

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

NOTE: PUBLICATION OF NAME(S) OR IDENTIFYING PARTICULARS OF THE APPLICANT PROHIBITED BY SS 18 (2) AND 19(4) (c) OF THE HARMFUL DIGITAL COMMUNICATIONS ACT 2015.

**IN THE DISTRICT COURT
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKĀURAU**

**CIV-2020-092-001779
[2020] NZDC 11089**

IN THE MATTER	THE HARMFUL DIGITAL COMMUNICATIONS ACT 2015
BETWEEN	[KELLI TRANG] Applicant
AND	SNAPCHAT and INSTAGRAM Respondents

Hearing: On the papers

Judgment: 17 June 2020

**JUDGMENT OF JUDGE J BERGSENG
[on the papers]**

Introduction

[1] On 12 June the applicant [Kelli Trang] applied for orders on a without notice basis against Snapchat and Instagram, the respondents as online content hosts to:

- (a) Take down or disable public access to material that has been posted or sent;

- (b) Tell the court who posted or sent a communication;
- (c) Publish a correction in the way the Court determines;
- (d) Give the right to reply in the way the Court determines; and
- (e) The identity of an anonymous communicator to be released to the Court.

The application and supporting material

[2] In her application Ms [Trang] states the grounds for making this application as:

Someone online has made fake accounts of myself on both Instagram and Snapchat but also made random accounts pretending to be someone else. They have bullied me by posting intimate, personal, private photos and videos and conversations on social media without consent that friends and family and strangers have seen and have brought up with me.

[3] In her affidavit in support Ms [Trang] exhibited screenshots depicting intimate photographs and conversations with individuals with the online identities of Nick Wills, Brandon Lyng and Jay Dominic.

[4] The applicant records that there were unauthorised posting of personal nude pictures and videos on both Snapchat and Instagram on two separate occasions during 1 May 2020 and 18 May 2020. The private conversations posted on Instagram from Snapchat linked the accounts together and it is her belief that the online posters were pretending to be someone else.

[5] The applicant has made a complaint to the police and has sought assistance from both Instagram and Snapchat. She is concerned about the re-posting of the various images and conversations.

The online content hosts

[6] The application does not identify the online content hosts with any particularity. There are referred to as Snapchat and Instagram.

[7] Snapchat is an image messaging and multimedia mobile app. Snapchat is owned by Snap Inc. Its main business premises are located in Santa Monica, California, USA.

[8] Snap Inc. has a New Zealand presence through the New Zealand registered company Snap NZ. All of the shares in Snap NZ are ultimately owned by Snap Inc. Its registered office in New Zealand is at the offices of Bell Gully, Level 21, 171 Featherston Street, Wellington.

[9] Instagram is wholly owned by Facebook. Facebook is a social media and social networking service company, trading under the name of Facebook Inc., based in California. Users outside of the United States and Canada have a contract with Facebook's Irish subsidiary,

[10] Facebook Ireland Ltd. has a New Zealand presence. Facebook New Zealand Limited is registered with the New Zealand Companies Office with its registered office at the premises of Kensington Swan, 89 The Terrace, Wellington.

The threshold for proceedings

[11] Before commencing proceedings, a potential applicant must refer the matter to the approved agency. Pursuant to the provisions of the Harmful Digital Communications Act, the approved agency is Netsafe.

[12] Netsafe has had a reasonable opportunity to assist the complaint and decide what action (if any) to take. A Netsafe complaints summary dated 4 June 2020 forms part of the application.

[13] Section 12 of the Act prevents the Court from granting an application for an order under ss 18 or 19 unless it is satisfied first that there has been a serious breach of one or more Communication Principles and that breach has caused or is likely to cause harm to an individual.

[14] I agree with the Netsafe assessment that Communication Principles one and five have been breached, being that a digital communication should not disclose

sensitive personal facts about an individual and should not be used to harass an individual.

[15] The applicant's affidavit records that she has been required to undergo counselling and has found the postings have caused her to be emotional as well as being physically and mentally draining. She says that she has suffered from depression trauma, suicidal thoughts and distress, as well as feeling harassed, embarrassed and unsafe. Physically she has lost weight and has been required to take time off work.

[16] I am satisfied that the breaches of the Communication Principles have caused harm to the applicant.

[17] I note that in determining that there have been breaches of the Communication Principles, I have taken into account that provisions of s 6(2)(b) of the Act, which directs that the court must act consistently with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990.

[18] Accordingly I find that the threshold for orders under ss 18 and 19 of the Act has been established.

Technical advisers

[19] Pursuant to s 17 of the Act the Court or any Registrar or Deputy Registrar of the Court must appoint a technical adviser if the court is considering an application for an order under s 19(2)(a) or (b) or (3) or (4)(a) of the Act. In this application the provisions of s 19(2) are engaged. It will be necessary for a technical adviser to be appointed.

Orders

[20] Section 18 of the Act allows for interim orders to be made pending the determination of an application for orders under s 19. The Netsafe summary confirms that both Instagram and Snapchat have taken down or disabled the material. The producer of the Instagram profile name [deleted] remains unidentified. Accordingly there doesn't appear to be a need for interim orders to be made against the Respondents

given the actions they have already taken. If that is not the case the matter is able to be referred back to me with further detail provided.

[21] The registry are to urgently appoint a technical adviser selected from the panel maintained by the Ministry of Justice to assist the court in determining this application.

[22] Pursuant to ss 18 and 19(4)(c) of the Act I direct that the name and contact details of the applicant be suppressed.

Judge J Bergseng
District Court Judge