

Court Denies Motion for Summary Judgment in Case Involving User-Generated Content

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In 2007, Quiznos launched the “Quiznos v. Subway TV Ad Challenge” and invited consumers to create videos demonstrating why Quiznos is better than Subway. To encourage submissions, Quiznos posted four sample videos on the contest site. After the contest, Subway sued Quiznos arguing, in part, that some of the videos submitted by consumers included false claims. Quiznos countered by arguing that it was immune from challenge under § 230 of the Communications Decency Act, a law that essentially provides that certain websites may not be held liable for content provided by third parties. A site may lose immunity, however, if it is responsible for creating or developing that content.



A federal court recently denied Quiznos’ motion for summary judgment. The court stated that the critical inquiry with respect to immunity is “whether the Defendants merely published information provided by third parties or instead were actively responsible for the creation and development of disparaging representations about Subway contained in the contestant videos.” The court noted a few factors that *could* destroy immunity: (a) Quiznos invited contestants to submit videos demonstrating why Quiznos is better than Subway; (b) the domain name for the Contest (meatnomeat.com) implies that Subway sandwiches have no meat; and (c) the sample videos may contain false claims. The court determined a jury should decide whether Quiznos is entitled to immunity.

This decision interprets CDA immunity more narrowly than other recent decisions in this area and serves as a reminder that there are circumstances in which companies may be held liable for content created by consumers. In a [presentation](#) this week, [Gonzalo E. Mon](#) will discuss strategies that companies can employ to help guard against liability.

Update: Quiznos and Subway agreed to settle the case.