffy — Psychic Stalker! Psychics Beware Of Australian Psychic Stalker!? Submit a complaint to help other consumers to....

www.complaintsboard.com/.../janice-duffy-psychic-stalker-psychic-beware-of-australian-psychic-stalker-a55920.html Cached

MiscellaneousM2 STOP KASAMBA/LIVEPERSON PSYCHIC RIP-OFF

28 Sep 2008 ... The person that is posting this about the site is Janice Duffy, a addict to Psychic readers, she tarnishes there reputation and still seeks ...

Kasamba.pissedconsumer.com/stop-kasamba-liveperson.../1.html Cached

- 13 The paragraphs said to have been published to users searching for “Dr Janice M Duffy”, “Dr Janice M Duffy Adelaide” or “Janice Duffy Adelaide”¹³ are as follows:

Ripoff ReportR1 Ripoff Report Janice Duffy — Psychic Stalker! Psychics Beware Of Australian...¹⁴

Dr Janice Duffy is from Adelaide Australia and is a senior researcher. Please ...

www.ripoffreport.com/...Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm Cached

¹³ I do not reproduce paragraphs resulting from searches for these three terms in the Background section below because ultimately I find that Dr Duffy has not proved publication to any publishee of paragraphs resulting from searches for those names: see [336]-[368] below.

¹⁴ In one variation, “Ripoff Report” is omitted.

- R2 [Rip-off Report Dr Janice M Duffy Stop the Australian Psychic ...](#)¹⁵
Click Here to read other Ripoff Reports on Dr Janice Duffy. Search for additional reports ... I'm sorry, but this place has gotten really really sick...¹⁶
www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-stop-the-aust-deb8p.htm Cached
- R3 [Dr Janice Duffy Review | Rip-off Report #363490](#)
15 Aug 2008... Please be aware of Dr Janice Duffy the psychic stalker from Adelaide Australia. Dr. Jake Los Angeles, California...
www.ripoffreport.com/.../Janice-Duffy/dr-janice-duffy-senior-research-9534.html United States Cached
- R4 [Dr Janice M Duffy Senior Researcher | Ripoff Report #363738](#)
Dr Janice M Duffy Dr Janice M Duffy Senior Researcher Dr Janice M Duffy Adelaide Australia continues to stalk Live Person Kasamba Psychics Adelaide ...
www.ripoffreport.com/.../dr-janice-m-duffy.../dr-janice-m-duffy-dr-janice-8f472.htm United States Cached
- R7 [Liveperson Kasamba | Ripoff Report #357787](#)
Adelaide, Australia Dr Janice Duffy is a 52-year-old woman that gets psychic readings over and over again, even though she is constantly bashing them here on...
www.ripoffreport.com/.../liveperson-Kasamba-unethical-c-wa8da.htm Cached -Similar
- R8 [Ripoff Report | All Scams, Consumer Complaints And Frauds | Page 1714](#)
3 Nov 2008 ... Janice M Duffy Senior Researcher Dr Janice M Duffy Adelaide, Australia continues to stalk Liveperson Kasamba psychics Adelaide,...
www.ripoffreport.com/lists/1/default1714.htm — Cached

123 People

- P1 [Janice Duffy — Email Address, Phone Numbers, everything ...](#)
4 Dec 1998... Dr Janice Duffy Stop the Australian Psychic Stalker Dr Janice Duffy! Adelaide, South Australia Adelaide, South Australia ...¹⁷
www.123people.com/s/janice+duffy — United States

Complaints Board

- C1 [Dr Janice M Duffy Senior Researcher](#)
Are you also a victim of the Dr Janice M Duffy Senior Researcher? Submit a complaint to help other consumers to be educated and don't let them get away...
www.complaintsboard.com/.../dr-janice-m-duffy-senior-researcher-a55917.html Cached
- C2 [Dr Janice Duffy — Psychic Stalker! Psychics Beware Of Australian...](#)¹⁸

15 In one variation, "Stop the Australian Psychic" is replaced by "#295925".

16 In one variation, the snippet reads "Dr Janice Duffy Stop the Australian Psychic Stalker Dr Janice Duffy! ... I'm a psychic, I went to Kasamba as it was the 'up and comer' so that I could ...". In a further variation, the words "I'm a psychic" etc are replaced by "Adelaide, South Australia Adelaide, South Australia".

17 In one variation, the address "Adelaide" etc is replaced with "Janice M Duffy (Age 57) 52302 MARION, IA — view details ...".

18 In one variation, the words "Psychic Stalker! Psychics Beware Of Australian" are omitted.

Are you also a victim of the Dr Janice Duffy? Submit a complaint to help other consumers to be educated and don't let them get away with it!¹⁹

www.complaintsboard.com/.../dr-janice-duffy-a55921.html Cached

C4 Companies suspected of fraudulent practices

Dr Janice M Duffy. Senior Researcher — Goldfield Credit — At Home Rewards — Shopping Essentials — Indian Valley Kennels — Carla Ferrier Owner/Breeder ...²⁰

www.complaintsboard.com/suspicious-companies/page/8

Miscellaneous

M3 All about “Janice Duffy”

Dr Janice Duffy Review | Rip-off Report #295925. Dr Janice Duffy Stop the Australian Psychic Stalker Dr Janice Duffy!! Adelaide, South Australia Adelaide...²¹

www.isthisyour.name/janice_duffy.htm Cached

14 The second aspect of Dr Duffy's case is that, by reason of the publication of such text and hyperlinks to the Ripoff Report material, Google was a republisher of the Ripoff Report material.

15 The third aspect of Dr Duffy's case is that Google published the words “janice duffy psychic stalker” by its Autocomplete utility from June 2011 onwards and its Related Search utility from June 2012 onwards.

Background

Dr Duffy

16 Dr Duffy was born in 1956.

17 In 1992, Dr Duffy was awarded a Bachelor of Arts Honours degree at Flinders University. She undertook the degree part-time while working. In 1991, she was diagnosed as suffering from depression.

18 In 1999, Dr Duffy was awarded a PhD at Flinders University. She undertook the degree part-time while working.

19 Between 2001 and early 2003, Dr Duffy was employed as a Senior Research Officer at the South Australian Community Health Research Unit. In late 2002 early 2003, she was diagnosed as suffering from major depression and generalised anxiety disorder. She was away from work for some months.

20 In April 2003, Dr Duffy returned to work as a Senior Research Officer, initially at the Social Inclusion Unit in the Department of Premier and Cabinet and then at the Research Analysis and Evaluation Unit in the Department of Health. In mid-2006, Dr Duffy again suffered from major depression.

21 In June 2006, Dr Duffy transferred to the Health Promotion Branch at the Department of Health and in September 2006 to the Respiratory Function Unit at the Repatriation General Hospital at Daw Park in the Department of Health. In mid-2007, she again suffered from major depression and was away from work in May and June 2007.

22 In August 2008, Dr Duffy suffered a fall and did not effectively return to work thereafter. In August 2010, Dr Duffy entered into a redemption agreement with WorkCover and resigned her employment as part of the agreement.

19 In one variation, the words after “help” are omitted.

20 In one variation the words after “At Home Rewards” are omitted.

21 In one variation the first seven words are omitted and the words “at:ripoffreport.com/...” are added at the end.

*World wide web*²²

23 The internet is a system of globally linked computer networks that communicate using a standardised protocol. The world wide web (*the web*) is a system of linked documents (*webpages*) that are accessed via the internet.

24 A website comprises a top level webpage together with a hierarchy of subordinate webpages. A website is hosted on a computer server and is controlled by a person or organisation called a webmaster. Webpages are fundamentally written in Hypertext Markup Language (*HTML*).²³ Each webpage has a unique electronic address, being a Uniform Resource Locator (*URL*), which is itself written in HTML. In 2008, the web included one trillion webpages accessed by the Google Search Engine.²⁴ In mid-2012, the web included 30 trillion webpages accessed by the Google Search Engine.

25 A computer uses a software program called a web browser (*browser*) to access the web. Examples of browsers are Internet Explorer, Chrome, Firefox and Safari. A browser reads the HTML code of a webpage and displays it in human language in a graphical user interface. One method of access to a webpage is for the user to enter its URL into the address bar of the browser. Another method is to mouse click on a hyperlink in a webpage, including a webpage of a search engine.

*Google*²⁵

26 Google Inc is a corporation incorporated in the United States of America. Google owns and operates, amongst others, the websites www.google.com (*the Google generic website*), www.google.com.au (*the Google Australian website*) and other country code domain websites.

27 When a user with an Australian IP address enters the URL “www.google.com”²⁶ into the address bar of a browser, Google causes it to default automatically to the Google Australian website. The user can override this automatic default if the user knows how to do so.

28 The Google websites offer various functions to users. One is Google Web Search which upon request provides a list of search results for given words or phrases appearing in publicly accessible webpages on the web. This is one of several functions performed by the Google Search Engine.²⁷ The Google Search Engine comprises vast databases compiled over historical time coupled with a search function that operates in real time when a user initiates a search.

29 A user undertakes a Google Web Search by entering a word or words into the

22 This section is derived from evidence given by Mr Madden-Woods. Much of it is now common knowledge.

23 Media files (eg image files and video files) forming part of or linked to a webpage are written in a different language but are not relevant in the present case. Webpages also contain subsidiary codes such as JavaScript.

24 Google only accesses publicly available webpages on the web.

25 This section is derived from evidence given by Mr Madden-Woods and Mr Herscovici. Much of it is now common knowledge.

26 The user must also enter a prefix such as “<https://>” but I omit it throughout this judgment for ease of reference.

27 Other functions are image, map, video and book searches, but none of these are relevant in the present case.

search box on the Google website.²⁸ This results in the display of search results on the user's screen. Each search result consists of a paragraph (paragraph) comprising three parts:

- Title — a reproduction of a selection from the title of the underlying webpage;
- Snippet — a reproduction of a selection of text from the underlying webpage that contains the word or words the subject of the search;
- URL — the URL (or an elided version thereof where it is longer than one line) of the underlying webpage.

30 The title also operates as a hyperlink to the underlying external webpage. A hyperlink is a piece of HTML code inserted by the operator of the website currently being accessed (in this case Google): clicking the mouse on the hyperlink causes the browser to display a webpage of a different website.²⁹ In this case, clicking on the title results in the display of the webpage whose URL is displayed at the end of the search result.³⁰

31 Frequently the word “cached” appears immediately after the URL. Google generally retains on its servers a cached (historical) copy of webpages it has crawled and indexed. Clicking the mouse on the word “cached” operates as a hyperlink to Google's own cached copy of the external webpage.

32 The Google Search Engine compiles databases over historical time that are constantly being updated and are used by Google Web Search. The first stage is undertaken by a computer program called a web crawler or robot. The crawler program visits publicly available webpages on the web and downloads and retains a copy of the HTML code and any other code comprising the webpage together with meta data relating to the webpage. The frequency with which a given webpage is visited by the crawler depends on its relative importance as determined by computer algorithms and may vary from minutes or hours to weeks or months.

33 The second stage of compiling databases is undertaken by computer software known as an indexer program. The indexer program creates an index of each word found on webpages by the crawler program. The index records for each word a unique ID that is linked to the unique URL of each webpage on which that word has been found. The index also records data relating to each webpage, such as its nature, form and publication date, which is later used by the search program to rank results.

34 The databases compiled in these two stages are compiled automatically without human intervention. They are compiled by algorithms written by human beings.

35 If a webpage that has been crawled and indexed is subsequently removed by its webmaster from its website, the next time the crawler visits the website it will cause the indexer to remove the webpage from the index.

36 A webmaster can use tools provided by Google to prevent a specified

28 I assume for present purposes that the user is using the Google Australian website.

29 A hyperlink can also be used to link webpages within the same website but that usage is not relevant to the present case.

30 In July 2011, Google moved the display of the URL from the end of the search result to immediately below the title. However, in general terms the searches the subject of this action pre-date July 2011 and I describe the display as it was before that change.

webpage being crawled and/or indexed and/or to prevent a specified webpage having a snippet displayed or a cached copy made available to a user undertaking a search on the Google websites.

37 Google itself maintains a removals list that prevents specified webpages having a paragraph (title, snippet and URL) displayed to a user undertaking a search on a specified country code domain Google website.

38 The Google search program, in contradistinction to the crawler and indexer programs, operates in real time when a user initiates a word search on a Google website. It compiles a list of paragraphs (title, snippet and URL) relating to the webpages that contain the word or words entered by the user in the search box. If two or more words are entered, unless otherwise instructed by the user, it will only return results relating to webpages that contain all of the words entered. It ranks or prioritises the paragraphs in accordance with a ranking algorithm designed to present the most relevant results first. The ranking algorithm has regard to over 200 signals or factors, most of which are proprietary information. The search program displays 10 paragraphs or search results per page (screen) ranked in order by the ranking algorithm. The search program typically produces results in a fraction of a second and operates automatically in accordance with algorithms written by human beings.

39 The search program, and in particular the ranking algorithm, operates differentially between different Google country code domains. Subject to two exceptions, identical searches carried out at identical times by two different users in Australia on the Google Australian website return the same results in the same order. The first exception applies if the user has signed in to the Google system (entering username and password) and has enabled the feature "Web & App Activity". The second exception applies if the user has a specific cookie stored on the user's computer and linked to the browser and has not removed that cookie. If either exception applies, the search program will take into account the user's search history, at least over the previous 180 days, in applying the ranking algorithm.

40 Google has a legal team based in California that is responsible, amongst other things, for deciding whether a webpage should be added to the removals list. This process is usually initiated by a request from a member of the public or a court, law enforcement or other government body, although it is occasionally initiated by Google itself. If the legal team decides that a webpage should be added to the removals list, a request is passed to the removals engineering team. The engineering team adds the URL for the specified webpage to the removals list for the specified Google country code domain website (eg the Google Australian website). This results in the URL contained in the removals list being excluded from possible results otherwise generated by the search program before display on a search by a user on the specified Google website. This exclusion operates regardless of the search word or words entered by the user and regardless of when the webpage in question was last crawled or indexed. Because the exclusion operates at the level of the URL, it will not apply to a webpage if its webmaster subsequently changes its URL.

41 Google Web Search has an Autocomplete utility. As a user is entering a search term into the search box, it generates immediately below the search box alternative search terms based on past search terms entered by the user or by others. Google Web Search also has a Related Search utility. As a user is

entering a search term into the search box, it generates at the bottom of the page alternative search terms based on past search terms entered by the user or by others.

- 42 Autocomplete and Related Search terms are both generated automatically in real time based on algorithms written by human beings. They operate differentially between different Google country code domains. Subject to one exception, identical searches carried out at identical times by two different users in Australia on the Google Australian website return the same Autocomplete or Related Search results in the same order. The exception applies if the user has signed in to the Google system and has enabled the feature “Web History”. If the exception applies, the Google search engine will take into account the user’s search history in applying the ranking algorithm.

*Kasamba*³¹

- 43 The Kasamba website (www.Kasamba.com) operates as an intermediary between advisors called *Experts* and customers called *Clients* who engage Experts to provide paid advice. Persons register with Kasamba as Experts in various categories to provide advice electronically to Clients who pay a negotiated rate per hour. Advertised rates range from \$80 to \$1,200 per hour but ultimately the Expert and Client negotiate a specific rate.

- 44 The principal medium for seeking and providing advice is a paid online live chat via the Kasamba website in which the Expert and Client communicate by live continuous exchange of written messages and the charge is calculated per minute while the parties are online. A Client initiates an online chat to which the Expert responds if willing and available. The parties initially communicate without charge. The Expert suggests a rate per hour or per minute, the Client responds with an offered rate per hour or per minute and after any further negotiation the charged session begins when the Client clicks on “hire”.

- 45 A second medium for seeking and providing advice is for the Client to ask a question by sending an internal email to the Expert on the Kasamba website and for the Expert to respond by internal email. This is not “live” or continuous and there may be a delay of minutes, hours or days between the Client email and the response. A charge for the answer to the question is negotiated in the same manner as for online chats. The charge might encompass follow up email exchanges which again are not live or continuous.

- 46 One category of expertise is *Religion & Spirituality*, which contains a sub category *Psychic Readings*. Persons professing expertise in psychic powers are registered as Experts with Kasamba and known as “psychics”.

- 47 The Pissed Consumer/Kasamba webpage (kasamba.pissedconsumer.com) is a webpage that acts as a forum for consumers disaffected with Kasamba.

Ripoff Report

- 48 The Ripoff Report website (www.ripoffreport.com) enables persons who register to post a report entitled “Complaint Review” about a supplier of goods or services. The consumer posting a complaint is called an *Author*. A supporter or another consumer who posts a comment is called a *Consumer*. The supplier

31 This section describes the operation of Kasamba as it was in 2006-2008 but uses the present tense for ease of reference.

or a supporter of a supplier who posts a responsive comment is called an *Employee*. Each report is given a consecutive six or seven digit number and the webpage containing the report and comments has a unique URL.

Secondary websites

49 The Complaints Board website (www.complaintsboard.com) recorded complaints made primarily if not exclusively about companies.

50 The 123 People website (www.123 people.com), Wiki Name website (wiki.name.com) and Is This Your Name website (www.isthisyour.name) each recorded details about people.

51 Each of these websites ostensibly sourced content in part directly or indirectly from the Ripoff Report website.

Consultations with psychics

52 In mid-2005, Dr Duffy met Jon while in New York. Upon her return to Australia, they communicated by email and occasionally by telephone. Dr Duffy hoped that they would embark on a romantic relationship.

53 In August 2005, Dr Duffy registered with Kasamba as a Client under the username *janice180501*.

54 Beginning on 30 August 2005, Dr Duffy participated in paid live online chats on Kasamba with a psychic using the name *Master Z*. Master Z told Dr Duffy that he saw a “true soul mate connection” and a “fated inevitability” between Jon and herself. In November 2005, Dr Duffy participated in several online email exchanges with Master Z. He made positive predictions about a relationship with Jon.

55 Beginning on 14 January 2006, Dr Duffy participated in paid live online chats on Kasamba with a psychic using the name *Soul Connection*. Soul Connection made positive predictions about a relationship with Jon.

56 Beginning on 14 January 2006, Dr Duffy participated in paid live online chats and online email exchanges on Kasamba with a psychic using the name *Fruno*. Fruno made strong positive predictions about a relationship with Jon.

57 In February 2006, Jon sent an email to Dr Duffy saying that he was planning to come back to Australia to see her in June.

58 In February 2006, Dr Duffy participated in an online email exchange on Kasamba with Master Z. Master Z said that Jon would return to Australia in June.

59 In February 2006, Dr Duffy participated in a paid live online chat on Kasamba with Soul Connection who was now using the name *Powerful Visions*. She made positive predictions about a relationship with Jon and his return to Australia.

60 In February 2006, Dr Duffy participated in paid live online chat sessions on Kasamba with a psychic practising under the name *SunshiningUponYou* (“Sun” for short). Sun made positive predictions about a relationship with Jon.

61 In March 2006, Jon sent an email to Dr Duffy saying that he had met and fallen in love with a married woman, did not know if he was coming to Australia in June and was not sure if he wanted to see Dr Duffy. He cut off contact with Dr Duffy for some months after this email.

62 In March and April 2006, Dr Duffy participated in online email exchanges on

Kasamba with Fruno. She told him of the setback with Jon. He responded making positive predictions notwithstanding the setback and predicted that Dr Duffy would still see Jon in June 2006.

63 Between March and July 2006, Dr Duffy participated in paid live online chats and online email exchanges on Kasamba with Powerful Visions. Dr Duffy told her about the setback with Jon. She responded making positive predictions notwithstanding the setbacks.

64 In March 2006, unbeknown at the time to Dr Duffy, Erik of Massachusetts posted a report on the Ripoff Report website complaining about readings he obtained from psychics on the Kasamba website. Between March 2006 and June 2007, at least 18 reports were posted by consumers complaining about psychics operating on the Kasamba website which attracted extensive comments from other consumers and from supporters of psychics.

65 In May 2006, Dr Duffy participated in an online email exchange on Kasamba with Master Z. He made positive predictions about Jon.

66 In July 2006, Jon told Dr Duffy that he had broken up with the married woman. They had daily contact for two weeks before Jon broke off contact again.

67 In July 2006, Dr Duffy participated in online email exchanges on Kasamba with Powerful Visions. Dr Duffy said that Powerful Visions' predictions had been wrong, expressed disappointment and pain and requested a refund of the money she had spent. Powerful Visions said she could not give a refund as the payment was to Kasamba but offered a free reading or spell.

68 In December 2006 and January 2007, Dr Duffy participated in further paid live online chat sessions on Kasamba with SunshiningUponYou. Sun gave positive advice to Dr Duffy about Jon and said that May 2007 would be an amazing month for Jon and Dr Duffy.

69 In January 2007, Jon sent an email to Dr Duffy saying that his girlfriend had now divorced her husband, he was enjoying life, he could not afford to get too deep with Dr Duffy and he could not promise he would be back in Australia soon or ever.

Dr Duffy's disillusionment

70 On 14 May 2007, Jon sent an email to Dr Duffy saying that he was still overseas, had women in his life and wished her well in her life. Dr Duffy received no further contact from him. Dr Duffy suffered major depression and was away from work from mid-May to the end of the June following this final rebuff.

71 Between 22 May and 4 July 2007, Dr Duffy participated in online email exchanges on Kasamba with Fruno. She said that his predictions had been wrong, she was in the middle of a bad breakdown and unable to function and enquired why he had given her false hope. Fruno responded saying that he could not make Jon embrace the love that Fruno felt was there.

72 On 31 May 2007, Dr Duffy participated in an online email exchange on Kasamba with Master Z. She said that his predictions about Jon had been wrong. Master Z responded saying that he could have been wrong and Dr Duffy should forget about Jon because he was not healthy for her and expressing compassion.

73 In June 2007, Dr Duffy started writing a report about her experiences with

Kasamba psychics on which she worked intermittently over the next year and which she contemplated publishing electronically but which was never completed or published (*the Kasamba report*).

74 Between 21 June and 4 July 2007, Dr Duffy participated in online email exchanges on Kasamba with Fruno. She said that she was writing a chapter on him for an e-book. She attached a partial excerpt of a chapter from the book she was writing. That excerpt was not tendered. She said that she was extremely sick, depressed, unable to function and suicidal and that Fruno was partially responsible because of the encouragement he had given her in 2006. Fruno responded in sympathetic terms.

75 On 3 July 2007, Dr Duffy participated in an online email exchange on Kasamba with Master Z. Dr Duffy sent to him transcripts of her paid chats and email sessions with him in 2005 and 2006 about the prospects of a relationship with Jon that had not transpired. Master Z responded saying that the fact that Dr Duffy had been able to feel what she did for a while had been a blessing and gave hope for the future after her health improved. Dr Duffy sent a responding email saying that he had hurt her, taken her money, she was broken and she felt angry and bitter.

76 In July 2007, LivePerson announced that it had agreed to acquire the Kasamba website. On 10 July 2007, Dr Duffy sent an email to LivePerson complaining about some of the psychics operating on the Kasamba site which LivePerson was acquiring. From time to time thereafter, Dr Duffy communicated by email with Kasamba Support about some of the psychics operating on the Kasamba site.

77 On 18 July 2007, Dr Duffy under the username “Janice” posted a report on the Ripoff Report website about Kasamba. She listed names of psychics operating on the Kasamba website who she said were completely wrong about the outcome with someone she had met. The names included Master Z, Fruno and Powerful Visions. She subsequently posted further reports and comments on reports by others on the Ripoff Report website.

78 On 29 July 2007, Dr Duffy created a chat group on yahoo.com under the name “kasambavictims”. Dr Duffy posted the internet address of the chat group on the Ripoff Report website. Dr Duffy communicated over the internet with persons who joined this chat group. Dr Duffy gave evidence that she wrote some of the posts on the Kasamba and Ripoff Reports under usernames other than her own name by reference to events narrated by or in conjunction with some members of this group.

79 On 4 and 15 September 2007, Dr Duffy participated in online email exchanges on Kasamba with SunshiningUponYou. Dr Duffy said that Sun’s January prediction that May would be an amazing month for Jon and herself turned out to be wrong when Jon ditched her for good in May and she had a breakdown. She asked why Sun had made that prediction when the opposite turned out. Sun replied saying that Sun’s timeframes were not always right, Jon would in time realise how stupid he had been and Dr Duffy should focus on being well right now.

80 Between 26 and 30 September 2007, Dr Duffy participated in further online email exchanges on Kasamba with SunshiningUponYou. Dr Duffy expressed pessimism and despair about a relationship with Jon and personal pain, anguish, foolishness and depression. Dr Duffy expressed a loss of faith and trust in SunshiningUponYou. Dr Duffy’s last post complained that she had spent

hundreds of dollars on Sun's readings, accepted that no relationship with Jon would happen and criticised Sun for making promises Dr Duffy trusted that did not eventuate.

81 In December 2007, Dr Duffy registered with the Kasamba website the username "ozzieb" under the name Oswald Billet. On 18 December 2007, Dr Duffy under the username "ozzieb" posted three online messages on the Kasamba website to SunshiningUponYou saying that his wife's friend committed suicide on 17 December. Ozzieb posted that Sun was responsible for the death because she told his wife's friend lies that she would be with someone who was using her and who had married someone else. Ozzieb said that he would send Sun's communications with his wife's friend to the head of Kasamba and the national media. Sun did not respond to the posts.

82 On 19 December 2007, Dr Duffy under the name Oswald Billet sent an email to Kasamba saying that his wife's friend committed suicide on 17 December and complaining about SunshiningUponYou's conduct leading up to the suicide. On 28 December 2007, Dr Duffy under the username "Friend's Husband" posted a report on the Ripoff Report website about the suicide of his wife's friend and complaining about SunshiningUponYou's conduct leading up to the suicide.

The six Ripoff reports

83 On 30 December 2007, "Mary anne" of Riverton, Wyoming posted a report on the Ripoff Report website (*the first ROR report*). It was given the URL www.ripoffreport.com/psychic/janice-duffy-psychic/janice-duffy-psychic-stalker-98d93.htm which encompassed comments on the initial report (*the first Ripoff Report webpage*). It included the following passages (all pleaded passages are set out in context in the appendix):

Report #295712

Report: Janice Duffy — Psychic Stalker! Psychics Beware of Australian Psychic Stalker!

Reported by: (Riverton Wyoming)

Janice Duffy — Psychic Stalker! Psychics Beware of Australian Psychic Stalker! Janice Duffy Stalked me on the computer for several months. She uses the name Janice and other phoney names and keeps on sending you her name over and over again. I know of her because she stalked me on the psychic website Kasamba and other websites. I am sad to say that she has stalked other psychics as well. Australia Adalade internet.

...

Psychics must beware of a psychic stalker named Janice Duffy. ... She threatens psychics to abide by her rules or else she will blackmail them by writing rip off reports about them. ... She ... harasses psychics over and over again. She will not stop and has a stalker like mentality. She spreads malicious lies and gossip about people in hopes to gain sympathy for her life. She cannot even work right now and has been laid off by the hospital in which she works because she cannot even function on a day to day life. ... She is also someone who spreads lies and says that she is another person from Australia ... She also makes up lies about people dying and committing suicide. ... She ... stalks psychics for more information and if she doesn't get any, she writes fake and phoney information about them online. ... Nobody likes to be stalked and Janice Duffy will not stop until the psychic community becomes aware of who Janice Duffy is and the fact that she has a serious stalking problem. ...

... She is a PHD and should not be using her power to try to harass and talk psychics. She works for a hospital and it's a shame that she knows the rules of the psychic websites and yet stalks psychics continuously on them. Psychics, please beware of this woman. You have been warned. If you wish to file a harassment lawsuit against her for stalking, please write to me and I will give you her real mailing address so that you can call her local police station and have her stopped for stalking. She harasses continuously. ...

Mary anne
Riverton, Wyoming
USA

This report was posted on "Ripoff Report on 12/30/2007 4:00:21 PM and is a permanent record located here: <http://www.ripoffreport.com/psychic/janice-duffy-psychic/janice-duffy-psychic-stalker-98d93.htm>. Ripoff Report has an exclusive license to this report. It may not be copied without the written permission of Ripoff Report.

#1 Story sounds similar to my friend's experience with Janice

Katie — Smalltown (USA)

... Dr Janice Duffy is truly an embarrassment to her profession as a Senior Researcher in Adelaide, Australia.

...

#3 Dr. Janice Duffy uses her government work email address to email anti Kasamba psychic clients.

Katie — Smalltown (USA)

... I can't believe she used her government email for personal purposes and it proves how stupid she is. This will be reported to her superior for breaking the law. ...

84 On 30 December 2007, "Mary Anne" posted a comment on the Ripoff Report website in response to Friend's Husband's 28 December report. She said that "Friend's Husband" was Janice D from Australia and the report of a suicide was false.

85 On 31 December 2007, "Mary anne" posted a second report on the Ripoff Report website (*the second ROR report*). It was given the URL www.ripoffreport.com/psychic/dr-janice-duffy/dr-janice-duffy-stop-the-aust-stalker-deb8p.htm which encompassed comments on the initial report (*the second Ripoff Report webpage*). It included the following passages (all pleaded passages are set out in context in the appendix):

Report: #295925

Report: Dr. Janice Duffy

Reported by: (Riverton Wyoming)

Dr. Janice Duffy Stop the Australian Psychic Stalker Dr. Janice Duffy!!
Adelaide, South Australia Adelaide, South Australia

...

Dr Janice Duffy P.H.D has been stalking psychics for a long time now and she must be stopped. Her harassing emails have caused many psychics to go into hiding because of her blackmailing and forcing psychics to respond to her emails. She is from Adelaide, South Australia and has made numerous rip off reports and has lied about many psychics online. ... If you don't do what she says, then she is known to use blackmail and says that she will write rip off reports about you ... Dr. Janice Duffy has tried to blackmail numerous psychics begging them for free updates and email updates and if you don't respond to her, she starts creating rip off reports with many lies to try to gain sympathy from people who will respond to her posts. ... she has also written fake and deceptive rip off reports about

psychic websites. ... After the first few psychic readings, she tends to write emails to psychics for updates and when she doesn't hear back from you fast enough, she begins to send you hate mail which usually says that she is going to ruin your name and reputation online as a psychic. ...

Mary anne
Riverton Wyoming
U.S.A

This report was posted on Ripoff Report on 12/31/2007 1:54:36 PM and is a permanent record located here: <http://www.ripoffreport.com/psychic/dr-janice-duffy/dr-janice-duffy-stop-the-aust-stalker-deb8p.htm>. Ripoff Report has an exclusive license to this report. It may not be copied without the written permission of Ripoff Report.

...

#2 Australian Dr. Janice Duffy senior researcher stalks Kasamba psychic advisors and uses her Dr. title to allow people to believe that she is being ripped

Mary Anne — Riverton (U.S.A.)

Australian Dr. Janice Duffy senior researcher stalks Kasamba psychic advisors and uses her Dr. title to allow people to believe that she is being ripped off by psychics. She is responsible for most of the false rip off reports created about Kasamba ... Stop stalking psychics doctor Janice Duffy ...

Dr. Janice Duffy is responsible for the numerous fake rip off reports about psychics ... she wants to stalk psychics until she gets her way. ... She is a very sick woman and wants to stalk and destroy Kasamba and their psychics... She won't stop until she is locked up or sued. ... She ... manipulates and threatens people to give her what she wants. ...

As you can see, she is very equipped to stalk psychics and does this on a regular basis. ... She makes up lies and spends her free time stalking ... her obsession cannot end. Stalking is a mental illness and unless she gets treatment, she cannot stop herself. ...

... She is using blackmail and is currently writing and telling others what she is going to be doing. Your name may or may not be on her list. ... Dr. Janice Duffy ... will make it her priority to stalk you. Stalking is a serious illness and she cannot stop until she is medicated or put in jail. ... She ... stalks daily. ... She has been stalking for a long time now ... Please also note that many people in her anti psychic groups feel that she has email hacking software or knows and uses hackers. It is rumoured in some of her anti psychic groups that she tries to get your personal email address and then tries to hack into it. ... What is even more bizarre is that Dr. Janice Duffy has used her government email address to email anti Kasamba clients. This can be tracked by the governments webmaster. We will be forwarding this report to her superiors as a way to gain court evidence that she did indeed write and receive emails from her anti psychic kasamba group members with her government email address; therefore breaking government rules. You cannot use a company's email address for personal purposes. ...

86 Dr Duffy became aware of the existence of an adverse report on the Ripoff Report website upon being told about it by a member of the Kasamba Victims group. She looked at the Ripoff Report website and found a report by Mary anne about her. She undertook an internet search using Yahoo! but did not find a link to Mary anne's report.

87 On 23 March 2008, Dr Duffy created an account on Kasamba in the name of "bad boy" and paid for an online chat session with Master Z. She posed as a 29-year-old man looking for love and received positive predictions which she

regarded as scripted. The next day she participated in an email exchange on Kasamba with Master Z in which she accused Master Z of using scripted readings, which he denied.

88 On 24 March 2008, Dr Duffy under the username “Aussieboy” posted a report on the Ripoff Report website complaining about Master Z and describing the previous night’s online chat session with Master Z. On 26 March 2008, Dr Duffy under the username “Gretal” posted a further report on the Ripoff Report website complaining about Master Z.

89 Between 31 July and 8 August 2008, Dr Duffy under the username “Janice” posted three reports on the Ripoff Report concerning her experiences with psychics including Fruno, Master Z and Powerful Visions.

90 On 15 August 2008, “Dr Jake” of Los Angeles, California posted a report on the Ripoff Report website (*the third ROR report*). It was given the URL www.ripoffreport.com/psychic/dr-janice-duffy/dr-janice-duffy-senior-research-9534.htm which encompassed comments on the initial report (*the third Ripoff Report webpage*). It included the following passages (all pleaded passages are set out in context in the appendix):

Report: #363490

Report: Dr. Janice Duffy

Reported by: (Los Angeles California)

Dr. Janice Duffy Senior Researcher Dr. Janice Duffy Psychic Stalker from the Respiratory Function Unit, Repatriation General Hospital, Adelaide, South Australia

...

Wow, I cannot believe that Janice Duffy is still at it. I had no idea that Janice would still be at this stalking game after all this time. She has stalked me several times on Kasamba. I can’t believe a 52 year old woman would sit around like this writing fake ripoff reports. ...

... She has “ties” to a friend that works in the Australian FBI who helps her to hack emails. She hacked into my account several times on Kasamba and my own personal email account. She seems to work with friends in the Australian government that help her to hack into psychic accounts. ... She even hacks psychic readers from her work place. If she knows your real name, I would get a fraud alert put on your credit report because she knows how to hack. ... She has a crazy obsession with psychics and simply won’t stop harassing them. ...

Dr. jake

Los angeles, California

U.S.A.

This report was posted on Ripoff Report on 8/15/2008 10:36:21 PM and is a permanent record located here: <http://www.ripoffreport.com/psychic/dr-janice-duffy/dr-janice-duffy-senior-research-9534.htm>.

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91 On 17 August 2008, “Susan” of Southampton, New York posted a report on the Ripoff Report website (*the fourth ROR report*). It was given the URL www.ripoffreport.com/psychic/dr-janice-m-duffy-se/dr-janice-m-duffy-dr-janice-8f472.htm which encompassed comments on the initial report (*the fourth Ripoff Report webpage*). It included the following passages (all pleaded passages are set out in context in the appendix):

Report: #363738

Report: Dr. Janice M. Duffy Senior Researcher**Reported by:** (Southampton New York)

Dr. Janice M. Duffy Dr. Janice M. Duffy Senior Researcher Dr. Janice M. Duffy Adelaide, Australia continues to stalk Live person Kasamba Psychics Adelaide, Australia Internet

...

Janice Duffy is coming to New York City ... to purposely stalk Liveperson. ... She sends you multiple emails and goes to your personal websites and stalks and stalks and stalks and stalks and stalks and stalks. It doesn't and will never end. ... The best that she can do with her life is lie, cheat, make false accusations and stalk psychics. ... Dr. Janice M. Duffy from Adelaide Australia is the stalker behind most of the anti-psychic reports here on rip off report. ... She is harassing, stalking and posting lies about psychics daily. ... She is one of these internet wackos that love to sit behind a computer and stalk and stalk and stalk. ... She stalks, taunts and harasses you over and over and over and over and over again...

Susan

Southampton, New York

U.S.A.

This report was posted on Ripoff Report on 8/17/2008 12:09:41 AM and is a permanent record located here: <http://www.ripoffreport.com/psychic/dr-janice-m-duffy-se/dr-janice-m-duffydr-janice-81472.htm>

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92 On 20 December 2008, "Fiona" of Houston, Texas posted a report on the Ripoff Report website (*the fifth ROR report*). It was given the URL www.ripoffreport.com/astologers-psychics/janice-duffy-kasamba/janice-duffy-kasamba-liveperson-dc63c.htm which encompassed comments on the initial report (*the fifth Ripoff Report webpage*). Its relevant passages are set out in context in the appendix.

93 On 28 January 2009, "Mia" of LA, Alabama posted a report on the Ripoff Report website (*the sixth ROR report*). It was given the URL www.ripoffreport.com/psychic/-fortune-tellers/janice-duffy-her-gro/janice-duffy-her-group-and-kas-afzaf.htm which encompassed comments on the initial report (*the sixth Ripoff Report webpage*). Its relevant passages are set out in context in the appendix.

Search engine searches

94 On 5 January 2009, Dr Duffy lodged a claim for workers compensation with her employer the Department of Health. Jed Shearer became her case manager.

95 On 8 January 2009, Mr Shearer conducted a web search of Dr Duffy's name using whichever search engine was used by the Department of Health. He saw links to the Ripoff Report website. He looked on that website and saw adverse reports about Dr Duffy. He engaged Kingswood Investigations to interview her concerning her workers compensation claim.

96 On 6 February 2009, Kingswood Investigations interviewed Dr Duffy. The investigator asked a number of questions about her interest in psychics. This prompted her to search for her name using the Yahoo! search engine in March or April 2009. She saw references to adverse reports on the Ripoff Report website.

97 In mid-2009, Dr Duffy learnt of the existence of the Complaints Board website. This website contained four webpages the subject of this action:

1. www.complaintsboard.com/suspicious-companies/dr-janice-m-duffy-senior-researcher-a55917.html (*the first Complaints Board webpage*);
2. www.complaintsboard.com/suspicious-companies/dr-janice-duffy-a55921.html (*the second Complaints Board webpage*);
3. www.complaintsboard.com/suspicious-companies/janice-duffy-psychic-stalker-psychics-beware-of-the-australian-psychic-stalker-a55920.html (*the third Complaints Board webpage*);
4. www.complaintsboard.com/suspicious-companies/page/8 (*the fourth CB webpage*).³²

98 Based on printouts of webpages downloaded by Dr Duffy on 8 September 2009, the first Complaints Board webpage was as follows:

<http://www.complaintsboard.com/suspicious-companies/dr-janice-m-duffy-senior-researcher-a55917.html>

COMPLAINTS BOARD

Dr Janice M Duffy Senior Researcher + Submit complaint

Dr Janice M Duffy Senior Researcher

In case if you have experienced any problems with Dr Janice M Duffy Senior Researcher, please report immediately by filling a Complaint Form.

and the second Complaints Board webpage was as follows:

www.complaintsboard.com/suspicious-companies/dr-janice-duffy-a55921.html

COMPLAINTS BOARD the

Dr Janice Duffy + Submit complaint

Dr Janice Duffy

In case if you have experienced any problems with Dr Janice Duffy, please report immediately by filling a Complaint Form.

99 Dr Duffy also learnt of the existence of the 123 People website. This website contained two webpages the subject of this action:

- www.123people.com/s/janice+duffy (*the first 123 People webpage*);
- www.123people.com/s/janice+person (*the second 123 People webpage*).³³

Communications with Google

100 On 7 September 2009, Dr Duffy sent an email to Google Reception in Sydney (reception-au@google.com) saying that defamatory statements about her had been published on the Ripoff Report website and requesting that links be removed. She received a reply requesting adequate detail for Google to follow up on her request.

101 On 8 September 2009, Dr Duffy conducted a search on the Google Australian website for “Dr Janice Duffy”. The search returned the following paragraphs containing snippets and links to the first three Ripoff Report webpages, the first and second Complaints Board webpages and the first 123 People webpage:

[1] [Rip-off Report By Consumers For Consumers Dr Janice Duffy Stop ...](#)
 Dr Janice Duffy Stop the Australian Psychic Stalker Dr Janice M Duffy
 Adelaide Australia

32 These webpages are items C1 to C4 respectively at [11]-[13] above.

33 These webpages are hyperlinked by the paragraphs P1 and P2 respectively at [11] above.

www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-stop-the-aust-deb8p.htm Cached

- [2] Ripoff Report By Consumers For Consumers Dr Janice Duffy Psychic Sugarpie (1/1/2008] Dr Janice M Duffy uses her government work email address to email anti-Kasamba psychics clients Katie [1/2/2008)...
www.ripoffreport.com/...Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm

...

- [4] Dr Janice M Duffy Senior Researcher
 Are you also a victim of the Dr Janice M Duffy Senior Researcher? Submit a complaint to help other consumers to be educated and don't let them get away ...
www.complaintsboard.com/.../dr-janice-m-duffy-senior-researcher-a55917.html United States Cached

- [5] Dr Janice Duffy
 Are you also a victim of the Dr Janice Duffy? Submit a complaint to help other consumers to be educated and don't let them get away ...
www.complaintsboard.com/suspicious.../dr-janice-duffy-a55921.html Cached

+ Show more results from www.complaintsboard.com

- [6] Janice Duffy — Email Address, Phone Number, Everything! 123 people.com
 Dr Janice Duffy Stop the Australian Psychic Stalker Dr Janice Duffy!...Dr Janice Duffy uses her government work email address to email anti-Kasamba ...
www.123people.com/s/janice+duffy — United States Cached Similar

...

- [12] Rip-off Report Dr Janice Duffy Senior Researcher Dr Janice ...
 15 Aug 2008...Dr Janice Duffy senior researcher Dr Janice Duffy Psychic Stalker from the Respiratory Function Unit Repatriation General Hospital ...
www.ripoffreport.com/reports/0/RipOff363490.htm Cached Similar

102 On 8 September 2009, Dr Duffy sent an email to Google Reception attaching a document entitled “Publication of Defamatory Reports on the Internet and their Listing on Google”. Dr Duffy complained that each of the six Ripoff Reports and the first and second Complaints Board webpages were defamatory of her and requested that Google remove every URL that linked to and derived from those publications. She reproduced her search results undertaken on 8 September 2009, the relevant portions of which are reproduced above. She set out the full URL and reproduced by cutting and pasting the initial report for each of the six Ripoff Report webpages and the first and second Complaints Board webpages.

103 On 10 September 2009, Google Reception sent an email to Dr Duffy acknowledging receipt of her 8 September email saying that her request had been forwarded to Google’s removals team in the US for review. Dr Duffy replied requesting contact details for Google’s removals team. She received a reply providing the email address. She sent an email to Google’s removals team requesting urgent attention to her removal request lodged through Google Australia.

104 On 12 September 2009, Dr Duffy sent an email to Google Australia asking for details of Google's legal team. These details were sent to her and she emailed Google's legal team on 12 September 2009.

105 On 15, 18 and 19 September 2009, Google's removals team sent standard form emails to Dr Duffy requesting information in a specified format identifying amongst other things the URL, text claimed to violate her rights and reason therefor for each allegedly illegal search result.³⁴

106 On 18 September 2009, Google's removals team sent a standard form email in response to Dr Duffy's 12 September 2009 email asking for details of Google's legal team. Google's email acknowledged receipt of Dr Duffy's note and recognised her concern but said there was nothing Google could do to remove the offending content without the cooperation of the site's webmaster.

107 On 22 and 23 September 2009, Dr Duffy sent by email and facsimile respectively to Google's removals team a formal request for removal of links to defamatory material in the format requested by Google. She said that she had received legal advice that her previous removal request was sufficient but she resubmitted the request in the form requested by Google despite the fact that it was not required by law. She quoted passages from the text and provided URLs for additional webpages beyond those provided on 8 September³⁵ as follows:

R9 217.17.158.39/reports/0/295/RipOff0295712.htm

C3 www.complaintsboard.com/.../janice-duffy-psychic-stalker-psychic-beware-of-Australian-psychic-stalker-a55920.html

C4 www.complaintsboard.com/suspicious-companies/page/8

P1 www.123people.com/s/janice+duffy

M2 www.isthisyour.name/janice_duffy.htm

108 On 28 September 2009, Dr Duffy sent an email to Google's removals team requesting acknowledgment of her resubmitted request. Further emails were sent on 29 September and 3 October.

109 On 7 October 2009, Google's removals team sent a standard form email to Dr Duffy in response to her 28 September 2009 email acknowledging receipt of her note and recognising her concern but saying there was nothing Google could do to remove the offending content without the cooperation of the site's webmaster.

110 On 13 January 2010, Dr Duffy undertook searches on the Google Australian website. The searches returned (amongst others) snippets from and links to the first and second Ripoff Report webpages, second Complaints Board webpage and the two 123 People webpages. The first two pages³⁶ of the search for "Dr Janice Duffy" returned the following relevant paragraphs:

[1] Rip-off Report Dr Janice M Duffy Stop the Australian Psychic ...

Dr Janice Duffy Stop the Australian Psychic Stalker Dr. Janice M Duffy
Adelaide South Australia Adelaide South Australia

34 I infer that these three separate emails were generated as a result of three separate emails from Dr Duffy.

35 Dr Duffy also quoted passages from the text and provided URLs for several items addressed on 8 September 2009.

36 Dr Duffy also sues for paragraphs on pages beyond the first two pages (in the case of this search the fourth page). I do not reproduce paragraphs for any searches beyond the first two pages because ultimately I find that Dr Duffy has not proved publication to any publishee of paragraphs on pages beyond the first two pages see.

www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-stop-the-aust-deb8p.htm Cached

[2] [Ripoff Report Janice Duffy — Psychic Stalker Psychics Beware Of ...](#)

Dr Janice Duffy is truly an embarrassment to her profession as a Senior Researcher in Adelaide Australia #2 Consumer Comment. Respond to this report ...

www.ripoffreport.com/.../Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm Cached

+ Show more results from www.ripoffreport.com

...

[4] [Dr Janice Duffy](#)

Are you also a victim of the Dr Janice Duffy? Submit a complaint to help other consumers to be educated and don't let them get away with it!

www.complaintsboard.com/suspicious.../dr-Janice-duffy-a55921.html Cached

...

[6] [Janice Duffy — Email, Address, Phone Number, everything! 123 people.com](#)

Dr Janice Duffy Stop the Australian Psychic Stalker Dr Janice Duffy!...Dr Janice Duffy uses her government work email address to email anti-Kasamba ...

www.123people.com/s/janice+duffy — United States Cached Similar

...

[14] [Janice Person — Email Address, Phone Numbers, everything ...](#)

Dr Janice Duffy Stop the Australian Psychic Stalker Dr Janice Duffy!...american man was placed there as a means of identifying this Janice person!...

www.123people.com/s/janice+person — United States

111 The first two pages of the search for “Janice Duffy” returned the following relevant paragraphs:

[1] [Ripoff Report: Janice Duffy — Psychic Stalker! Psychics Beware Of ...](#)

Psychics must beware of a psychic stalker named Janice Duffy. She is a woman that comes from Australia and writes phoney rip off reports on psychics ...

www.ripoffreport.com/.../Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm Cached

[2] [Rip-off Report: Dr Janice Duffy Stop the Australian Psychic ...](#)

Dr Janice Duffy Stop the Australian Psychic Stalker Dr. Janice Duffy!! Adelaide, South Australia Adelaide, South Australia

www.ripoffreport.com/...Janice-Duffy/dr-janice-duffy-stop-the-aust-deb8p.htm Cached

...

[5] [Dr Janice Duffy](#)

Are you also a victim of the Dr Janice Duffy? Submit a complaint to help other consumers to be educated and don't let them get away with it.

www.complaintsboard.com/suspicious.../dr-Janice-Duffy-a55921.html Cached

...

[19] [Dr Janice Duffy — Psychic Stalker! Psychics Beware Of Australian ...](#)

Are you also a victim of the Janice Duffy — Psychic Stalker! Psychics Beware Of Australian Psychic Stalker!? Submit a complaint to help other consumers to....

www.complaintsboard.com/.../janice-duffy-psychic-stalker-psychic-beware-of-australian-psychic-stalker-a55920.html Cached

112 On 12 July 2010, Dr Duffy sent a concerns notice pursuant to s 14(2) of the *Defamation Act 2005* (SA) to Google’s legal department in the United States. This was largely repetitious of the September 2009 notifications. She quoted passages from the text and provided URLs for additional webpages beyond those provided in September 2009 as follows:

R7 www.ripoffreport.com/.../liveperson-kasamba-unethical-c-wa8da.htm

C3 www.complaintsboard.com/.../janice-duffy-psychic-stalker-psychic-beware-of-Australian-psychic-stalker-a55920.html

P2 www.123people.com/s/janice+person

M3 Kasamba.pissedconsumer.com/stop-kasamba-liveperson.../1.html

113 On 13 October 2010, Dr Duffy undertook searches on the Google Australian website. The searches returned (amongst others) snippets from and links to the first to fourth ROR reports and the Complaints Board and 123 People websites. The first two pages of the search for “Dr Janice Duffy” returned the following relevant paragraphs:

[1] [Dr Janice Duffy Rip-off Report #295925...](#)

Dr Janice Duffy Stop the Australian Psychic Stalker Dr. Janice Duffy!! Adelaide South Australia Adelaide South Australia

www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-stop-the-aust-deb8p.htm United States Cached

[2] [Janice Duffy — Psychic Stalker! Psychics Beware Of Australian...](#)

Dr Janice Duffy is truly an embarrassment to her profession as a Senior ...

www.ripoffreport.com/.../Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm Cached

...

[4] [Dr Janice M Duffy Senior Researcher](#)

Are you also a victim of the Dr Janice M Duffy Senior Researcher? Submit a complaint to help other consumers to be educated and don’t let them get away...

www.complaintsboard.com/.../dr-janice-m-duffy-senior-researcher-a55917.html United States Cached

[5] [Dr Janice Duffy](#)

Are you also a victim of the Dr Janice Duffy? Submit a complaint to help...

www.complaintsboard.com/.../dr-janice-duffy-a55921.html United States Cached

[6] [Janice Duffy — Email, Address, Phone numbers, everything ...](#)

4 Dec 1998... Dr Janice Duffy Stop the Australian Psychic Stalker Dr Janice Duffy!! Adelaide, South Australia Adelaide, South Australia...

www.123people.com/s/janice+duffy — United States

[7] [All about “Janice Duffy”](#)

Dr Janice Duffy Review Rip-off Report #295925. Dr Janice Duffy Stop the Australian Psychic Stalker Dr Janice Duffy!! Adelaide, South Australia Adelaide...

www.is.this.your.name/janice_duffy Cached

...

[18] [Dr. Janice Duffy Review Rip-off Report #363490](#)

15 Aug 2008...Dr Janice Duffy senior researcher Dr Janice Duffy
 Psychic Stalker from the Respiratory Function Unit Repatriation General
 Hospital...
www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-senior-researcher-c9534.html United States Cached

114 The first two pages of the search for “Janice Duffy” returned the following relevant paragraphs:

[1] [Janice Duffy — Psychic Stalker! Psychics Beware Of Australian](#)

...
 30 Dec 2007 Janice Duffy Psychic Stalker! Psychics beware of
 Australian psychic stalker! Janice Duffy stalked me on the computer for
 several months
www.ripoffreport.com/.../Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm Cached

[12] [Dr Janice Duffy Rip-off Report #295925](#)

Dr Janice Duffy Stop the Australian Psychic Stalker Dr. Janice Duffy!!
 Adelaide, South Australia Adelaide, South Australia
www.ripoffreport.com/...Janice-Duffy/dr-janice-duffy-stop-the-aust-deb8p.htm Cached

...

[15] [Dr Janice Duffy](#)

Are you also a victim of the Dr Janice Duffy? Submit a complaint to
 help other consumers to be educated and don't let them get away with it!
www.complaintsboard.com/.../dr-janice-duffy-a55921.html
 United States Cached

115 On 16 October 2010, Dr Duffy undertook further searches on the Google
 Australian website. The first two pages of the search for “Dr Janice Duffy”
 returned the following relevant paragraphs:

[1] [Dr Janice Duffy Rip-off Report #295925](#)

Dr Janice Duffy Stop the Australian Psychic Stalker Dr. Janice Duffy!!
 Adelaide South Australia Adelaide South Australia
www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-stop-the-aust-deb8p.htm United States Cached

[2] [Janice Duffy — Psychic Stalker! Psychics Beware Of Australian...](#)

Dr Janice Duffy is truly an embarrassment to her profession as a
 Senior ...
www.ripoffreport.com/.../Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm Cached

+ [Show more results from www.ripoffreport.com](#)

...

[4] [Janice Duffy — Email Address, Phone numbers, everything ...](#)

Dr Janice Duffy Stop the Australian Psychic Stalker Dr Janice Duffy!!
 Adelaide, South Australia Adelaide, South Australia...
www.123people.com/s/janice+duffy — United States

[5] [Dr Janice M Duffy Senior Researcher](#)

Are you also a victim of the Dr Janice M Duffy Senior Researcher?
 Submit a complaint to help other consumers to be educated and don't let
 them get away...
www.complaintsboard.com/.../dr-janice-m-duffy-senior-researcher-a55917.html Cached

[6] [Dr Janice Duffy](#)

Are you also a victim of the Dr Janice Duffy? Submit a complaint to help ...

www.complaintsboard.com/.../dr-janice-duffy-a55921.html Cached
+ Show more results from www.complaintsboard.com

...

[17] [Dr Janice Duffy Review Rip-off Report #363490](#)

15 Aug 2008...Dr Janice Duffy senior researcher Dr Janice Duffy Psychic Stalker from the Respiratory Function Unit Repatriation General Hospital...

www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-senior-researcher-c9534.html United States Cached

116 The first two pages of the search for “Janice Duffy” returned the following relevant paragraphs:

[1] [Janice Duffy — Psychic Stalker! Psychics Beware Of Australian...](#)

30 Dec 2007 Janice Duffy Psychic Stalker! Psychics beware of Australian psychic stalker! Janice Duffy stalked me on the computer for several months...

www.ripoffreport.com/.../Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm Cached

...

[11] [Dr Janice Duffy Rip-off Report #295925](#)

Dr Janice Duffy Stop the Australian Psychic Stalker Dr. Janice Duffy!! Adelaide South Australia Adelaide South Australia

www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-stop-the-aust-deb8p.htm United States Cached

...

[15] [Dr Janice Duffy](#)

Are you also a victim of the Dr Janice Duffy Senior Researcher? Submit a complaint to help other consumers to be educated and don't let them get away with it!...

www.complaintsboard.com/.../dr-janice-m-duffy-senior-researcher-a55917.html United States Cached

117 On 24 October 2010, Dr Duffy undertook further searches on the Google Australian website. The first two pages of the search for “Dr Janice Duffy” returned the following relevant paragraphs:

[1] [Dr Janice Duffy Rip-off Report #295925](#)

Dr Janice Duffy Stop the Australian Psychic Stalker Dr. Janice Duffy!! Adelaide South Australia Adelaide South Australia

www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-stop-the-aust-deb8p.htm United States Cached

[2] [Dr Janice Duffy Review Rip-off Report #363490](#)

Dr Janice Duffy Senior Researcher Dr Janice Duffy Psychic Stalker from the ...

www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-senior-researcher-c9534.html United States Cached

[3] [Janice Duffy — Psychic Stalker! Psychics Beware Of Australian...](#)

Dr Janice Duffy is truly an embarrassment to her profession as a Senior ...

www.ripoffreport.com/.../Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm Cached

+ Show more results from www.ripoffreport.com

...

[6] [Dr Janice M Duffy Senior Researcher](#)

Are you also a victim of the Dr Janice M Duffy Senior Researcher? Submit a complaint to help other consumers to be educated and don't let them get away...

www.complaintsboard.com/.../dr-janice-m-duffy-senior-researcher-a55917.html Cached

[14] [Janice Duffy — Email Address, Phone Numbers, everything ...](#)

Dr Janice Duffy Stop the Australian Psychic Stalker Dr Janice Duffy!! Adelaide, South Australia Adelaide, South Australia...

www.123people.com/s/janice+person — United States

118 The first two pages of the search for “Janice Duffy” returned the following relevant paragraphs:

[1] [Janice Duffy — Psychic Stalker! Psychics Beware Of Australian...](#)

30 Dec 2007 Janice Duffy Psychic Stalker! Psychics beware of Australian psychic stalker! Janice Duffy stalked me on the computer for several months...

www.ripoffreport.com/.../Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm Cached

[2] [Dr Janice Duffy Rip-off Report #295925](#)

Dr Janice Duffy Stop the Australian Psychic Stalker Dr. Janice Duffy ... Adelaide South Australia Adelaide South Australia

www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-stop-the-aust-deb8p.htm United States Cached

[+ Show more results from www.ripoffreport.com](#)

...

[18] [Dr Janice M Duffy Senior Researcher](#)

Are you also a victim of the Dr Janice M Duffy Senior Researcher? Submit a complaint to help other consumers to be educated and don't let them get away...

www.complaintsboard.com/.../dr-janice-m-duffy-senior-researcher-a55917.html Cached

119 On 10 November 2010, Dr Duffy undertook a further search on the Google Australian website for “Dr Janice Duffy”. The first two pages of the search returned the following relevant paragraphs:

[1] [Dr Janice Duffy Rip-off Report #295925](#)

Dr Janice Duffy Stop the Australian Psychic Stalker Dr. Janice Duffy!! Adelaide South Australia Adelaide South Australia

www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-stop-the-aust-deb8p.htm United States Cached

[2] [Dr Janice Duffy Review Rip-off Report #363490](#)

Dr Janice Duffy Senior Researcher Dr Janice Duffy Psychic Stalker from the ...

www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-senior-researcher-c9534.html United States Cached

[3] [Janice Duffy — Psychic Stalker! Psychics Beware Of Australian...](#)

Dr Janice Duffy uses her government work email address to email anti...

www.ripoffreport.com/.../Janice-Duffy/janice-duffy-psychic-stalker-98d93.htm Cached

...

[6] [Dr Janice M Duffy Senior Researcher](#)

Are you also a victim of the Dr Janice M Duffy Senior Researcher? Submit a complaint to help other consumers to be educated and don't let them get away...

www.complaintsboard.com/.../dr-janice-m-duffy-senior-researcher-a55917.html Cached

120 On 17 December 2010, Dr Duffy undertook a further search on the Google Australian website for “Dr Janice Duffy”. The first two pages of the search returned the following relevant paragraphs:

[1] Dr Janice Duffy Rip-off Report #295925

Dr Janice Duffy Stop the Australian Psychic Stalker Dr. Janice Duffy!! Adelaide South Australia Adelaide South Australia

www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-stop-the-aust-deb8p.htm United States Cached

[2] Dr Janice Duffy Review Rip-off Report #363490

Dr Janice Duffy Senior Researcher Dr Janice Duffy Psychic Stalker from the ...

www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-senior-researcher-c9534.html United States Cached

+ [Show more results from www.ripoffreport.com](#)

...

[8] Dr Janice M Duffy Senior Researcher

Are you also a victim of the Dr Janice M Duffy Senior Researcher? Submit a complaint to help other consumers to be educated and don't let them get away...

www.complaintsboard.com/.../dr-janice-m-duffy-senior-researcher-a55917.html Cached

121 On 16 February 2011, Dr Duffy instituted this action in the District Court against Google Inc.

122 On 7 March 2011, Google removed from the Google Australian website (but not the Google generic website) paragraphs relating to the first four Ripoff Report webpages.

123 On 31 May 2011, Google removed from the Google Australian website (but not the Google generic website) paragraphs relating to the fifth Ripoff Report webpage.

124 In June 2011, Dr Duffy undertook a search for “janice duffy” on the Google Australian website and Google generic website. She noted that the Autocomplete utility produced alternative phrases in a box immediately below the search box, one of which was “janice duffy psychic stalker”. Printouts of searches undertaken on 7 July 2011 and various other dates showing this Autocomplete term were tendered.

125 On 15 July 2011, Dr Duffy’s solicitors wrote to Google’s solicitors enclosing a printout showing the result of an 18 June 2011 search on the Google generic website showing the Autocomplete alternative “janice duffy psychic stalker” and requested removal from publication of the defamatory phrase “janice duffy psychic stalker”.

126 On or just before 9 October 2011, Dr Duffy created a blog website www.drjaniceduffy.com that referred amongst other things to internet defamation of her.

127 On 2 November 2011, Google removed from the Google Australian website (but not the Google generic website) paragraphs relating to the sixth Ripoff Report webpage.

128 On 21 November 2011, an article by Verity Edwards appeared in *The Australian* newspaper about this action by Dr Duffy against Google.

129 On 2 April 2012, an article by Rachel Wells appeared in *The Age* and *Sydney Morning Herald* newspapers about this action by Dr Duffy against Google.

130 On 11 January 2013, Dr Duffy undertook a search for “Janice Duffy” on the Google Australian website. It produced six search terms related to Janice Duffy at the bottom of the first page. The first related search term was “Janice Duffy psychic stalker”.

131 In May 2013, references to the ROR reports on the Google generic website by their URLs were removed. Subsequently references to the same webpages but with different URLs reappeared on the Google generic website.

The trial

The plaintiff’s witnesses

132 Dr Duffy was cross-examined at length on topics relevant to Google’s justification defence. Google contends that there were instances in which her evidence on some of those topics was unreliable or untruthful. Ultimately, my findings and conclusions do not turn on the credit of Dr Duffy’s evidence.

133 A number of medical reports were tendered that show that over the years Dr Duffy has been diagnosed as suffering from major depressive disorder, dysthymic disorder, anxiety and bipolar disorder. It was evident that she was experiencing symptoms of some of these conditions while giving evidence. She also has obvious character traits that bore on her manner of giving evidence. In addition, she was suffering from some of these conditions at the time of some of the events about which she gave evidence which were likely to have affected the accuracy and reliability of her perception and recollection of those events.

134 Dr Duffy was not an exemplary witness. She was at times argumentative or evasive and was often highly emotional.

135 Notwithstanding the above infirmities, I generally accept Dr Duffy’s evidence insofar as it is relevant to all issues other than justification. Her evidence was not challenged insofar as it relates to such issues. She generally gave a coherent and plausible account of chronological events other than those relevant to justification.

136 In relation to events relevant to justification, with one exception I consider that Dr Duffy gave evidence to the best of her recollection. I do not accept that she gave full and frank evidence in relation to her communications under the usernames “Oswald Billet” and its contractions and “Friend’s Husband” with and about SunshiningUponYou. In relation to other events relevant to justification, in broad terms I accept her evidence although in a number of instances that evidence was vague as to detail for the reasons summarised above.

137 Ms Palumbo was a straightforward and impressive witness. I accept her as an honest and reliable witness.

138 Mr Trkulja was passionate in his distrust of and dislike for Google. I accept his evidence that he did not give false evidence to assist Dr Duffy’s case or to harm Google’s case. There was an important conflict between Mr Trkulja’s written evidence-in-chief and oral cross-examination. In the former, he said that

he first heard of Dr Duffy when his attention was drawn to an article in *The Australian* in November 2011, he then searched for her name on Google's Australian website and saw and followed links to the Ripoff Report website, but was unable to get in contact with her at that time. In cross-examination, he said that he did not hear of Dr Duffy until April 2012 and only saw the article in *The Australian* in November 2012. His evidence in cross-examination in this respect did not assist Dr Duffy's case in any way. Nor is there any reason to believe that he thought that it would. His evidence in cross-examination was unsatisfactory in this respect and I do not accept it as reliable. Nevertheless, I accept the balance of his evidence as honest and reliable.

139 Dr Duffy also called as witnesses Catherine Miller, one of her former ultimate bosses at the Department of Health; Belinda Loh, Jed Shearer and Grant Simpson, who handled her WorkCover claim on behalf of the Department of Health; Jonathan Miller, her barrister in relation to that WorkCover claim; and Dolores Costello from the Public Service Association, who assisted her in relation to a workplace bullying claim. There was no challenge to the evidence of any of these witnesses and I accept them all as honest and reliable witnesses.

The defendant's witnesses

140 Google called as a witness Vaughn Beckett Madden-Woods, who is employed by Google. He worked on snippet-generating software from 2007 to 2011 and since 2012 has worked on search software. Since mid-2010 he has also worked in the engineering team that processes legal removals requests.

141 Mr Madden-Woods gave evidence about the web and the operation of the Google Search Engine. He has no involvement in the receipt by Google of external requests for removal of webpages from Google search results or decision-making by Google in relation thereto, which is performed by Google's legal team. However, he gave evidence about the process from receipt of a removal request from the legal team through to implementation of the removal.

142 Google also called as a witness Michael Herscovici, who is employed by Google Israel Ltd. He has worked since 2008 as technical legal manager for Google's Autocomplete utility.

143 Mr Herscovici gave evidence about the operation of the Autocomplete utility. He gave evidence about the process from receipt of a removal request for Autocomplete words from the legal team (who made the relevant decision) through to implementation of the removal.

144 There was no challenge to the evidence of either of these witnesses and I accept them both as honest and reliable witnesses.

The trial on liability

145 Near the beginning of the trial, with the consent of the parties I directed that the trial was to proceed on liability only, leaving damages and associated issues to be addressed at a subsequent trial if Dr Duffy succeeded on liability.

146 The issues that I directed were to be addressed at a subsequent trial were the defences of triviality³⁷ and time limitation,³⁸ Dr Duffy's application for an extension of time to institute the action,³⁹ and issues of causation and quantum of loss.

37 *Defamation Act 2005 (SA)*, s 31.

38 *Limitation of Actions Act 1936 (SA)*, s 37(1).

39 *Limitation of Actions Act 1936 (SA)*, ss 37(2) and 48.

The application to amend the defence

147 At the end of the trial, Google applied for permission to amend its defence of justification. At that point, its justification plea was confined to the stalking, harassment, government email misuse, injury infliction and reputation tarnishing imputations. Google sought to expand the plea to justify additional imputations including that Dr Duffy used phoney names for deception; disseminated lies; made unfair, inaccurate and damaging reports about psychics; behaved in a manner requiring complaints against her to protect consumers; and is someone of whom to be wary. Google also sought to add additional particulars to support the expanded and existing pleas by reference to Dr Duffy's communications with Kasamba administrators and on the Kasamba website.

148 Dr Duffy opposed the grant of permission on the ground that the application was made too late and that she would have conducted her case differently if it had been made before or at the commencement of trial. I reserved my decision on the grant of permission to be addressed in my reasons for judgment.

149 By way of background, the Department of Health produced on subpoena documents relating to Dr Duffy that were inspected by both parties before trial. Google then applied for permission to amend its justification defence to add a plea of justification in respect of the government email misuse imputation and to rely on the Kasamba report in support of its existing and extended justification pleas. Google explained the lateness of the application by reference to its recent receipt of the Department of Health documents produced on subpoena. Ultimately, Dr Duffy did not oppose the application and I granted permission to amend the defence in these respects.

150 The trial proceeded over six days from 22 to 29 June 2015 during which all of the evidence was completed. The trial was then adjourned for the parties to prepare written closing addresses and to make supplementary oral closing addresses on 6 and 7 August 2015.

151 Google completed its oral closing address at the end of 6 August 2015. Towards the end of that oral closing address, Google made an oral application for permission to amend its justification defence as summarised above.

152 In *Aon Risk Services Australia Ltd v Australian National University*,⁴⁰ the High Court identified the principles to be applied in determining a late application to amend a defence.

153 In *Channel Seven Adelaide Pty Ltd v Manock*,⁴¹ Bleby J (with whom White J agreed) summarised the factors to be taken into account as follows:⁴²

- (1) Whether there has been undue delay in making the application;
- (2) The extent to which there will be wasted public resources in granting the amendment;
- (3) Whether there will be inefficiency occasioned by the need to revisit interlocutory processes;
- (4) Whether a trial date would need to be vacated or a trial adjourned;
- (5) Whether there is any satisfactory reason for the delay in applying;
- (6) Whether the point to be raised by the amendment would be raised in any event at the trial;

40 *Aon Risk Services Australia Ltd v Australian National University* (2009) 239 CLR 175.

41 *Channel Seven Adelaide Pty Ltd v Manock* [2010] SASFC 59.

42 *Channel Seven Adelaide Pty Ltd v Manock* [2010] SASFC 59 at [46].

- (7) The likelihood of strain and uncertainty being imposed on the litigants;
- (8) Whether any further delay would undermine confidence in the administration of civil justice;
- (9) Any other prejudice likely to be suffered by the other party;
- (10) The additional costs likely to be incurred.

(Citations omitted.)

154 Google sought to explain the late making of the application by contending that the evidentiary basis for it only emerged during cross-examination of Dr Duffy. However, it is the documentary material that has been in Google's possession since before the commencement of trial that forms the evidentiary basis for the proposed additional justification pleas. The cross-examination was based on that documentary material. In addition, even if the evidentiary basis had emerged during cross-examination of Dr Duffy, that does not explain Google's failure to apply for permission to amend at the end of Dr Duffy's case or before written closing addresses. The delay is very substantial and there is no satisfactory explanation for it.

155 I accept that Dr Duffy conducted her case at trial on the basis that the truth of the imputations that she had been disseminating lies, using phoney names for deception and making unfair, inaccurate and damaging reports about psychics was not an issue at trial, and this impacted on her decision not to call any other witnesses on the issue of justification. Dr Duffy may well have conducted her case at trial differently if justification had been in issue in respect of these other imputations, including the possibility of calling other witnesses. It is impossible to make a definitive finding about this but there is a real possibility that Dr Duffy has been prejudiced in this manner.

156 Weighing all of the relevant factors, permission to amend is refused.

Elements of the tort

157 The common law tort of defamation⁴³ is comprised by publication by the defendant to another person of matter defamatory of the plaintiff.⁴⁴

158 The tort can be divided up into the following ingredients:

1. the defendant participates in publication to a third party of a body of work;⁴⁵
2. the body of work contains a passage alleged to be defamatory;
3. the passage conveys an imputation;
4. the imputation is about the plaintiff;
5. the imputation is damaging to the plaintiff's reputation.

159 The first ingredient involves a physical and a mental element. The physical element is that the defendant by his or her conduct objectively participates in communication of the work to a third party. It is sufficient participation if the defendant takes one step in the overall process of communication which

43 The separate common law torts of libel and slander have been merged by s 7 of the *Defamation Act 2005 (SA)*. Except to the extent that the Act provides otherwise, the common law is preserved: s 6.

44 *Lee v Wilson & Mackinnon* (1934) 51 CLR 276 at 287-290 per Dixon J; *Dow Jones & Co Inc v Gutnick* (2002) 210 CLR 575 at [25]-[27] per Gleeson CJ, McHugh, Gummow and Hayne JJ; *Radio 2UE Sydney Pty Ltd v Chesterton* (2009) 238 CLR 460 at [1] per French CJ, Gummow, Kiefel and Bell JJ.

45 The body of work may consist of words, gestures, pictures or anything else capable of conveying an imputation.

requires concurrent or cumulative steps by others. The mental element is that the defendant intends or knows that the work will be communicated to a third party or is reckless or careless as to such communication occurring as a result of her or his conduct.⁴⁶ It may be that the onus of proof as to this mental element lies on the defendant.⁴⁷

160 The second ingredient has no separate existence from the first ingredient in the simple case where the entire communication consists of a few spoken or written words and the entire communication is alleged to be defamatory. However, in a complex case where the relevant passage is part of a larger body of work or there is an issue whether it is part of the body of work at all, it is necessary to distinguish between the defendant's conduct and state of mind in relation to the relevant passage and conduct and state of mind in relation to the larger body of work.

161 The physical element of the second ingredient is that the body of work contains the relevant passage. This will usually be obvious but there will be cases in which it will be controversial whether the passage is incorporated into the body of work. The mental element depends on whether the defendant is a primary or secondary publisher. If the defendant is a primary publisher, there is strict liability in respect of the second ingredient.⁴⁸ If the defendant is a secondary publisher, there is a mental element, namely that the defendant intends or knows that the work contains the passage in question or is reckless or careless as to its containing such a passage.⁴⁹ The onus of proof as to this mental element lies on the defendant.⁵⁰ This aspect of the cause of action in defamation is commonly referred to as the defence of innocent dissemination.⁵¹ I shall refer to it instead as the secondary publisher doctrine or the innocent dissemination doctrine.

162 The third ingredient is that the relevant passage conveys an imputation. The test is objective: it is the understanding that would be formed by ordinary, reasonable recipients of the communication as assessed by the trier of fact.⁵² In general, there is strict liability in respect of the third ingredient; it does not matter whether the defendant intends, knows or ought to know that the matter conveys the imputation in question.⁵³

163 A defendant is, as a general rule, liable for a publication notwithstanding that she or he is manifestly only repeating or referring to a statement made by

46 *Huth v Huth* [1915] 3 KB 32 at 38-39 per Lord Reading CJ, 42-45 per Swinfen Eddy LJ and 46-47 per Bray J; *McNicoll v Grandy* [1932] 1 DLR 225 at 230 per Anglin CJC (with whom Rinfret, Lamont and Cannon JJ agreed) and 231-232 per Duff J; *Thompson v Australian Capital Television Pty Ltd* (1996) 186 CLR 574 at 594-595 per Gaudron J.

47 *McNicoll v Grandy* [1932] 1 DLR 225 at 231 per Duff J.

48 *Lee v Wilson & Mackinnon* (1934) 51 CLR 276 at 288 per Dixon J.

49 This is addressed in more detail at [170] ff below.

50 *McNicoll v Grandy* [1932] 1 DLR 225 at 230 per Anglin CJC (with whom Rinfret, Lamont and Cannon JJ agreed) and 231-232 per Duff J.

51 Cf *Thompson v Australian Capital Television Pty Ltd* (1996) 186 CLR 574 at 589 per Brennan CJ, Dawson and Toohey JJ.

52 *Mirror Newspapers Ltd v Harrison* (1982) 149 CLR 293 at 298-301 per Mason J (with whom Gibbs CJ, Wilson and Brennan JJ agreed).

53 *Cassidy v Daily Mirror Newspaper Ltd* [1929] 2 KB 331 at 339-341 per Scrutton LJ and 354 per Russell LJ; *Lee v Wilson & Mackinnon* (1934) 51 CLR 276 at 287-288 per Dixon J.

someone else without adopting it or expressing a belief in its truth.⁵⁴ This is known as the “repetition rule”. There is a qualification to this general rule when the content and context show that the correct imputation is to the opposite effect of the statement to which reference is made and the defendant is only referring to it to refute it.⁵⁵ It is a corollary of the repetition rule that a defendant does not establish justification by proving merely that he or she was repeating the statement of another or believed it to be true but must prove the objective truth of the statement repeated.⁵⁶

164 The fourth ingredient is that the imputation is about the plaintiff. The test is objective: it is the understanding that would be formed by ordinary, reasonable recipients of the communication as assessed by the trier of fact.⁵⁷ In general, there is strict liability in respect of the fourth ingredient; it does not matter whether the defendant intends, knows or ought to know that the matter concerns the plaintiff.⁵⁸

165 The fifth ingredient is that the imputation is defamatory, ie damaging to the plaintiff’s reputation. The test is objective: it is the understanding that would be formed by ordinary, reasonable members of the community by reference to community standards as assessed by the trier of fact as to whether it is calculated to damage the plaintiff’s reputation.⁵⁹ In general, there is strict liability in respect of the fifth ingredient; it does not matter whether the defendant intends, knows or ought to know that the matter is damaging to the plaintiff’s reputation.⁶⁰

Publication

166 The first and second ingredients of defamation require communication of the work containing the allegedly defamatory matter by the defendant to at least one third party.

54 *Truth (New Zealand) Ltd v Holloway* [1960] 1 WLR 997 at 1002-1003 per Lord Denning delivering the judgment of the Privy Council (Viscount Simonds, Lord Reid, Lord Tucker, Lord Denning and Lord Morris); *Lewis v Daily Telegraph Ltd* [1964] AC 234 at 260 per Lord Reid (with whom Lord Jenkins agreed), 274-275 per Lord Hodson and 283-284 per Lord Devlin; *Wake v John Fairfax & Sons Ltd* [1973] 1 NSWLR 43 at 49-50 per Manning, Hope and Reynolds JJ; *John Fairfax Publications Pty Ltd v Obeid* (2005) 64 NSWLR 485 at [92]-[95] and [98]-[102] per McColl JA (with whom Sheller JA and McClellan AJA agreed).

55 *Wake v John Fairfax & Sons Ltd* [1973] 1 NSWLR 43 at 49-50 per Manning, Hope and Reynolds JJ; *John Fairfax Publications Pty Ltd v Obeid* (2005) 64 NSWLR 485 at [92]-[95] and [98]-[102] per McCole JA (with whom Sheller JA and McClellan AJA agreed).

56 *Lewis v Daily Telegraph Ltd* [1964] AC 234 at 260 per Lord Reid (with whom Lord Jenkins agreed), 274-275 per Lord Hodson and 283-284 per Lord Devlin.

57 *David Syme & Co v Canavan* (1918) 25 CLR 234 at 238 per Isaacs J; *Morgan v Odhams Press Ltd* [1971] 1 WLR 1239 at 1243 per Lord Reid, 1264 per Lord Donovan and 1269-1270 per Lord Pearson.

58 *E Hulton & Co v Jones* [1910] AC 20 at 23-24 per Lord Loreburn and 26 per Lord Shaw; *Lee v Wilson & Mackinnon* (1934) 51 CLR 276 at the 288-292 per Dixon J and 296-298 per Evatt and McTiernan JJ.

59 *Slatyer v Daily Telegraph Newspaper Co Ltd* (1908) 6 CLR 1 at 7 per Griffiths CJ (with whom O’Connor and Isaacs JJ agreed); *Tolley v JS Fry & Sons Ltd* [1930] 1 KB 467 at 475 per Scrutton LJ 479 per Greer LJ and 489 per Slessor LJ.

60 *E Hulton & Co v Jones* [1910] AC 20 at 23-24 per Lord Loreburn and 26 per Lord Shaw; *Lee v Wilson & Mackinnon* (1934) 51 CLR 276 at the 288-292 per Dixon J and 296-298 per Evatt and McTiernan JJ; *Dow Jones & Co Inc v Gutnick* (2002) 210 CLR 575 at [25] per Gleeson CJ, McHugh, Gummow and Hayne JJ.

167 In *Dow Jones & Co Inc v Gutnick*,⁶¹ Gleeson CJ, McHugh, Gummow and Hayne JJ said:⁶²

Harm to reputation is done when a defamatory publication is comprehended by the reader, the listener, or the observer. Until then, no harm is done by it. This being so it would be wrong to treat publication as if it were a unilateral act on the part of the publisher alone. It is not. It is a bilateral act — in which the publisher makes it available and a third party has it available for his or her comprehension.

168 Both sides of the element of publication are in issue in this case. The parties addressed the sides independently: the act of the publisher and the act of the publishee.

Publication: the act of the publisher

Participation

169 At common law, a person who participates in the publication of a work is a publisher.⁶³ In the simplest case of defamatory words spoken by A to B or written in a letter by A given to B, A is the creator, producer, director and conveyor and the sole publisher of the defamatory words. In more complex cases, publication is a process that may for example be instigated by a creator, produced by a second person, directed by a third person and conveyed by a fourth person. Participants in the publication of a written work such as a book or newspaper include the author, editor,⁶⁴ printer,⁶⁵ publisher⁶⁶ and vendor⁶⁷ of the work.

Primary and secondary participants

170 At common law, a distinction is drawn between a primary or principal participant and a secondary or subordinate participant. A primary participant is liable for a publication regardless of whether she or he knows or ought to know of the defamatory matter within the work.⁶⁸ A secondary participant is not liable for a publication if he or she did not know and could not with the exercise of reasonable diligence have known of the defamatory matter.⁶⁹

171 In *Emmens v Pottle*,⁷⁰ the defendants carried on business as newsvendors and sold an edition of *Money* newspaper that contained a libel. The jury found that the defendants did not know and were not negligent in not knowing that the newspaper contained or was likely to contain a libel. The English Court of Appeal held that it was a defence if the defendants as mere disseminators

61 *Dow Jones & Co Inc v Gutnick* (2002) 210 CLR 575.

62 *Dow Jones & Co Inc v Gutnick* (2002) 210 CLR 575 at [26].

63 A Mullis and R Parkes QC, *Gately On Libel and Slander* (12th ed, 2013) [6.10].

64 *Watts v Fraser* (1835) 7 Car & P 369; 173 ER 164.

65 *Johnson v Hudson* (1836) 7 A & E 233n; 112 ER 459.

66 *Blake v Stevens* (1864) 4 E & F 232; 176 ER 544.

67 *Emmens v Pottle* (1885) 16 QBD 354. See [170] below.

68 *Thompson v Australian Capital Television Pty Ltd* (1996) 186 CLR 574 at 586-588 per Brennan CJ, Dawson and Toohey JJ and 592-595 per Gaudron J.

69 *Thompson v Australian Capital Television Pty Ltd* (1996) 186 CLR 574 at 586-588 per Brennan CJ, Dawson and Toohey JJ and 592-595 per Gaudron J.

70 *Emmens v Pottle* (1885) 16 QBD 354.

showed that they did not know and using reasonable care would not have known that the newspaper contained or was likely to contain a libel. Lord Esher MR (with whom Cotton LJ agreed) said:⁷¹

I agree that the defendants are prima facie liable. They have handed to other people a newspaper in which there is a libel on the plaintiff. I am inclined to think that this called upon the defendants to shew some circumstance which absolved them from liability ... facts which shew that they did not publish the libel. ... The proprietor of a newspaper, who publishes the paper by his servants, is the publisher of it, and he is liable for the acts of his servants. The printer of the paper prints it by his servants, and therefore he is liable for the libel contained there. But the defendants did not compose the libel on the plaintiff, they did not write it or print it; they only disseminated that which contained a libel. The question is whether, as such disseminators, they published the libel? If they had known what was in the paper, whether they were paid for circulating it or not, they would have published the libel, and would have been liable for so doing. ... I am not prepared to say that it would be sufficient for them to shew that they did not know of the particular libel ... The defendants did not know that the paper was likely to contain libel, and, still more, that they ought not to have known this, which must mean, that they ought not to have known it, having used reasonable care — the case is reduced to this, that the defendants were innocent disseminators of a thing which they were not bound to know was likely to contain a libel. That being so, I think the defendants are not liable for the libel.

Bowen LJ said:⁷²

The jury have found as a fact that the defendants were innocent carriers of that which they did not know contained libellous matter, and which they had no reason to suppose was likely to contained libellous matter. ... It seems to me that the defendants are no more liable than any other innocent carrier of an article which he has no reason to suppose likely to be dangerous. But I by no means intend to say that the vendor of a newspaper will not be responsible for libel contained in it, if he knows, or ought to know, that the paper is one which is likely to contain a libel.

172 In *Vizetelly v Mudie's Select Library Ltd*,⁷³ the defendant carried on business as a circulating library. The defendant lent circulating copies of a libellous book and sold surplus copies. The jury found the defendant liable, having been directed that it was to consider whether it used due care in the management of its business. The English Court of Appeal upheld the verdict. AL Smith LJ (with whom Vaughan Williams LJ agreed) said:⁷⁴

The defendants having lent and sold copies of the book containing that libel, prima facie they published it. What defence, then, have they? None, unless they can bring themselves within the doctrine of *Emmens v Pottle* ... there was sufficient evidence to justify the jury in coming to the conclusion that the defendants have failed to prove their defence, and that it was through negligence on their part that they did not find out that the book contained a libel on the plaintiff. That being so, they failed to do what the defendants in *Emmens v Pottle* succeeded in doing, namely, prove that they did not publish the libel.

(Citation omitted.)

71 *Emmens v Pottle* (1885) 16 QBD 354 at 357-358.

72 *Emmens v Pottle* (1885) 16 QBD 354 at 358.

73 *Vizetelly v Mudie's Select Library Ltd* [1900] 2 QB 170.

74 *Vizetelly v Mudie's Select Library Ltd* [1900] 2 QB 170 at 176-177.

Vaughan Williams J said:⁷⁵

The verdict of the jury, as I understand it, amounts to a finding that the defendants failed in their judgment to prove that it was not by any negligence on their part that they did not know that the book in question contained a libel on the plaintiff. ... What I understand *Emmens v Pottle* really to decide is that the innocent publication of defamatory matter, i.e., its publication under such circumstances as rebut the presumption of any malice, is not a publication within the meaning of the law of libel.

(Citation omitted.)

Romer J said:⁷⁶

The result of the cases is I think that, as regards a person who is not the printer or the first or main publisher of a work which contains a libel, but has only taken, what I may call, a subordinate part in disseminating it, in considering whether there has been a publication of it by him, the particular circumstances under which he disseminated the work must be considered. If he did it in the ordinary way of his business, the nature of the business and the way in which it was conducted must be looked at; and, if he succeeds in shewing (1) that he was innocent of any knowledge of the libel contained in the work disseminated by him, (2) that there was nothing in the work or the circumstances under which it came to him or was disseminated by him which ought to have led him to suppose that it contained a libel, and (3) that, when the work was disseminated by him, it was not by any negligence on his part that he did not know that it contained the libel, then, although the dissemination of the work by him was prima facie publication of it, he may nevertheless, on proof of the before-mentioned facts, be held not to have published it. But the onus of proving such facts lies on him, and the question of publication or non-publication is in such a case one for the jury.

173 Google contends that the law took a wrong turn when the Court of Appeal decided *Emmens v Pottle* and *Vizetelly v Mudie's Select Library Ltd* and it should have been held that a mere disseminator such as a news vendor or library is not even prima facie a publisher. However, as was observed in *Thompson v Australian Capital Television Pty Ltd*,⁷⁷ the principle established by those cases has become well accepted in the United Kingdom⁷⁸ and has been applied in Canada⁷⁹ and New Zealand.⁸⁰

75 *Vizetelly v Mudie's Select Library Ltd* [1900] 2 QB 170 at 177-178.

76 *Vizetelly v Mudie's Select Library Ltd* [1900] 2 QB 170 at 180.

77 *Thompson v Australian Capital Television Pty Ltd* (1996) 186 CLR 574 at 586 per Brennan CJ, Dawson and Toohey JJ and 592 per Gaudron J.

78 *Weldon v The Times Book Co Ltd* (1911) 28 TLR 143 at 144 per Cozens-Hardy MR (with whom Fletcher Moulton and Farwell LJJ agreed); *Bottomley v FW Woolworth & Co Ltd* (1932) 48 TLR 521 at 521 per Scrutton LJ (with whom Greer and Slesser LJJ agreed); *Sun Life Assurance Co of Canada v WH Smith & Son Ltd* (1933) 150 LT 211 at 214 per Scrutton LJ (with whom Lawrence and Greer LJJ agreed).

79 *Lambert v Roberts Drug Stores Ltd (No 1)* [1933] 4 DLR 193 at 195 per Trueman JA (with whom Predergast CJM, Dennistown, Robson and Richards JJA agreed). See also *Society of Composers, Authors and Music Publishers of Canada v Canadian Association of Internet Providers* [2004] SCR 427 at [89] per McLaughlin CJ, Iacobucci, Major, Bastarache, Binnie, Deschamps and Fish JJ.

80 *Jensen v Clark* [1982] 2 NZLR 268 at 274-276 per Pritchard J; *Crocombe v Examiner Newspapers Ltd* (1992) 15 TCL 11/11.

- 174 In *Lee v Wilson & MacKinnon*,⁸¹ Dixon J endorsed the secondary publisher doctrine, saying:⁸²

The communication may be quite unintentional and the publisher may be unaware of the defamatory matter. If, however, the publication is made in the ordinary exercise of some business or calling such as that of booksellers, newsvendors, messengers, or letter carriers, and the defendant neither knows nor suspects, nor using reasonable diligence ought to know or suspect, the defamatory content of the writing, proof of which facts lies upon him, his act does not amount to publication of a libel.

- 175 In *McPhersons Ltd v Hickie*,⁸³ the New South Wales Court of Appeal endorsed the application of the secondary publication doctrine to newsagents, booksellers and libraries and held that it was arguable that in principle it should also apply to modern day printers.⁸⁴

- 176 In *Thompson v Australian Capital Television Pty Ltd*,⁸⁵ the High Court not only endorsed the secondary publisher doctrine but held that it applied equally to electronic transmissions of radio or television broadcasts. Brennan CJ, Dawson and Toohey JJ said:⁸⁶

... There is no reason in principle why a mere distributor of electronic material should not be able to rely upon the defence of innocent dissemination if the circumstances so permit. In that respect we agree with Miles J in the Full Court who, agreeing with the trial judge, said:

[T]here is no logical reason, in accordance with the ordinary processes of the development of the law through judicial decision, why the defence of innocent dissemination or innocent republication should be restricted to printed material and not extended to television broadcasts.

Gaudron J said:⁸⁷

Thus, it cannot be said that, as a matter of fact, the rule as to innocent dissemination cannot apply to those who retransmit televised material. Accordingly, it is necessary to consider whether a broadcaster is, in relation to the retransmission of televised material, a secondary distributor.

- 177 In *Dow Jones & Co Inc v Gutnick*,⁸⁸ Gleeson CJ, McHugh, Gummow and Hayne JJ endorsed the secondary publisher doctrine and cited as authority Dixon J's judgment in *Lee v Wilson & MacKinnon*, saying:⁸⁹

... Yet a publication made in the ordinary course of a business such as that of bookseller or news vendor, which the defendant shows to have been made in circumstances where the defendant did not know or suspect and, using reasonable diligence, would not have known or suspected was defamatory, will be held not to amount to publication of a libel.

81 *Lee v Wilson & Mackinnon* (1934) 51 CLR 276.

82 *Lee v Wilson & Mackinnon* (1934) 51 CLR 276 at 288.

83 *McPhersons Ltd v Hickie* [1995] Aust Torts Reports 81-348.

84 *McPhersons Ltd v Hickie* [1995] Aust Torts Reports 81-348 at 62,498 per Priestley JA (with whom Mahoney JA agreed) and 62,499-62,500 per Powell IJA.

85 *Thompson v Australian Capital Television Pty Ltd* (1996) 186 CLR 574.

86 *Thompson v Australian Capital Television Pty Ltd* (1996) 186 CLR 574 at 589.

87 *Thompson v Australian Capital Television Pty Ltd* (1996) 186 CLR 574 at 594.

88 *Dow Jones & Co Inc v Gutnick* (2002) 210 CLR 575.

89 *Dow Jones & Co Inc v Gutnick* (2002) 210 CLR 575 at [25].

178 The secondary publisher doctrine was originally expressed and since then has often been expressed⁹⁰ as making the mental element a component of publication in the case of a secondary participant (albeit the onus lies on the defendant). Sometimes it is expressed as a standalone defence independently of the element of publication to be considered only after the plaintiff has established each ingredient of the cause of action. The better view is that it is an element of publication: this is consistent with intention, knowledge or carelessness as to the fact — as opposed to the content — of communication being an element of publication as summarised at [159] above (notwithstanding the onus of proof).

179 The secondary publisher doctrine is often expressed in terms of a defendant who does not know and ought not to know that the body of work “contains or is likely to contain a libel”. This expression is ambiguous as to whether the mental element relates to the second, third, fourth and/or fifth ingredients of the cause of action. The better view is that it relates to the second ingredient and the test as to imputations arising, concerning the plaintiff and being defamatory remains objective for secondary publishers as it is for primary publishers. There is no good reason to distinguish between primary and secondary publishers in respect of the third, fourth and fifth ingredients and there are sound policy reasons why those ingredients should be solely objective. However, in most cases the distinction will make no difference in practice.

180 In *Murray v Wishart*,⁹¹ the New Zealand Court of Appeal held that an actual knowledge test and not a constructive knowledge test should be applied to determine whether a website forum host — in that case a Facebook page host — is a secondary publisher in respect of third party postings.⁹² As a matter of principle, I do not consider that a different test should apply to a publisher of internet material from that applying to a publisher of physical, broadcast or televised material. In any event, as a matter of authority the approach of the New Zealand Court of Appeal is not open in Australia given the High Court’s endorsement of the constructive knowledge test in the case of secondary participants.

Works created by trespass

181 Google contends that to be a publisher a defendant must expressly or implicitly authorise the publication of the defamatory matter. Google relies in this respect upon cases that have considered the liability of an occupier of a building or structure for defamatory material placed there without the permission or knowledge of the occupier but who does not remove the material after learning of its existence.

182 In *Byrne v Deane*,⁹³ Mr and Mrs Deane owned a golf club of which Mrs Deane was the secretary. The club rules prohibited the posting of any notice in the premises without the secretary’s consent. A person unknown posted a notice containing a poem defamatory of Mr Byrne. The Deanes took no steps to

90 See the formulation of the doctrine in *Emmens v Pottle* (1885) 16 QBD 354 and *Vizetelly v Mudie’s Select Library Ltd* [1900] 2 QB 170 and subsequent references in *Lee v Wilson & Mackinnon* (1934) 51 CLR 276 and *Dow Jones & Co Inc v Gutnick* (2002) 210 CLR 575 extracted above.

91 *Murray v Wishart* [2014] 3 NZLR 722.

92 *Murray v Wishart* [2014] 3 NZLR 722 at [144]. See [201] ff below.

93 *Byrne v Deane* [1937] 1 KB 818.

remove the notice after becoming aware of it. The English Court of Appeal held that in the circumstances the Deanes published the matter. Greer LJ (with whom Greene LJ relevantly agreed) said:⁹⁴

In my judgment, the two proprietors of this establishment, by allowing the defamatory statement, if it be defamatory, to rest upon their wall, and by not removing it, with the knowledge that they must have had that, by not removing it, it would be read by people to whom it would convey such meaning as it had, were taking part in the publication of it.

Greene LJ said:⁹⁵

The test, it appears to me, is this: having regard to all the facts of the case, is the proper inference that, by not removing the defamatory matter, the defender really made himself responsible for its continued presence in the place where it has been put?

... The defendants, having the power of removing it, and the right to remove it, and being able to do it without any difficulty at all, and knowing that members of the club, when they came into the room, would see it, I think must be taken to have elected deliberately to leave it there. The proper inference, therefore, in those circumstances, it seems to me, is that they were consenting parties to its continued presence on the spot where it had been put up.

183 In *Urbanchich v Drummoyne Municipal Council*,⁹⁶ a person unknown glued posters defamatory of the plaintiff on bus shelters under the control of the Urban Transit Authority. The plaintiff's solicitors requested the Authority to remove the posters and it did not do so within a month thereafter. Hunt J held that there was evidence to go to the jury that the Authority had published the posters. Hunt J said:⁹⁷

In a case where the plaintiff seeks to make the defendant responsible for the publication of someone else's defamatory statement which is physically attached to the defendant's property, he must establish more than mere knowledge on the part of the defendant of the existence of that statement and the opportunity to remove it. According to the authorities, the plaintiff must establish that the defendant consented to, or approved of, or adopted, or promoted, or in some way ratified, the continued presence of that statement on his property, so that persons other than the plaintiff may continue to read it — in other words, the plaintiff must establish in one way or another an acceptance by the defendant of a responsibility for the continued publication of that statement.

Such conduct on the part of the defendant may of course be established by inference ...

... The facts upon which the plaintiff relies here — notice of the existence of the defamatory statement, an ability to remove it and the failure to comply within a reasonable period with a request to do so — may, if accepted by the jury ... give rise to the required inference that the defendant had in fact accepted a responsibility for the continued publication of the statements made on the posters.

184 I reject Google's contention that a defendant can only ever be a publisher if the defendant authorises or accepts responsibility for the publication. Such a test is apposite when the defamatory matter is physically attached to the defendant's

⁹⁴ *Byrne v Deane* [1937] 1 KB 818 at 830.

⁹⁵ *Byrne v Deane* [1937] 1 KB 818 at 838.

⁹⁶ *Urbanchich v Drummoyne Municipal Council* [1991] Aust Torts Reports 81-127.

⁹⁷ *Urbanchich v Drummoyne Municipal Council* [1991] Aust Torts Reports 81-127 at 69,193, 69,194.

property without the defendant's knowledge or permission, although in that case a better formulation of the test may be whether the defendant has acquiesced in the defamatory matter remaining on the defendant's property knowing that it will be seen by others. The posited test is not apposite when the defamatory matter is disseminated by the defendant itself and is inconsistent with the innocent dissemination doctrine. The appropriate test remains whether the defendant has participated in the publication. I agree with the decisions to this effect of Morland J in *Godfrey v Demon Internet Ltd*,⁹⁸ Beach J in *Trkulja v Google Inc LLC (No 5)*,⁹⁹ the Hong Kong Court of Final Appeal in *Oriental Press Group Ltd v Fevaworks Solutions Ltd*¹⁰⁰ and (subject to the issue of actual v constructive knowledge) the New Zealand Court of Appeal in *Murray v Wishart*.¹⁰¹

Publishers of internet material

185 In *Godfrey v Demon Internet Ltd*,¹⁰² Demon operated a news server that hosted an internet forum newsgroup relating to Thai culture (soc.culture.thai) as part of the Usenet system. Someone posted an article on the forum that was defamatory of Mr Godfrey. Mr Godfrey wrote to Demon saying the article was defamatory and requesting its removal. Demon did not remove it. Demon pleaded in its defence that it was not the publisher of the article. Morland J struck out that part of the defence, holding that Demon was a publisher at common law. Morland J said:¹⁰³

In my judgment the defendants, whenever it transmit and whenever there is transmitted from the storage of their news server a defamatory posting, publish that posting to any subscriber to its ISP who accesses the newsgroup containing that posting. Thus every time one of the defendant's customers accesses "soc culture thai" and sees that posting defamatory of the plaintiff there is a publication to that customer.

The situation is analogous to that of the bookseller who sells a book defamatory of the plaintiff ... to that of the circulating library who provided books to subscribers and to that of distributors ...

I do not accept Mr Barker's argument that the defendant was merely the owner of an electronic device through which postings were transmitted. The defendant chose to store "soc.culture.thai" postings within its computers. Such postings could be accessed on that newsgroup. The defendant could obliterate and indeed did so about a fortnight after receipt.

(Citations omitted.)

186 In *Bunt v Tilley*,¹⁰⁴ the first three defendants were individuals who allegedly posted defamatory articles on Usenet message boards hosted by others — such as Google — who were not parties to the action. The last three defendants were internet service providers who allegedly provided internet access to the first three defendants to enable their posting on the message boards. Eady J struck out Mr Bunt's claim against the last three defendants, holding that they were not

98 *Godfrey v Demon Internet Ltd* [2001] QB 201.

99 *Trkulja v Google Inc LLC (No 5)* [2012] VSC 533.

100 *Oriental Press Group Ltd v Fevaworks Solutions Ltd* (2013) 16 HKCFAR 366.

101 *Murray v Wishart* [2014] 3 NZLR 722.

102 *Godfrey v Demon Internet Ltd* [2001] QB 201.

103 *Godfrey v Demon Internet Ltd* [2001] QB 201 at [33]-[35].

104 *Bunt v Tilley* [2007] 1 WLR 1243.

publishers at common law. Eady J found that it was not pleaded that any of the last three defendants were given notice of the existence of the defamatory articles. Eady J then said:¹⁰⁵

In all the circumstances I am quite prepared to hold that there is no realistic prospect of the claimant being able to establish that any of the corporate defendants, in any meaningful sense, knowingly participated in the relevant publications. His own pleaded case is defective in this respect in any event. More generally, I am also prepared to hold as a matter of law that an ISP which performs no more than a passive role in facilitating postings on the internet cannot be deemed to be a publisher at common law. I would not accept the claimant's proposition that this issue "can only be settled by a trial", since it is a question of law which can be determined without resolving contested issues of fact.

I would not, in the absence of any binding authority, attribute liability at common law to a telephone company or other passive medium of communication, such as an ISP. It is not analogous to someone in the position of a distributor, who might at common law need to prove the absence of negligence. There a defence is needed because the person is regarded as having "published". By contrast, persons who truly fulfil no more than the role of a passive medium for communication cannot be characterised as publishers: thus they do not need a defence.

(Citations omitted.)

187 In *Metropolitan International Schools Ltd (t/as SkillsTrain and t/as Train2Game) v Designtecnica Corp (t/as Digital Trends)*,¹⁰⁶ the first defendant operated a website that hosted bulletin boards. On 25 March 2009, a user posted on one of its bulletin boards an allegedly defamatory article entitled "Train2Game new scam for [plaintiff's former name]". The third defendant was Google Inc. Searches conducted on Google's UK website between 25 March and 1 May 2009 produced as a search result the snippet "Train2Game new scam for [plaintiff's former name]". The relief sought against Google Inc was an injunction. Google Inc applied to set aside leave to serve out of the jurisdiction on the ground, amongst others, that there was no reasonable prospect of success of the action because it did not publish the snippet. By the time of the hearing on 24 and 25 June 2009, Google Inc had blocked access to the relevant page or pages of the bulletin board. Eady J upheld Google Inc's contention. Eady J said:¹⁰⁷

When a search is carried out by a web user via the Google search engine it is clear, from what I have said already about its function, that there is no human input from the third defendant. None of its officers or employees takes any part in the search. It is performed automatically in accordance with computer programmes.

When a snippet is thrown up on the user's screen in response to his search, it points him in the direction of an entry somewhere on the web that corresponds, to a greater or lesser extent, to the search terms he has typed in. It is for him to access or not, as he chooses. It is fundamentally important to have in mind that the third defendant has no role to play in formulating the search terms. Accordingly, it could not prevent the snippet appearing in response to the user's request unless it has taken some positive step in advance. There being no input from the third

¹⁰⁵ *Bunt v Tilley* [2007] 1 WLR 1243 at [36]-[37].

¹⁰⁶ *Metropolitan International Schools Ltd (t/as SkillsTrain and t/as Train2Game) v Designtecnica Corp (t/as Digital Trends)* [2011] WLR 1743.

¹⁰⁷ *Metropolitan International Schools Ltd (t/as SkillsTrain and t/as Train2Game) v Designtecnica Corp (t/as Digital Trends)* [2011] WLR 1743 at [50]-[58].

defendant, therefore, on the scenario I have so far posited, it cannot be characterised as a publisher at common law. It has not authorised or caused the snippet to appear on the user's screen in any meaningful sense. It has merely, by the provision of its search service, played the role of a facilitator.

Analogies are not always helpful, but there will often be resort to analogy when the common law has to be applied to new and unfamiliar concepts. Here, an analogy may be drawn perhaps with a search carried out in a large conventional library. If a scholar wishes to check for references to his research topic, he may well consult the library catalogue. On doing so, he may find that there are some potentially relevant books in one of the bays and make his way there to see whether he can make use of the content. It is hardly realistic to attribute responsibility for the content of those books to the compiler(s) of the catalogue. On the other hand, if the compilers have made an effort to be more informative, by quoting brief snippets from the book, the position may be different. Suppose the catalogue records that a particular book contains allegations of corruption against a living politician, or perhaps it goes further and spells out a particular activity, such as "flipping" homes to avoid capital gains tax, then there could be legal liability on the part of the compiler under the "repetition rule".

No doubt it would be said here too, by analogy, that the third defendant should be liable for repeating the "scam" allegations against the claimant. Yet, whereas a compiler of a conventional library catalogue will consciously at some point have chosen the wording of any "snippet" or summary included, that is not so in the case of a search engine. There will have been no intervention on the part of any human agent. It has all been done by the web-crawling "robots".

The next question is whether the legal position is, or should be, any different once the third defendant has been informed of the defamatory content of a "snippet" thrown up by the search engine. In the circumstances before Morland J in *Godfrey v Demon Internet*, the acquisition of knowledge was clearly regarded as critical. That is largely because the law recognises that a person can become liable for the publication of a libel by acquiescence; that is to say, by permitting publication to continue when he or she has the power to prevent it. As I have said, someone hosting a website will generally be able to remove material that is legally objectionable. If this is not done, then there may be liability on the basis of authorisation or acquiescence.

A search engine, however, is a different kind of internet intermediary. It is not possible to draw a complete analogy with a website host. One cannot merely press a button to ensure that the offending words will never reappear on a Google search snippet: there is no control over the search terms typed in by future users. If the words are thrown up in response to a future search, it would by no means follow that the third defendant has authorised or acquiesced in that process.

There are some steps that the third defendant can take and they have been explored in evidence in the context of what has been described as its "take down" policy. ...

In this case, the evidence shows that Google has taken steps to ensure that certain identified URLs are blocked, in the sense that when web-crawling takes place, the content of such URLs will not be displayed in response to Google searches carried out on Google.co.uk. This has now happened in relation to the "scam" material on many occasions. But I am told that the third defendant needs to have specific URLs identified and is not in a position to put in place a more effective block on the specific words complained of without, at the same time, blocking a huge amount of other material which might contain some of the individual words comprising the offending snippet.

It may well be that the third defendant's "notice and take down" procedure has not operated as rapidly as Mr Browne and his client would wish, but it does not follow as a matter of law that between notification and "take down" the third

defendant becomes or remains liable as a publisher of the offending material. While efforts are being made to achieve a “take down” in relation a particular URL, it is hardly possible to fix the third defendant with liability on the basis of authorisation, approval or acquiescence.

(Citations omitted.)

188 In *Crookes v Wikimedia Foundation Inc*,¹⁰⁸ Mr Crookes was suing Mr Pilling as author of three articles posted on the website www.openpolitics.ca. Mr Newton posted on his own website an article addressing Mr Crookes’ lawsuit against Mr Pilling that provided without comment a hyperlink to the Open Politics website. The article also contained without comment or explanation a hyperlink from the word “Wayne Crookes” to an article on the website www.usgovernetics.com that was also alleged by Mr Crookes to be defamatory. Kelleher J held that Mr Newton did not publish the material on the other two websites merely by including without comment hyperlinks to those websites. Kelleher J said:¹⁰⁹

... I agree with the defendant that footnotes in an article are an apt analogy. Where a footnote leads a reader to further material, that does not make the author who provided the footnote a publisher of what the reader finds when the footnote is followed.

A hyperlink is like a footnote or a reference to a website in printed material such as a newsletter. The purpose of a hyperlink is to direct the reader to additional material from a different source. The only difference is the ease with which a hyperlink allows the reader, with a simple click of the mouse, to instantly access the additional material.

Although a hyperlink provides immediate access to material published on another website, this does not amount to republication of the content on the originating site. This is especially so as a reader may or may not follow the hyperlinks provided.

... Readers of a newsletter, whether in paper form or online, who read of a reference to a third party website, may go to that website. I conclude that that does not make the publisher of the web address a publisher of what readers find when they get there.

In the present case, although hyperlinks referred the reader to articles now claimed by the plaintiffs to be defamatory, the plaintiffs agree that the defendant did not publish any defamatory content on the p2pnet website itself. The defendant did not reproduce any of the disputed content from the linked articles on p2pnet and did not make any comment on the nature of the linked articles. In these circumstances, a reader of the p2pnet website who did not click on the hyperlinks provided would not have any knowledge of the allegedly defamatory content.

...

I do not wish to be misunderstood. It is not my decision that hyperlinking can never make a person liable for the contents of the remote site. For example, if Mr. Newton had written “the truth about Wayne Crookes is found here” and “here” is hyperlinked to the specific defamatory words, this might lead to a different conclusion.

(Emphasis in original.)

189 In *Crookes v Wikimedia Foundation Inc*,¹¹⁰ the British Columbia Court of

108 *Crookes v Wikimedia Foundation Inc* [2008] BCSC 1424.

109 *Crookes v Wikimedia Foundation Inc* [2008] BCSC 1424 at [28]-[32], [34].

110 *Crookes v Wikimedia Foundation Inc* (2009) 311 DLR (4th) 647.

Appeal upheld the trial judge's conclusion that merely creating a hyperlink did not entail publishing the content of the hyperlinked website. The Court by majority held that the context of the article surrounding the hyperlinks did not encourage or invite a reader to look further.

190 In *Crookes v Wikimedia Foundation Inc.*,¹¹¹ the Supreme Court of Canada upheld the conclusion of the majority in the Court of Appeal. Abella J (with whom Binnie, LeBel, Charron, Rothstein and Cromwell JJ agreed) said:¹¹²

A reference to other content is fundamentally different from other acts involved in publication. Referencing on its own does not involve exerting *control* over the content. Communicating something is very different from merely communicating that something exists or where it exists. The former involves dissemination of the content, and suggests control over both the content and whether the content will reach an audience at all, while the latter does not. ...

Hyperlinks are, in essence, references. By clicking on the link, readers are directed to other sources. ...

...

Although the person selecting the content to which he or she wants to link might *facilitate* the transfer of information (a traditional hallmark of publication), it is equally clear that when a person follows a link they are leaving one source and moving to another. In my view, then, it is the actual creator or poster of the defamatory words in the secondary material who is publishing the libel when a person follows a hyperlink to that content. The ease with which the referenced content can be accessed does not change the fact that, by hyperlinking, an individual is referring the reader to other content.

Hyperlinks thus share the same relationship with the content to which they refer as do references. Both communicate that something exists, but do not, by themselves, communicate its content. And they both require some act on the part of a third party before he or she gains access to the content. The fact that access to that content is far easier with hyperlinks than with footnotes does not change the reality that a hyperlink, by itself, is content-neutral — it expresses no opinion, nor does it have any control over, the content to which it refers.

Where a defendant uses a reference in a manner that *in itself* conveys defamatory meaning about the plaintiff, the plaintiff's ability to vindicate his or her reputation depends on having access to a remedy against that defendant. In this way, individuals may attract liability for hyperlinking if the manner in which they have referred to content conveys defamatory meaning; not because they have created a reference, but because, understood in context, they have actually *expressed* something defamatory. This might be found to occur, for example, where a person places a reference in a text that repeats defamatory content from a secondary source.

...

Making reference to the existence and/or location of content by hyperlink or otherwise, without more, is not publication of that content. Only when a hyperlinker presents content from the hyperlinked material in a way that actually repeats the defamatory content, should that content be considered to be "published" by the hyperlinker ...

(Emphasis in original; citations omitted.)

McLachlin CJC and Fish J said:¹¹³

111 *Crookes v Wikimedia Foundation Inc* [2011] 3 SCR 269.

112 *Crookes v Wikimedia Foundation Inc* [2011] 3 SCR 269 at [26], [27], [29], [30], [40], [42].

113 *Crookes v Wikimedia Foundation Inc* [2011] 3 SCR 269 at [46], [48].

While we agree in large part with the reasons of Abella J., we respectfully propose a different formulation of the test for when a hyperlink reference in a text constitutes publication of defamatory matter to which it links.

... In our view, the combined text and hyperlink may amount to publication of defamatory material in the hyperlink in some circumstances. Publication of a defamatory statement via a hyperlink should be found if the text indicates *adoption or endorsement of the content of the hyperlinked text*. If the text communicates agreement with the content linked to, then the hyperlinker should be liable for the defamatory content. The defendant must adopt or endorse the defamatory words or material; a mere general reference to a web site is not enough ...

(Emphasis in original; paragraph references omitted.)

Deschamps J took a quite different approach, saying:¹¹⁴

Byrne and its progeny are consistent with the requirement that any finding of publication be grounded in a deliberate act. If a defendant was made aware (or had reason to be aware) of defamatory information over which he or she had sufficient control but decided to do nothing about it, this nonfeasance might amount to a deliberate act of approval, adoption, promotion, or ratification of the defamatory information.

...

It should be plain that not *every* act that makes the defamatory information available to a third party in a comprehensible form might ultimately constitute publication. The plaintiff must show that the act is deliberate. This requires showing that the defendant played more than a passive instrumental role in making the information available.

(Emphasis in original; citation omitted.)

191 In *Tamiz v Google Inc*,¹¹⁵ Google Inc operated a website www.blogger.com that allowed persons to create, host and control their own blogs. A host created a blog entitled London Muslim referring to Mr Tamiz. Eight anonymous allegedly defamatory comments were posted on the London Muslim blog between 28 and 30 April 2011. Mr Tamiz notified Google of the comments between 5 and 22 July 2011. Google passed on the notifications to the blogger on 11 August who removed the entire blog on 14 August 2011. Google applied to set aside leave to serve out of the jurisdiction on the ground amongst others that it did not publish the comments. Eady J upheld Google's contention. Eady J said:¹¹⁶

Google Inc accepts the responsibility of notifying (albeit not always with great promptitude) the blogger(s) in question. It does not, however, accept that it should investigate every complaint received, whether by way of establishing the facts or obtaining advice on the relevant domestic law or laws that may be applicable. The fact that an entity in Google Inc's position may have been notified of a complaint does not immediately convert its status or role into that of a publisher. It is not easy to see that its role, if confined to that of a provider or facilitator beforehand, should be automatically expanded thereafter into that of a person who authorises or acquiesces in publication. ... It may be true that it has the technical capability of taking down (or, in a real sense, censoring) communications which have been launched by bloggers or commentators on its platform. Yet that is not by any

114 *Crookes v Wikimedia Foundation Inc* [2011] 3 SCR 269 at [87], [91].

115 *Tamiz v Google Inc* [2012] EWHC 449.

116 *Tamiz v Google Inc* [2012] EWHC 449 at [38], [39].

means the same as saying that it has become an author or authoriser of publication. It is no doubt often true that the owner of a wall which has been festooned, overnight, with defamatory graffiti could acquire scaffolding and have it all deleted with whitewash. That is not necessarily to say, however, that the unfortunate owner must, unless and until this has been accomplished, be classified as a publisher.

It seems to me to be a significant factor in the evidence before me that Google Inc is not required to take any positive step, technically, in the process of continuing the accessibility of the offending material, whether it has been notified of a complainant's objection or not. In those circumstances, I would be prepared to hold that it should not be regarded as a publisher, or even as one who authorises publication, under the established principles of the common law. As I understand the evidence its role, as a platform provider, is a purely passive one. The situation would thus be closely analogous to that described in *Bunt v Tilley* and thus, in striving to achieve consistency in the court's decision-making, I would rule that Google Inc is not liable at common law as a publisher. It would accordingly have no need to rely upon a defence (statutory or otherwise).

192 In *Tamiz v Google Inc*,¹¹⁷ the Court of Appeal overturned Eady J's decision on the publication issue, holding that it was sufficiently arguable that Google was a publisher not to set aside leave to serve out of the jurisdiction. Richardson LJ (with whom Lord Dyson MR and Sullivan LJ agreed) said:¹¹⁸

In my view the judge was wrong to regard Google Inc's role in respect of Blogger blogs as a purely passive one and to attach the significance he did to the absence of any positive steps by Google Inc in relation to continued publication of the comments in issue.

...

By the provision of that service Google Inc plainly facilitates publication of the blogs (including the comments posted on them). Its involvement is not such, however, as to make it a primary publisher of the blogs. It does not create the blogs or have any prior knowledge of, or effective control over, their content. It is not in a position comparable to that of the author or editor of a defamatory article. Nor is it in a position comparable to that of the corporate proprietor of a newspaper in which a defamatory article is printed. Such a corporation may be liable as a primary publisher by reason of the involvement of its employees or agents in the publication. But there is no relationship of employment or agency between Google Inc and the bloggers or those posting comments on the blogs: such people are plainly independent of Google Inc and do not act in any sense on its behalf or in its name. The appellant's reliance on principles of vicarious liability or agency in this context is misplaced.

...

In relation to Blogger [Eady J] said nothing about Judge Parkes QC's analogy with the provision of a gigantic notice board on which others post comments. Instead, he drew an analogy with ownership of a wall on which various people choose to inscribe graffiti, for which the owner is not responsible. I have to say that I find the notice board analogy far more apposite and useful than the graffiti analogy. The provision of a platform for the blogs is equivalent to the provision of a notice board; and Google Inc goes further than this by providing tools to help a blogger design the layout of his part of the notice board and by providing a service that enables a blogger to display advertisements alongside the notices on his part of the notice board. Most importantly, it makes the notice board available to

117 *Tamiz v Google Inc* [2013] 1 WLR 2151.

118 *Tamiz v Google Inc* [2013] 1 WLR 2151 at [23], [25], [33]-[35].

bloggers on terms of its own choice and it can readily remove or block access to any notice that does not comply with those terms.

Those features bring the case in my view within the scope of the reasoning in *Byrne v Deane*. Thus, if Google Inc allows defamatory material to remain on a Blogger blog after it has been notified of the presence of that material, it might be inferred to have associated itself with, or to have made itself responsible for, the continued presence of that material on the blog and thereby to have become a publisher of the material. Mr White QC submitted that the vast difference in scale between the Blogger set-up and the small club-room in *Byrne v Deane* makes such an inference unrealistic and that nobody would view a comment on a blog as something with which Google Inc had associated itself or for which it had made itself responsible by taking no action to remove it after notification of a complaint. Those are certainly matters for argument but they are not decisive in Google Inc's favour at this stage of proceedings, where we are concerned only with whether the appellants have an arguable case against it as a publisher of the comments in issue.

I do not consider that such an inference could properly be drawn until Google Inc had had a reasonable time within which to act to remove the defamatory comments. ... it is in my view open to argument that the time taken was sufficiently long to leave room for an inference adverse to Google Inc on *Byrne v Deane* principles.

193 In *A v Google New Zealand Ltd*,¹¹⁹ Associate Judge Abbott held that it was sufficiently arguable that Google was a publisher of defamatory snippets and hyperlinks to third party website pages alleged to be defamatory that summary dismissal should be refused.¹²⁰ In *Rana v Google Australia Pty Ltd*,¹²¹ Mansfield J held that it was sufficiently arguable that Google was a publisher of defamatory hyperlinks to third party website pages alleged to be defamatory that leave to serve out of the jurisdiction should not be refused on that ground.¹²²

194 In *Trkulja v Google Inc LLC (No 5)*,¹²³ a Melbourne Crime website (www.melbournecrime.bizhosting.com) included a webpage headed "Melbourne Crime" containing an article reproduced from the *Herald Sun* about the police reopening an investigation into a shooting of Mr Trkulja by a hitman which included a photograph of Mr Trkulja. The Melbourne Crime website added to the *Herald Sun* article nine smaller photos of persons known or alleged to be serious criminals. A word search on the Google Australian website of "Michael Trkulja" produced a paragraph incorporating a snippet including "Michael Trkulja — Melbourne Crime — Underworld — Ganglands" and the Melbourne Crime webpage's URL as a hyperlink. Clicking on the hyperlink led to the Melbourne Crime webpage. An image search on the Google Australian website produced a search result incorporating multiple images below each of which was the name "Michael Trkulja", and the second of which was a photo of Mr Trkulja. Clicking on the fourth and fifth images led to the Melbourne Crime webpage.¹²⁴

195 The jury found that Google published the material resulting from each of the

119 *A v Google New Zealand Ltd* [2012] NZHC 2352.

120 *A v Google New Zealand Ltd* [2012] NZHC 2352 at [68]-[69].

121 *Rana v Google Australia Pty Ltd* [2013] FCA 60.

122 *Rana v Google Australia Pty Ltd* [2013] FCA 60 at [58].

123 *Trkulja v Google Inc LLC (No 5)* [2012] VSC 533.

124 The facts appear also from *Trkulja v Google Inc* [2010] VSC 226 and *Trkulja v Google (No 2)* [2010] VSC 490.

word and image searches of “Michael Trkulja”, that Google was notified by Mr Trkulja of the material resulting from an image search but not a word search on 10 October 2009 and that the defence of innocent dissemination was available to Google at all material times in respect of a word search but only up to 10 October 2009 in respect of an image search. Google made a non-obstante application to the trial judge on the ground amongst others that it had not been open to the jury to find that it was a publisher or to reject its innocent dissemination defence. Beach J dismissed Google’s application, holding that it was open to the jury to find that Google was a publisher in respect of all of the material. Beach J said:¹²⁵

The question of whether or not Google Inc was a publisher is a matter of mixed fact and law. In my view, it was open to the jury to find the facts in this proceeding in such a way as to entitle the jury to conclude that Google Inc was a publisher even before it had any notice from anybody acting on behalf of the plaintiff. The jury were entitled to conclude that Google Inc intended to publish the material that its automated systems produced, because that was what they were designed to do upon a search request being typed into one of Google Inc’s search products. In that sense, Google Inc is like the newsagent that sells a newspaper containing a defamatory article. While there might be no specific intention to publish defamatory material, there is a relevant intention by the newsagent to publish the newspaper for the purposes of the law of defamation.

By parity of reasoning, those who operate libraries have sometimes been held to be publishers for the purposes of defamation law. That said, newsagents, librarians and the like usually avoid liability for defamation because of their ability to avail themselves of the defence of innocent dissemination (a defence which Google Inc was able to avail itself of for publications of the images matter prior to 11 October 2009, and all of the publications of the web matter that were the subject of this proceeding).

While much was made by Google Inc in the present case of Eady J’s statements in *Bunt* and *Tamiz* that an internet service provider who performs no more than a passive role cannot be a publisher, those statements have to be seen in the light of the facts in those cases. To say as a general principle that if an entity’s role is a passive one then it cannot be a publisher, would cut across principles which have formed the basis for liability in the newsagent/library type cases and also in those cases where someone with power to remove a defamatory publication chooses not to do so in circumstances where an inference of consent can be drawn.

In any event, and putting to one side the factual differences I have identified, to the extent that there is anything written in the judgments of *Bunt v Tilley*, *Metropolitan Schools Ltd v Designtecnica Corporation* and *Tamiz v Google Inc* that might be thought to compel the conclusion that on the facts of the present case it was not open to the jury to conclude that Google Inc was a publisher of either the images matter or the web matter, then the same does not represent the common law of Australia. Further, while on the facts in *Bunt*, the defendants were correctly described as “internet intermediaries” (whatever may be the legal consequences of such a description), it is, with respect, doubtful that that same description can be applied to an internet search engine provider in respect of material produced as a result of the operation of that search engine. That said, any such “internet intermediary” is, in any event, performing more than the “merely passive role ... [of] facilitating postings” (Cf *Bunt*).

It follows that, in my view, it was open to the jury to conclude that Google Inc was a publisher — even if it did not have notice of the content of the material

125 *Trkulja v Google Inc LLC (No 5)* [2012] VSC 533 at [18]-[19], [28]-[29], [30].

about which complaint was made. Google Inc's submission to the contrary must be rejected ...

196 In *Oriental Press Group Ltd v Fevaworks Solutions Ltd*,¹²⁶ the defendants operated two websites that hosted internet discussion forums. In March 2007, defamatory comments were posted on one of the websites. The defendant was notified of the defamatory comments in November 2008 but did not remove them from the website until August 2009. The trial judge found that the defendant was liable for defamation as a publisher after November 2008. In October 2008 and January 2009, further defamatory comments were posted on each of the websites respectively. The defendants removed them within hours of becoming aware of their existence. The plaintiffs' claims in respect of those further comments were dismissed by the trial judge. The Court of Appeal upheld the judgment, as did the Hong Kong Court of Final Appeal. Ribeiro PJ (with whom Ma CJ, Chan PJ and Gleeson NPJ agreed and Litton NPJ relevantly agreed) said:¹²⁷

Once the nature of the *Byrne v Deane* principles is grasped, it becomes clear that they do not apply to internet platform providers like the respondents. The provider of a discussion forum is in a wholly different position from that of the occupier of premises who is not in the business of publishing or facilitating publication at all, but who has had imposed on him the defamatory act of a trespasser.

The respondents plainly played an active role in encouraging and facilitating the multitude of internet postings by members of their forum. As described in Section B of this judgment, they designed the forum with its various channels catering for their users' different interests; they laid down conditions for becoming a member and being permitted to make postings; they provided users browsing their website access to the discussion threads developed on their forum; they employed administrators whose job was to monitor discussions and to delete postings which broke the rules; and they derived income from advertisements placed on their website, a business model which obviously benefits from attracting as many users as possible to the forum.

The respondents were therefore, in my view, plainly participants in the publication of postings by the forum's users and in that sense they were publishers from the outset, it being in issue whether they were first or main publishers or merely subordinate publishers ...

In this context, I respectfully part company with the reasoning (adopted on an interlocutory basis) of the English Court of Appeal in *Tamiz v Google Inc*. It is reasoning which proceeds on the basis that successful invocation of the defence of innocent dissemination results in the defendant being deemed not to have published at all. For the reasons previously given, I do not accept that premise. Nor am I able to accept the distinction drawn between the notice board and graffiti analogies, nor the suggestion that "the provision of a platform for blogs is equivalent to the provision of a notice board". As indicated above, my view is that the provider of an internet discussion platform similar to that provided by the respondents falls from the outset within the broad traditional concept of "a publisher", a characteristic not shared by a golf club or other occupier who puts up a notice board on which a trespassing message is posted.

126 *Oriental Press Group Ltd v Fevaworks Solutions Ltd* (2013) 16 HKCFAR 366.

127 *Oriental Press Group Ltd v Fevaworks Solutions Ltd* (2013) 16 HKCFAR 366 at [50]-[53].

197 Ribeiro PJ went on to hold that the innocent dissemination doctrine applied to the operator of an internet discussion forum because such an operator is a subordinate publisher, saying:¹²⁸

As the authorities on the innocent dissemination defence show, in a newspaper setting, the journalist, editor, printers and (vicariously) the newspaper proprietor are all treated as first or main publishers. In my view, this is because they are persons whose role in the publication process is such that they know or can be expected easily to find out the content of the articles being published and who are able to control that content, if necessary preventing the article's publication. It is because they occupy such a position that the law has held them strictly liable for any defamatory statements published.

In my view, the abovementioned characteristics supply the criteria for identifying a person as a first or main publisher. They are (i) that he knows or can easily acquire knowledge of the content of the article being published (although not necessarily of its defamatory nature as a matter of law); and (ii) that he has a realistic ability to control publication of such content, in other words, editorial control involving the ability and opportunity to prevent publication of such content.

...

When the abovementioned criteria are applied to the respondents, it is in my view clear that they are subordinate publishers and not first or main publishers of the defamatory postings ...

198 In *Albert v Google Inc*,¹²⁹ typing "Albert Yeung" into the search box on Google's generic, Hong Kong and Taiwan websites resulted in Autocomplete search suggestions and a list of Related Searches each including "albert yeung triads". After notification by Dr Yeung, Google took no steps to remove the triad references. Google applied to set aside leave to serve out of the jurisdiction on the ground that there was not a good arguable case that it was a publisher. Deputy Judge Marlene Ng held that there was such a good arguable case. Her Honour said:¹³⁰

In my view, as a matter of law, it is plainly arguable that a search engine (including Google Inc) that generates objectively defamatory materials by its automated processes is a "publisher" within the meaning as explained in *Fevaworks Solutions Ltd*. It is also arguable that Google Inc by creating and operating its automated systems that generate materials in the manner they and their staff intended satisfies the requisite mental element for the act of publication, ie they provided the platform for dissemination and/or encouraged/facilitated or actively participated in the publication with intent to assist in the process of conveying the impugned words to publishees, and knowledge of defamatory content is not necessary (especially for an unwitting publisher who may in due course wish to invoke the defence of innocent dissemination if it can). I have not forgotten that unlike the non-publisher in *Bunt* Google Inc here is in the business of disseminating information, and it is arguable that they fall within the broad traditional concept of "a publisher".

...

Mr McCoy SC places emphasises on the passivity rule (as explained above) in *Bunt* and *Metropolitan International Schools Ltd* as well as Eady J's observations

128 *Oriental Press Group Ltd v Fevaworks Solutions Ltd* (2013) 16 HKCFAR 366 at [75], [76], [89].

129 *Albert v Google Inc* [2014] 4 HKLRD 493.

130 *Albert v Google Inc* [2014] 4 HKLRD 493 at [103], [105], [121].

in *Tamiz* to say that an internet search engine who performs a mere passive role cannot be a publisher. In my view, Beach J's countervailing observation that if this is put forward as a general principle it cuts across the orthodox publication rule under which liability is strict also has arguable merits. It is also plainly arguable that under the common law principles of publication that one can unwittingly become a publisher, and then one may (if one can) invoke the defence of innocent dissemination.

...

Neither counsel has cited any other authority apart from *Trkulja v Google Inc LLC*. But in my view, given the reasoning in *Trkulja v Google Inc LLC* and *Fevaworks Solutions Ltd* and on the approach for identifying "a publisher", there is plainly a good arguable case that Google Inc is more than a passive facilitator vis-à-vis their Autocomplete and Related Searches features.

199 In *Bleyer v Google Inc LLC*,¹³¹ seven webpages independent of Google contained matter allegedly defamatory of Mr Bleyer. A search undertaken by Mr Bleyer on the Google Australian website produced paragraphs including snippets derived from and hyperlinks to those seven external webpages. Mr Bleyer pleaded that two of the snippets alone and five of the snippets and hyperlinked pages combined were defamatory and were published to two persons in December 2012 and one person in April 2013. In March 2013, Mr Bleyer requested Google to remove the links and in May 2013 Google removed three of the links and sought further information in respect of the other four. Mr Bleyer instituted the action two days later. McCallum J held that Google did not publish the matters before being put on notice in March 2013 but it was arguable that Google did publish them after that time. McCallum J said:¹³²

To the extent that the claim in *Trkulja* alleged that Google Inc was liable for publication before being put on notice of the plaintiff's claim, I would respectfully not share his Honour's view that the decision in *Urbanchich* was authoritative in that context ...

Accordingly, I would respectfully not share Beach J's view that there is any relevant difference between the decisions in *Bunt v Tilley*, *Metropolitan International Schools* and *Tamiz* and the common law of Australia.

...

The evidence before me establishes that there is no human input in the application of the Google search engine apart from the creation of the algorithm. I would respectfully disagree with the conclusion reached by Beach J in *Trkulja* that the performance of the function of the algorithm in that circumstance is capable of establishing liability as a publisher at common law. I would adopt the English line of authority to the effect that, at least prior to notification of a complaint (and on the strength of the evidence before me), Google Inc cannot be liable as a publisher of the results produced by its search engine.

...

I am satisfied, on the strength of the evidence before me, that it is highly unlikely that Mr Bleyer would be able at trial to establish that Google Inc is liable for publication of at least the first two alleged downloads of the matters complained of. The position is more complex as to the third download, which occurred after Google Inc received notice of Mr Bleyer's complaint. As already noted, Google Inc operates a voluntary notice and take down procedure and that

131 *Bleyer v Google Inc LLC* (2014) 88 NSWLR 670.

132 *Bleyer v Google Inc LLC* (2014) 88 NSWLR 670 at [76], [77], [83] and [85].

procedure was engaged in the present case. It resulted in a positive response in respect of part but not all of the material complained of. That is probably enough to save the claim from summary dismissal on the *General Steel* test ...

200 In *Wishart v Murray*,¹³³ Mr Murray in June 2011 created a Facebook webpage entitled “Boycott the Macsyna King book” that was critical of Mr Wishart. The page attracted comments from numerous third parties. Mr Wishart pleaded that Mr Murray was required to monitor the comments and remove those that were abusive and block further posts from persons who had posted those comments. Mr Murray said that there were too many comments for him to monitor them all. He denied being put on notice by Mr Wishart that any particular comment was defamatory before he closed down the webpage in August 2011. Courtney J declined to strike out that part of the statement of claim that pleaded that Mr Murray was a publisher of third party comments posted on his Facebook webpage. Courtney J said:¹³⁴

A person who participates in or contributes to the publication of another person’s defamatory statement is, prima facie, liable as a publisher, subject to the defence of innocent dissemination. Distributors such as librarians and booksellers can avoid liability, even though they are taken, prima facie, to have published the defamatory material contained in the newspapers or books that they have distributed by showing that they neither knew nor ought to have known that the published material contained defamatory statements ...

This statement makes it clear that the absence of actual knowledge does not prevent a person who, prima facie, publishes a defamatory statement from being liable; there must also be no reason to think it likely that the material being published contained such a statement. The issue in this case is how this general principle is to be applied to the host of a Facebook page.

...

I consider that the noticeboard analogy is apt in considering publication via Facebook. The host of a Facebook page has established what is, essentially, a noticeboard. It may be a public “noticeboard”, on which anyone can post comments. It may also be a private “noticeboard”, available to a specified group. In either case, the host has the power to control content by deleting postings. The host also has the power to control those who post on the site by blocking users. Those blocked may include potential plaintiffs, affected by what is posted, but unable to see the offending content and complain.

Those who host Facebook pages or similar are not passive instruments or mere conduits of content posted on their Facebook page. They will be regarded as publishers of postings made by anonymous users in two circumstances. The first is if they know of the defamatory statement and fail to remove it within a reasonable time in circumstances that give rise to an inference that they are taking responsibility for it. A request by the person affected is not necessary. The second is where they do not know of the defamatory posting but ought, in the circumstances, to know that postings are being made that are likely to be defamatory.

201 In *Murray v Wishart*,¹³⁵ the New Zealand Court of Appeal reversed Courtney J’s conclusion insofar as her Honour held that a Facebook host will be regarded as a publisher of postings by anonymous users if the host has constructive knowledge, but affirmed her Honour’s conclusion where the host

133 *Wishart v Murray* [2013] 3 NZLR 246.

134 *Wishart v Murray* [2013] 3 NZLR 246 at [82], [83], [116], [117].

135 *Murray v Wishart* [2014] 3 NZLR 722.

has actual knowledge of the defamatory statement and fails to remove it within a reasonable time of acquiring such knowledge. The Court considered that none of the pre-internet categories — such as the newsvendor, graffiti, unauthorised billposter and noticeboard cases — were applicable and the Court was not constrained by precedent from approaching internet publication from first principles.¹³⁶ The Court identified five concerns about imposing liability on a Facebook host for third party postings of which the host was unaware but ought to have been aware. O’Regan P, Ellen France and French JJ concluded:¹³⁷

These concerns lead us to conclude that the actual knowledge test should be the only test to determine whether a Facebook page host is a publisher. That is consistent with at least some of the authorities to which we have referred and with the Law Commission’s analysis. It conforms with the approach in *Byrne v Deane*, which is, we believe, the most appropriate analogy and with the decision in *Urbanchich v Drummoyne Municipal Council*. It makes the liability risk of a Facebook page host no greater than that of an organiser of a public meeting — another appropriate analogy, in our view. It is consistent with the right of freedom expression in the Bill of Rights, bearing in mind the unavailability of the innocent dissemination defence. And it provides a situation where liability for defamation is not imposed on the basis of negligence.

(Citations omitted.)

202 In *Niemela v Malamas*,¹³⁸ adverse reports about Mr Niemela were posted on the Ripoff Report website. Searches on the Google generic website and Google Canadian website resulted in search results containing snippets and hyperlinks to those reports, which snippets were allegedly themselves defamatory. On an application for an interlocutory injunction, the issue was whether Google Inc was liable for the snippets before notification of their content. Fenlon J held that it was not. Fenlon J said:¹³⁹

Using the traditional approach to publication, Google’s lack of awareness of the content of the words it repeated on a search page snippet would not prevent it from being a publisher, although it would likely be able to avail itself of the defence of innocent dissemination after the *prima facie* test for defamation had been made out.

As I have noted, however, the tenor of *Crookes* and of recent jurisprudence in England is to narrow the test for who is a publisher of defamatory material to those who do deliberate acts. In Canada this shift originates in the Supreme Court of Canada’s recognition post-Charter “that what is at stake in an action for defamation is not only an individual’s interest in protecting his or her reputation, but also the public’s interest in protecting freedom of expression”: *Crookes* at para. 31, citing *Hill v Scientology*.

It is worth noting at this point that the English approach requiring a deliberate act to establish publication (the passive instrument test) is related to, but distinct from, the defence of innocent dissemination which is a well-settled principle in Canadian defamation law.

...

In substance, the passive instrument test appears to have requirements very similar to the defence of innocent dissemination. However, it shifts the burden of proof from the defendant to the plaintiff. Where innocent dissemination is pleaded,

136 *Murray v Wishart* [2014] 3 NZLR 722 at [99]-[136].

137 *Murray v Wishart* [2014] 3 NZLR 722 at [144].

138 *Niemela v Malamas* [2015] BCSC 1024.

139 *Niemela v Malamas* [2015] BCSC 1024 at [94]-[96], [99]-[100], [105]-[108].

the defendant bears the burden of showing that it had no actual knowledge of an alleged libel, was aware of no circumstances to put it on notice to suspect a libel, and committed no negligence in failing to find out about the libel.

On the other hand, if the passive instrument test is applied the plaintiff bears the burden of showing that the defendant was not a mere passive instrument because at the initial prima facie stage the plaintiff must prove the third element of publication.

...

Added to the sheer volume of material is the obvious difficulty of developing programming to detect and screen out defamatory words. It is apparent that a search engine could not simply be programmed to block every site containing, for example, the words “scam artist” or “steals” without blocking millions of pages of non-defamatory content.

Google programs its search algorithm so that it locates URLs likely to relate to a user’s search query. It is not aware of the snippets and hyperlinks produced, nor can it be, realistically. In the words of Eady J. in *Metropolitan*, Google does not authorize the appearance of the snippets on the user’s screen “in any meaningful sense” but “has merely, by the provision of its search service, played the role of a facilitator”: at para. 51.

In summary on this issue, I conclude that Google is a passive instrument and not a publisher of snippets. There is accordingly no issue for trial in relation to defamation.

I emphasize that I have not been asked in this case to consider whether Google could be a publisher of snippets and search results after notice of defamatory content. In the present case, Mr. Niemela initially raised this issue in his notice of application but abandoned the argument when Google voluntarily blocked the URLs that produced the offending snippets. Accordingly, the issue does not arise on the facts of this case.

Subject matter in this case

Paragraphs

- 203 The first issue that arises is whether the paragraphs (title, snippet and URL) displayed by the Google websites to users in response to searches for Dr Duffy’s name were published by Google. I take as an exemplar for this purpose the first paragraph extracted at [11] above, namely:

R1 Ripoff Report Janice Duffy — Psychic Stalker Psychics Beware Of..

Dr Janice Duffy is truly an embarrassment to her profession as a Senior Researcher in Adelaide Australia #2 Consumer Comment. Respond to this report...

www.ripoffreport.com/...Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm Cached

- 204 Google was the sole operator and controller of the Google website. The paragraphs resided on Google’s website. The paragraphs were communicated by Google to the user conducting a search. Google played a critical role in communicating the paragraphs to the user. The physical element of publication is present. Google did not play the passive role of a mere conduit such as an internet service provider who merely provides access to the internet or a telecommunications carrier who merely provides access to the telephone network. Google played an active role in generating the paragraphs and communicating them to the user. The mere fact that the words are programmed to be generated because they appear on third party webpages makes no

difference to the physical element. It makes no difference to the physical element whether a person directly composes the words in question or programs a machine which does so as a result of the program. I agree with the analysis of Beach J in *Trkulja v Google Inc LLC (No 5)*¹⁴⁰ in this respect.

205 As to the mental element, Google intended to publish the paragraphs to the user. In addition, because Google was not a primary publisher, it is necessary that Google knew or ought to have known of the existence of the paragraphs. Google had no such knowledge before Dr Duffy's notifications in or in some cases after September 2009 and cannot be regarded as a publisher of the paragraphs before that time. However, if Google acquired knowledge of the paragraphs by reason of Dr Duffy's notifications and failed to remove them within a reasonable time thereafter,¹⁴¹ the necessary mental element will be present.

206 The mere fact that the paragraphs were generated automatically by Google's software programs does not prevent Google being a publisher of them after notification by Dr Duffy. If Google personnel were made aware of the existence of the paragraphs generated by Google's own software programs and failed to remove them, their continuing existence thereafter was the direct result of human action or inaction rather than merely the result of machine operation.

207 Approaching the question from first principles, Google was a secondary publisher of the paragraphs after notification and lapse of a reasonable time to allow for their removal (if that occurred).

208 There is authority which supports this conclusion. In *Trkulja v Google Inc LLC (No 5)*,¹⁴² Beach J held that it was open to the jury to conclude that Google published the paragraphs in that case after notification. While this was a ruling on a non-obstante application, there were no evidentiary or factual issues for the jury to decide and the ruling that the conclusion was open to the jury was tantamount to a decision that Google published the paragraphs.

209 There is no case in which it has been held that a search engine operator does not publish such paragraphs after the operator has been notified of them and failed to remove them within a reasonable time. In *Metropolitan International Schools Ltd (t/as SkillsTrain and t/as Train2Game) v Designtecnica Corp (t/as Digital Trends)*,¹⁴³ Eady J held that Google was not a publisher of such paragraphs before notification or while taking reasonable steps to remove them after notification. Eady J did not go so far as to hold that Google could not be a publisher if it refused to remove them after notification. McCallum J in *Bleyer v Google Inc LLC*¹⁴⁴ and Fenlon J in *Niemela v Malamas*¹⁴⁵ each held that Google was not a publisher of such paragraphs before notification but explicitly said that the same conclusion did not necessarily apply after notification. The reasoning of Fenlon J strongly suggests that her Honour would have concluded that Google was a publisher of such paragraphs after notification. In particular, Fenlon J considered that the only real difference between the innocent dissemination test and the passive instrument test involves the burden of proof.

140 *Trkulja v Google Inc LLC (No 5)* [2012] VSC 533.

141 This involves a factual issue which I address below.

142 *Trkulja v Google Inc LLC (No 5)* [2012] VSC 533.

143 *Metropolitan International Schools Ltd (t/as SkillsTrain and t/as Train2Game) v Designtecnica Corp (t/as Digital Trends)* [2011] WLR 1743.

144 *Bleyer v Google Inc LLC* (2014) 88 NSWLR 670.

145 *Niemela v Malamas* [2015] BCSC 1024.

210 Subject to considering Google's submission that the authorities on website forum hosts dictate a contrary result, I conclude that Google was a publisher of the paragraphs relating to Dr Duffy if and to the extent that Google failed to remove them after a reasonable time elapsed after effective notification by Dr Duffy.

Website forum hosts

211 Google contends that both principle and authority support the proposition that website forum hosts are not publishers of postings on their websites by third parties even after notification and non-removal, and that the position is similar or a fortiori in respect of paragraphs generated by search engines.

212 Website forum hosts operate websites that invite users to post articles and comments. They are analogous to notice boards in shops where the shop owner invites users to post notices and comments. As a matter of principle, such website forum hosts and shop owners are secondary publishers and liable for defamatory postings if they know of their content and do not remove them. I agree with the analysis of the Hong Kong Court of Final Appeal in *Oriental Press Group Ltd v Fevaworks Solutions Ltd* in this respect.¹⁴⁶

213 The weight of authority supports this approach. This approach was taken by Morland J in *Godfrey v Demon Internet Ltd*,¹⁴⁷ the English Court of Appeal in *Tamiz v Google Inc*,¹⁴⁸ the Hong Kong Court of Final Appeal in *Oriental Press Group Ltd v Fevaworks Solutions Ltd*¹⁴⁹ and the New Zealand Court of Appeal in *Murray v Wishart*.¹⁵⁰ In the last mentioned case, the New Zealand Court of Appeal held that actual and not merely constructive knowledge was required but nevertheless held that the host was a publisher after acquiring such knowledge and failing to remove the material.

Hyperlinked material

214 The second issue that arises is whether the content of the external webpages was republished by Google when users clicked on hyperlinks displayed by the Google website when conducting searches for Dr Duffy's name. Dr Duffy only pleads such publication in respect of the six Ripoff Report reports. I take as an exemplar for this purpose the first hyperlink extracted at [11] above in the context of the paragraph as a whole, namely:

R1 Ripoff Report Janice Duffy — Psychic Stalker Psychics Beware Of.

Dr Janice Duffy is truly an embarrassment to her profession as a Senior Researcher in Adelaide Australia #2 Consumer Comment. Respond to this report...

www.ripoffreport.com/...Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm Cached

215 Mr Madden-Woods gave evidence that, by clicking on the title displayed at

¹⁴⁶ *Oriental Press Group Ltd v Fevaworks Solutions Ltd* (2013) 16 HKCFAR 366. See [196]-197] above.

¹⁴⁷ *Godfrey v Demon Internet Ltd* [2001] QB 201.

¹⁴⁸ *Tamiz v Google Inc* [2013] 1 WLR 2151.

¹⁴⁹ *Oriental Press Group Ltd v Fevaworks Solutions Ltd* (2013) 16 HKCFAR 366.

¹⁵⁰ *Murray v Wishart* [2014] 3 NZLR 722.

the beginning of the paragraph, the user is taken to the webpage to which the URL relates (albeit the URL displayed may be elided) and the title therefore functions as a hyperlink to the external webpage.

216 Dr Duffy gave evidence that was not challenged that, by clicking on the word “cached” on the last line where the URL is displayed,¹⁵¹ the user is taken to a copy maintained by Google as a cached copy of the external webpage and it therefore functions as a hyperlink to Google’s own cached copy of the webpage.

217 Google follows a general practice of eliding the display of the name of the URL returned on a search when the length of the URL exceeds the screen width. Despite the eliding of the words displayed, the title or the URL line (as the case may be) functions as a hyperlink in the same manner as if all the words were displayed. By reason of the correspondence between the elided version in the snippet and the full version in the Ripoff Report webpage, the correspondence between the text in the paragraph extracted at [214] above and the text in the Ripoff Report webpage extracted at [83] above and Dr Duffy’s evidence about searches undertaken by her, I find that the elided URL in the paragraph extracted at [214] above relates to the Ripoff Report webpage with the full URL “<http://www.Psychic/Janice-Duffy-Psychic/janice-duffy-psychic-stalker-98d93.htm>”. I make corresponding findings in respect of the other paragraphs numbered R2 to R4 above.

218 If a search of Dr Duffy’s name had merely returned the URL of the first Ripoff Report webpage without functioning as a hyperlink and without accompanying text, it could not be said that Google was a publisher of the content of that material. To access the first Ripoff Report webpage, the user would need to enter the URL into the address box of the internet browser. Google’s conduct in such a case would be analogous to that of a library catalogue that lists details of an allegedly defamatory book and external libraries at which the book can be found. It would be analogous to the author of an article including an allegedly defamatory book in the bibliography section without comment.

219 If a search of Dr Duffy’s name had returned the URL of the first Ripoff Report webpage functioning as a hyperlink to an external webpage but without accompanying text, the position would be more complex. By providing the hyperlink, Google’s software plays an essential role in the delivery of the content of the webpage to the user upon request. On the one hand, it might be argued that Google is analogous to a newsagent who upon request delivers a free newspaper or to a pamphlet distributor at the street corner both of whom are conventionally regarded as secondary publishers, and that Google is a secondary publisher if it failed to remove the paragraph incorporating the hyperlink after a reasonable time elapsed after effective notification by Dr Duffy. On the other hand, it might be argued that there is insufficient material difference between this situation and the situation referred to in the previous paragraph in which Google is not a publisher. It is not necessary to decide that question in this case.

220 Similarly, it is not necessary to decide the question if a search of Dr Duffy’s name had returned the URL of the first Ripoff Report webpage functioning as a hyperlink to Google’s own cached copy of the webpage to the user but there

151 As noted above, since July 2011 the URL has been displayed at the beginning of the paragraph just below the title.

were no accompanying text. In this case, it is difficult to see as a matter of principle why Google would not be liable in the same manner as a person who photocopies a defamatory page and hands it to a third party.

221 In the case of the URL contained in the paragraph extracted at [214] above, it is necessary to have regard to the text of the title and the snippet in conjunction with the fact that the title functions also as a hyperlink. The text and the hyperlink comprise an integrated whole. The text says that Dr Duffy is a stalker of psychics of whom psychics should beware and offers by clicking on the title on the Google webpage to deliver to the user the Ripoff Report webpage that provides more detail. The user does not need to enter the URL into the user's web browser; the Google website is programmed automatically to cause the browser to display the Ripoff Report webpage by clicking on the hyperlink. In these circumstances, Google is a secondary publisher of the Ripoff Report webpage if and to the extent that Google failed to remove the paragraph incorporating the hyperlink after a reasonable time elapsed after effective notification by Dr Duffy.

222 This conclusion is supported by the judgment of Beach J in *Trkulja v Google Inc LLC (No 5)*,¹⁵² in which his Honour held that it was open to the jury to conclude that Google was a publisher of the snippets and hyperlink alike, treating the two as an integrated whole.

223 In *Crookes v Wikimedia Foundation Inc*,¹⁵³ the Supreme Court of Canada considered that it was critical to take into account the text comprising or surrounding a hyperlink to determine whether the operator of the website upon which the hyperlink resided was a publisher of the material contained on the external webpage to which the hyperlink led. The Court held that merely creating a hyperlink without more did not amount to publication of the material on the external webpage. The Court held that the position might be different if some text from the external webpage were reproduced. Abella J (with whom Binnie, LeBel, Charron, Rothstein and Cromwell JJ agreed) gave as an example:¹⁵⁴

This might be found to occur, for example, where a person places a reference in a text that repeats defamatory content from a secondary source.

Paragraphs combining text and hyperlinks

224 Dr Duffy pleads publication by Google of the material contained in external webpages in respect of the six Ripoff Report webpages. However, Dr Duffy does not plead publication of any paragraphs on the Google websites that contain hyperlinks to the fifth or sixth Ripoff Report webpages and her case in respect of those two webpages must fail.

225 The paragraphs of which Dr Duffy complains comprise words and hyperlinks that function as an integrated whole.

226 In the case of the exemplar extracted at [214] above, the title "Janice Duffy — Psychic Stalker Psychics Beware Of", the text stating that Dr Duffy is an embarrassment to her profession and provision of a hyperlink to a webpage entitled "... janice duffy psychic stalker ..." naturally invite the reader to click on the hyperlink for elaboration. The reader may be expected to know that the

152 *Trkulja v Google Inc LLC (No 5)* [2012] VSC 533.

153 *Crookes v Wikimedia Foundation Inc* [2011] 3 SCR 269.

154 *Crookes v Wikimedia Foundation Inc* [2011] 3 SCR 269 at [40].

original author of the words contained in the snippets and the referenced webpage is someone other than and independent of Google. This reinforces the interconnectedness between the text of the snippets and the referenced webpage.

227 The text of the title and snippets of the paragraph R2¹⁵⁵ stating that Dr Duffy is an Australian psychic stalker who should be stopped naturally invite the reader to click on the hyperlink for explanation and elaboration of those statements.

228 The text of the title and snippets of the paragraph R3¹⁵⁶ stating that Dr Duffy is a psychic stalker from the Respiratory Function Unit Repatriation General Hospital naturally invite the reader to click on the hyperlink for explanation and elaboration of those statements.

229 The text of the snippet of the paragraph R4¹⁵⁷ stating that Dr Duffy is an Australian psychic stalker who should be stopped and who continues to stalk Kasamba psychics naturally invites the reader to click on the hyperlink for explanation and elaboration of those statements.

230 By publishing the relevant paragraphs, Google played a critical role in communicating the material on the external webpage to the user and was a secondary publisher of the hyperlinked Ripoff Report webpages containing the first to fourth Ripoff Report reports if Google failed to remove the paragraphs incorporating the hyperlink after a reasonable time elapsed after effective notification by Dr Duffy.

231 For the sake of completeness, I note that Dr Duffy pleads that Google also published the hyperlinked Ripoff Report webpages when web users hovered their mouse over the hyperlink which resulted in Google's website displaying a preview of the webpage the subject of that hyperlink. If this occurred, it would be another means of Google participating in the communication of the material on the external webpage to the user and Google would be a secondary publisher of the hyperlinked Ripoff Report webpages if it failed to remove the paragraphs incorporating the hyperlink after a reasonable time elapsed after effective notification by Dr Duffy. However, Dr Duffy did not adduce sufficient evidence to prove the display of legible material from the Ripoff Report webpages by the preview function. The copy of a search containing previewed material tendered by Dr Duffy is not of sufficient quality to ascertain the precise content of the previewed material or that it was legible to a reader.

Autocomplete and Related Search Terms

232 The third issue that arises is whether the generation by the Google websites of the words "janice duffy psychic stalker" when a user entered the search term "Janice Duffy" was a publication by Google after notification and failure by Google to remove it within a reasonable time thereafter. On the issue of publication, there is no material difference between the Autocomplete utility and the Related Search utility. The parties do not distinguish between them in their submissions.

233 The words "janice duffy psychic stalker" are generated by Google's programs as a result of Google's programming. The mere fact that the words are programmed to be generated because the user or others have previously

155 See [11]-[12] above.

156 See [11]-[12] above.

157 See [13] above.

searched for those words makes no difference to the physical element. The mental element will be present if Google failed to remove the words within a reasonable time after notification.

234 The only authority on whether a search engine operator publishes words created by the Autocomplete and Related Search utilities is *Albert v Google Inc.*¹⁵⁸ In that case, Deputy Judge Marlene Ng held that there was a good arguable case that an operator whose search engine generates objectively defamatory materials by its automated processes is a “publisher” and that Google was more than a passive facilitator vis-à-vis its Autocomplete and Related Search utilities.

The secondary publisher doctrine

235 Dr Duffy does not claim against Google for publication of material before September 2009 when she gave what she contends was effective notification of the allegedly defamatory matter to Google and requested its removal.

236 The fact that a search engine operator or website forum host is only a secondary publisher is now well established by *Godfrey v Demon Internet Ltd*,¹⁵⁹ *Tamiz v Google Inc*,¹⁶⁰ *Trkulja v Google Inc LLC (No 5)*,¹⁶¹ *Oriental Press Group Ltd v Fevaworks Solutions Ltd*¹⁶² and *Murray v Wishart*.¹⁶³

237 Under the secondary publisher doctrine, a secondary participant is not liable for a publication if he or she did not know, and could not with the exercise of reasonable diligence have known, of the defamatory matter. The onus of proof lies on the secondary publisher to prove no actual or constructive knowledge of the defamatory matter.

September 2009

238 Mr Madden-Woods gave evidence that Google maintains a removals list that lists all URLs that Google’s legal team has decided are to be removed from search results returned for a particular country code domain of the Google Search Engine. If a URL appears on the removals list, the URL is removed from the list of possible results that can be returned upon a search by a user on that country code domain. This has the consequence that all snippets and hyperlinks referring to the URL are effectively removed from the search results. Google’s attention is directed to the URL of the external webpage rather than to the consequential snippets and hyperlinks that would otherwise refer to the external webpage.

239 Dr Duffy’s 8 September 2009 email to Google identified the full URL for the first to fourth Ripoff Report webpages, copied and pasted the initial report for each and claimed that each was defamatory of her. It also identified the full URL for the first and second Complaints Board webpages, copied and pasted the webpages and claimed that each was defamatory of her. Google personnel thereby became aware of the existence and content of the material in those six webpages that was allegedly defamatory of Dr Duffy.

240 I find that Dr Duffy’s email comprised adequate notification to Google of that

158 *Albert v Google Inc* [2014] 4 HKLRD 493.

159 *Godfrey v Demon Internet Ltd* [2001] QB 201.

160 *Tamiz v Google Inc* [2013] 1 WLR 2151.

161 *Trkulja v Google Inc LLC (No 5)* [2012] VSC 533.

162 *Oriental Press Group Ltd v Fevaworks Solutions Ltd* (2013) 16 HKCFAR 366.

163 *Murray v Wishart* [2014] 3 NZLR 722.

allegedly defamatory material. This notification encompassed all snippets that might be generated from and hyperlinks to those six webpages because Google's consideration of removals and actual removals operate at the level of the URL of the external webpage rather than at the level of the snippets and hyperlinks that would otherwise refer to the external webpage.

241 Dr Duffy's 22 September 2009 email to Google reiterated her request for removal of snippets from and links to the same six webpages. In addition, she identified URLs of, quoted allegedly defamatory passages from and requested the removal of snippets from and links to, the following webpages:

- R7 217.17.158.39/reports/0/295/RipOff0295712.htm
- C3 www.complaintsboard.com/.../janice-duffy-psychic-stalker-psychic-beware-of-Australian-psychic-stalker-a55920.html
- C4 www.complaintsboard.com/suspicious-companies/page/8
- P1 www.123people.com/s/janice+duffy
- M2 www.isthisyour.name.com/janice_duffy.htm

242 I find that this comprised adequate notification in respect of all snippets that might be generated from and hyperlinks to those five webpages.

243 Google in its defence pleads that no removal action is possible when an incomplete URL is supplied. The only evidence adduced by Google relevant to this plea was a generic statement by Mr Madden-Woods in his statement of evidence that in his experience it is only possible to remove a webpage from search results if Google is provided with its exact URL. Mr Madden-Woods did not give evidence that it was not possible or practical for Google to ascertain the complete URL of the Complaints Board webpage being item C3 in the previous paragraph based on Dr Duffy's notification.¹⁶⁴ Google in its closing address does not make a submission that the information provided by Dr Duffy was insufficient to allow removal in respect of this or any other webpage.

244 Dr Duffy had provided the complete URLs for three other Complaints Board webpages (C1 to C3) each of which contained the generic prefix "www.complaintsboard.com/suspicious-companies/" before the specific suffix designating a specific web page. It would have been elementary for Google to have ascertained that the complete URL was "www.complaintsboard.com/suspicious-companies/janice-duffy-psychic-stalker-psychic-beware-of-Australian-psychic-stalker-a55920.html". The partial URL quoted by Dr Duffy in her email was the version displayed by Google itself in its search results. In any event, if Google had been unable to ascertain the complete URL, in order to exercise reasonable care as required by the secondary publisher doctrine, it was incumbent on Google to ask Dr Duffy to provide the complete URL and Google failed to do so. It is evident that the reason Google did not add the URL to its removals list was not because Dr Duffy provided a partial URL but because Google made a decision not to do so in respect of any URL provided by Dr Duffy.

245 Google did not become a secondary publisher until a reasonable time elapsed for it to add the relevant URLs to its removals list. Google did not lead evidence as to how long was required if it had decided to so act. Google responded to Dr Duffy on 7 October 2009 saying that it would not remove any URLs. I find

164 Mr Madden-Woods did not give such evidence about any partial notification by Dr Duffy. His evidence was confined to the level of generality.

that a reasonable time for removal of references to the 11 webpages the subject of the 8 and 22 September 2009 notifications elapsed by 7 October 2009.

246 On 7 March 2011, Google removed from the Google Australian website snippets from and links to the first four Ripoff Report webpages. Although the substantive content of some of those webpages was still accessible thereafter via different URLs, Dr Duffy either is not suing in respect of those URLs or did not prove notification to Google in respect of those URLs and hence Google is not liable as a publisher on the Google Australian website in respect of the first to fourth ROR reports after 7 March 2011.¹⁶⁵

247 Google was a secondary publisher of paragraphs in respect of the first to fourth Ripoff Report webpages and of those webpages themselves between 7 October 2009 and 7 March 2011 on the Google Australian website. Google was a secondary publisher of text and hyperlinks in respect of the other seven webpages the subject of Dr Duffy's notifications after 7 October 2009.

July 2010

248 Dr Duffy's 12 July 2010 concerns notice reiterated her request for removal of snippets from and links to the same 11 webpages the subject of her September requests. In addition, she identified URLs of, quoted allegedly defamatory passages from and requested the removal of snippets from and links to, the following webpages:

R7 www.ripoffreport.com/.../liveperson-kasamba-unethical-c-wa8da.htm

P2 www.123people.com/s/janice+person

M3 Kasamba.pissedconsumer.com/stop-kasamba-liveperson.../1.html

249 I find that this comprised adequate notification in respect of all snippets that might be generated from and hyperlinks to those three webpages. I find that a reasonable time for removal of references to these three webpages elapsed by 12 August 2010. Google was a secondary publisher of text and hyperlinks in respect of those three webpages after 12 August 2010.

250 Two of the URLs provided were elided. However, Google could easily have ascertained the complete URL by conducting a search on its own website for Dr Duffy's name and clicking on the hyperlinks produced or by visiting the external websites.

251 Dr Duffy did not prove notification to Google in respect of the Ripoff Report webpage item R8 or the Wiki Name webpage item M1 at [11] and [13] respectively above. She therefore failed to prove publication by Google in respect of any snippets from or links to those webpages.

July 2011

252 Dr Duffy's solicitors notified Google on 15 July 2011 of the Autocomplete term "janice duffy psychic stalker". Google did not respond. Google did not adduce any evidence about how long was needed to remove this Autocomplete term if it had decided to do so. I find that a reasonable time elapsed by 15 August 2012. Google was a secondary publisher of the Autocomplete term "janice duffy psychic stalker" after 15 August 2011.

¹⁶⁵ Google continued to be a publisher on the Google generic website but for reasons that appear below Dr Duffy failed to prove the existence of any publishees in Australia in respect of that website.

253 Dr Duffy did not adduce evidence of any notification to Google about the Related Search term “janice duffy psychic stalker” or request that it be removed. She therefore failed to prove publication by Google in respect of it.

254 It is not necessary that Google knew or ought to have known of the imputations arising from the passages to which Dr Duffy drew attention in her September 2009, July 2010 and July 2011 notifications or that they were defamatory or that they concerned Dr Duffy. In any event, to the extent that those passages gave rise to imputations defamatory of Dr Duffy, that fact is self-evident from the passages themselves.

255 For the sake of completeness, even if actual knowledge of the relevant passages were required as held by the New Zealand Court of Appeal in *Murray v Wishart*,¹⁶⁶ that requirement would be satisfied for those passages in respect of which I have held that Google was a secondary publisher.

256 Google did not lead any specific evidence concerning the state of mind of its personnel or otherwise specifically addressing its knowledge of the existence of the passages that Dr Duffy alleges it published or, apart from Mr Madden-Woods’ generic evidence, that it could not reasonably have added the webpages in question to its removals list upon notification. Google in its closing address does not make any submissions about the matters I have addressed above.

Knowledge of falsity

257 The only contention put by Google in its closing address in relation to the innocent dissemination doctrine is that it is necessary that Google knew or ought to have known that the relevant passages were actionable or otherwise unlawful as defamation, ie knew or ought to have known that all of the ingredients of the cause of action were present and all defences negated. Google contends in particular that the innocent dissemination defence applies unless it knew or ought to have known that the defamatory passages were false.

258 I reject Google’s contention. It is contrary to the underlying rationale for the innocent dissemination doctrine being that a secondary participant ought not to be liable for material of which the participant is reasonably unaware¹⁶⁷ and to the clearly established principle that the test for justification is purely objective and independent of the defendant’s knowledge or belief of the truth or falsity of the relevant imputations.¹⁶⁸

259 In *Goldsmith v Sperrings Ltd*,¹⁶⁹ newsagents who had distributed editions of *Private Eye* containing allegedly defamatory articles failed at first instance in their application for a stay on the ground of abuse of process being ulterior motive. The appeal to the English Court of Appeal on this ground was dismissed (Lord Denning MR dissenting). The plaintiff did not plead that the newsagents knew or ought to have known of the existence of the allegedly defamatory articles and the newsagents did not contend at first instance or on appeal that a cause of action was therefore not disclosed against them. Despite its not having been argued and not being determinative of the appeal, Lord Denning MR made the following obiter observation:¹⁷⁰

166 *Murray v Wishart* [2014] 3 NZLR 722.

167 See [171] ff above.

168 *National Assembly for Wales v Condron* [2006] EWCA Civ 1573 at [50] per Richards LJ (with whom Wall and Ward LJ agreed).

169 *Goldsmith v Sperrings Ltd* [1977] 1 WLR 478.

170 *Goldsmith v Sperrings Ltd* [1977] 1 WLR 478 at 487F.

Common sense and fairness require that no subordinate distributor — from top to bottom — should be held liable for a libel contained in it unless he knew or ought to have known that the newspaper or periodical contained a libel on the plaintiff himself; that is to say, that it contained a libel on the plaintiff which could not be justified or excused: and I should have thought that it was for the plaintiff to prove this.

260 Lord Denning MR did not cite any cases in which it had been held that under the innocent dissemination doctrine the onus of proof lies on the plaintiff or that a secondary participant is not liable in defamation unless she or he knows that the defamatory imputation is false. Lord Denning MR merely cited three cases in which secondary participants were found liable when they knew or ought to have known of the existence of the defamatory passage and two cases in which secondary participants were found not liable when they did not know or ought to have known of the existence of the defamatory passage.

261 Bridge LJ (with whom Scarman LJ agreed) formulated the innocent dissemination doctrine in conventional terms contrary to the opinion expressed by Lord Denning MR as follows:¹⁷¹

... any disseminator of defamatory matter is liable to the party to be defamed, subject to the defence of innocent dissemination. To establish this it is for him to show that he did not in fact know that the publication contained defamatory matter and that he had no reason to believe that it was likely to contain defamatory matter.

(Citations omitted.)

262 In *Metropolitan International Schools Ltd (t/as SkillsTrain and t/as Train2Game) v Designtechnica Corp (t/as Digital Trends)*,¹⁷² Eady J declined to follow Lord Denning MR's approach and rightly observed that it would throw up more problems than it was likely to solve. The approach of Lord Denning MR is in any event inconsistent with the formulation of the innocent dissemination doctrine by the High Court.

Publication: the publishee

263 Dr Duffy's case is that Google published the allegedly defamatory material to Therese Palumbo and Milorad Trkulja and in addition it should be inferred that it was published to various persons unknown.

Therese Palumbo

June 2010

264 Therese Palumbo cut Dr Duffy's hair on 25 June 2010. Ms Palumbo told Dr Duffy that she was concerned about lung cancer and wanted to stop smoking. Dr Duffy suggested that Ms Palumbo search the internet for articles co-authored by Dr Duffy on those topics. That evening, Ms Palumbo searched for Dr Duffy's name to find the articles. She used the Google Australian website to carry out that search and subsequent searches. In those days she always used Google as her search engine, never used Yahoo! and only recently (as at June 2015) started using Bing. She always used www.google.com.au.

265 Ms Palumbo gave evidence that she typed the name "Janice Duffy" into the

¹⁷¹ *Goldsmith v Sperrings Ltd* [1977] 1 WLR 478 at 505B.

¹⁷² *Metropolitan International Schools Ltd (t/as SkillsTrain and t/as Train2Game) v Designtechnica Corp (t/as Digital Trends)* [2011] WLR 1743.

Google search box and was “pretty sure” that she did not include the title “Dr” at the beginning of the name. The Google search engine produced a page of search results several of which contained statements referring to Dr Duffy being an “Australian psychic stalker” and stalking psychics. Most of those search results originated from a website entitled “Ripoff ...” but some were from other websites. She clicked on a couple of hyperlinks that took her to pages on the Ripoff Report website that she read and that said that Dr Duffy was a psychic stalker and “several other bits of defamation”. She was shocked to read those statements.

266 I accept Ms Palumbo’s evidence summarised in the previous paragraphs. I find that she entered the words “Janice Duffy” simpliciter into the search box on the Google Australian website. I find that this generated multiple search results referring to Dr Duffy being an “Australian psychic stalker” and stalker of psychics with hyperlinks to the Ripoff Report website. I find that Ms Palumbo followed the hyperlinks to two of the Ripoff Report webpages. I find that Ms Palumbo also saw search results with hyperlinks to other websites referring to Dr Duffy being a psychic stalker.

267 I find that Ms Palumbo read paragraphs relating to the first and second Ripoff Report webpages. The paragraphs relating to the first and second Ripoff Report webpages referred to Dr Duffy as an “Australian psychic stalker” or a “psychic stalker” from Australia. Ms Palumbo saw paragraphs linked to the Ripoff Report website that so described Dr Duffy. Ms Palumbo saw more than one paragraph linked to more than one Ripoff Report report. Searches undertaken by Dr Duffy for “Janice Duffy” between January 2010 and October 2010 tendered in evidence showed paragraphs relating to these Ripoff Report webpages consistently towards the top of the search results. By way of elimination, paragraphs relating to the fourth to sixth Ripoff Report webpages did not appear in any of those search results and a paragraph relating to the third Ripoff Report webpage appeared only on the sixth page of one search.

268 On the basis of the searches tendered and Ms Palumbo’s evidence, I find that the paragraph Ms Palumbo saw relating to the second Ripoff Report report was as follows:

Rip-off Report Dr Janice M Duffy

Dr Janice Duffy Stop the Australian Psychic Stalker Dr. Janice M Duffy
Adelaide South Australia Adelaide South Australia

www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-stop-the-aust-deb8p.htm Cached

269 There were two different versions of paragraphs relating to the first Ripoff Report report on the searches tendered¹⁷³ but they both had in common the following words:

Janice Duffy — Psychic Stalker Psychics Beware Of...

Psychics beware of psychic stalker Janice Duffy...

www.ripoffreport.com/.../Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm Cached

270 I find that Ms Palumbo followed the hyperlinks to the first and second Ripoff Report webpages.

173 See R1A and R1B at [12] above.

271 It is possible that Ms Palumbo also saw paragraphs relating to the first, second and/or third Complaints Board webpages. However, I am not satisfied of this on the balance of probabilities.

Late 2010

272 Ms Palumbo gave evidence that a few months after June 2010 she carried out another search of Dr Duffy's name using the Google Australian website and this time typed in "Dr Janice Duffy". She saw search results that included paragraphs referring to Dr Duffy being an "Australian psychic stalker" and stalking psychics, most of which were linked to the "Ripoff" website, in essentially the same terms as the June 2010 search.

273 I accept Ms Palumbo's evidence summarised in the previous paragraph.¹⁷⁴ I find that she entered the words "Dr Janice Duffy" into the search box on the Google Australian website. I find that this generated multiple search results referring to Dr Duffy being an "Australian psychic stalker" and stalker of psychics with hyperlinks to the Ripoff Report website. I find that these were to the first and second Ripoff Report reports for essentially the same reasons as in respect of the June 2010 search.

274 On the basis of the searches tendered and Ms Palumbo's evidence, I find that the paragraphs Ms Palumbo saw relating to the first and second Ripoff Report reports were as follows:

Janice Duffy — Psychic Stalker! Psychics Beware Of...

Dr Janice Duffy is truly an embarrassment to her profession as a Senior Researcher

...

www.ripoffreport.com/...Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm Cached

Rip-off Report Dr Janice Duffy...

Dr Janice Duffy Stop the Australian Psychic Stalker Dr. Janice Duffy!! Adelaide South Australia Adelaide South Australia

www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-stop-the-aust-deb8p.htm Cached

275 It is possible that Ms Palumbo also saw paragraphs relating to the first and/or second Complaints Board, the first 123 People and/or the Is This Your Name webpage. However, I am not satisfied of this on the balance of probabilities.

2012

276 Ms Palumbo gave evidence that in 2012 she carried out a search for "Dr Janice Duffy" using the Google Australian website and saw search results referring to Dr Duffy being a psychic stalker. I accept this evidence. However, by this time Google had removed from the Google Australian website references to the six Ripoff Report webpages. While searches by Dr Duffy tendered in evidence prove that there were other Ripoff Report references to Dr Duffy being a psychic stalker in Google search results in 2012, these were derived from Ripoff Report webpages in respect of which Dr Duffy is not suing or has not proved notification to Google. While searches by Dr Duffy tendered

¹⁷⁴ Ms Palumbo's written statement of evidence did not address this search but she gave evidence of it in oral evidence in chief. I accept her evidence notwithstanding that it is not referred in her written statement of evidence.

in evidence prove that there were non-Ripoff Report references to Dr Duffy being a psychic stalker in Google search results in 2012, I am not satisfied that Ms Palumbo saw one of these in 2012.

277 I find that Ms Palumbo chose to undertake the search in 2012 of her own volition and was not asked to do so by Dr Duffy, although what led her to undertake the search was a conversation with Dr Duffy during which Dr Duffy said that the Google search engine still loaded search results containing derogatory comments about her.

2015

278 Ms Palumbo gave evidence that in about April 2015 she carried out another search for “Dr Janice Duffy” using the Google Australian website and typed in the name “Dr Janice Duffy”. However, for similar reasons to her search in 2012, I am not satisfied that in 2015 Ms Palumbo saw a paragraph for which Dr Duffy is suing and in respect of which she had notified Google.

Autocomplete

279 Ms Palumbo gave evidence that during one of her searches she noticed that Google’s Autocomplete function generated as an alternative search term the words “janice duffy psychic stalker”. This occurred during the second search (late 2010) or third search (2012) but it was more likely that it was the third search. I accept Ms Palumbo’s evidence in this respect and find that this occurred during the 2012 search. This is corroborated by Dr Duffy’s evidence that she did not see the alternative search term “Janice Duffy psychic stalker” before June 2011 and copy searches by Dr Duffy in 2010 and early 2011 showing Autocomplete alternatives that do not include “janice duffy psychic stalker”.

280 Ms Palumbo gave evidence that during her 2015 search she again noticed that Google’s Autocomplete function generated the alternative search term “janice duffy psychic stalker”. However, Dr Duffy makes no claim in relation to the Autocomplete function after January 2014.

281 Google contends that “publication” must be to a person other than someone “in the plaintiff’s camp” and must be to a person who has given the imputations a measure of credence rather than merely to a person such as a friend or colleague who has viewed the material at the plaintiff’s request and not attached any weight to it. Google does not contend that Ms Palumbo fell within the plaintiff’s camp for this purpose when she undertook the 2010 searches but contends that she did so when she undertook the 2012 and 2015 searches. The only search in respect of which this is a live issue is the 2012 search producing the Autocomplete alternative search term “janice duffy psychic stalker”.

282 I reject Google’s contention. It is well established that publication is complete and the cause of action in defamation is good even if the publishee does not believe the imputation or give it any credence.¹⁷⁵ Google’s proposition of law summarised in the previous paragraph was rejected by the English Court of

¹⁷⁵ *Duke of Brunswick v Harmer* (1849) 14 QB 185 at 189 per Coleridge J; *Hough v London Express Newspaper Ltd* [1940] 2 KB 507 at 515 per Lord Goddard LJ; *Morgan v Odhams Press Ltd* [1971] 1 WLR 1239 at 1253 per Lord Morris; *Shevill v Presse Alliance* [1996] AC 959 at 983 per Lord Jauncey; *Berezovsky v Michaels* [2000] 1 WLR 1004 at 1012 per Lord Steyn.

Appeal in *Jameel v Dow Jones & Co Inc.*¹⁷⁶ The doctrine developed and applied by the Court of Appeal in that case, namely that it may be an abuse of process to sue for defamation when the publication has been minimal and caused no significant damage to the claimant's reputation such that the expense of an action is disproportionate to the available remedy, is inconsistent with Google's proposition of law.

283 I accept (without deciding) that there might not be an actionable publication if a plaintiff instigates a friend to access from a website defamatory matter solely for the purpose of the plaintiff relying on it as publication to give rise to a cause of action.¹⁷⁷ However, while Ms Palumbo made her search in 2012 following and as a result of Dr Duffy telling her that the defamatory material was still on the internet, she nevertheless made that search of her own volition and it was not instigated by Dr Duffy.

284 I am satisfied that Google published to Ms Palumbo:

1. the first and second Ripoff Report webpages and paragraphs relating to them in June 2010 and late 2010; and
2. the Autocomplete term "janice duffy psychic stalker" in 2012.

Milorad Trkulja

285 Milorad Trkulja instituted defamation actions against Yahoo Inc and Google Inc in the Supreme Court of Victoria in 2009. The trial of the action against Yahoo Inc proceeded in March 2012 and against Google Inc proceeded in October 2012.

April 2012

286 Mr Trkulja gave evidence that in April 2012 his attention was drawn to an article in *The Age* addressing Dr Duffy's action against Google Inc. He searched on the website www.google.com.au for "Dr Duffy" and "Janice Duffy" and found the electronic version of the article. An article entitled "Google in the gun as cyber hate victims fight back" by Rachel Wells dated 2 April 2012 was tendered.¹⁷⁸ It also mentioned Mr Trkulja's recent successful court case against Yahoo!. Mr Trkulja also saw search results that were critical of Dr Duffy referring to her "attacking somebody" and "defamatory things" which contained links to articles on the Ripoff Report website. He followed some of the links to articles on the Ripoff Report website which were defamatory of Dr Duffy. He then contacted Dr Duffy and they kept in contact thereafter, particularly concerning their respective actions against Google Inc.

287 I accept Mr Trkulja's evidence as summarised in the previous paragraph. Although Google made submissions about Mr Trkulja's credit based on his evidence about the *The Australian* article addressed below, I have no reason to doubt his evidence about how he came to meet Dr Duffy and the fact of their meeting is corroborated by the fact that she gave evidence at the trial of his action against Google in October 2012.

176 *Jameel v Dow Jones & Co Inc* [2005] QB 946 at [25]-[32] per Lord Phillips MR, Sedley and Parker LJJ.

177 Even if this extreme situation, in the pre-internet context it has been held that there is an actionable publication: *Ward v Smith* (1830) 6 Bing 749 at 752; 130 ER 1469 at 1470 per Tindal CJ; *Duke of Brunswick v Harmer* (1849) 14 QB 185 at 188, 189 per Coleridge J; *Pullman v Hill & Co* [1891] 1 QB 524 at 528, 529 per Lord Esher.

178 As downloaded from the Fairfax website www.smh.com.au.

288 Mr Trkulja's evidence was relatively vague about what he saw in April 2012 when he searched for Dr Duffy's name on the Google Australian website. For essentially the same reasons as in respect of Ms Palumbo's Google search results in 2012, I am not satisfied that in April 2012 Mr Trkulja saw one of the paragraphs for which Dr Duffy is suing and in respect of which she had notified Google.

November 2011/2012

289 In his written evidence-in-chief, Mr Trkulja said that he first searched on the Google Australian website for Dr Duffy's name in November 2011 prompted by his attention being drawn to an article in *The Australian* addressing a woman's action against Google Inc. He bought the paper and saw that the woman's name was Dr Janice Duffy. An article entitled "Google being sued over 'ripoff site'" by Verity Edwards dated 21 November 2011 was tendered.¹⁷⁹ He saw snippets from the Ripoff Report website, clicked on the links and saw that it said that Dr Duffy stalks and harasses psychics and hacks into people's accounts from her workplace with the government hospital. Mr Trkulja could not find any way of contacting Dr Duffy at that time.

290 In his oral evidence, Mr Trkulja said that his written evidence was incorrect, he did not search for Dr Duffy's name until April 2012 and the reference in his written evidence to the article in *The Australian* should have been to what occurred in November 2012 when he obtained a back copy of *The Australian* from the library.

291 Given the conflict between Mr Trkulja's written and oral evidence as to whether he saw the article in *The Australian* in 2011 or 2012, Dr Duffy accepts that I am unable to make a finding that he saw it on either occasion. On the one hand, I cannot accept his oral evidence that this occurred in November 2012 because it is not plausible. On the other hand, his written evidence that this occurred in November 2011 is entirely credible but he renounced that version in his oral evidence.

Post April 2012

292 Mr Trkulja gave evidence that since April 2012 he has carried out many searches on the Google Australian website for "Dr Duffy" and "Janice Duffy" and on most occasions found links to the Ripoff Report website referring to Dr Duffy in derogatory terms. For the same reasons as in respect of his search results in April 2012, I am not satisfied that after April 2012 Mr Trkulja saw one of the paragraphs for which Dr Duffy is suing and in respect of which she had notified Google.

293 Dr Duffy has not proved relevant publication to Mr Trkulja.

Department of Health

294 Dr Duffy pleads that there was publication of the defamatory words to executives and employees of the Department of Health, WorkCover claims managers and their lawyers from the Crown Solicitor's office (collectively *employer personnel*).

295 Jed Shearer gave evidence that on 8 January 2009 he conducted an internet search of Dr Duffy's name using whichever internet search engine was used by the Department of Health for internet searches. He saw links to the Ripoff

¹⁷⁹ As downloaded from the website www.theaustralian.com.au.

Report website. He looked on the Ripoff Report website and saw adverse reports about Dr Duffy. Mr Shearer's internet search was conducted before September 2009 being the earliest date in respect of which Dr Duffy sues for defamation. Mr Shearer did not know whether the search engine used by the Department of Health was Google, Yahoo!, Bing or some other search engine.

296 Dr Duffy called other employer personnel as witnesses but none of them conducted a search using Google for Dr Duffy's name.

Persons unknown

297 Dr Duffy invites me to infer that the allegedly defamatory words published by Google were read by persons unknown.

298 In the case of newspapers with a large circulation and radio and television broadcasts with a large audience, an inference is readily drawn that persons unknown read, heard or saw the defamatory matter.¹⁸⁰ The same approach is applicable to internet versions of newspapers and the like which have a large circulation. In the case of interactive use of the internet, this inference cannot be drawn as a matter of course, ie there is not a "presumption" that there were publishers unknown as in the case of print, radio, television and internet media.¹⁸¹ The facts and circumstances must be analysed in the traditional way to determine whether the inference should be drawn.¹⁸²

299 In *Pritchard Englefield (A Firm) v Steinberg*,¹⁸³ Mr Steinberg placed on his website a copy of a letter to Pritchard Englefield accusing them of inflating their costs. Pritchard Englefield could only identify one person who read the letter. The English Court of Appeal held that an inference of substantial publication to persons unknown should be drawn. Sedley LJ (with whom Ward and Longmore LJ agreed) said:¹⁸⁴

The copy letter from Mr Steinberg to Pritchard Englefield, suggesting in no uncertain terms that the latter artificially and unprofessionally inflated their solicitor and own client costs, was accessible to anyone, including in particular a potential client, who fed the claimant's name into a standard search engine. It was also readable by anyone who accessed the defendant's own professional website. The inference of substantial publication was, it seems to me, irresistible.

300 Dr Duffy tendered documents in support of a circumstantial case that relevant searches of the Google website were undertaken. These were printouts or screenshots of inquiries made by Dr Duffy on the Google AdWords website (adwords.google.com). Dr Duffy gave evidence that she selected the Keyword Tool from the Tools and Analysis menu on the AdWords website. The Keyword Tool enables a user to:

- enter a search term;
- select Google website (eg google.com.au);
- select device type (eg desktop and laptop devices);

180 *Fullam v Newcastle Chronicle & Journal Ltd* [1977] 1 WLR 651 at 658-659 per Scarman J; *Nationwide News Pty Ltd v University of Newlands* (2005) 29 TCL 2/4 at [48] per Glazebrook, Hammond and Panckhurst JJ.

181 *Nationwide News Pty Ltd v University of Newlands* (2005) 29 TCL 2/4 at [27]-[29] per Glazebrook, Hammond and Panckhurst JJ; *Al-Amoudi v Brisard* [2007] 1 WLR 113 at [28]-[38] per Gray J.

182 *Al-Amoudi v Brisard* [2007] 1 WLR 113 at [28]-[38] per Gray J.

183 *Pritchard Englefield (A Firm) v Steinberg* [2005] EWCA Civ 288.

184 *Pritchard Englefield (A Firm) v Steinberg* [2005] EWCA Civ 288 at [21].

- select closely related ideas or not;
- select Match Type (eg Phrase Match Type);
- select location (eg Australia); and
- select language (eg English).

301 The Keyword Tool generates data showing the number of local average monthly searches (for the selected location) and global average monthly searches (regardless of location) over the preceding 12 months for prescribed match type matches to the entered search term in the selected language.

302 An extract from AdWords Help was tendered that explains Match Types. There are three relevant match types. An “Exact Match” (checking the *Exact Match* box or entering the search words in square brackets) requires a match to the term entered (same words in same order) or a *close variation* to that term. A *close variation* is a misspelling, singular or plural form, acronym, stemming, abbreviation or accent. A “Phrase Match” (checking the *Phrase match* box or entering the search words in inverted commas) requires a match to the phrase entered (same words in same order) or a *close variation* to that phrase. A “Broad Match” (checking the *Broad match* box or entering the search words without punctuation) requires a match to the same words (in any order) or a *close variation* or a synonym or related search or other relevant variation.

303 Dr Duffy routinely selected desktop and laptop devices and checked the box “Only show ideas closely related to my search terms”. While she variously selected “www.google.com.au” or “www.google.com” or did not specify the Google website, the results were generally the same when Australia was specified as the location regardless of website entered. I infer that the results for the location specified as Australia show searches on the Google.com.au website.

304 When Dr Duffy selected Phrase Match and Broad Match, the results were either the same or only slightly lower for Phrase Match. I infer that, as is to be expected in the case of proper names comprising an obvious forename and surname (eg Janice Duffy), all or nearly all of the results reported using Broad Match type involve the same words in the same order (eg Janice Duffy) and hence the numbers are the same as or only slightly greater than results reported using Phrase Match type.

305 Dr Duffy undertook Keyword Tool inquiries for searches in various countries including Australia, the United Kingdom and the United States. Where a search is conducted in Australia and defamatory words originating overseas are received by the searcher in Australia, the tort will ordinarily be governed by Australian law.¹⁸⁵ Conversely, where defamatory words are transmitted and received overseas, the tort will ordinarily be governed by overseas law as to which I have no evidence. For this reason, I have regard only to searches conducted in Australia.

306 Dr Duffy’s first Keyword Tool inquiry was conducted on 1 September 2011. Inquiries for “Janice Duffy” using Broad Match type and Phrase Match type showed 480 local (Australian) monthly searches and 1,300 global monthly searches for each Match type. Inquiries for “Dr Janice Duffy” using Broad Match type showed 260 Australian monthly searches and 320 global monthly searches and using Phrase Match type showed 210 Australian monthly searches and 260 global monthly searches.

185 *Dow Jones & Co Inc v Gutnick* (2002) 210 CLR 575 at [25] and [44] per Gleeson CJ, McHugh, Gummow and Hayne JJ.

307 Dr Duffy conducted four further Keyword Tool inquiries.¹⁸⁶ The results of the five inquiries for local (Australian) searches are summarised in the following table:

Date	Match type	janice duffy	dr janice duffy	janice duffy psychic stalker
1.9.2011	Broad (Phrase)	480 (480)	260 (210)	
2.3.2012	Broad	880	390	91
29.8.2012	Broad (Phrase)	590 (590)	260 (210)	
26.10.2012	Broad	590	260	46
13.6.2013	Broad	320	140	110

308 Dr Duffy also tendered a document produced by Google for the purpose of the action showing number of searches emanating from Australia (based on searcher's IP address) using the Google search engine from 1 August 2013 to 31 October 2014. This showed 278 searches for "Janice Duffy" and 196 searches for "Dr Janice Duffy".

309 Google has not retained any data showing the number of searches on the Google Australian website for "Dr Janice Duffy" and "Janice Duffy" before August 2013. That data would have been available for at least the 12 months ending in March 2011 if Google had chosen to retain it upon being served with the summons in the action.

310 The earliest period for which data is now available is from September 2010 to August 2011 referred to at [306] above. That data shows large numbers of searches being conducted for both "Dr Janice Duffy" and "Janice Duffy" over that period. There is no reason to believe that the number of searches increased dramatically between October 2009 and August 2011. By contrast, in October 2011 Dr Duffy began her blog and in November 2011 there was media publicity about this action which was likely to increase searches for Dr Duffy's name and this is borne out by the table at [307] above. I find that between October 2009 and February 2011 there were at least 100 monthly searches for "Dr Janice Duffy" and at least 200 monthly searches for "Janice Duffy".

"Dr Janice Duffy": first and second Ripoff Report webpages

311 In relation to searches in Australia on the Google Australian website for "Dr Janice Duffy", it is likely that persons searching for that term were searching in relation to the plaintiff. The plaintiff was the only "Dr Janice Duffy" in Australia and the inclusion of the title "Dr" strongly suggests that the searcher was not searching for another Janice Duffy.

312 The searches between January and December 2010 tendered at trial show paragraphs returned on a search for "Dr Janice Duffy" relating to the first and second Ripoff Report webpages as follows:

Janice Duffy — Psychic Stalker Psychics Beware Of...

Dr Janice Duffy is truly an embarrassment to her profession as a Senior Researcher ...

186 There were also inquiries for more complex search terms including "janice duffy adelaide" and "janice duffy australia" but these produced much smaller numbers of searches.

www.ripoffreport.com/...Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm Cached

Rip-off Report Dr Janice Duffy...

Dr Janice Duffy Stop the Australian Psychic Stalker Dr. Janice Duffy!!
Adelaide, South Australia Adelaide, South Australia

www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-stop-the-aust-deb8p.htm Cached

- 313 It is likely that a significant proportion of persons searching for “Dr Janice Duffy” read these paragraphs relating to the first and second Ripoff Report webpages. I make this finding because searches by Dr Duffy between January and December 2010 generally showed these paragraphs on the first page of search results and I have found that the searches by Ms Palumbo in late 2010 showed those paragraphs.
- 314 Google contends that the priorities assigned by Google’s algorithms for Dr Duffy’s later searches may have been influenced by her earlier search results in the manner described by Mr Madden-Woods. Mr Madden-Woods gave evidence that this occurs if the user has signed in to the Google system and has enabled the feature “Web & App Activity” or if the user has a specific cookie stored on the user’s computer and link to the browser and has not removed that cookie. As to the first, it was not suggested to Dr Duffy in cross-examination that she had enabled the feature “Web & App Activity” and I find that this is unlikely. As to the second, it was not suggested to Dr Duffy in cross-examination that she did something to attract the cookie. Given Google’s knowledge and expertise, there was an evidentiary onus on Google to adduce some evidence that Dr Duffy was likely to have this cookie on her computer. Dr Duffy’s search results do not appear to show any logical progression if earlier search results were affecting later search results. In addition, Ms Palumbo’s first search in June 2010 produced search results linking to the first and second Ripoff Report webpages when she had no relevant search history and her subsequent 2010 search also did so in circumstances in which she gave evidence that her husband regularly removed cookies. I find on the balance of probabilities that Dr Duffy’s computer did not have the cookie.
- 315 Mr Trkulja’s search in April 2012 on the Google Australian website produced search results referring to the Ripoff Report. While this was after the period presently being considered and the paragraphs must have been references to webpages other than those for which Dr Duffy is suing, it tends to confirm that webpages on the Ripoff Report were assigned a relatively high priority by Google’s algorithms when users searched for Dr Duffy’s name. Similarly, while his search was undertaken before the period presently being considered and may have used a different search engine, Mr Shearer’s January 2009 search suggests that search engine algorithms at the generic level tended to assign a relatively high priority to webpages on the Ripoff Report when users searched for Dr Duffy’s name. Both these items of evidence are relatively minor, but add some weight to my conclusion that a significant proportion of persons searching for “Dr Janice Duffy” saw the paragraphs relating to the first and second Ripoff Report webpages.
- 316 A significant proportion of searchers whose searches returned paragraphs relating to the first and second Ripoff Report webpages are likely to have read those paragraphs. The paragraphs themselves are attention-catching as appears from their wording extracted above. It is true, as Google points out, that many

searchers will have been looking for another specific webpage or reference and will not have noticed those relating to the Ripoff Report, but a significant proportion of even those searchers are likely to have noticed the paragraphs relating to the first and second Ripoff Report webpages.

317 Of those searchers who noticed the relevant paragraphs, a significant proportion are likely to have followed the hyperlink to the Ripoff Report webpages themselves for an elaboration of the message conveyed by the paragraphs.

318 I am satisfied that a substantial number of persons in Australia conducted searches on the Google Australian website for the name “Dr Janice Duffy”, read the paragraphs relating to the first and second Ripoff Report webpages and followed the hyperlinks to those webpages.

319 Google published the first and second Ripoff Report webpages and paragraphs relating to them to a substantial number of users between January and December 2010.

“Janice Duffy”: first and second Ripoff Report webpages

320 The searches between January and December 2010 tendered in the action show paragraphs returned on a search for “Janice Duffy” relating to the second Ripoff Report webpage as follows:

Rip-off Report Dr Janice M Duffy Stop the Australian Psychic...¹⁸⁷

Dr Janice Duffy Stop the Australian Psychic Stalker Dr. Janice Duffy!!
Adelaide, South Australia Adelaide, South Australia

www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-stop-the-aust-deb8p.htm Cached

321 They showed two different versions of paragraphs relating to the first Ripoff Report report¹⁸⁸ but they both had in common the following words:

Janice Duffy — Psychic Stalker Psychics Beware Of...

Psychics beware of psychic stalker Janice Duffy...

www.ripoffreport.com/...Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm Cached

322 It is likely that a significant proportion of persons searching for “Janice Duffy” read the paragraphs relating to the first and second Ripoff Report webpages. I make this finding for essentially the same reasons as in respect of searches for “Dr Janice Duffy”. Persons searching for the plaintiff under the name “Janice Duffy” are as likely to have read these paragraphs as persons searching for the plaintiff under the name “Dr Janice Duffy”. Persons searching under the name “Janice Duffy” for someone other than the plaintiff are less likely to have done so but nevertheless a significant proportion of such persons are likely to have noticed these paragraphs and to have read them.

323 Of the searchers who noticed the relevant paragraphs, a significant proportion are likely to have followed the hyperlink to the Ripoff Report webpages themselves for an elaboration of the message conveyed by the paragraphs.

187 In one variation, the words “Stop the Australian Psychic” are replaced by the number “#295925”.

188 See R1A and R1B at [12] above.

324 I am satisfied that a substantial number of persons in Australia conducted searches on the Google Australian website for the name “Janice Duffy”, read the paragraphs relating to the first and second Ripoff Report webpages and followed the hyperlinks to those webpages.

325 Google published the first and second Ripoff Report webpages and paragraphs relating to them to a substantial number of users between January and December 2010.

Remaining Ripoff Report webpages

326 I am not satisfied that a substantial number of persons who conducted searches on the Google Australian website for the names “Dr Janice Duffy” and “Janice Duffy” read paragraphs relating to the third Ripoff Report webpage. Those paragraphs appeared only intermittently in searches undertaken by Dr Duffy and when they appeared they generally appeared on pages after the first two pages of search results.

327 Dr Duffy does not sue in respect of paragraphs relating to the fourth to sixth Ripoff Report webpages as a result of searches for the names “Dr Janice Duffy” or “Janice Duffy”. In any event, those paragraphs appeared rarely, if at all, in searches undertaken by Dr Duffy for those names.

First and second Complaints Board webpages

328 The first and second Complaints Board webpages are in virtually identical terms as follows:

C1 Dr Janice Duffy Senior Researcher

Are you also a victim of the Dr Janice Duffy Senior Researcher? Submit a complaint to help other consumers to be educated and don't let them get away...

www.complaintsboard.com/.../dr-janice-m-duffy-senior-researcher-a55917.html
Cached

C2 Dr Janice Duffy

Are you also a victim of the Dr Janice Duffy? Submit a complaint to help other consumers to be educated and don't let them get away with it!

www.complaintsboard.com/.../dr-janice-duffy-a55921.html Cached

329 Searches by Dr Duffy for the name “Dr Janice Duffy” between January 2010 and October 2011 generally showed paragraphs linked to the first and/or second Complaints Board webpages appearing on the first page of search results. After October 2011, searches for that name resulted in no reference or in paragraphs in innocuous terms referring to the Complaints Board website. I am satisfied that a substantial number of persons who conducted searches on the Google Australian website between January 2010 and October 2011 for the name “Dr Janice Duffy” read the paragraphs relating to the first and second Complaints Board webpages.¹⁸⁹

330 Searches by Dr Duffy for the name “Janice Duffy” showed the paragraphs linked to the first and second Complaints Board webpages appearing only intermittently, and when they appeared they generally appeared on pages after the first page of search results. I am not satisfied that a substantial number of

189 However, the imputations arising from these two paragraphs are not defamatory: see [364]-[365] below.

persons who conducted searches on the Google Australian website for the name “Janice Duffy” read the paragraphs relating to the first and second Complaints Board webpages.

331 Google published paragraphs relating to the first and second Complaints Board webpages to a substantial number of persons searching for “Dr Janice Duffy” between January 2010 and October 2011.

Remaining Complaints Board webpages

332 Searches by Dr Duffy for the name “Janice Duffy” showed the paragraph linked to the third Complaints Board webpage appearing only intermittently and when it appeared it appeared on pages after the first page of search results. I am not satisfied that a substantial number of persons who conducted searches on the Google Australian website for “Janice Duffy” read the paragraph relating to the third Complaints Board webpage. Dr Duffy does not sue in respect of the paragraph relating to the third Complaints Board webpage as a result of searches for “Dr Janice Duffy”.

333 Dr Duffy does not sue in respect of the paragraph relating to the fourth Complaints Board webpage as a result of searches for “Dr Janice Duffy” or “Janice Duffy”. In any event, that paragraph appeared rarely, if at all, in searches undertaken by Dr Duffy for those names.

123 People webpages

334 The searches between January and 16 October 2010 tendered in the action show two different versions of paragraphs returned on a search for “Dr Janice Duffy” relating to the first 123 People webpage, but they both had in common the following words:

Janice Duffy — Email Address, Phone Numbers everything!

Dr Janice Duffy Stop the Australian Psychic Stalker Dr Janice Duffy!...

www.123people.com/s/janice+duffy — United States

335 Searches by Dr Duffy for “Dr Janice Duffy” between January and 16 October 2010 showed paragraphs linked to the first 123 People webpage appearing on the first page of search results. After 16 October 2010, searches for that name resulted in no reference or in paragraphs in innocuous terms referring to the 123 People website. I am satisfied that a substantial number of persons who conducted searches on the Google Australian website between January and 16 October 2010 for “Dr Janice Duffy” read the paragraphs relating to the first 123 People webpage.

336 Dr Duffy does not sue in respect of the paragraph relating to the first 123 People webpage as a result of searches for “Janice Duffy”.

337 Searches by Dr Duffy for “Dr Janice Duffy” and “Janice Duffy” showed the paragraph linked to the second 123 People webpage appearing only intermittently and when it appeared it generally appeared on pages after the first page of search results. I am not satisfied that a substantial number of persons who conducted searches on the Google Australian website for “Dr Janice Duffy” or “Janice Duffy” read the paragraph relating to the second 123 People webpages.

338 Google published the first 123 People webpage to a substantial number of persons between January and December 2010.

Miscellaneous webpages

339 I am not satisfied that a substantial number of persons who conducted searches on the Google Australian website for “Dr Janice Duffy” or “Janice Duffy” read the paragraphs relating to the Wiki Name or Pissed Consumer/Kasamba webpages respectively.

“Dr Janice M Duffy”, “Dr Janice M Duffy Adelaide”, “Janice Duffy Adelaide”

340 I am not satisfied that a substantial number of persons conducted searches on the Google Australian website for the names “Dr Janice M Duffy”, “Dr Janice M Duffy Adelaide” or “Janice Duffy Adelaide” and read the pleaded paragraphs or were led thereby to the Ripoff Report webpages.

341 As to the first two names, I take judicial notice of the fact that Australians rarely use a middle initial and rarely know another person’s middle initial, which was exemplified by Ms Palumbo. Dr Duffy did not make any inquiries using Google’s Keyword Tool for searches for “Dr Janice M Duffy” or “Dr Janice M Duffy Adelaide”.

342 As to “Janice Duffy Adelaide”, Dr Duffy’s only inquiries using Google’s Keyword Tool for this search term were in August to November 2012 which produced a result of about five percent in number of the searches for “Janice Duffy” and these results may have been affected by the media publicity in November 2011 and April 2012.

janice duffy psychic stalker

343 I am satisfied that a substantial number of persons in Australia who conducted searches on the Google Australian website for “Janice Duffy” between August 2011 and June 2013 read the words “janice duffy psychic stalker” generated by Google’s Autocomplete function.

344 I make this finding because the search undertaken by Ms Palumbo in 2012 resulted in the generation of these words by Google’s Autocomplete function and the data produced by Google’s Keyword Tool in March 2012, September 2012 and June 2013 showed an average of 91, 46 and 110 monthly searches respectively for “janice duffy psychic stalker” over the preceding 12 months. It is likely that many of these searches were the result of the Autocomplete function. When the words were generated by Google’s Autocomplete function, these searchers are very likely to have noticed the generation of the words in order to make the search.

345 Google published the words “janice duffy psychic stalker” by its Autocomplete function for a substantial number of persons between August 2011 and June 2013.

Conclusion on publication

346 Google published the following paragraphs relating to the first and second Ripoff Report webpages to a substantial number of persons who searched on the Google Australian website in Australia for “Dr Janice Duffy” between January 2010 and December 2010:

A Janice Duffy — Psychic Stalker Psychics Beware Of..

Dr Janice Duffy is truly an embarrassment to her profession as a Senior Researcher ...

www.ripoffreport.com/...Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm Cached

B Rip-off Report Dr Janice Duffy ..

Dr Janice Duffy Stop the Australian Psychic Stalker Dr. Janice Duffy!!
Adelaide, South Australia Adelaide, South Australia

www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-stop-the-aust-deb8p.htm Cached

- 347 Google published the following paragraphs relating to the first and second Ripoff Report webpages to a substantial number of persons who searched the Google Australian website in Australia for “Janice Duffy” between January 2010 and December 2010:

C Janice Duffy — Psychic Stalker Psychics Beware Of..

Psychics beware of psychic stalker Janice Duffy...

www.ripoffreport.com/.../Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm Cached

D Rip-off Report Dr Janice Duffy

Dr Janice Duffy Stop the Australian Psychic Stalker Dr. Janice Duffy!!
Adelaide, South Australia Adelaide, South Australia

www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-stop-the-aust-deb8p.htm Cached

- 348 Google published the following paragraph relating to the first 123 People webpage to a substantial number of persons who searched on the Google Australian website in Australia for “Dr Janice Duffy” between January 2010 and October 2010:

E Janice Duffy — Email Address, Phone Numbers, Everything!

Dr Janice Duffy Stop the Australian Psychic Stalker Dr Janice Duffy!...

www.123people.com/s/janice+duffy — United States

- 349 Google published the following paragraphs relating to the first and second Complaints Board webpages to a substantial number of persons who searched on the Google Australian website in Australia for “Dr Janice Duffy” between January 2010 and October 2011:

F Dr Janice Duffy Senior Researcher

Are you also a victim of the Dr Janice Duffy Senior Researcher? Submit a complaint to help other consumers to be educated and don't let them get away...

www.complaintsboard.com/.../dr-janice-m-duffy-senior-researcher-a55917.html Cached

G Dr Janice Duffy

Are you also a victim of the Dr Janice Duffy? Submit a complaint to help other consumers to be educated and don't let them get away with it!

www.complaintsboard.com/.../dr-janice-duffy-a55921.html Cached

- 350 Google published the following webpages to a substantial number of persons searching the Google Australian website in Australia for “Dr Janice Duffy” or “Janice Duffy” between January and December 2010:

H <http://www.Psychic/Janice-Duffy-Psychic/janice-duffy-psychic-stalker-98d93.htm> (the first Ripoff Report webpage);

I <http://www.Psychic/Dr-Janice-Duffy/dr-janice-duffy-stop-the-aust-stalker-deb8p.htm> (the second Ripoff Report webpage).

351 Google published the following words by its Autocomplete function to a substantial number of persons searching the Google Australian website in Australia for “Janice Duffy” between August 2011 and June 2013:

J janice duffy psychic stalker.

Imputations

352 The issue as to the meaning conveyed by allegedly defamatory words is determined objectively from the perspective of fair-minded ordinary reasonable persons in the general community reading or hearing the words in their context.¹⁹⁰

353 In *Sands v Channel Seven Adelaide Pty Ltd*¹⁹¹ Gray J (with whom Nyland and Vanstone JJ agreed) summarised the approach as follows:¹⁹²

Irrespective of the tense used, the natural and ordinary meaning of the ABC publications should be determined objectively, by reference to the ordinary reasonable listener or reader of average intelligence. In determining the natural and ordinary meaning conveyed to the ordinary reasonable listener, the Court should approach the matter on the basis that the hypothetical listener or reader is a “right-thinking member of society” who is neither perverse, nor morbid or suspicious of mind, nor avid for scandal.

The ordinary reasonable reader or listener does not live in an ivory tower and can and does “read between the lines” in the light of his or her general knowledge and experience of worldly affairs. Consequently, the words in a publication should be assessed in a manner which reasonable persons of ordinary intelligence with ordinary general knowledge and experience of worldly affairs, would be likely to understand them.

Where the words published are imprecise, ambiguous, loose, fanciful or unusual, the capacity of the matter complained of to convey particular imputations, is given a wide degree of latitude. However there is an overarching requirement of reasonableness to the assessment of the material. As a consequence a publisher will not be liable for meanings imputed to the publication by a listener or reader which are strained or forced, or those which are reached through guesswork or suspicion, or those which are reached by taking into account the individual beliefs of the listener or reader. This distinction was explained in *Mirror Newspapers Ltd v Harrison* where Mason J observed:

... A distinction needs to be drawn between the reader’s understanding of what the newspaper is saying and judgments or conclusions which he may reach as a result of his own beliefs and prejudices. It is one thing to say that a statement is capable of bearing an imputation defamatory of the plaintiff because the ordinary reasonable reader would understand it in that sense, drawing on his own knowledge and experience of human affairs in order to reach that result. It is quite another thing to say that a statement is capable of bearing such an imputation merely because it excites in some readers a belief or prejudice from which they proceed to arrive at a conclusion unfavourable to the plaintiff. The defamatory quality of the published material is to be determined by the first, not by the second, proposition. Its importance for present purposes is that it focuses attention on what is conveyed by the published material in the mind of the ordinary reasonable reader.

190 *Mirror Newspapers Ltd v Harrison* (1982) 149 CLR 293 at 298-301 per Mason J (with whom Gibbs CJ, Wilson and Brennan JJ agreed).

191 *Sands v Channel Seven Adelaide Pty Ltd* [2010] SASC 202.

192 *Sands v Channel Seven Adelaide Pty Ltd* [2010] SASC 202 at [95]-[97].

Paragraph A

354 Paragraph A is:

A Janice Duffy — Psychic Stalker Psychics Beware Of..

Dr Janice Duffy is truly an embarrassment to her profession as a Senior Researcher ...

www.ripoffreport.com/...Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm Cached

355 Paragraph A gives rise to the following defamatory imputations:

1. the plaintiff stalks clairvoyants and others who have or claim to have paranormal powers (“psychics”);¹⁹³
2. the plaintiff is an embarrassment to her profession.¹⁹⁴

356 Google makes a particular contention about the stalking imputation and a more general contention in similar terms about all of the pleaded imputations arising from titles and snippets. Google contends that the ordinary reasonable reader would be aware that Google is only reproducing content of external websites without vouching for it, there is an enormous variation in the reliability of external websites and what is displayed is based on an automatic search guided by textual matches rather than intelligent analysis. However, by reason of the repetition rule, a person who unthinkingly repeats defamatory words of another is liable even though it is evident to the reader that this is what the person has done. While ambiguity in the meaning of words extracted by Google’s search engines might more readily be resolved against a defamatory imputation for the reasons advanced by Google, the imputation that Dr Duffy is a stalker of psychics is unambiguous.

357 Paragraph A does not give rise to the following pleaded defamatory imputations:

1. the plaintiff harasses psychics by persistently and obsessively pursuing them;¹⁹⁵
2. the plaintiff has engaged in scams;
3. the plaintiff is someone to be wary of.¹⁹⁶

Paragraphs B, D and E

358 Paragraphs B, D and E are:

B, D Rip-off Report Dr Janice Duffy ..

Dr Janice Duffy Stop the Australian Psychic Stalker Dr. Janice Duffy!!
Adelaide, South Australia Adelaide, South Australia

193 The paragraph says “Janice Duffy — psychic stalker” and says that psychics should beware of her. Google contends that to describe someone as a psychic stalker does not necessarily mean that the person stalks psychics. However, it is clear from the heading in the context of the snippet that it is being said that Janice Duffy stalks psychics, not that she is a stalker who is also psychic or that she is being stalked by psychics. Google does not contend that the pleaded definition of a psychic (a person possessing paranormal powers) is inaccurate.

194 The paragraph says “Janice Duffy is truly an embarrassment to her profession”.

195 There is a marked difference between stalking and harassment. While some cases of harassment will amount to stalking and vice versa, there are cases of harassment that do not amount to stalking.

196 The paragraph does urge psychics to beware of Janice Duffy but this is part and parcel of the stalking imputation and adds nothing to it.

www.ripoffreport.com/.../Dr-Janice-Duffy/dr-janice-duffy-stop-the-aust-deb8p.htm Cached

E Janice Duffy — Email Address, Phone Numbers, Everything!

Dr Janice Duffy Stop the Australian Psychic Stalker Dr Janice Duffy!...
www.123people.com/s/janice+duffy — United States

359 Paragraphs B, D and E give rise to the following defamatory imputation:

1. the plaintiff stalks psychics.

360 Paragraphs B, D and E do not give rise to the following pleaded defamatory imputations:

1. the plaintiff harasses psychics by persistently and obsessively pursuing them;
2. the plaintiff is someone to be wary of;
3. the plaintiff made unfair, inaccurate and damaging reports about psychics;
4. the plaintiff has engaged in scams.

Paragraph C

361 Paragraph C is:

C Janice Duffy — Psychic Stalker Psychics Beware Of..

Psychics beware of psychic stalker Janice Duffy...
www.ripoffreport.com/...Janice-Duffy.../janice-duffy-psychic-stalker-98d93.htm Cached

362 Paragraph C gives rise to the following defamatory imputation:

1. the plaintiff stalks psychics.

363 Paragraph C does not give rise to the following pleaded defamatory imputations:

1. the plaintiff harasses psychics by persistently and obsessively pursuing them;
2. the plaintiff made unfair, inaccurate and damaging reports about psychics;
3. the plaintiff has engaged in scams;
4. the plaintiff is someone to be wary of.¹⁹⁷

Passages F and G

364 Paragraphs F and G are:

F Dr Janice Duffy Senior Researcher

Are you also a victim of the Dr Janice Duffy Senior Researcher? Submit a complaint to help other consumers to be educated and don't let them get away...
www.complaintsboard.com/.../dr-janice-m-duffy-senior-researcher-a55917.html Cached

G Dr Janice Duffy

Are you also a victim of the Dr Janice Duffy? Submit a complaint to help other consumers to be educated and don't let them get away with it!
www.complaintsboard.com/.../dr-janice-duffy-a55921.html Cached

¹⁹⁷ The paragraph does urge psychics to beware of Janice Duffy but this is part and parcel of the stalking imputation and adds nothing to it.

365 The Complaints Board webpages ostensibly enable a consumer to submit a complaint. The paragraphs do not record a complaint against Dr Duffy. Nor do they identify how Dr Duffy (especially as a Senior Researcher) would have harmed consumers. If the paragraphs had included additional words, the references to “also a victim” might have implied that consumers were victims of Dr Duffy. However, as they stand the words are too vague to give rise to that imputation.

366 These paragraphs do not give rise to the pleaded imputations:

1. the plaintiff has behaved in such a way as to require complaints to be made against her so as to protect other consumers;
2. the plaintiff is someone to be wary of;
3. the plaintiff inflicts injury, hardship, loss or ill-treatment on others.

Passage H

367 Passage H is the first Ripoff Report webpage which is relevantly reproduced at [83] above.

368 The first Ripoff Report webpage gives rise to the following defamatory imputations:

1. the plaintiff stalks psychics;¹⁹⁸
2. the plaintiff harasses psychics by persistently and obsessively pursuing them;¹⁹⁹
3. the plaintiff misused her government work email address by sending emails for non-work or other wrongful purposes;²⁰⁰
4. the plaintiff spreads malicious lies and gossip about other people with a view to gaining sympathy for herself;²⁰¹
5. the plaintiff spreads lies about people dying;²⁰²
6. the plaintiff spreads lies about people committing suicide;²⁰³
7. the plaintiff is an embarrassment to her profession;²⁰⁴
8. the plaintiff is unable to function in day-to-day life;²⁰⁵
9. the plaintiff has been laid off by the hospital where she works because she cannot function in day-to-day life.²⁰⁶

369 The first Ripoff Report webpage does not give rise to the following pleaded defamatory imputations:

198 “Janice Duffy — Psychic Stalker...she stalked me on the psychic website Kasamba and other websites. I am sad to say that she has stalked other psychics as well...she has a serious stalking problem...stalks psychics continuously...please write to me and I will give you her real mailing address and you can call her local police station and have her stopped from stalking...In most countries stalking is against the law”.

199 “harasses psychics over and over again. She will not stop ... has harassed psychics on an ongoing basis ... She harasses continuously”.

200 “I can’t believe she used her government email for personal purposes and it proves stupid she is. This will be reported to her superiors for breaking the law”.

201 “she spreads malicious lies and gossip about people and hopes to gain sympathy for her life”.

202 “she also makes up lies about people dying and committing suicide”.

203 “she also makes up lies about people dying and committing suicide”.

204 “truly an embarrassment to her profession”.

205 “she cannot even function on a day-to-day life”.

206 “she ... has been laid off by the hospital in which she works because she cannot even function on a day to day life”.

1. the plaintiff has behaved in such a way as to require complaints to be made against her so as to protect other consumers;²⁰⁷
2. the plaintiff made unfair, inaccurate and damaging reports about psychics;
3. the plaintiff inflicts injury, hardship, loss or ill-treatment on others;²⁰⁸
4. the plaintiff has engaged in scams;
5. the plaintiff is someone to be wary of;²⁰⁹
6. the plaintiff has an obsession with people who use, or claim to use, paranormal powers to provide a service predicting specific events in individual people's future and unfairly tarnishes their reputations;²¹⁰
7. the plaintiff is hypocritical because she often obtains "psychic readings" but also frequently criticises them;²¹¹
8. the plaintiff engages in blackmail;²¹²
9. the plaintiff uses phoney names for the purposes of deception.²¹³

Passage I

370 Passage I is the second Ripoff Report webpage which is relevantly reproduced at [85] above.

371 The second Ripoff Report webpage gives rise to the following defamatory imputations:

1. the plaintiff stalks psychics;²¹⁴
2. the plaintiff harasses psychics by persistently and obsessively pursuing them;²¹⁵

207 While this is a logical consequence of some of the imputations, it has no separate existence independently of those imputations and adds nothing material to them.

208 While this is a logical consequence of some of the imputations, it has no separate existence independently of those imputations and adds nothing material to them.

209 The paragraph does urge psychics to beware of Janice Duffy but this is part and parcel of the stalking imputation and adds nothing to it.

210 Comment #5 says the plaintiff has a sick obsession with psychics but not that she unfairly tarnishes their reputations. This plea is not that there were two separate imputations of obsession and tarnishing reputations but of a single integrated imputation of obsession and tarnishment.

211 The report says that "The interesting thing is that she continues to get psychic readings on an ongoing basis" and that Dr Duffy criticises psychics, but does not say that this is hypocritical. Objectively, it is not inconsistent for a person to believe that some psychics are genuine and others are not and no hypocrisy is therefore implied.

212 While the report uses the word "blackmail", the substance of the allegations do not amount to blackmail as commonly understood.

213 While the article refers to using phoney names, it is not alleged that this is for the purposes of deception and is in the context of real names frequently not being used on the Kasamba and Ripoff Report websites.

214 "Dr Janice Duffy PHD has been stalking psychics for a long time now and she must be stopped...now this stalker is being exposed to stop her... she is very equipped to stalk psychics and does this on a regular basis ... stalking is a mental illness and unless she gets treatment, she cannot stop herself ... stalking is a serious illness and she cannot stop until she is medicated or put in jail ... She is from Australia and stalks daily ... She has been stalking for a long time ago now".

215 "Her harassing emails have caused many psychics to go into hiding... She likes to go to psychic websites and harass psychics ... She has a crazy obsession with psychics and simply won't stop harassing them".

3. the plaintiff misused her government work email address by sending emails for non-work or other wrongful purposes;²¹⁶
4. the plaintiff, without their permission, fraudulently and/or maliciously accesses other peoples' emails, stored electronic materials and/or electronic memberships;²¹⁷
5. the plaintiff made unfair, inaccurate and damaging reports about psychics;²¹⁸
6. the plaintiff has disseminated lies about psychics;²¹⁹
7. the plaintiff spreads malicious lies and gossip about other people with a view to gaining sympathy for herself;²²⁰
8. the plaintiff spreads lies about people dying;²²¹
9. the plaintiff has engaged in criminal conduct;²²²
10. the plaintiff threatens and manipulates people to further her own ends.²²³

372 The second Ripoff Report webpage does not give rise to the following pleaded defamatory imputations:

1. the plaintiff has behaved in such a way as to require complaints to be made against her so as to protect other consumers;²²⁴
2. the plaintiff is someone to be wary of;²²⁵
3. the plaintiff inflicts injury, hardship, loss or ill-treatment on others;²²⁶
4. the plaintiff has an obsession with people who use, or claim to use, paranormal powers to provide a service predicting specific events in individual people's future and unfairly tarnishes their reputations;²²⁷

216 "What is even more bizarre is that Dr. Janice Duffy has used her government email address to email anti Kasamba clients. This can be tracked by the governments webmaster. We will be forwarding this report to her superiors as a way to gain court evidence that she did indeed write and received emails from her anti psychic kasamba group members with her government email address; therefore breaking government rules. You cannot use a company's email address for personal purposes".

217 "Please also note that many people in her anti-psychic groups feel that she has email hacking software or knows and uses hackers. It is rumoured in some of her anti-psychic groups that she tries to get your personal email address and then tries to hack into it."

218 "she starts creating ripoff reports with many lies... She has also written fake and deceptive rip-off reports about psychic websites ...She is responsible for most of the false rip-off reports created about Kasamba ...".

219 "she... has lied about many psychics online... she starts creating rip-off reports with many lies ... still making false claims against the psychics ... She makes up lies ...".

220 "she starts creating a rip-off reports with many lies to try to gain sympathy from people who will respond to her posts".

221 "she is making up stories about death".

222 "Janice is committing a crime".

223 "she is a doctor and knows how to manipulate innocent people... She knows how to manipulate ...She manipulates and threatens people to give her what she wants".

224 While this is a logical consequence of some of the imputations, it has no separate existence independently of those imputations and adds nothing material to them.

225 While this is a logical consequence of some of the imputations, it has no separate existence independently of those imputations and adds nothing material to them.

226 While this is a logical consequence of some of the imputations, it has no separate existence independently of those imputations and adds nothing material to them.

227 While the report says "stop ruining their reputations because you can't stop your obsession with psychic readings", the claim is that Dr Duffy is *actually* ruining reputations and her

5. the plaintiff is hypocritical because she often obtains “psychic readings” but also frequently criticises them;²²⁸
6. the plaintiff engages in blackmail;²²⁹
7. the plaintiff makes inappropriate use of government records;²³⁰
8. the plaintiff should be imprisoned;²³¹
9. the plaintiff, without their permission, fraudulently and/or maliciously accesses other people’s emails, stored electronic materials and/or electronic memberships and uses such access to engage in electronic communication as if she were those people;²³²
10. the plaintiff has behaved, and will continue to behave, in an evil manner;²³³
11. the plaintiff has breached intellectual property laws;²³⁴
12. the plaintiff severely maltreats her father, including by falsely imprisoning him;²³⁵
13. the plaintiff uses her intelligence to take advantage of people.

Passage J

373 Passage J is the words “janice duffy psychic stalker” generated by Google’s Autocomplete function.

374 The Autocomplete words are alleged to give rise to the following defamatory imputations:

1. the plaintiff stalks psychics;
2. the plaintiff harasses “psychics” by persistently and obsessively pursuing them.

(cont)

conduct in this respect is *caused* by her obsession with readings. That is a different claim with a different sting to a claim that Dr Duffy is obsessed with psychics and *unfairly* tarnishes reputations.

228 While the report says that Dr Duffy is still using psychics and is still making false claims against psychics, it does not say that this is hypocritical. Objectively, it is not inconsistent for a person to believe that some psychics are genuine and others are not and no hypocrisy is therefore implied.

229 While the report uses the word “blackmail”, the substance of the allegations do not amount to blackmail as commonly understood.

230 While the report says that Dr Duffy has easy access to government records, it does not say or imply that she uses them inappropriately.

231 While the report says that Dr Duffy “won’t stop until she is locked up or sued” and “cannot stop until she is medicated or put in jail”, it does not say that she should be imprisoned.

232 While the imputation in the first clause is conveyed, the report does not say that Dr Duffy accessed other people’s emails and then sent emails pretending to be them.

233 It is said: “From what we know of her, she has used her real name Janice and her fake name Lucy. She is also from Australia. Because you can say that you are anyone from anywhere on Ripoff report without any proof, you can only imagine the evil that she can do and she has already done this and continues to do it” However, read in the context this does not say that Dr Duffy has behaved in an evil manner.

234 It is said: “I have the feeling that what she is doing is highly illegal, in that she is publishing on the internet intellectual property that belongs to Liveperson.” However, it goes on to quote from Liveperson’s conditions relating to expert’s and raises the question whether these conditions apply also to clients. Read in context, it does not amount to an assertion that Dr Duffy breached intellectual property laws.

235 The statement “If there is any ‘investigation’ going on with authorities ... it should be an investigation into her poor elderly father who she probably has chained up in her basement, feeding him cat food while she demands he gives her ‘readings’” is clearly satirical.

375 The first imputation is not established. The ordinary reasonable person reading the Autocomplete words would understand that they are neither a statement by Google nor a reproduction by Google of a statement by someone else about Dr Duffy. Rather, they comprise a collection of words that have been entered by previous searchers when conducting searches. They do not amount to the proposition that Janice Duffy is a stalker of psychics.

376 The second imputation is not established.

Imputations are defamatory and of the plaintiff

377 Google does not contend that, if established (which it denies), the pleaded imputations are not defamatory. Google does not contend that the pleaded imputations are not of the plaintiff.

378 An imputation is defamatory if it exposes the plaintiff to hatred, contempt or ridicule²³⁶ or causes the plaintiff to be shunned²³⁷ or otherwise tends to lower the estimation of the plaintiff by the community.²³⁸

379 The imputations I have found established are defamatory of the plaintiff.

Innocent dissemination defence

380 Google relies on the “innocent dissemination defence” at common law and under s 30 of the Act.

Common law defence

381 I have addressed the common law defence as an integral aspect of the issue whether Google was a publisher of the allegedly defamatory material.

382 Google was a secondary participant but by virtue of Dr Duffy’s notifications was aware of the existence of the defamatory material and failed to take steps within a reasonable time to prevent continuing publication thereof by it. The common law defence is not established.

Statutory defence

383 Section 30 of the Act relevantly provides:

30—Defence of innocent dissemination

- (1) It is a defence to the publication of defamatory matter if the defendant proves that—
 - (a) the defendant published the matter merely in the capacity, or as an employee or agent, of a subordinate distributor; and
 - (b) the defendant neither knew, nor ought reasonably to have known, that the matter was defamatory; and
 - (c) the defendant’s lack of knowledge was not due to any negligence on the part of the defendant.
- (2) For the purposes of subsection (1), a person is a *subordinate distributor* of defamatory matter if the person—
 - (a) was not the first or primary distributor of the matter; and
 - (b) was not the author or originator of the matter; and
 - (c) did not have any capacity to exercise editorial control over the content of the matter (or over the publication of the matter) before it was first published.

236 *Parmiter v Coupland* (1840) 6 M & W 105 at 108; 151 ER 340 at 342 per Lord Wensleydale.

237 *Villers v Monsley* (1769) 2 Wils KB 403 at 404; 95 ER 886 at 887 per Lord Wilmot CJ.

238 *Reader’s Digest Services Pty Ltd v Lamb* (1982) 150 CLR 500 at 506 per Brennan J (with whom Gibbs CJ, Stephen, Murphy and Wilson J agreed).

Subordinate distributor

384 Google was a subordinate distributor of the material contained in the first and second Ripoff Report webpages because it was not the first or primary distributor, was not the author or originator and had no capacity to exercise editorial control before first publication.

385 Google was a subordinate distributor of the titles and snippets reproduced on the Google Australian website from the material contained in the first and second Ripoff Report webpages and the first 123 People webpage because it was not the first or primary distributor of that material, was not the author or originator and had no capacity to exercise editorial control before first publication.

Know or ought to know that matter defamatory

386 Google was notified by Dr Duffy of the existence and content of the first and second Ripoff Report webpages and of the fact that the Google websites were producing search results containing extracts from and hyperlinks to them. Their defamatory nature was self-evident from an examination of them. Google's statutory defence fails in respect of that material.

387 Google was notified by Dr Duffy of the existence and content of the paragraphs generated by the Google websites containing extracts from and hyperlinks to the first and second Ripoff Report webpages and the first 123 People webpages. Their defamatory nature was self-evident from an examination of them. Google's statutory defence fails in respect of that material.

Qualified privilege defence

388 Google relies on the qualified privilege defence at common law and under s 28 of the Act.

Common law defence

389 The common law defence applies when:

1. the work is published on an occasion of qualified privilege;
2. the defamatory passage is sufficiently connected to that occasion; and
3. the occasion is used for the purpose of the privilege.²³⁹

390 The onus in relation to the first and second elements lies on the defendant and the onus in relation to the third element (commonly called "malice") lies on the plaintiff.²⁴⁰

391 The underlying rationale for the existence of the defence is public policy, namely that on the occasions protected by privilege it is in the public interest that freedom of communication be given priority over the right of the individual to protection against loss of reputation.²⁴¹

239 *Guise v Kouvelis* (1947) 74 CLR 102 at 116-117 per Dixon J; *Bashford v Information Australia (Newsletters) Pty Ltd* (2004) 218 CLR 366 at [7], [9], [22] and [27] per Gleeson CJ, Hayne and Heydon JJ (see also at [43], [52] and [54] per McHugh J, [130] and [142] per Gummow J, [167], [187] and [192]-[194] per Kirby J and [208] per Callinan J).

240 *Roberts v Bass* (2002) 212 CLR 1 at [97] per Gaudron, McHugh and Gummow JJ.

241 *Aktas v Westpac Banking Corporation* (2010) 241 CLR 79 at [22] per French CJ, Gummow and Hayne JJ, *Cush v Dillon* (2011) 243 CLR 298 at [12] per French CJ, Crennan and Kiefel JJ.

- 392 The categories of occasions of qualified privilege are not closed and are informed by the underlying rationale but are not subsumed by merely considering what might be in the public interest in a particular case.²⁴²
- 393 Two categories traditionally formulated²⁴³ are first, a communication by a person having a legal or moral duty to communicate it to a recipient having a reciprocal duty or interest to receive it and second, a communication to a recipient having a legitimate interest in receiving it by a person having a reciprocal interest in communicating it.²⁴⁴ These two categories of their nature usually apply to communications to a limited class and not to the world at large.²⁴⁵ Google does not contend that it had a duty to communicate the work containing the defamatory passages and relies exclusively on the second traditional category.²⁴⁶
- 394 In relation to communications to the world at large, there are categories recognised by the common law albeit they vary between common law jurisdictions. In Australia, there is a recognised category of communications in relation to government or political matters (the so-called *Lange* defence).²⁴⁷ In England and Wales and some other countries, there is a broader recognised category of communications on matters of public interest (the so-called *Reynolds* defence).²⁴⁸ Google does not rely on these categories.

Reciprocal or mutual interest

- 395 Google contends that the recipient users of the Google search engine had an interest in accessing information relevant to the search term entered, Google had an interest in providing that information, those interests are reciprocal or mutual and it is in the public interest that there be efficient availability of material via the internet and in response to searches made via the internet of the web.
- 396 In *Hunt v Great Northern Railway Co*,²⁴⁹ Lord Esher MR said:²⁵⁰
- The occasion had arisen if the communication was of such a nature that it could be fairly said that those who made it had an interest in making such a

242 *Aktas v Westpac Banking Corporation* (2010) 241 CLR 79 at [22] per French CJ, Gummow and Hayne JJ. Compare categories of duties of care, abuse of process and restitution.

243 These categories may overlap on the facts: *Howe v Lees* (1910) 11 CLR 361 at 368 per Griffith CJ (with whom Barton J agreed) and 376 per O'Connor J.

244 *Toogood v Spyring* (1834) 1 Cr M & R 181 at 193; 149 ER 1044 at 1050 per Parke B.

245 See *Bashford v Information Australia (Newsletters) Pty Ltd* (2004) 218 CLR 366 at [26] per Gleeson CJ, Hayne and Heydon JJ quoted below.

246 While other categories exist or arguably exist, such as those recognised in *Braddock v Bevins* [1948] 1 KB 580; *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 and *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127, Google does not contend that any such categories apply in this case.

247 *Theophanous v Herald & Weekly Times Ltd* (1994) 182 CLR 104; *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.

248 *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127; *Flood v Times Newspapers Ltd* [2012] 2 AC 273; *Yaqoob v Asia Times Online Ltd* [2008] 3 HKC 589. This broader category has not been recognised by the New South Wales Court of Appeal in *John Fairfax & Sons Ltd v Vilo* (2001) 52 NSWLR 373 at [107]-[112] per Heydon JA (with whom Handley and Giles JJA agreed) and several cases that have followed *John Fairfax & Sons Ltd v Vilo* (2001) 52 NSWLR 373.

249 *Hunt v Great Northern Railway Co* [1891] 2 QB 189.

250 *Hunt v Great Northern Railway Co* [1891] 2 QB 189 at 191.

communication, and those to whom it was made had a corresponding interest in having it made to them. When those two things co-exist, the occasion is a privileged one ...

397 In *Howe v Lees*,²⁵¹ the defendants belonged to an association of stock agents at Bendigo whose rules required members to report defaulting purchasers via the secretary to other members. The defendants reported the plaintiff as a defaulting purchaser. The High Court (Isaacs J dissenting) held that members of the association had a sufficient mutual interest to amount to an occasion of qualified privilege. Griffiths CJ (with whom Barton J agreed) said:²⁵²

With regard to the privilege founded upon what is called interest it is contended that the person who makes the communication and the person to whom it is made must have a common interest. “Community of interest” is, I think, a more accurate term ...

The term “community of interest” does not connote a joint pecuniary interest in property. Any legitimate object for the exercise of human faculties pursued by several persons in association with one another may be sufficient to establish community of interest. Again: “interest” does not mean an interest in the particular subject matter as to which the communication is made, but an interest in knowing the fact communicated, in other words, an interest in the subject matter to which the communication is relevant, as for instance the solvency of a probable customer. Having regard to the nature of the business conducted by the members of the Bendigo association, I think that they were all mutually interested in knowing whether probable bidders at the auction sales were persons to whom the short credit allowed might be safely given.

O’Connor J said:²⁵³

The interest relied on as the foundation of privilege must be definite. It may be direct or indirect, but it must not be vague or unsubstantial. So long as the interest is of so tangible a nature that for the common convenience and welfare of society it is expedient to protect it, it will come within the rule. The credit of intending buyers must always be a matter of supreme importance to agents conducting business under the circumstances proved in this case.

Higgins J said:²⁵⁴

... the other auctioneers ... had the same interest in preventing bogus bidders, as they had the same interest in being protected from the rain and the sun. It does seem to me rather ludicrous to say that, as a matter of business, these men had no interest in knowing that Lees had made default. What kind of interest is required? It certainly is not any proprietary interest; it need not even be any pecuniary interest ...

The truth seems to be that the word “interest”, as used in the cases, is not used in any technical sense. It is used in the broadest popular sense, as when we say that a man is “interested” in knowing a fact — not interested in it as a matter of gossip or curiosity, but as a matter of substance apart from its mere quality as news. The interest of the other persons in Bendigo, or in Victoria, would probably be treated as too remote, too unsubstantial; but the interest of the limited body of auctioneers selling in the Bendigo yards, and exposed to the plaintiff’s bids, cannot be regarded as unsubstantial or remote.

251 *Howe v Lees* (1910) 11 CLR 361.

252 *Howe v Lees* (1910) 11 CLR 361 at 369-370.

253 *Howe v Lees* (1910) 11 CLR 361 at 377.

254 *Howe v Lees* (1910) 11 CLR 361 at 396, 398.

398 In *Bashford v Information Australia (Newsletters) Pty Ltd*,²⁵⁵ the defendant published a trade newsletter, the *Occupational Health and Safety Bulletin*, to 900 subscribers who paid an annual subscription of \$395 and had professional responsibility for occupational health and safety matters. The High Court (McHugh and Callinan JJ dissenting) held that the publication was made on an occasion of qualified privilege. Gleeson CJ, Hayne and Heydon JJ said:²⁵⁶

What set the respondent's Bulletin apart from some other paid publications was the narrow focus of both its subject matter and its readership. Because its subscribers were *only* those responsible for occupational health and safety matters, and because it dealt *only* with those matters, there was that reciprocity of duty or interest between maker and recipient which attracted qualified privilege. The circumstances of publication were, therefore, very different from those in which the general news media deal with matters of political or other interest ...

(Emphasis in original.)

399 In *Papaconstuntinos v Holmes à Court*,²⁵⁷ French CJ, Crennan, Kiefel and Bell JJ said:²⁵⁸

The defence of qualified privilege at common law has been held to require that both the maker and the recipient of a defamatory statement have an interest in what is conveyed. This is often referred to as a reciprocity of interest, although "community of interest" has been considered a more accurate term because it does not suggest as necessary a perfect correspondence of interest. The interest spoken of may also be founded in a duty to speak and to listen to what is conveyed.

(Footnotes omitted.)

400 In the present case, Google published the defamatory words to anyone who chose to use its search engine to search for Dr Duffy's name. Google's publication was indiscriminate as to the persons to whom publication might be made and as to the purpose or interest of such persons in making the search enquiry. While some recipients may have had a legitimate interest in ascertaining specific types of information about Dr Duffy amounting to a sufficient interest for the purpose of qualified privilege, the information provided by Google about Dr Duffy was not confined to any specific type of information nor tailored to the particular interest of such a recipient. Google made the information available to any recipient enquiring out of mere curiosity or for purposes of gossip or worse.

401 The publications by Google do not meet the requirement for privileged occasions. The common law defence of qualified privilege fails.

Statutory defence

402 Section 28 of the Act relevantly provides:

28—Defence of qualified privilege for provision of certain information

(1) There is a defence of qualified privilege for the publication of defamatory matter to a person (the *recipient*) if the defendant proves that—

(a) the recipient has an interest or apparent interest in having information on some subject; and

255 *Bashford v Information Australia (Newsletters) Pty Ltd* (2004) 218 CLR 366.

256 *Bashford v Information Australia (Newsletters) Pty Ltd* (2004) 218 CLR 366 at [26].

257 *Papaconstuntinos v Holmes à Court* (2012) 249 CLR 534.

258 *Papaconstuntinos v Holmes à Court* (2012) 249 CLR 534 at [8].

- (b) the matter is published to the recipient in the course of giving to the recipient information on that subject; and
 - (c) the conduct of the defendant in publishing that matter is reasonable in the circumstances.
- (2) For the purposes of subsection (1), a recipient has an apparent interest in having information on some subject if, and only if, at the time of the publication in question, the defendant believes on reasonable grounds that the recipient has that interest.

Recipient interest or apparent interest

403 The word “interest” in s 28(1)(a) applies not only to the interest of a particular class of recipients but also to the interest of the public at large when it is in the public interest that the information be communicated to the public.²⁵⁹ The reference to “interest” in s 28 is therefore broader than the category of communication to a limited class having an interest in receiving the communication referred to at [391] above.²⁶⁰

404 In *Barbaro v Amalgamated Television Services Pty Ltd*,²⁶¹ Hunt J said of s 22(1)(a) of the *Defamation Act 1974* (NSW) which was in the same terms as s 28(1)(a) of the Act:²⁶²

The interest or apparent interest of the recipients need not be a proprietary one, nor even a pecuniary one. The word “interest” is not used in any technical sense; it is used in the broadest popular sense, to connote that the interest in knowing a particular fact is not simply a matter of curiosity, but a matter of substance apart from its mere quality as news. The interest must be definite; it may be direct or indirect, but it must not be vague or insubstantial — so long as the interest is of so tangible a nature that it is expedient to protect it for the common convenience and welfare of society, it will come within the privilege afforded by the section.

405 This passage has been approved by the New South Wales Court of Appeal more recently in *Echo Publications Pty Ltd v Tucker*²⁶³ and *Griffith v Australian Broadcasting Corporation*.²⁶⁴

406 Google published the defamatory words indiscriminately to anyone who wanted to search for references on the web to Dr Duffy regardless of the person’s purpose or interest: it may have been simply a matter of curiosity or

259 In *Lower Murray Urban and Rural Water Corporation v Di Masi* (2014) 43 VR 348, the Victorian Court of Appeal observed that the factors listed in subs (3) appear to be drawn from the speech of Lord Nicholls in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127 at [97] per Warren CJ, Tait and Beach JJA.

260 *Echo Publications Pty Ltd v Tucker* [2007] NSWCA 320 at [7]-[8] per Hodgson JA (with whom Mason P and McColl JA agreed); *Griffith v Australian Broadcasting Corporation* [2010] NSWCA 257 at [103]-[104] per Hodgson JA (with whom Basten JA and McClellan CJ at CL agreed). See also *Austin v Mirror Newspapers Ltd* (1985) 3 NSWLR 354 at 359 per Lord Griffith delivering the judgment of the Privy Council.

261 *Barbaro v Amalgamated Television Services Pty Ltd* (1985) 1 NSWLR 30.

262 *Barbaro v Amalgamated Television Services Pty Ltd* (1985) 1 NSWLR 30 at 40B-C. (Citations omitted).

263 *Echo Publications Pty Ltd v Tucker* [2007] NSWCA 320 at [7]-[8] per Hodgson JA (with whom Mason P and McColl JA agreed).

264 *Griffith v Australian Broadcasting Corporation* [2010] NSWCA 257 at [103]-[104] per Hodgson JA (with whom Mason P and McColl JA agreed). See also the judgment of the Privy Council in *Austin v Mirror Newspapers Ltd* (1985) 3 NSWLR 354 at 359.

otherwise not a matter of substance apart from its mere quality as news. The requirement that the recipients had an interest in having information on the subject is not satisfied.

407 Google contends that there is a public interest in the efficient availability of material on the web and in particular through the use of search engines. Whether or not that be so, a member of the public does not have an “interest” within the meaning of s 28(1)(a) in information on the web because it is on the web any more than a member of the public has an interest in reading information in a newspaper because it is in a newspaper.

408 For the same reasons, the alternative requirement that the recipients had an apparent interest is not satisfied.

Conduct reasonable in the circumstances

409 Section 28(3) of the Act provides a non-exhaustive list of circumstances that the court may take into account in determining whether the defendant’s conduct was reasonable. They include the sources of the information in the matter published and the integrity of those sources and any other steps taken to verify the information in the matter published.

410 Google published the material about Dr Duffy indiscriminately. It is only regarded as a publisher after it was notified of the defamatory material by Dr Duffy and refused to review or remove it. Its conduct is incapable of being characterised as reasonable in the circumstances.

Justification defence

411 Google relies on the justification defence at common law and under s 23 of the Act in respect of some of the alleged imputations. Neither party suggests that there is a material difference between the common law and statutory defences: both involve the question whether the defamatory imputations were substantially true.

412 The imputations that Google seeks to justify²⁶⁵ are as follows:

1. the plaintiff stalks psychics;
2. the plaintiff harasses psychics by persistently and obsessively pursuing them;
3. the plaintiff misused her government work email address by sending emails for non-work or other wrongful purposes.

Stalks and persistently and obsessively harasses psychics

413 Google relies on the same evidence to justify these two imputations and it is convenient to consider them in conjunction albeit they ultimately require independent consideration.

414 Google relies principally on Dr Duffy’s communications with four Kasamba psychics — Fruno, Powerful Visions, Master Z and SunshiningUponYou — as comprising stalking and harassment.

Meaning of harass

415 The word “harass” has a settled meaning in ordinary parlance exemplified by dictionary definitions.

265 Google also seeks to justify the imputations that the plaintiff inflicts injury, hardship, loss or ill-treatment on others and that the plaintiff has an obsession with people who use, or claim to use, paranormal powers to provide a service predicting specific events in individual people’s future and unfairly tarnishes their reputations but these imputations are not established.

416 The *Oxford English Dictionary* gives the following relevant definitions of the verb:²⁶⁶

3. To trouble or vex by repeated attacks.
4. To trouble, worry, distress with annoying labour, care, perplexity, importunity, misfortune, etc.

417 The *Macquarie Dictionary* gives the following relevant definitions of the verb:²⁶⁷

1. To trouble by repeated attacks, incursions, etc, as in war or hostilities; harry; raid.
2. To disturb persistently; torment, as with troubles, cares, etc.

Meaning of stalk

418 The word “stalk” has a traditional meaning exemplified by dictionary definitions.

419 The *Oxford English Dictionary* gives the following relevant traditional definitions of the verb:²⁶⁸

2. To go stealthily to, towards (an animal) for the purpose of killing or capturing it ...
3. To pursue (game) by stealthy approach. *To stalk down*: to follow or track (an animal) stealthily until one comes within range

420 The *Macquarie Dictionary* gives the following relevant traditional definitions of the verb:²⁶⁹

1. To pursue or approach game, etc, stealthily ...
5. To pursue (game, a person, et cetera) stealthily.

421 The word “stalk” evolved during the 20th century from its traditional meaning to refer to stalking a person rather than game. The conduct is still covert and surreptitious. The purpose however is not to kill or capture game but to invade the privacy of the victim for inappropriate and unacceptable purposes such as voyeurism or to harm the victim. Regardless of the specific purpose, the conduct if discovered by the victim is calculated (although not intended because of the covert nature of the activity) to cause the victim to feel fear or apprehension.

422 The word “stalk” evolved further to encompass not only covert conduct but also overt conduct where the victim is physically pursued in an inappropriate and unacceptable manner that invades the victim’s privacy and is calculated to cause the victim to feel fear or apprehension. Finally, the word evolved to encompass similar conduct except the pursuit of the victim is undertaken by following the victim by electronic means (video, telephone, email, internet messaging, etc) rather than physically. In this variation, the victim’s privacy is still invaded, the conduct is still inappropriate and unacceptable and the conduct is still calculated to cause the victim to feel fear or apprehension. There are thus now two species of stalking being the covert and overt species.

266 *Oxford English Dictionary* (2nd ed, 1989) Vol VI, p 1100.

267 *Macquarie Dictionary* (3rd rev ed, 2003) p 864.

268 *Oxford English Dictionary* (2nd ed, 1989) Vol XVI, p 470.

269 *Macquarie Dictionary* (3rd rev ed, 2003) p 1830.

423 The modern understanding of stalking described in the previous two paragraphs is the sense in which the word was used in the first and second Ripoff Reports and in the paragraphs on the Google Australian website derived from them and from the first 123 People webpage.

Context

424 Before considering Dr Duffy's communications with the psychics, it is important to identify the context in which those communications took place. The psychics operating on the Kasamba website knew that some²⁷⁰ of their clients placed faith in their predictions, were prepared to pay an hourly rate for those predictions because of their faith in them and were emotionally attached to the matters about which they sought predictions and to the predictions themselves.

425 Such psychics knew that sometimes their predictions would come true and this would result in positive emotions for those clients who had faith in them. Such psychics knew that sometimes their predictions would not come true, sometimes after a considerable time, and that in such cases some clients would suffer emotionally as a result. Such emotions would include anxiety, disappointment, disillusionment, pain, anger, blame and depression. Such clients were likely to express those emotions to the psychic and others after the predictions did not come true and this was to be accepted as an ordinary foreseeable consequence of such predictions not coming true. Such psychics could be expected to be relatively empathetic to their clients and relatively tolerant when their clients expressed emotions and blame when their predictions did not come true.

Fruno

426 Between 14 January and 7 April 2006, Dr Duffy participated in paid live online chats and online email exchanges with Fruno. Fruno made strong positive predictions about a relationship with Jon, including after Dr Duffy told him of the setbacks with Jon, and predicted that Dr Duffy would still see Jon in June 2006.

427 Between 22 May and 4 June 2007, Dr Duffy participated in online email exchanges with Fruno. She said that his predictions had been wrong, she was in the middle of a bad breakdown and unable to function and enquired why he had given her false hope. Fruno generally responded to Dr Duffy saying that he could not make Jon embrace the love that Fruno felt was there. The predominant matters expressed by Dr Duffy were pain, disappointment and disillusionment. There is nothing in these email exchanges that could amount to harassment or stalking.

428 On 21 June 2007, Dr Duffy participated in an online email exchange with Fruno. She said that she was writing an e-book on him and other psychics who had made wrong predictions and did not know how to treat clients and there would be a chapter on him. Fruno responded in sympathetic terms. Dr Duffy's conduct on this occasion cannot be characterised as harassment or stalking.

429 Between 22 June and 4 July 2007, Dr Duffy participated in online email exchanges with Fruno. She attached a partial excerpt of a chapter from the book

270 Other clients no doubt considered the predictions to be for entertainment value only, but it is unlikely that many such clients would have paid the very high hourly rates charged by some psychics.

she was writing. That excerpt was not tendered. She said that she was extremely sick, depressed, unable to function and suicidal and Fruno was partially responsible because of the encouragement he had given her in 2006. Fruno responded in sympathetic terms.

430 The predominant tone of Dr Duffy's emails up to 1 July was of pain and distress. Between 1 and 4 July, Dr Duffy expressed increasing despair and talked about killing herself and Jake, who Fruno initially thought was her son but who she told him was her dog. Dr Duffy rejected Fruno's expressions of prayers and care. Although Dr Duffy used highly emotionally charged language in those latter emails, the clear and consistent message conveyed to Fruno was of overwhelming despair, grief, helplessness and hopelessness. Dr Duffy's conduct during those communications does not amount to harassment or stalking.

431 Google relies generically on email communications between Dr Duffy and Kasamba administrators, not necessarily specifically in relation to Fruno but in relation to psychics who had given readings to Dr Duffy generally. Google tendered documents created by Dr Duffy that appear to be drafts of emails that she contemplated sending to Kasamba administrators but in general there is no evidence that those documents were in fact sent. Google also tendered emails that were sent by Dr Duffy to Kasamba and Kasamba's replies. Dr Duffy's statements in those emails (and indeed in the drafts that were not proved to be sent) were relatively generic and low key. They do not amount to harassment or stalking of anyone and in any event there is no reason to believe that they were sent to Fruno or any other psychic or that Dr Duffy intended or contemplated that they would be.

432 Google also relies generically on reports and comments on other persons' reports posted by Dr Duffy on the Ripoff Report website between July 2007 and March 2009. In some of those reports and comments, Dr Duffy listed names of psychics operating on the Kasamba website, including Fruno, who she said were completely wrong about the outcome of a relationship with someone she met. In some cases, she used mild objective language; in other cases she used strong emotionally charged subjective language. While these reports and comments related to Fruno (and Powerful Visions, Master Z and SunshiningUponYou), they were not addressed or directed to those psychics. Indeed, there is no reason to believe that those psychics visited the Ripoff Report website or were aware of Dr Duffy's posts or that Dr Duffy believed or intended that they were so aware. Dr Duffy's posts on the Ripoff Report website cannot comprise or evidence stalking or harassment of psychics.

433 A number of other persons responded to Dr Duffy's reports or comments on the Rip Off website and Dr Duffy responded to the reports and comments of other persons on that website. Several of these exchanges were expressed, often on both sides, in emotionally charged and in some cases vitriolic language. However, neither party in those exchanges was stalking or harassing the other, whatever other characterisation might be given of their communications. Moreover, Dr Duffy's participation in those exchanges cannot be characterised as stalking or harassing psychics.

434 Google has failed to prove that Dr Duffy stalked or persistently and obsessively harassed Fruno.

Powerful Visions

435 Between 14 January and 25 February 2006, Dr Duffy participated in paid live online chats with Powerful Visions (initially known as Soul Connection). She made positive predictions about a relationship with Jon and his return to Australia. Between 21 March and 10 July 2006, Dr Duffy participated in further paid live online chats on Kasamba with Powerful Visions. Dr Duffy told her that Jon had met and fallen in love with a married woman and did not know if he was coming to Australia in June. She responded making positive predictions notwithstanding the setbacks.

436 On 30 and 31 July 2006, Dr Duffy participated in online email exchanges with Powerful Visions. Dr Duffy said that Powerful Visions' predictions had been wrong, expressed extreme disappointment and pain and requested a refund of the money she had spent. Powerful Visions said she could not give a refund as the payment was to Kasamba but offered a free reading or spell. There is nothing in Dr Duffy's communications during these relatively brief exchanges that could amount to stalking or harassment.

437 Google has failed to prove that Dr Duffy stalked or persistently and obsessively harassed Powerful Visions.

Master Z

438 Between 30 August 2005 and 7 February 2006, Dr Duffy participated in paid live online chats and email exchanges with Master Z. Master Z made positive predictions about a relationship with Jon and said that Jon would return to Australia in June. On 12 May 2006, Dr Duffy participated in an online email exchange with Master Z. He gave positive predictions about Jon notwithstanding the setbacks.

439 On 31 May 2007, Dr Duffy participated in an online email exchange with Master Z. She said that his predictions about Jon had been wrong. Master Z responded saying that he could have been wrong, Dr Duffy should forget about Jon because he was not healthy for her and expressing compassion. There was no element of stalking or harassment in Dr Duffy's communications on this occasion.

440 On 3 July 2007, Dr Duffy participated in an online email exchange on Kasamba with Master Z. Dr Duffy sent to him transcripts of her paid chats and email sessions with him in 2005 and 2006 about the prospects of a relationship with Jon which had not transpired. Master Z responded saying that the fact that Dr Duffy had been able to feel what she did for a while had been a blessing and gave hope for the future after her health improved. Dr Duffy sent a responding email saying that he had hurt her, taken her money, she was broken and she felt angry and bitter. The overall matters conveyed by Dr Duffy to Master Z were of despair, grief, helplessness and hopelessness. While Dr Duffy expressed anger towards and attributed blame to Master Z, Dr Duffy's communications do not amount to stalking or harassment of Master Z.

441 On 23 March 2008, Dr Duffy created an account on Kasamba in the name of "bad boy" and paid for an online chat session with Master Z. She posed as a 29-year-old man looking for love and received positive predictions which she regarded as scripted. The next day she participated in an online email exchange with Master Z in which she accused Master Z of using scripted readings and said that she was collecting information on him, he hurt people for money and that made him evil. On 24 and 26 March 2008, she posted reports under the

usernames “Aussieboy” and “Gretal” on the Ripoff Report website complaining about Master Z and describing bad boy’s online chat session with Master Z.

442 Master Z did not use his real name on the Kasamba website and there is no doubt that many clients did not use their real names when seeking readings. There is no doubt that many clients tested psychics on the Kasamba website by providing false details about themselves to see what predictions the psychics would make. This does not amount to stalking or harassment. The fact that Dr Duffy so acted does not amount to stalking or harassment. While the tone of her email to Master Z and reports about him in the Ripoff Report reflects poorly on her, neither the email nor the reports amount to stalking or persistent and obsessive harassment.

443 Google has failed to prove that Dr Duffy stalked or persistently and obsessively harassed Master Z.

SunshiningUponYou

444 In February 2006, Dr Duffy participated in paid live online chat sessions with SunshiningUponYou. Sun made positive predictions about a relationship with Jon. In December 2006 and January 2007, Dr Duffy participated in further paid live online chat sessions with SunshiningUponYou. Sun gave positive advice to Dr Duffy about Jon and said that May 2007 would be an amazing month for Jon and Dr Duffy.

445 On 4 and 15 September 2007, Dr Duffy participated in online email exchanges with SunshiningUponYou.²⁷¹ Dr Duffy said that Sun’s January prediction that May would be an amazing month for Jon and herself turned out to be wrong when Jon ditched her for good in May and she had a breakdown. She asked why Sun had given that prediction when the opposite turned out. Sun replied saying that Sun’s timeframes were not always right, Jon would in time realise how stupid he had been and Dr Duffy should focus on being well right now. There was no element of stalking or harassment in Dr Duffy’s communications on this occasion.

446 Between 26 and 28 September 2007, Dr Duffy participated in unpaid online email exchanges on Kasamba with SunshiningUponYou. Dr Duffy expressed pessimism and despair about a relationship with Jon and personal pain, anguish, foolishness and depression. There was no element of stalking or harassment in Dr Duffy’s communications on this occasion.

447 On 30 September 2007, Dr Duffy participated in an unpaid online email exchange with SunshiningUponYou. Dr Duffy expressed increasing pain and depression and a loss of faith and trust in SunshiningUponYou. Dr Duffy’s last post on that day complained that she had spent hundreds of dollars on Sun’s readings, accepted that no relationship with Jon would happen and criticised Sun for making promises she trusted that did not eventuate. The overwhelming message was of pain and despair. There was no element of stalking or harassment in Dr Duffy’s communications on this occasion.

448 On 18 December 2007, Dr Duffy under the username “ozzieb” posted three online messages on Kasamba to SunshiningUponYou saying that his wife’s friend committed suicide on 17 December and Sun was responsible for the death because she told the friend lies that she would be with someone who was

271 The 4 September session was conducted by Dr Duffy under her username *janice180501* and the 15 September session under her user name *wonderingstar1960* but it is evident that Sun knew that *wonderingstar1960* was the same person.

using her and who had married someone else. Ozziieb said that he would send Sun's communications with his wife's friend to the head of Kasamba and the national media. The posts were expressed in highly emotionally charged and critical language. Sun did not respond.

449 On 19 December 2007, Dr Duffy under the name Oswald Billet sent an email to Kasamba saying that his wife's friend committed suicide on 17 December and complaining about SunshiningUponYou's conduct leading up to the suicide.

450 On 28 December 2007, Dr Duffy under the username "Friend's Husband" posted a report on the Ripoff Report about the suicide of his wife's friend and complaining about SunshiningUponYou's conduct leading up to the suicide.

451 Dr Duffy's conduct towards SunshiningUponYou on 18 December 2007 was reprehensible and would have caused substantial distress to SunshiningUponYou if Sun had given any credence to the allegation that a former client had committed suicide. Dr Duffy's conduct was offensive but it did not amount to stalking. It was one-off conduct. It did not have the elements of pursuit or invasion of privacy. Nor did it amount to obsessive and persistent harassment.

452 Google has failed to prove that Dr Duffy stalked or persistently and obsessively harassed SunshiningUponYou.

Psychics collectively

453 Google adduced some evidence of Dr Duffy's communications with or reports about other psychics. None of that evidence proves that Dr Duffy stalked or persistently and obsessively harassed any of those psychics.

454 Considered collectively, Dr Duffy's proven conduct in respect of Fruno, Powerful Visions, Master Z, SunshiningUponYou and the other psychics does not amount to stalking or persistently and obsessively harassing psychics. Google has failed to prove justification in respect of these imputations.

Misused government work email address

455 Google seeks to justify the imputation that Dr Duffy misused her government work email address by sending emails for non-work or other wrongful purposes.

456 Dr Duffy had a work email address at the Repatriation General Hospital being an sa.gov.au address. Dr Duffy had a standard work sign-off for emails sent from that work email address being "Dr Janice Duffy, Senior Researcher, Respiratory Function Unit, Division of Medicine, Repatriation General Hospital, Daws Road, Daw Pk, SA, 5041" together with her work and mobile telephone numbers. Dr Duffy also had from time to time private email addresses.

457 Between 21 August 2007 and 19 August 2008, Dr Duffy sent a number of emails from her work email address using her work sign-off to various persons for private purposes (linked directly or indirectly to her experiences with psychics). There were no disclaimers in those emails that they were not sent in Dr Duffy's capacity as an employee at the Repatriation General Hospital.

458 Google tendered the Department of Health's email policy issued in June 2005. It contained provisions prohibiting business auto-signatures being attached to personal emails and requiring that personal emails incorporate an identifying disclaimer. The policy was expressed to be due for review in June 2007. While there was no evidence adduced about review of the policy in June 2007, there is no reason to believe that the relevant provisions of the June 2005 policy were not still applicable after June 2007.

459 Objectively, Dr Duffy breached the Department of Health’s email policy by sending the personal emails referred to above. Dr Duffy gave evidence that in 2007 and 2008 she was not specifically aware of the Department of Health’s written email policy. However, without having a specific awareness of the existence of a written policy, it is generally understood within government and in the community that a government employee is not entitled to use a government work email address to send personal emails without appropriate disclaimers.

460 Google has proved the truth of the imputation that Dr Duffy misused her government work email address by sending emails for non-work or other wrongful purposes.

Contextual truth defence

461 Google relies on the contextual truth defence under s 24 of the Act in respect of the imputations pleaded by Dr Duffy.

462 Section 24 provides:

It is a defence to the publication of defamatory matter if the defendant proves that—

- (a) the matter carried, in addition to the defamatory imputations of which the plaintiff complains, one or more other imputations (*contextual imputations*) that are substantially true; and
- (b) the defamatory imputations do not further harm the reputation of the plaintiff because of the substantial truth of the contextual imputations.

463 There are at least three elements²⁷² to the defence:

1. the matter carried an additional imputation;
2. the additional imputation is substantially true;
3. the defamatory imputation established by the plaintiff does not cause further harm than that already caused by the additional imputation.

Additional imputation

464 Google contends that each of the first and second Ripoff Report webpages carried an imputation that Dr Duffy had conducted a campaign on the internet against psychics whom she had targeted.²⁷³ Google pleads specific passages from each of those webpages as particulars giving rise to the imputation.

First Ripoff Report webpage

465 Google relies on several passages from the first Ripoff Report webpage as giving rise to the additional imputation, which passages include:

... She threatens psychics to abide by her rules or else she will blackmail them by writing rip off reports about them. She uses this website to simply trash psychics.
... She is overly obsessed with him and stalks psychics for more information and if she doesn’t get any, she writes fake and phoney information about them online. ...

466 These passages in their context give rise to the pleaded additional imputation.

²⁷² There is probably a fourth element that the additional imputation be defamatory of the plaintiff but it is not necessary to form a final view on this: see [470] below.

²⁷³ Google makes the same contention in respect of the third and fourth ROR webpages but I have concluded that Dr Duffy has failed to prove publication thereof.

Second Ripoff Report webpage

467 Google relies upon several passages from the second Ripoff Report webpage as giving rise to the additional imputation, which passages include:

She ... has made numerous rip off reports and has lied about many psychics online. ... She creates numerous rip off reports about psychics claiming that they somehow wronged her or caused one of her friends to die. ... Dr. Janice Duffy likes to use the website Kasamba amongst other psychic websites and makes numerous user accounts to try and trick psychics because she is often blocked by many psychic advisors. ... In my opinion, she is out to get any psychic that she can and she uses rip off reports so that it can show up in the search engines so that when someone types in your psychic name or handle, it will show a rip off report about you. ...

468 These passages in their context give rise to the pleaded additional imputation.

Conclusion

469 Google has proved that each of the first and second Ripoff Report webpages gave rise to the additional imputation. Subject to the next paragraph, this element is established.

470 It is probably an implied requirement of s 24(a) that, in order to fall within the first limb of the defence defined by s 24(a), the additional imputation must be defamatory of the plaintiff. The use of the word “other” following the reference to “defamatory imputations” suggests this, as does the purposive consideration that, if the additional imputation is not defamatory of the plaintiff, it is difficult to see how the defamatory imputation could fail to cause incremental harm to the plaintiff’s reputation. It is not necessary to form a final view on this question of construction of s 24(a) because it is superseded by the s 24(b) issue in this case.

Substantial truth

471 The evidence establishes that Dr Duffy did conduct a campaign on the internet against psychics whom she had targeted. This element is established.

Incremental harm

472 The additional imputation pleaded by Google is not defamatory. Conducting a campaign on the internet against others of a person’s choosing in itself is not calculated to lower the estimation of the person by the community. Even if it did so, it would not cause as much harm as an imputation of stalking or persistent and obsessive harassment.

473 The defence of contextual truth is not established.

Conclusion

474 Between January and December 2010, Google published to a substantial number of persons searching for “Dr Janice Duffy” or “Janice Duffy” the first Ripoff Report webpage that contained the following imputations defamatory of Dr Duffy:

1. Dr Duffy stalks psychics;
2. Dr Duffy harasses psychics by persistently and obsessively pursuing them;
3. Dr Duffy spreads malicious lies and gossip about other people with a view to gaining sympathy for herself;
4. Dr Duffy spreads lies about people dying;

5. Dr Duffy spreads lies about people committing suicide;
6. Dr Duffy is an embarrassment to her profession;
7. Dr Duffy is unable to function in day-to-day life;
8. Dr Duffy has been laid off by the hospital where she works because she cannot function in day-to-day life.

475 Between January and December 2010, Google published to a substantial number of persons searching for “Dr Janice Duffy” the paragraph extracted at [335] above (first occurring) relating to the first Ripoff Report webpage that contained the following imputations defamatory of Dr Duffy:

1. Dr Duffy stalks psychics;
2. Dr Duffy is an embarrassment to her profession.

476 Between January and December 2010, Google published to a substantial number of persons searching for “Janice Duffy” the paragraph extracted at [358] above (first appearing) relating to the first Ripoff Report webpage that contained the following imputations defamatory of Dr Duffy:

1. Dr Duffy stalks psychics.

477 Between January and December 2010, Google published to a substantial number of persons searching for “Dr Janice Duffy” or “Janice Duffy” the second Ripoff Report webpage that contained the following imputations defamatory of Dr Duffy:

1. Dr Duffy stalks psychics;
2. Dr Duffy harasses psychics by persistently and obsessively pursuing them;
3. Dr Duffy, without their permission, fraudulently and/or maliciously accesses other peoples’ emails, stored electronic materials and/or electronic memberships;
4. Dr Duffy made unfair, inaccurate and damaging reports about psychics;
5. Dr Duffy has disseminated lies about psychics;
6. Dr Duffy spreads malicious lies and gossip about other people with a view to gaining sympathy for herself;
7. Dr Duffy spreads lies about people dying;
8. Dr Duffy has engaged in criminal conduct;
9. Dr Duffy threatens and manipulates people to further her own ends.

478 Between January and December 2010, Google published to a substantial number of persons searching for “Dr Janice Duffy” or “Janice Duffy” the paragraph extracted at [358] above (first occurring) relating to the second Ripoff Report webpage that contained the following imputations defamatory of Dr Duffy:

1. Dr Duffy harasses psychics by persistently and obsessively pursuing them;
2. Dr Duffy made unfair, inaccurate and damaging reports about psychics;
3. Dr Duffy has engaged in scams.

479 Between January and October 2010, Google published to a substantial number of persons searching for “Dr Janice Duffy” the paragraph extracted at [358] above (second occurring) relating to the first 123 People webpage that contained the following imputations defamatory of Dr Duffy:

1. Dr Duffy stalks psychics.

480 The defences of innocent dissemination, qualified privilege, justification
(except as to the misuse of government email) and contextual truth fail.

481 It is necessary to proceed to trial of the remaining issues, being the defences
of triviality and time limitation, the application for an extension of time, and
causation and quantum of damages.

Solicitors for the defendant: *HWL Ebsworth Lawyers*.

ALEX JAMES-MARTIN

Appendix

Ripoff Report 1²⁷⁴

Report #295712

Report: Janice Duffy — Psychic Stalker! Psychics Beware of Australian Psychic Stalker!

Reported by: (Riverton Wyoming)

Janice Duffy — Psychic Stalker! Psychics Beware of Australian Psychic
Stalker! Janice Duffy Stalked me on the computer for several months. She uses
the name Janice and other phoney names and keeps on sending you her name
over and over again. I know of her because she stalked me on the psychic
website Kasamba and other websites. I am sad to say that she has stalked other
psychics as well. Australia Adelaide internet.

Janice Duffy — Psychic Stalker!

Psychics Beware of Australian

Psychic Stalker

Adelaide internet 5041

Australia

Category Psychic

Submitted: Sunday, December 30, 2007

Last posting: Tuesday, October 14, 2008

*Psychics must beware of a psychic stalker named Janice Duffy. She is a woman
that comes from Australia and writes phoney rip off reports on psychics
worldwide. She sends out threatening emails to people in hopes to get free
psychic readings and free information from psychics. She actually holds a PHD
and works for a hospital in Australia. I am sending this warning out to psychics
worldwide in case you have also been stalked by this woman. She threatens
psychics to abide by her rules or else she will blackmail them by writing rip off
reports about them. She uses this website to simply trash psychics. She has been
known to create multiple accounts on psychic websites like Kasamba and
harrasses psychics over and over again. She will not stop and has a stalker like
mentality. She spreads melicious lies and gossip about people in hopes to gain
sympathy for her life. She cannot even work right now and has been laid off by
the hospital in which she works because she cannot even function on a day to
day life. She is a stalker because she hunts psychics down and sends threatening
emails that if you don't do what she says, then she will make other people
believe in the lies in which she is putting out. Janice Duffy is from Adelaide
Australia and is a senior researcher. Please make sure to watch out for this*

274 Emphasis added in italics to passages pleaded by the plaintiff as giving rise to imputations.

woman and to avoid her at all costs for doing psychic readings for. She is a woman who does not understand the term, "Entertainment purposes only." She is also someone who spreads lies and says that she is another person from Australia and uses Australia in many of her rip off reports. I know who she is because she befriends people on the internet in her internet chat groups that bashes Kasamba psychics. She is someone that psychics need to be aware of. The interesting thing is that she continues to get psychic readings on an ongoing basis and she has gotten them from several psychic websites and has harrassed psychics on an ongoing basis. Psychics try to stop her by blocking her accounts. However, Janice Duffy keeps on creating new accounts on any psychic website that she gets her hands on. This is something that Janice is known for. She also makes up lies about people dying and committing suicide. This is very sad since that is a serious issue and should be dealt with accordingly. Janice Duffy works in a medical hospital and gets health insurance, but instead of seeking help with professional psychiatrists, she instead harrasses psychics. Granted she may not like psychics and if this is the case, then do not get a psychic reading done by them. Janice Duffy is someone that sends multiple emails out to psychics daily complaining about a guy that she has never met before on the internet and a man that she has fell in love with and she never even met him in person. He is of African American descent and she is caucasian. She is overly obsessed with him and stalks psychics for more information and if she doesn't get any, she writes fake and phoney information about them online. Being she is from Australia, she is very careful about leaving her name behind. However, many psychics have encountered this woman Janice Duffy and its time that psychics fight back. Nobody likes to be stalked and Janice Duffy will not stop until the psychic community becomes aware of who Janice Duffy is and the fact that she has a serious stalking problem. Janice also has dyslexia and has been known to create multiply accounts. Janice wrote a phony rip off report about psychics such as Master Z and she used the name Janice from Australia. She used blackmail to let psychics know that they must answer her emails or else she will create rip off reports about them. This woman should be best avoided and never dealt with.

Please look for Australia in her rip off report because she doesn't hide the fact that she is coming from Australia. However, she does hide her real name and makes up extremely bizzare stories to gain sympathy for her delusions. She needs a lot of help and this is something that psychics should not have to handle. She is a PHD and should not be using her power to try to harrass and talk psychics. She works for a hospital and its a shame that she knows the rules of the psychic websites and yet stalks psychics continuously on them. Psychics, please beware of this woman. You have been warned. If you wish to file a harrassment lawsuit against her for stalking, please write to me and I will give you her real mailing address so that you can call her local police station and have her stopped for stalking. She harrasses continuously. In most countries, stalking is against the law and has serious consequences. For those interested, I can send you detailed information as to the anti psychic groups that she has started and starts right now as well as the hate mail that she sends to psychics.

Mary anne
Riverton, Wyoming
USA

This report was posted on "Ripoff Report on 12/30/2007 4:00:21 PM and is a permanent record located here: <http://www.ripoffreport.com/psychic/janice-duffy-psychic/janice-duffy-psychic-stalker-98d93.htm>. Ripoff Report has an exclusive license to this report. It may not be copied without the written permission of Ripoff Report.

#1 Story sounds similar to my friend's experience with Janice
Katie — Smalltown (U.S.A.)

SUBMITTED: Monday, December 31, 2007

My friend was also continuously attacked by Janice thru emails about her obsession with this man

From reading other Ripoffreports, I found out Janice created a Kasamba victim's group and took many client's transcripts from their Kasamba accounts and ran off with it.

POSTED Monday, December

Janice Duffy is a dangerous person and the psychic community needs to be aware of her. Her last measure of revenge is to make up lies in attempting to ruin psychic's reputations since she isn't able to bring down Kasamba. Dr Janice Duffy is truly an embarrassment to her profession as a Senior Researcher in Adelaide, Australia.

...

#3 *Dr. Janice Duffy uses her government work email address to email anti Kasamba psychic clients.*

Katie — Smalltown (U.S.A.)

SUBMITTED: Wednesday, January 02, 2008

Sugarpie you said

I can't believe this OP posted personal info on her, but a lot of it proved how educated, job having, important person she is.

POSTED: Wednesday, January 02, 2008

I can't believe she used her government email for personal purposes and it proves how stupid she is. This will be reported to her superiors for breaking the law.

...

#5 Report Janice

Freya4 — Hollywood (U.S.A.)

SUBMITTED: Monday, January 07, 2008

I feel the only necessary thing to do here is to report Janice to her Government/place of work, *the fact that she is using Government hours and money to fuel her sick obsession with Psychics is downright wrong. Surely someone must have her company name or the like from the work email that she has used to abuse psychics?*

POSTED: Monday, January 07, 2008

Ripoff Report 2**Report: #295925****Report: Dr. Janice Duffy****Reported by:** (Riverton Wyoming)Dr. Janice Duffy Stop the Australian Psychic Stalker Dr. Janice Duffy!!
Adelaide, South Australia Adelaide, South Australia**Dr. Janice Duffy**

Adelaide, South Australia

Adelaide, South Australia Nationwide 5041

U.S.A

Category: Psychic**Submitted:** Monday, December 31, 2007

Last posting: Saturday, December 06, 2008

Dr. Janice Duffy P.H. D has been stalking psychics for a long time now and she must be stopped. Her harassing emails have caused many psychics to go into hiding because of her blackmailing and forcing psychics to respond to her emails. She is from Adelaide, South Australia and has made numerous rip off reports and has lied about many psychics online. She has a dog named Jake and she is obsessed with an African American boyfriend that she only met online and through the internet. Her story is very familiar to most psychics since she usually says that she is either from Australia, Toronto or Skyville Australia. Her real name is Janice Duffy and she also uses the name Lucy as you can see in her previous rip off report. She creates numerous rip off reports about psychics claiming that they somehow wronged her or caused one of her friends to die. She likes to go to psychic websites and harass psychics for free updates and to listen to her story over and over again. If you dont do what she says, then she is known to use blackmail and says that she will write rip off reports about you. Her personal website is on the dogster website as she stated on a previous rip off report #268343. Janice wrote Alternatively they can view my page on the Dogster site just put in Jake as the dogs name and Adelaide in the city in the find find by dogster search. Janice Duffy is known for creating internet anti psychic groups and she tells her information to many of her anti psychic friends. She is an easy woman to track because she leaves a paper trail behind herself wherever she goes. Its a shame that a P.H.D. is a stalker. However, Dr. Kevorkian was also a doctor as well. These people have powerful minds and can be very crafty at doing bad things. She works as a senior researcher and posts her picture on the internet for all to see. She is a very lonely woman who comes to psychics very kind at first and then after a few psychic readings, she begins making her threats of blackmail. Psychics can best protect themselves by knowing this information before you give a reading to Dr. Duffy. She always has the same story of herself being in love with an African American man that she met over the internet and who she has not met yet in person. She is extremely obsessed with him and asks questions like, when will he come back to me and is he thinking of me. She often sends her picture and the picture of the guy that she is in love with. She also has a dog by the name of Jake that she sends to psychics as well and also posts a picture of them together on dogster. Dr. Janice Duffy has tried to blackmail numerous psychics begging them for free updates and email updates and if you don't respond to her, she starts creating rip off

reports with many lies to try to gain sympathy from people who will respond to her posts. Dr. Janice Duffy also has dyslexia. In many of her posts, she will often misspell words because of her dyslexia. She is someone that every psychic should know about. She takes psychic readings extremely serious and she doesn't know what the words entertainment purposes only actually means. It's shocking since she is a researcher and a P.H.D. holder from Australia. This amazes me because she should know better and she gets medical insurance to see professional doctors in Australia. We have numerous emails and other stalking information about Dr. Duffy. She forms several online anti psychic internet groups and uses her threats to let psychics know that she will destroy their reputation unless you give her exactly what she wants. It's time that psychics know all about this woman. She also uses several different email addresses that all link her back to Dr. Janice Duffy and she has slipped up far to many times online with people that she thought were her anti psychic friends. In actuality, half of the people that she thinks are anti psychic are all actually psychics themselves. She fell into her own game and now this stalker is being exposed to stop her. Psychics, please avoid this stalker if you happen to see her online or tries to get a psychic reading with you. Of course she is all sweet in the beginning, but then her emails begin to get more and more demanding and she begins the blackmailing process. I am just as shocked as you are that she is a P.H.D. and a researcher. However, stranger things have happened. Dr. Janice Duffy likes to use the website Kasamba amongst other psychic websites and makes numerous user accounts to try and trick psychics because she is often blocked by many psychic advisors. This is not the first time that Dr. Duffy has done this. She has done this numerous times and she has also written fake and deceptive rip off reports about psychic websites. I ask you to stop Dr. Janice Duffy now by not giving her anymore psychic readings. She needs serious medical help and is actually harming herself more than anyone else. Please remember the facts once again. She is a Caucasian woman and from Australia. She has a dog named Jake and has an obsession for an African man and she uses the names Janice, Lucy and other names. However, she usually writes that she is from Australia, Toronto or other places. After the first few psychic readings, she tends to write emails to psychics for updates and when she doesn't hear back from you fast enough, she begins to send you hate mail which usually says that she is going to ruin your name and reputation online as a psychic. In my opinion, she is out to get any psychic that she can and she uses rip off reports so that it can show up in the search engines so that when someone types in your psychic name or handle, it will show a rip off report about you. She should be stopped and the only way to stop Dr. Janice Duffy from Australia is to not give her anymore psychic readings. Save your reputation. You know the facts, now it's up to you to stop the psychic stalker.

Mary ann
Riverton Wyoming
U.S.A

This report was posted on Ripoff Report on 12/31/2007 1:54:36 PM and is a permanent record located here: <http://www.ripoffreport.com/psychic/janice-duffy-psychic/janice-duffy-psychic-stalker-deb8p.htm>. Ripoff Report has an exclusive license to this report. It may not be copied without the written permission of Ripoff Report.

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#2 Australian Dr. Janice Duffy senior researcher stalks Kasamba psychic advisors and uses her Dr. title to allow people to believe that she is being ripped

Mary Anne — Riverton (U.S.A)

SUBMITTED: Wednesday January 02, 2008

Australian Dr. Janice Duffy senior researcher stalks Kasamba psychic advisors and uses her Dr. title to allow people to believe that she is being ripped off by psychics. *She is*

POSTED: Wednesday, January 02, 2008

responsible for most of the false rip off reports created about Kasamba and is used to doing extensive research on psychics since she is a senior researcher at her present job. She is dangerous behind a computer and is a government worker. Stop stalking psychics doctor Janice Duffy and stop ruining their reputations because you can't stop your obsession with psychic readings.

Dr. Janice Duffy is responsible for the numerous fake rip off reports about psychics and is currently in the process of writing a detailed and researched rip off report about psychics. She is pretending to know the F.B.I. so that she can gather information about psychics. Psychic websites must not fall for her antics and she wants to stalk psychics until she gets her way. She has told numerous people online through her anti Kasamba and anti psychic groups that she is going to bring Kasamba and their psychics down. She is a dangerous woman and has stated several times in emails and in her group that she is going to do extensive research on psychics and track them down using their real names and psychic handles to ruin their businesses and to ruin their lives. She is a very sick woman and wants to stalk and destroy Kasamba and their psychics. Kasamba is not only her target. She is targeting many psychic websites. She is still using psychics and still making false claims against psychics and this company. She won't stop until she is locked up or sued. A lawsuit must be brought against her by the psychic community and psychic companies. She is now trying to use more U.S. states in her phoney psychic reports since previous reports has come out. Her method is to befriend you and then attack you. She is a Dr. and knows how to manipulate innocent people. She knows how to convince psychics that she will be your friend and then she goes in for her attack and posts personal information about you all over the internet and she keeps on doing it. She will not stop. She has an obsession with psychics and has told many psychics online that she is going to get them and take them down anyway that she can. She knows how to manipulate and she gives out her government email address to her most trusted online friends. However, most of them are psychics themselves looking to find out as much as they can about her so that they can sue her and stop the stalker. She is a woman that has several identities and has easy access to government records since she researches drugs. She can get mostly anything that she wants because she has the title Dr. in front of her name and manipulates and threatens people to give her what she wants. Often pretending to be connected to the F.B.I. Don't give her any information and keep your true identity to yourselves. She will use it against you in a detailed report that she is writing about psychics and is threatening to sue psychics and psychic websites. Dr. Janice Duffy is "Janice Duffy, BA

(Hons), Ph.D. is currently a senior researcher at the South Australian Community Health Research Unit and a lecturer in Public Health at the Flinders University of South Australia. Her Ph.D, thesis, on alcohol in the workplace, was supported by a National Drug Strategy Scholarship and compared the delivery of harm-reduction programs in the building and banking industries. Janice has experience in a wide variety of health research and teaching concerned with disease prevention and health promotion. She has participated in projects concerned with primary health care as well as general practice and alcohol and other drug research.”

As you can see, she is very equipped to stalk psychics and does this on a regular basis. Please protect yourself. This information is being put out because she is harming psychics and their businesses and the innocent lives of people. She makes up lies and spends her free time stalking and trying to find out the identities of psychics and stalking psychic companies. She is emotionally unstable and will post information about you online that you would rather be kept private. She has already done this and her obsession cannot end. Stalking is a mental illness and unless she gets treatment, she cannot stop herself. She is ruining the lives of psychics and psychic companies. Janice, psychic readings are for entertainment purposes only. Remember that.

Currently there are more than 5 well known Kasamba psychics that she is targeting in her anti psychic e-book. *She has told numerous people online that she is going to present her detailed research report to Kasamba as a way to blackmail them into doing what she wants. She has also told numerous people in her anti Kasamba and anti psychic groups that she is trying to find out the true identities of the psychics and she is also gathering the actual transcripts of other people's psychic readings in order to expose psychics. She is using blackmail and is currently writing and telling others what she is going to be doing. Your name may or may not be on her list. If you had given Janice a psychic reading, then you may be on her stalking list. Since the stalking reports came out, she is using different handles and names and states of where she is from. If you want to protect your identity, never give out your real name and information. Dr. Janice Duffy will try to find it and will make it her priority to stalk you. Stalking is a serious illness and she cannot stop until she is medicated or put in jail. Dr. Janice has also stated in her anti-psychic groups that she will ruin the lives of psychics and their real names, handles and reputations. She also likes to stalk psychics who are willing to sell her a spell. That is her way of getting your personal living address and real names. She is from Australia and stalks daily. In her anti psychic group, many of her followers were upset because they passed on their private details from their Kasamba transcripts and felt like they were left high and dry. She promised them she would help them and she ran off with their information. She is not from the United States of America and is using psychics and their clients as a way to gather personal information about people as a way to blackmail and manipulate psychics and their clients. Many of Dr. Janice's followers are upset because they feel like they were betrayed by her and are afraid that Janice may be using their information for illegal purposes. Once you give out your information online, it can go anywhere. Remember that you don't know who you can trust online. Do not give out your information to this woman. She will act like your friend and she will act like she is trying to get your information so that you can sell her a spell and then she will use it to attack you online and blackmail you as much as she could. Don't pay anything and don't think that you can stop her. She has been*

stalking for a long time now and everyone that knows Janice knows how dangerous she can be behind a computer. Please also note that many people in her anti psychic groups feel that she has email hacking software or knows and uses hackers. It is rumored in some of her anti psychic groups that she tries to get your personal email address and then tries to hack into it. She tells people that she is a Dr. and is doing something to help people. However, she is just trying to use this information as a way to find out personal information and a way to try and ruin your life. Sadly, she really is a Dr. and uses that title as a way for you to gain her trust. She will even give you her personal government email address. You will not know that it is her since she uses different names, states and countries in her posts. From what we know of her, she has used her real name Janice and her fake name Lucy. She is also from Australia. Because you can say that you are anyone from anywhere on rip off report without any proof, you can only imagine the evil that she can do and she has already done this and continues to do it. This is scary for anyone that has to work online because she is a true internet psychic and client stalker. What is even more bizarre is that Dr. Janice Duffy has used her government email address to email anti Kasamba clients. This can be tracked by the governments webmaster. We will be forwarding this report to her superiors as a way to gain court evidence that she did indeed write and receive emails from her anti psychic kasamba group members with her government email address; therefore breaking government rules. You cannot use a company's email address for personal purposes. As you can see, Dr. Janice Duffy has messed up far too many times and now its time for this stalker to be stopped from the harm that she is causing to innocent people worldwide. Psychics and clients please be careful.

#3 Regarding Wow
 Karen — Henderson (U.S.A.)

SUBMITTED: Wednesday, January 02, 2008

No one is dead and no one is disliking black people. You totally missed the point of the entire post! If Janice Duffy was attacking and harassing YOU then I am sure you would be singing a different tune. The african american man was placed there as a means to identifying this Janice person! Think about what your going to say before you go blurting it out sounding like a idiot!

POSTED: Wednesday, January 02, 2008

Readers SHOULD be warned against this woman if it is true what she is doing! No one should be subjected to that kind of harassment. I know that post by the "husband" about a suicide is Janice. Know how I know? Because the way she spewed venom against "Karen" and it was the wrong Karen. I am the Karen that kept calling her out against her lunacy on this board! If it was just a "husband" persay there would of not been that much venom and ugliness against "Karen" unless the person has been responding to my posts in the past. You know when you look beyond the surface you see whats really there. So if your walking out here blind then its best you don't read anything and respond anymore.

#12 Janice is committing a crime
 Legaleagle — Paris (France)

SUBMITTED: Friday, August 15, 2008

This woman Janice is obsessed, and is taking out her bad circumstances on the people who have tried to help her. Anyone who bases their life on a psychic reading, needs to get some professional help. I mean, they are only meant to be used as a guide and for entertainment purposes.

POSTED: Friday, August 15, 2008

I have the feeling that what she is doing is highly illegal, in that she is publishing on the internet intellectual property that belongs to Liveperson.

“Expert agrees that any information or content that Expert posts or transmits through LivePerson.com will not be considered Expert’s confidential information but rather this information, whether personal in nature or not, shall be owned by LivePerson. Expert further agrees and consents to the Expert’s chats or transcripts, being captured in any format, controlled, processed and shared by LivePerson with third parties as designated solely by LivePerson;

Expert grants LivePerson an unlimited, irrevocable, royalty-free license to use, reproduce, display, edit, copy, transmit, process, control, publicly perform, and create derivative works communicate to the public or any third party any such information and content on a world-wide basis”

Surely this would also apply to clients.

In any case, I actually feel sorry for this Janice person, because she is obviously obsessed and unbalanced. *I also feel sorry for the people whose reputations she is destroying, when all they are doing is trying to provide a service and make money for their families, like we all are.* She carries on about being dishonest, and yet, *she is the one who is being dishonest.* Pot calling the kettle black if you ask me.

...

#17 I think the only thing that is clear here
Jessica — Wahiawa (U.S.A.)

SUBMITTED: Friday, August 22, 2008

Is that *Janice is absolutely insane.*

POSTED: Friday, August 22, 2008

No one reading this would read two sentences from her without coming to the conclusion that *she is unbalanced, and possibly dangerous.* If there is any “investigation” going on with authorities (that no one believes either) *it should be an investigation into her poor elderly father who she probably has chained up in her basement, feeding him cat food while she demands he gives her “readings”*

Regardless of the comments from the OP *I can’t even believe this women holds a PHD, except maybe in crazy.*

Its more likely thats just another facet of her on-line persona, part and parcel with her imaginary dog “Jake”, her war hero father, and her negro “boyfriend”

I’m sure her family and neighbours get down on their knees everyday thanking God there is an internet, so she has another outlet for venting her toxic waste.

...

#19 Yes Its Ridiculous

Karen-Henderson (U.S.A.)

SUMBITTED: Tuesday, September 02, 2008

Yes the rants and threats of of lawsuits from this Janice person is most definitely insanity. No one is afraid of any lawsuits being filed around here. It is comical to read at times. You have to admit. This Janice stuff is whats "entertainment" around here. You talk about psychic for entertainment only crap. Just get on this site and read this mess.

POSTED: Tuesday, September 02, 2008

#20 The Janice Show

Iris — Beverly Hills (U.S.A.)

SUMBITTED: Wednesday, September 24, 2008

I wanted to bump this thread as well, so that people can CLEARLY see that *Janice is off her rocker, and that's putting it mildly.*

Her lengthy rants are indicative of a highly volatile and unbalanced mind.

POSTED: Thursday, September 25, 2008

Now I WAS an advocate. I had been in support of what she claimed to be doing. I thought it was great that someone was going to actually compile evidence against the fake psychics and do something productive.

But in light of recent events, I have come to realize that the only thing Janice cares about is being the center of attention. She currently has a group of women in her Yahoo group, who are all vulnerable and in need of guidance. *They have all spent way too much money on psychic readings, and need to seek addiction counselling. Instead, they have Janice as their "leader," MISLEADING them. She still gets readings on the site regularly.*

These people are addicts. I know this, as I was one in the past. The only way to get better is to go 100% cold turkey and stop using psychic services. *The only way to get healthy is to get away from Janice Duffy.*

I KNOW for a fact she'll be targeting me here now that I am publicly being vocal, and now that I am eating MAJOR humble pie in terms of my previous endorsement.

This woman is a loose cannon. True, she threatens to do things that she really can't do. (1) If she could sue, she would. (2) No one would take her seriously.

...

#25 Well as I said

Sickofpsychos — New York (U.S.A.)

SUMBITTED: Monday, September 28, 2008

In my previous thread, Pattie, I stated that, Jh is a client that is psychic addicted, she starts off liking them and praising them and then turns on them like some bi-polar disorder is taking over her...

POSTED: Monday, September 28, 2008

...

Ripoff Report 3**Report: #363490****Report: Dr. Janice Duffy****Reported by:** (Los Angeles California)

Dr. Janice Duffy Senior Researcher Dr. Janice Duffy Psychic Stalker from the Respiratory Function Unit, Repatriation General Hospital, Adelaide, South Australia

Dr Janice Duffy

Respiratory Function Unit, Daws Rd, Daw Park
Adelaide Australia, Nationwide 5000
U.S.A.

Phone: 0418 842 815

Category: Psychic**Submitted:** Friday, August 15, 2008

Last posting: Monday, August 18, 2008

Wow, I cannot believe that Janice Duffy is still at it. I had no idea that Janice would still be at this stalking game after all this time. She has stalked me several times on Kasamba. I can't believe a 52 year old would sit around like this writing fake ripoff reports. Perhaps this is the only attention she ever gets and ever will get. Her multiple personalities on ROR are her only real friends (like Lucy,S, and AussieBoy) She has the worst luck in love and takes it out on everyone else. She doesn't just take it out on them, but she stalks them. She makes up new accounts on Live Person to keep stalking you but its always links back to her. She thinks that her Dr. title is a respectable one but how can anyone take this nut case seriously? Dr. Duffy threatens everyone with a law suit and she still has not come through on any of her empty promises. She is out to get any psychic that she can. She is mentally ill.

She shockingly works for the Australian government as a Senior Researcher from the Respiratory Function Unit at the Repatriation General Hospital in Adelaide South Australia. *She has "ties" to a friend that works in the Australian FBI who helps her to hack emails. She hacked into my account several times on Kasamba and my own personal email account. She seems to work with friends in the Australian government that help her to hack into psychic accounts.* She is after all a government employee and holds a prestigious position. She hacks into many different types of account to include: email accounts, kasamba accounts. *She even hacks psychic readers from her work place. If she knows your real name, I would get a fraud alert put on your credit report because she knows how to hack.* I am writing all of this to let you know that *this person is extremely sick. She has a crazy obsession with psychics and simply won't stop harassing them. I'm posting her information so that if any psychic wants to sue this woman or get an order of protection against her, they have her information and you at least know who she is. As you can see, she keeps posting lies on rip off report and shockingly she keeps on using her real name and says that she is guilty of doing some stalking.* She also stated in a previous rip off report that she can get away with this because of her position with the Australia government. *Wow!!! I was shocked to see that she is actually admitting to this and the worst part of all, she admits to making up lies about psychics here on rip off report. Protect yourselves against this stalker. If you find yourself getting hacked,*

chances are, it's from her. Once she has your information, she will try to mess your world up by hacking and stalking you consistently. You have been warned. Please beware of Dr. Janice Duffy the psychic stalker from Adelaide Australia.

Dr. Jake
Los Angeles, California
U.S.A.

This report was posted on Ripoff Report on 8/15/2008 10:36:21 PM and is a permanent record located here: <http://www.ripoffreport.com/psychic/dr-janice-duffy/dr-janice-duffy-senior-resear-c9534.htm>.

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Ripoff Report 4

Report: #363738

Report: Dr. Janice M. Duffy Senior Researcher

Reported by: (Southampton New York)

Dr. Janice M. Duffy
Dr. Janice M. Duffy Senior Researcher
Dr. Janice M. Duffy Adelaide, Australia continues to stalk Live person Kasamba Psychics Adelaide, Australia Internet

Dr. Janice M. Duffy Senior Researcher

Respiratory Function Unit, Repatriation General Hospital,
Daws Rd, Daw Park
Adelaide, Australia, Internet 5041
U.S.A.

Phone: 61 8275 1189

Category: Psychic

Submitted: Sunday, August 17, 2008

Last posting: Monday November 03, 2008

Janice Duffy is coming to New York City in November to visit Liveperson directly at their corporate office. She has been telling people this and she is not holding back any information. *Yes, she is traveling to New York City all the way from Adelaide Australia to purposely stalk Liveperson.* There is no saying what she is up to. *She is posting files in her yahoo group and is now working on stalking more psychics.* She is still in the process of building her e-book about psychics and trying to defame LivePerson. This would be fine to do if it would stop there. However, she doesn't stop there. *She sends you multiple emails and goes to your personal websites and stalks and stalks and stalks and stalks and stalks and stalks and stalks. It doesn't and will never end.* So far I have not seen Janice Duffy do anything with her so called e-book. However, she keeps saying that this manual is impressive and large. *This deranged woman is still on her rampage and she will never stop.* Think about it. She is 52 years old and has spent 52 years on planet earth. *The best that she can do with her life is lie, cheat, make false accusations and stalk psychics. She mainly stalks psychics from the United States since they really can't bother her because she lives in Adelaide Australia.* She is now using people to work for her in the United States who will put up some room and board for her when she comes into town to talk to Liveperson directly in their corporate office. *Dr. Janice M. Duffy from*

Adelaide Australia is the stalker behind most of the anti- psychic reports here on rip off report. She uses different handle names and she admits to doing some stalking on one of her posts. Just keep reading about Janice from Adelaide, Australia and you will see that she is really a twisted sick person. I do not sympathize with her because she will never stop! Her posts just keep on coming and coming every single day. Just read and read. You will find her here over and over again. Be careful because she is out to get you. Just look at all of the innocent psychics she has hurt here already and she will not stop. She is harassing, stalking and posting lies about psychics daily. She wants you to feel sorry for her so that she can suck you in and become your friend. When she is your friend, she will use your information against you and she will lie about you and make up stories about how evil you are and that she is of course the innocent victim here. She has some sort of mental disorder and she loves to stalk online where she can't get caught so easily. She is one of these internet wackos that love to sit behind a computer and stalk and stalk and stalk. Once she gets your email address, she will keep on sending you emails and threatening ones. She won't stop ever! You are better off changing your emails address, phone number and living address if she gets a hold of it. This woman is clearly a monster and to look at her, you would not think so. Her photo may be posted soon so that you can get an image of who this woman really is and what she looks like. You would never think that she could be capable of doing such things. She looks like your girlfriend from next door. She is a senior researcher as reported in another report and she doesn't look too tough. However, behind a computer screen, she is a psycho. She stalks, taunts and harasses you over and over and over and over and over again. I have a feeling that she is possessed because she is literally hunting down psychics online and harassing them. Be careful about giving her your paypal information. This has not been going on for just a week or two. This is years. Once she has it, she will use your real name against you. That's how she is able to get your personal information. That is just one of her tactics. She also tries to befriend your other psychic friends, in hopes that they will give her some information about you. Scary? Yes it is. There are several victims of Dr. Janice M. Duffy. She stalked and harassed me daily. Does this story sound familiar to you? If it does, then it's because Dr. Janice M. Duffy has done it too far to many psychics and she is proud of it. Her sick obsession with psychics is ongoing and even after a few years; she is still at her games. She is now setting up groups with her anti psychic friends who are trying to get information about psychics. If I were you, I would not give anyone out there your personal details and information. She actually has psychics working for her. She tells them that if they do what she says, then she will not put their names in her anti psychic e-book that she is claiming on making available to everyone. That is of course blackmail. Many psychics have fallen for it and are actually working with her. You never know when you are going to be her next victim. I would personally work for a psychic network because once she has your information, the stalking begins. I don't even care about her having a problem with psychic readings and writing ripoff reports about it's not that. It's really all about the stalking and the harassing, threatening, lying and malicious attacks by her. You cannot win against a stalker since it is a serious illness. It's really bad for Dr. Janice M. Duffy from Adelaide Australia you cannot win against her because she has some serious connections with the Australian government that exempts her somehow from getting caught. I know that she has hacked my email and my account several times with some

government software that she or her friends obtained. I don't believe her motive is to steal your money. *I believe it is just to find out your information so that she can stalk you and threaten you. She has not yet taken any psychic to court or Liveperson as of yet and she just makes up false lies and accusations against everyone that she possibly can.* Her message is clear. She is not out for justice. *She is only out to harass, stalk and make your life miserable because hers is miserable. She stalks and stalks. I think I have made myself clear and I will keep posting as long as this stalker is still stalking psychics.* Remember Janice, nobody here is your friend and you think that your friend Jennifer H. from the Bronx is really your friend and I can clearly tell you that she is not. *Janice works in groups and has many US psychic friends that are trying to help her to stalk psychics. They are not out to seek justice or to get their money back. They only want to stalk, harass, threaten and make you run from your psychic job.* Look out for more reports. We will keep you up to date on her stalking friends as well.

Susan
Southampton, New York
U.S.A.

This report was posted on Ripoff Report on 8/17/2008 12:09:41 AM and is a permanent record located here: <http://www.ripoffreport.com/psychic/dr-janice-m-duffy-se/dr-janice-m-duffydr-janice-81472.htm>

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#16 Susan
Karen — Henderson (U.S.A.)

SUBMITTED: Wednesday, August 20, 2008

You have nothing to worry about because no agency is going to take Janice's crap seriously. I am sure that your not worried. I have to admit watching her unravel like a loon is comical.

POSTED: Wednesday, August 20, 2008

You did the RIGHT thing by warning those SHE has hurt by using this site as her weapon. Regardless if SHE agrees in your method and manner of doing so or not.

I hope someone will use the information you provided to stop this loon from bothering them.

Be Blessed

...

#27 WHOA ...ANNOUNCEMENT PEOPLE
Susan — Southampton (U.S.A.)

SUBMITTED: Tuesday, August 26, 2008

WOW!! I must be a Psychic ... yesterday I had a feeling that I should visit this site ... WHICH I HAVE NOT BEEN TO OR POSTED ON SINCE APPROX.MARCH, 2008! I KNOW SEE THAT SOMEONE IS POSITNG FOR ME/AS ME!!

ACTUALLY, IT IS NO SURPRISE (JANICE). BE ADVISED I HAVE CONTACTED THIS STIE AND THE MATTER IS BEING LOOKED INTO.

POSTED: Tuesday, August 26, 2006

GENERAL PUBLIC: IF YOU SEE A POST OTHER THAN THIS ONE FROM SUSAN/SOUTHHAMPTONIT IS NOT ME. Janice is and continues to be a very, very unstable individual and I don't know what motivates her, nor do I care. *She can pretend to be me, post as me and paste my correspondence with her from when I THOUGHT she was legit. ALL SHE WANTS.*

Here's a tip ... once you escape from the ruthless world of lies attached to Kasamba Your life becomes WONDERFUL.

So...do what you want....slander IS a crime...whatever. These posts are NOT FROM ME.

WHOA!

...

#38 Joy/Joy K
Patti — Madison (U.S.A.)

SUBMITTED: Wednesday, September 17, 2008

I noticed that this is the one recent Kasamba/LivePerson thread that the fake Joy K has not posted on.

POSTED: Wednesday, September 17, 2008

Is it because it is actually Janice trying to bury this thread? Watch for a series of new threads complaining to try to push this one down lower and lower so people don't notice it.

...

#41 One more thing
Iris — Beverly Hills (U.S.A.)

SUBMITTED: Wednesday, September 24, 2008

I completely recant EVERYTHING I said months ago. I apologize. I was wrong. She had me fooled.

JANICE IS STALKING PSYCHICS. NO doubt about it.

Oh, did she ever fly to NY on her broom? LOL

POSTED: Thursday, September 25, 2008

...

#60 The Reason ...
Karen — Henderson (U.S.A.)

SUBMITTED: Saturday, October 04, 2008

The reason Janice posted her personal information on this site is because she WANTS someone from this site to contact her via this information. Especially on her job. This way she can play the victim on her job and to her neighbours. She invites harassment but no one is stupid enough to fall for this bull. To go as far to post as Susan and Maryanne is just sick. Everyone knows shes a sicko except

for the victims (Janice is the one victimizing them with manipulation and lies) in her group and the no lifers who constantly arise to her defense whom very well could be all her multiple personal ties because no one could be that stupid or could they? Someone should start a anti Janice yahoo group around here. Nah. Then she would be over there acting a damn fool. Let her rot in her own hell which has become her mind.

The group is obsessed with Kasamba/Liveperson website and ripoff report website. Shamefully manipulated by Janice. I pray that one day the group members will tire of the blatant Janice manipulation and lies and move on. This depends on how long they want to remain in the dependent personality stage.

Ripoff Report 5

Report: #417297

Report: Janice Duffy — Her Group, Kasamba And Melodie Davd James Bluedragon Connection

Reported by: (LA Alabama)

Janice Duffy Her Group And Kasamba Janice Duffy — Her Group, Kasamba And Melodie Davd James Bluedragon Connection She is psycho. Be there and be prepared to have your information circulate through Kasamba utopia group readers New York Internet.

***Consumer Comment:** *To Jackie in New York who wrote “Janice Duffy and her group continue to be me dangerous, irresponsible and delusional”*

Janice Duffy — Her Group, Kasamba And Melodie Davd James Bluedragon Connection

Liveperson.com

New York Internet

U.S.A.

Category: psychic fortune tellers

Submitted: Wednesday, January 28, 2009

Last posting: Friday, December 04, 2008

Janice is part of utopia — the group of psychics that discuss clients. She is the dog on a leash for melodie, bluedragon, david james, nicola

Speak against their gang and you are in for a surprise, you will be bullied just like they bully the psychics. they want the competition out so they are doing everything to take away other psychics clients by bad mouthing them, editing their readings on this group and making melodie, david james, nicola to be the stars of LP

Another kind of fraud!! send your readings to janice, all she will do is pass on your details to melodie and dj and their group. Ever wonder how david james knows your details even before you open your mouth in his chat readings? they client share details, try him on keen or melodie, they are crap.

Since janice started her sh** melodie has risen, janice's job is to find melodie more clients. try her out, see if she is right for you. she is not a psychic nor an astrologer, she bull shitts her way and plays with words. none of her predictions everrr come true. lying fraud.

Mia
LA, Alabama
U.S.A.

This report was posted on Ripoff Report on 1/28/2009 12:39:53 PM and is permanent record located here: <http://www.ripoffreport.com/psychic-fortune-tellers/janice-duffy-her-gro/janice-duffy-her-group-and-kas-afzef.htm>. Ripoff Report has an exclusive license to this report. It may not be copied without written permission of Ripoff Report.

#1 Mia is RIGHT! Janice and the Kasamba
Utopia group are in it together
Jackie — New York (U.S.A.)

SUBMITTED: Thursday, January 29, 2009

Janice admits she will not say bad things about Melodie or Nicola. That is because she is helping them rise in the ranks. They give her free readings in exchange for the positive press. Janice is in bed with that group of Melodie, Nicola, DavidJames and Bohemian Moon. **DO NOT SHARE YOUR TRANSCRIPTS WITH JANICE.** *Janice cant be trusted. She will post your stories in her group and the group has psychics for members. Once she uploads your private sessions for all to see, you are f*cked. Anything you tell Janice will become public. If you value your privacy, stay away from Janice and her group.*

POSTED: Friday, January 30, 2009

#2 Janice Duffy and her group continue to be more dangerous,
irresponsible and delusional
Jackie — New Your (U.S.A.)

SUBMITTED Saturday, January 31, 2009

---In weakguyonkasamba@..., bigstargazer@ wrote

Ok one of Tallulah's predictions is now delayed by about 1 week or so, it was a strong prediction due to happen over a week ago — & nothing yet. Not even a hint of it happening. I thought abt going back to her to see whats happening — but the price is still steep. I'll wait it out a few weeks just to see if it will. But already I am sort of losing a bit of faith ...!:(

This kind of post is exactly why Janice needs to be stopped. Her group is not about getting help and stopping these of fake psychics. Janice continues to give advice to these poor souls about which psychics are supposedly real and which are not.

Wake up call to the members of weakguyonkasamba. **NONE OF THE PSYCHICS ARE REAL.** You are living in a fantasyland and should get professional counseling in the real world.

The above post by bigstargazer is proof positive of how dangerous Janice Duffy really is. These people are talking about predictions and living their lives based on psychic predictions and bigstargazer is even considering going back to the psychic again even though the prediction isn't happening!

...

#10 Nope Lisa, you are wrong

Jackie — New York (U.S.A.)

SUBMITTED: Sunday, February 01, 2009

I am not a member or former member of KU or EAK. I didn't know what EAK was either, and based on your answer I still don't. I don't know which experts are in which groups and frankly I don't care.

POSTED: Sunday, February 01, 2009

I am not targeting any one group or any one expert. I am saying that ALL OF THE PSYCHICS ARE FAKES. I am not endorsing anyone. I am not suggesting that there's someone you should go to. I am saying DONT GO TO ANY OF THEM.

I am not an expert, psychic, reader, what have you. I once was needy enough to use the psychics on liveperson (or kasamba when I was using it) and none of them were right. They all guessed or did cold readings or made predictions that never came true and all blocked me once I let them know they were wrong.

I have no transcripts to share as I am not on the site. I have no emails to share either. If I did have any of that kind of evidence why would I be dumb enough to post it on a site like this?

Your demand for "evidence" is something Robin Bluedragon seems to do on this site all the time. And "evidence" is something that Janice Duffy seems to share with everyone. For all of her hot air since 2007 (for two years now), she has never gone ahead with any of her threats. Her life purpose seems to be ot stalk and harass people and search for a real psychic.

I have no alliance with anyone.

...

#13 Janice personality splitting even more

Jackie — New York (U.S.A.)

SUBMITTED: Friday, February 13, 2009

So now she has 3 identities in her own group. Not only is she weakguyonkasamba and gsinfoseeker, but now also warning543219876.

POSTED: Friday, February 13, 2009

She's getting desperate. Still talking about who is real and who isn't. Is still calling psychics.

Almost 2 years since she first came on the scene and she is still talking about doing a report.

A few months ago she promised she would go silent in the group, stop posting, and said she'd go away to finish the report. That silence lasted only about a week, then she resurfaced with multiple new identities in the group.

Maybe she is related to Nadya Suleman. Mentally unstable people.

Ripoff Report 6

Report #403390

Report: Janice Duffy Kasamba LivePerson

Reported By: (Houston texas)

Janice Duffy Kasamba LivePerson NZ Client Beware — a very friendly warning NYC Internet

Janice Duffy Kasamba LivePerson

LivePerson

Internet

U.S.A.

Category: Astrologers & Psychics

Submitted: Saturday, December 20, 2008

Last posting: Friday, January 2008

Janice is in legal issues with Liveperson. If you do speak against psychics or in agreement with her then choose your words wisely. Re-read your statement before posting in her group or anywhere else because LP are picking up cases. Janice is in the center of all of this and she knows it.

Fiona

Houston Texas

This report was posted on Ripoff Report on 12/20/2008 9:30:56 AM and is permanent record located here: <http://www.ripoffreport.com/astrologers-psychics/janice-duffy-kasamba/janice-duffy-kasamabe-liveperso-dc63c.htm>. Ripoff Report has an exclusive license to this report. It may not be copied without written permission of Ripoff Repor

#4 All I am saying is to be careful of the use of words anyone uses in forums

Fiona — Houston (U.S.A.)

*Janice has sent de*th threats to people. She has been talking about having those threats herself too, to protect herself. This has been getting worse since February 2008.*

She is intelligent enough to post as different identities, use different kind of language with no spelling problem. When she types as herself she makes very big mistakes, capital letters, going on about Dr Jake because she is fighting the case as “Psychologically unstable and ill with severe depression”. This is not true. She will keep on saying that she is not able to hold a forum together, she loses temper, she is sick, she doesnt eat anything, she has other people who help her through, she fell outside a gas station and hurt her head. These are all being used to prove she is not well. She has email conversations with some members of the forum where she is explaining how she is not psychologically fit. She is using these in her defense. She does not want to be the moderator of her own forum because she wants to avoid this, this is shifting the blame or sharing it.

She needs support from people more than anything right now. In her own forum she uses a few identities to post as others, LP has track of this due to her IP and her use of cyber cafes. She knows she is being watched, she keeps changing her computer by deliberately destroying them few weeks at a time. She gets these replaced thinking she is leaving no proof of stalking and threats.

*I could go on about his but this is not the purpose to say what is happening regarding her. My purpose is to let all those innocent people who are following her to publish her report, she cannot publish. She is in a lot of trouble. Her initial motive might have been right but she has gone so far in these de*th kind of threats to a few psychics and LP (including the CEO) that this is getting worse by the day. Discuss, dont leave her forum. What you discuss should be*

legally safe. The best way I know is to always use a disclaimer in any forum. Read everything before you post where you are sure nothing comes across as a threat.

...

#20 Janice is Bluedragon and KU's Puppet on a String

Charlotte58 — PITTSBURGH (U.S.A.)

SUBMITTED: Sunday, December 28, 2008

Robin Bluedragon and his KU Posse are who Janice gets her readings from. It's them who have been telling Janice who the supposed fake psychics are so that she can go harrass, cyberstalk and generally anoy them till they go offline. Bluedragon and his KU Posse have been using Janice all thi time to get rid of the real psychics who are the fakes competition. Bluedragon and his KU posse are the real fakes but they set up a scam with Janice as the puppet on the string doing there bidding in other words their dirty work for them.

POSTED: Sunday, December 28, 2008

Two of his current inner circle KU posse friends have been helping our research group Stop All Fake Psychics Now for some time. *We have evidence of the plots involving Janice in the form of chat messenger copies, e-mail messages and private posting messages, as well as other scamming plots and plans and client information sharing.*

As for Janice, she is a dangerously unhinged individual that needs counselling and needs to get away from fakes like Robin bluedragon and his KU Posse, because they are getting her to harrass, bully, lie, cheat and cyberstalk real deal psychics, while they sit back laughing and patting themselves on each others backs at how they've manipulated this person into doing exactly w2hat they want her to do. Eventually and sooner rather than later, Janice will get into trouble making the wrong enemies at Bluedragon and the inner circle KU Posse requests, and when that does happen and she does get into trouble Robin and the rest of their gang will sit back and hold up their hands and say that she was a trouble soul they were trying to help and let Janice take the entire fall for all that has happened.

The cyberstalking, the harrassment, the fake suicide stories that were created by Bluedragon and his KU inner circular Posse who gave Janice the idea and then sat back and watch this unstable woman torture and upset real psychics, while they made jokes about Janice and talked behind her back about all the mad and crazy things that they suggested that she do to the supposed fake psychics who were actually the real psychics. It's a sad and yet totally unacceptable situation.