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Virginia Supreme Court Holds that Yelp! Cannot be Subpoenaed in Virginia

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In the past twelve months we have reported on a Virginia case, [Yelp!, Inc., v. Hadeed Carpet Cleaning, Inc.](#), ("Hadeed") that was closely watched because the case dealt with whether a business owner could unmask an anonymous blogger that posted specific critical reviews on [Yelp!](#) of his carpet cleaning company. This week the Virginia Supreme Court said, "No". Hadeed had subpoenaed Yelp! to provide information in Virginia that would identify the authors of the reviews under a new Virginia statute, that requires only that a business prove that a negative review is, or "may be defamatory" or that it has a legitimate good-faith basis for believing that the review is defamatory in order to learn the identity of the reviewer. Hadeed presented evidence that could prove that the seven negative reviewers were not actual customers of the carpet cleaners, which a lower court found could mean that the reviews could be defamatory.

The Virginia Supreme Court in a fairly short, succinct opinion, held that the lower courts were wrong because Virginia courts do not have subpoena authority over nonresident non-parties like Yelp!. Even though it was registered to do business in Virginia, that is not enough for a court to require Yelp!, a non-resident, to respond to a Virginia subpoena. Yelp!, a Delaware corporation, has its primary headquarters in California. Thus, Hadeed might be able to subpoena Yelp! to produce documents in California but the business could not require Yelp! to respond in Virginia. The Uniform Depositions and Discovery Act allows litigants to get discovery from non-parties in the states where the non-parties reside.

Please contact [Greg Duff](#) if you have any questions.

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