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Katherine Heigl Lawsuit to Explore Nature of Corporate Tweets (Analysis)



Katherine Heigl



The actress is suing a drug store chain for posting pictures of her carrying its shopping bags.

Katherine Heigl has been out of the limelight of late, but thanks to a \$6 million lawsuit against Duane Reade, she's primed to deliver a ruling that could impact how businesses use social media.

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The actress is upset that the drug store posted on Twitter and Facebook a paparazzi photo of her carrying the chain's shopping bags. She's suing in New York federal court with claims that the defendant has violated the false advertising provision of the Lanham Act, as well as New York civil rights statutes protecting use of likenesses for purpose of trade.

Here's a look at the tweet in question:

Love a quick [#DuaneReade](#) run? Even [@KatieHeigl](#) can't resist shopping [#NYC's](#) favorite drugstore <http://t.co/l4Ge1IEKL9pic.twitter.com/uGTc3k1Mii>

— Duane Reade (@DuaneReade) [March 18, 2014](#)

It's likely that as the case proceeds, Duane Reade will put up a First Amendment defense that will attempt to protect its social media postings as expressive rather than commercial speech. Thus, the nature of how corporations tweet will be subject to a judge's analysis.

On one hand, it's long been acknowledged that professionals lean on the medium to promote themselves. On the other, even corporations can sometimes convey newsworthy information, and as recent Supreme Court rulings have suggested, they too have First Amendment rights.

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It's not often clear what are the commercial and noncommercial uses of the Twitter platform.

In Heigl's complaint ([read here](#)), she attempts to put Duane Reade into the realm that's outside the boundaries of free speech. Her lawyers at Ballard Spahr write:

"Duane Reade's Twitter account normally includes only occasional Duane Reade products or store premises photographs displayed as the user scrolls through the Tweet postings. But among recent photographs, Plaintiffs image stands out as the only celebrity image, thereby designed to exploit Plaintiffs image to suggest false cachet for Defendant's Twitter page and imply falsely that Plaintiff endorses Defendant. On information and belief, Defendant has singled out Plaintiff simply because she happened to be a

customer on one occasion at a Duane Reade store, and a photograph of that occasion happened to be included in reporting on entertainment-industry news."

The commercial or noncommercial aspect of Duane Reade's tweet won't be the only factor that determines the outcome of the lawsuit. In a claim under section 43(a) of the Lanham Act, there's also the issue of how the drug store's followers will interpret the tweet. Since there appears to be no question that the tweet was literally true, the case might turn on whether consumers were instead given the misleading impression that Heigl had endorsed the drug store.

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She's certainly not the first celebrity to bring a false advertising claim. For example, **Sandra Bullock** has been pursuing companies for advertising a watch as the one used by the actress in *The Blind Side*. That case, though, deals with venues like e-commerce site Amazon.com as well as the purchase of the Google AdWords term "Bullock" for promotion. This one inhabits social media where Twitter and Facebook followers may have different interpretations about what they see. If the case isn't settled, expect surveys to be done.

There is a potential drawback for Heigl in bringing the lawsuit. Unlike Bullock, who is a clear A-lister whose recent papers in arbitration tout how she's "America's sweetheart" with more positive associations than even **Oprah Winfrey**, Heigl is a more controversial actress thanks in part to reported bad behavior. In recent years, she's struggled to land great acting jobs, and as a result, there could be an issue arising in court proceedings about the true worth of her endorsement. If the case gets far and Duane Reade finds itself on the hook for its social media activity, the company could attempt to probe Heigl's professional career.

And thus, it might not only be a corporation under the microscope, but the actress' social media imprimatur as well.

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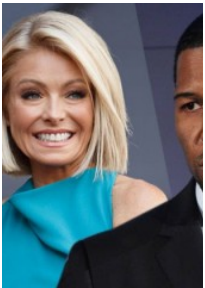
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