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State laws address risk, pervasiveness of 'e-personation'



JORDAN
GROTZINGER



DANA
HOOPER

No one can deny the power or exponential growth of social media, especially in the sports world. These platforms are the new global, virtual sports bar. After every big play, Twitter feeds light up with comments from athletes, sports analysts and anyone else around the world who wants to chime in. That's one of the cool things about this bar: Anyone can mingle with pro athletes and VIPs.

But it's dangerous too, because nobody checks ID. In fact, athletes, coaches, broadcasters and other sports talent can be easily impersonated without their consent, harming them and even the companies they endorse or that sponsor them. California Penal Code Section 528.5 is designed to help.

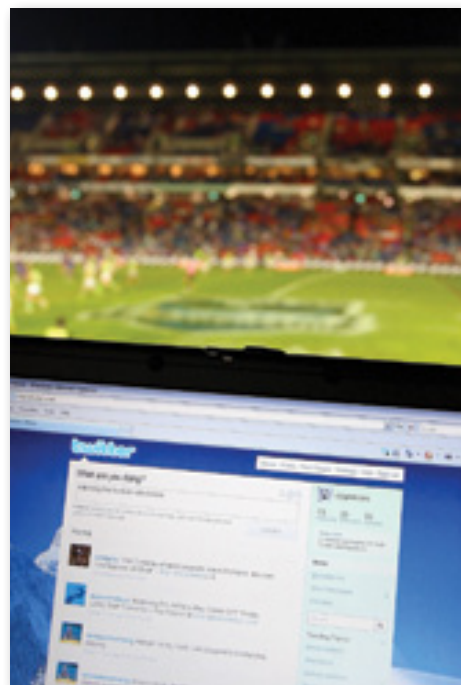
Section 528.5 provides that "any person who knowingly and without consent credibly impersonates another actual person through or on an

Internet Web site or by other electronic means for purposes of harming, intimidating, threatening, or defrauding another person" is guilty of a misdemeanor. In addition, anyone who is harmed by such impersonation can bring a civil action against the violator for compensatory damages, injunctive relief, attorneys' fees and, if the conduct was particularly egregious, punitive damages.

This law was enacted to combat "the dark side of the social networking revolution," said California state Sen. Joe Simitian. The California Legislature took action after former St. Louis Cardinals manager Tony LaRussa was impersonated on Twitter, appearing to mock the deaths of two Cardinals players; and after a sports reporter, posing as two prominent college football players, sent obscene messages to underage girls. Before Section 528.5, there were laws against identity theft generally and harassment, but nothing that specifically prohibited unauthorized impersonation in social media for purposes of harming another. Section 528.5 recognizes the unlimited potential for abuse in this forum.

Social media platforms are filled with athlete and other celebrity impersonators. How many athletes' Twitter handles start with "@thereal_____ [fill in athlete's name]?" That's often because someone else has taken their names. Some impersonators have hundreds or thousands of followers, or "fans" who presumably believe they are following, or "liking," the real athlete. And followers beget followers: The more the impersonator has, the more he or she will get because the larger the following, the more people will believe the impostor is real.

This proliferation can enable the impostor to reach a huge number of unknowing followers with humiliating or damaging messages, purportedly from the real sports figure. The ways in which sports talent can be harmed



The proliferation of social media has brought increased risk of fraud by those impersonating celebrities and athletes.

Photo by: GETTY IMAGES

in social media are limitless, and the degree of harm will vary from case to case. While one end of the spectrum may be messages that just make an athlete appear foolish, the other end could be conduct so offensive that the athlete's reputation and business are affected. Regardless, Section 528.5 gives athletes and other talent a weapon to shut this conduct down before real (or more) damage is done.

The law also protects the companies that sponsor the athlete. Any "person who suffers damage or loss by reason of a violation" may sue. "Person" includes not just natural persons, but companies. Therefore, if an impersonator of an athlete who endorses a national sandwich chain tweets to thousands of people that he found a bug in

California Penal Code Section 528.5

"... any person who knowingly and without consent credibly impersonates another actual person through or on an Internet Web site or by other electronic means for purposes of harming, intimidating, threatening, or defrauding another person is guilty of a public offense ..."

his sandwich, the sandwich chain can go to court.

Although Section 528.5 is a California law, its reach may be broader than the state's borders, providing a tool for impersonated victims nationally. Venue rules generally allow lawsuits to proceed where the victim resides or was harmed, so California residents and companies should be able to bring 528.5 claims against out-of-state perpetrators. Also, states including New York, Texas, Washington, Mississippi and Hawaii have enacted statutes punishing online impersonation, while the legislatures in Louisiana, Illinois and Rhode Island introduced similar bills within the past year. The trend reflects a growing recognition of the risks and prevalence of "e-personation."

Since Section 528.5 is relatively new, it has not been tested in court and im-

postors who are sued will raise issues about whether their impersonation was credible (a requirement under Section 528.5) and the degree to which the victim was harmed. The credibility requirement was built into the law so as not to offend First Amendment protections of parody and other free speech, and whether an impostor is violating the law or is protected by the Constitution will depend on the facts of each case. If it's obvious that the impersonation was a parody, the impersonator will not be liable. Even if the impersonation was credible, proving "harm" in the social media context, another requirement under Section 528.5, may not be easy.

Either way, Section 528.5 has value. Before posing as a prominent sports figure, impersonators now need to consider civil judgments, attorney fee

awards, and even criminal liability and incarceration. With these potential consequences, simple cease and desist letters may convince the impostor to close his fake social media account even before the victim spends money on litigation.

Thus, the virtual sports bar that is social media has a new bouncer. He won't stop all embarrassing impersonations, but he's got enough muscle that potential violators should think twice before messing with him. ■

Jordan Grotzinger (grotzingerj@gtlaw.com) is a shareholder at Greenberg Traurig in Los Angeles, and Dana Hooper (hooperd@gtlaw.com) is an associate in the firm's Phoenix office. They focus their practices on litigation and sports and entertainment matters.