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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

VOICE TECH CORPORATION,

Plaintiff,

Docket No. 4:20-cv-00111-RK

v.

MYCROFT AI, INC.,

Defendant.

Kansas City, Missouri
April 14, 2020

.....

TRANSCRIPT OF ORAL ARGUMENT
BEFORE THE HONORABLE ROSEANN KETCHMARK
UNITED STATES DISTRICT JUDGE

Proceedings recorded by machine shorthand, transcript
produced by computer-aided transcription.

Jean M. Crawford, RDR, CRR
United States Court Reporter
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1 (Proceedings commenced at 3:03 p.m.)

2 THE COURT: Good afternoon. This is Roseann
3 Ketchmark. We are on the record. And the Court is calling
4 case No. 20-cv-00111, Voice Tech Corp. versus Mycroft.

5 Mr. Phillips, are you able to hear me?

6 THE LAW CLERK: Yes, Judge.

7 THE COURT: All right. Let me first note that today
8 is April 14th, 2020. It's 3:00 in the afternoon, Kansas City,
9 time. And we are here for oral argument on plaintiff's motion
10 in document 14, plaintiff Voice Tech Corporation's motion for
11 relief to require decorous and civil conduct by the parties.

12 Let me first ask for entry of appearances by
13 attorneys for the plaintiff.

14 (Simultaneous cross-talking.)

15 MS. GILMAN: I'm sorry, go ahead.

16 MR. ADAMS: No, no. Go ahead, Stacey.

17 THE COURT: Ms. Gilman.

18 MS. GILMAN: This is Stacey Gilman on behalf of
19 Voice Tech Corporation. Would you like individual appearances,
20 or do you want me to run through our staff? We've got Tod
21 Tumey, Eric Adams, David Wooten, and Silachi -- and I'm going
22 to apologize in advance for butchering his last name --
23 Nwogwugwu from the Tumey firm also on the line on behalf of
24 Voice Tech Corporation as well as Mo Khan from my firm. And I
25 just want to note for the record, Mr. Khan is a 2018 graduate

1 from Georgetown and has just moved here from Colorado. He is
2 not a member yet of the Missouri bar. His application is
3 pending, and so I wanted to make sure that it's okay with the
4 Court that he be at the hearing before he entered his
5 appearance officially.

6 THE COURT: Absolutely. That's fine. Thank you for
7 that, Ms. Gilman. Anyone else for plaintiff?

8 All right. Let me get entry of appearances for
9 defense, beginning with Mr. DeBacker.

10 MR. DeBACKER: Yes. This is Chris DeBacker, Your
11 Honor, from the law firm Mark Brown on behalf of the defendant
12 Mycroft AI. Also on the line is Justin Poplin and Hissan Anis
13 from Lathrop GPM.

14 THE COURT: Very good. Anyone else? Anyone
15 witnesses? Anyone else on the line?

16 All right. I have had an opportunity to read
17 plaintiff's filings in document 14 and their suggestions in
18 document 15 as well as several exhibits and also the
19 defendant's opposition in document 20 with the exhibits as
20 well. So I guess I'd like to hear from both sides.

21 But what my focus today is going to be on is whether
22 or not plaintiff has shown that the defense or any agents has
23 harassed plaintiff or counsel for plaintiff. And if there
24 hasn't been a showing, I think the second level would be, was
25 it foreseeable that defendant's conduct would cause such

1 harassment.

2 So that's kind of my focus. But I'm open to
3 whatever issues the parties want to include in their arguments.
4 And I anticipate your arguments -- since I've read the
5 complaint, the pleadings, reviewed the exhibits, that each side
6 would argue about ten minutes.

7 Ms. Gilman, will you be leading the arguments or
8 will one of your co-counsels?

9 MS. GILMAN: I'm going to turn it over to Eric Adams
10 to take the lead on this, Your Honor.

11 THE COURT: Very good. Mr. Adams, are you ready to
12 proceed with your statement, or do you have any issues we need
13 to take up ahead of time?

14 MR. ADAMS: I'm ready to proceed, Your Honor.

15 THE COURT: All right. Mr. DeBacker, will you be
16 the lead in the argument or will someone else?

17 MR. DeBACKER: Yes, Your Honor, it will be me, Chris
18 DeBacker, Your Honor.

19 THE COURT: And, Mr. DeBacker, do you have any
20 issues that we should take up before I turn it back over to
21 Mr. Adams?

22 MR. DeBACKER: None at this point, Your Honor.

23 THE COURT: All right. Mr. Adams, you may proceed.

24 MR. ADAMS: Okay. Thank you, Your Honor. May it
25 please the Court. I want to jump in and start addressing the

1 questions by the Court right away. We, of course, outlined
2 this in our Exhibit 97, which is a timeline of different
3 events. Each event is laid out in detail, and then the exhibit
4 that is associated with that event has also been submitted to
5 the Court. That's a good, kind of, road map of all of the
6 events that have taken place that we're complaining about.

7 Really, the story -- to kind of focus in on the
8 Court's question -- really starts at the end of January. We
9 served Mycroft with the lawsuit in Texas at the end of January.
10 And then, within a few days of that, we started getting
11 harassing phone calls at our firm. Somebody would call, heavy
12 breathing, hang up, and then this just was repeated over and
13 over again. That's -- and we put this in our suggestions, it's
14 actually very unusual for our firm. We're just a small patent
15 boutique down here in Houston.

16 A few days later, we saw that Josh Montgomery, one
17 of the co-owners of Mycroft and one of the -- or I guess he was
18 a former CEO -- he's now something called a first officer --
19 submitted a -- I guess published an article on Mycroft's
20 website critical of us, using some slurs against us, calling us
21 patent trolls and explaining his feelings about the case. But
22 at one point, he also points out that he thinks Tod Tumey, one
23 of the attorneys, is a patent troll, and he knows how to handle
24 them. And he says you should stab -- or I know how to handle
25 them. Stab, shoot and hang them, and then dissolve them in

1 acid. So that was the -- the first threatening language that
2 we saw come from Mycroft.

3 Now, after that, a few days later, there was this
4 flood of attempts to try to hack into our systems, different
5 online harassment, you know, signing us up for email lists,
6 pornography websites, all kinds of activity that stretched over
7 about a seven-hour period. And a lot of that was -- or that
8 was all anonymous. There were a few individuals from third
9 parties who did email us in response to Mr. Montgomery's
10 article, but they all identified themselves.

11 And if the Court looks at the timeline that I
12 referred to, Exhibit 97, it's clear, looking at February 8th,
13 2020, that this seven-hour tirade is all one person. You can
14 see it in the pattern. You can see how they're going through
15 different activities. At one point, they're trying to access
16 different accounts for our firm. At one point, they're signing
17 us up for pornography websites. Another point, email lists.
18 And there's just a pattern to it, which indicates that it's one
19 person.

20 After that, we looked at it, and we thought, you
21 know, this has got to be somebody at Mycroft. Who else would
22 be motivated to do this. We strongly suggested it was Josh
23 Montgomery or somebody helping him at Mycroft. And we decided
24 that it would be best to move this case to Missouri. And we
25 decided to dismiss the Texas case. So we dismissed it. And

1 then all of a sudden, all the online attacks stopped.

2 And we refiled it, of course, in this court and
3 moved forward. As soon as Mycroft made an appearance, we filed
4 this motion for relief. And a few days later, after filing
5 that motion for relief, the attacks started up again. We had
6 somebody try to hack into our systems at our firm and somebody
7 was signing us up for online solicitation from companies,
8 basically claiming to be us and saying that we were interested
9 in their goods, so please give us a call. So to us, the
10 timing of this is a major indication that this is somebody at
11 Mycroft, most likely Josh Montgomery.

12 The fact is, you know, as soon as we dismissed the
13 case, these attacks stopped. As soon as we filed our motion
14 for relief, they started up again. And it's just -- it's just
15 not likely that some random third party is following this case,
16 has access to Pacer filings, has access to high key Law360
17 articles and is monitoring this case daily. And as soon as we
18 do something that they approve of, the attacks stop. As soon
19 as we do something they don't approve of, these attacks start
20 up suddenly again.

21 So the evidence that we have that we've presented to
22 the Court is -- is circumstantial, but it is strongly
23 indicative of this being somebody at Mycroft performing these
24 online attacks. And really, what we're asking for here is we
25 just want to set a baseline of behavior going forward. We

1 shouldn't have to deal with these kind of attacks. We want,
2 you know, everybody to agree let's just treat each other
3 professionally, with courtesy, and focus on the merits of the
4 case. We don't -- we didn't want to wait a year and then have
5 these attacks just get unbearable and go back to the Court with
6 everyone asking, well, if it were such a big deal, why did you
7 wait so long. So that's why we're bringing it up now at the
8 beginning of the case.

9 As far as whether -- well, we believe it was Mycroft
10 or, most likely, Josh Montgomery. I know the Court had a
11 second question, whether this would be foreseeable that this
12 kind of conduct would lead some third party to act this way.
13 The fact is, these attacks did happen, and we've submitted the
14 evidence to support it. And so I think it's very clear that at
15 the very least, the evidence incited someone to act this way,
16 if it was not Josh Montgomery, someone at Mycroft.

17 THE COURT: All right. Thank you. And let me
18 ask --

19 MR. ADAMS: And --

20 THE COURT: Were you through? I'm sorry.

21 Mr. Adams, were you through?

22 MR. ADAMS: Yes, Your Honor, I am. Thank you.

23 THE COURT: All right. I have a few questions. As
24 part of your prayer for relief in your document 14 motion, you
25 asked that the defendant be required to remove comments that

1 they've published that threaten or suggest or incite violence.
2 That is still -- that remains your position; is that correct?

3 MR. ADAMS: Yes, Your Honor. That's a reference to
4 the initial article that Mr. Montgomery published on Mycroft's
5 website. The reference is to stab, shoot and hang them and
6 dissolve them in acid. And it's just that sentence.

7 THE COURT: What about "punch him square in the face
8 and nuke them from orbit?"

9 MR. ADAMS: The "nuke them from orbit" is -- you
10 know, is an obvious reference to a movie line. We're not
11 concerned about that. "Punch him in the face" would be a
12 threat, not as serious, but it should be removed as well. And,
13 like I said before, we're not trying to make them take down
14 this complete article. If they have criticisms of us, they're
15 free to make those known. We're not trying to put any kind of
16 gag order on them. We just want that one little threat taken
17 out. We just think it sends the wrong message. And that's the
18 limit of our request.

19 THE COURT: All right. Thank you.

20 All right. Mr. DeBacker. You may proceed.

21 MR. DeBACKER: Thank you, Your Honor. And may it
22 please the Court. I just wanted to first, you know, latch on
23 to the -- the fact that they do admit that it's circumstantial
24 evidence. And we've submitted a declaration of
25 Mr. Montgomery's categorically denying any of this activity.

1 And, you know, Mycroft would be the first to formally
2 admonish and deny any of these personal attacks. They don't
3 believe that anybody, counsel, companies should be subjected to
4 this type of harassment. And it's fitting -- I found out
5 earlier today that today is national be kind to lawyers day, so
6 it's something that attorneys sometimes have to deal with in
7 the face of these situations. But nobody should have a
8 threatened attack and phone calls and harassment. But there is
9 no evidence whatsoever that any of these activities were
10 performed by Mycroft or Mr. Montgomery or any person instructed
11 to do these attacks by Mr. Montgomery.

12 You know, we would certainly be interested in seeing
13 the digital file of these emails in discovery and seeing if
14 maybe we can't identify these particular parties for the
15 plaintiff. Mycroft has resources and some technical experience
16 that they could potentially track down these individuals. But,
17 you know, they asked who else would be motivated to do this.
18 And, you know, as we pointed out in our response in opposition,
19 there is a large segment of the technological society and
20 inventors all over the country that are against the type of
21 activity that Mycroft is of the opinion Voice Tech is taking on
22 here.

23 The tautologism is patent troll. You know, the
24 courts have used that term, Congress has used that term to
25 describe nonpracticing entities and these individuals that --

1 the language that the plaintiff is locked in on, the "stab,
2 shoot and hang them and then dissolve them in acid" --
3 Mycroft's position is that's referring to the fictional
4 creature of the troll, has to deal with the troll. And the
5 quote itself is actually written to another article unrelated
6 to this matter. So Mycroft doesn't view that as any sort of
7 language that -- other than hyperbole that would direct
8 somebody to perform these types of act.

9 And Mycroft would like to point out also that
10 they're -- they have nine full-time employees. They're going
11 up against giants like Google and Amazon. And they are the
12 defendants here. They didn't bring this case. So that's
13 paramount to why they need the ability to inform their
14 customers, inform their investors. And we're glad to hear that
15 the plaintiff isn't suggesting a full gag order here. But it
16 seems like really that language is what they're latching on to.
17 And I don't know that removing by word is going to stop some
18 individual out there on the internet who has a strong opinion
19 about, you know, patent -- abusers of the patent system
20 from defensively continuing this activity, which Mycroft cannot
21 control and cannot stop. But at the same time having First
22 Amendment rights to express its opinion and to continue
23 informing its communities about the ongoings of the case,
24 informing its customers, and it will continue to provide
25 quality product to -- you know, continue to assure its investor

1 that they're going to defend this type of case and all future
2 types of cases like this against what they consider an attack
3 on their own business.

4 So while they are not aware of this activity that is
5 being accused of, they deny any form of activity. They did
6 not -- they did not participate in any of the activity. They
7 did not contact Mr. Tumey or his firm. None of the online --
8 you know, the signing up for various services or attempts to
9 hack their website can be proven to have come from Mycroft or
10 any of its associates. And they categorically deny any of that
11 activity in Mr. Montgomery's declaration. And that pretty much
12 sums up our position on this matter.

13 THE COURT: All right. Here is where the Court is
14 landing. In your Exhibit 5 to your opposition in your document
15 20, in that exhibit, it is a posting by Techdirt. And one of
16 the sentences in that writing -- the paragraph begins with, As
17 Tumey recounts, the various angry, immature, internet trolls
18 then did a bunch of other mean stuff to Tumey, such as signing
19 him up for mailing lists. This is, again, childish behavior,
20 but it's kind of what often happens when you do something
21 stupid and the internet finds out about it.

22 And I find that there is sufficient evidence that
23 the harassment that plaintiff's counsel has received is induced
24 or inspired by the postings of Mr. Montgomery. In particular,
25 the initial blog posting on February 5th where his -- the

1 posting is, basically, I want you to do something for me. And
2 he says, I'd like -- I don't often ask this, but I'd like for
3 everyone in our community to share the post in any which way
4 they can. And so that is what -- he is calling folks into
5 action to get the word out.

6 And then as he describes and educates the readers as
7 to what a troll is, then he explains what their internal
8 policy -- how they're going to combat this. And he describes
9 it in equating plaintiff as a bully and the language of
10 punching a bully in the face; stab, shoot, hang them; and
11 dissolve them in acid; and nuke them from orbit; and that he is
12 turning into a hunter, a troll hunter. I think that even
13 though he may not be directly the source of the harassment, his
14 actions are foreseeable and that that is what would happen
15 based on his conduct.

16 So I am going to order, at least for the pendency of
17 this case, or until ordered otherwise, for defense to
18 assertively take down the sentence that begins with "I don't
19 often ask this," to delete that portion until the section where
20 "a brief history of patents in the United States." I'd also
21 order defense to assertively search and take down in those
22 similar -- whether it's Facebook or blogs or whatever, the
23 remainder of the writing beginning with "the thing is, once you
24 pay the bully, he just comes back again and again and again."
25 And so from that sentence -- that can stay in, but where it

1 begins with "Eventually, the lunch money adds up to a lot more
2 than a doctor's visit." From "eventually" until the end of
3 that posting, for that to be deleted. And I do -- I'm not
4 asking that all that blog be taken down, just those sections.

5 I don't know that a written order is required and
6 that this on-the-record order should be sufficient. But I want
7 to give each side an opportunity to make any requested changes
8 to my order. Let's start with plaintiff.

9 MR. ADAMS: Your Honor, we're fine with your order
10 being in the record being taken down by the court reporter.
11 And we don't have any other recommendations or suggested
12 changes to it.

13 THE COURT: All right. Defense?

14 MR. DeBACKER: Yes, Your Honor. I just wanted some
15 clarity. To remove the sentence starting from "I don't often
16 ask this" through the link and the posting. And then the
17 sentence near the end starting with "Eventually, that lunch
18 money adds up" through the end of the -- the post; is that
19 correct?

20 THE COURT: Yes. So they need to take down "I don't
21 often ask this, but I'd like for everyone in our community who
22 believes that patent trolls are bad for open source to repost,
23 link, tweet, and share this post. Please help us to get the
24 word out by sharing this post on Facebook, LinkedIn, Twitter,
25 or email." All of that is to be deleted.

1 In addition, towards the end, beginning with,
2 "Eventually, that lunch money adds up to a lot more than a
3 doctor's visit." And that continues on. And to take down the
4 remainder, which includes Tod Tumey's confidential
5 correspondence information and the email 1, 2, 3, email 4,
6 final notice letter link. And then there shouldn't be any need
7 for the image attribution. Does that clarify your concern?

8 MR. DeBACKER: Yes, Your Honor.

9 And I -- also, if I may, Mycroft is sort of an open
10 source network. And they do often post asking for support in
11 situations such as the (inaudible) and other things. Is that
12 going to be an issue?

13 THE COURT: I didn't clearly understand what you
14 said. That they asked for support in what manner? Tell me
15 again.

16 MR. DeBACKER: So often -- they are part of an open
17 source network that collaborates with other open source
18 innovators. And I just want to be clear that they're going to
19 be able to continue to ask for support outside of this matter
20 with sharing links and such with their open source network, if
21 they post on other forums, if they're going to be allowed to
22 request aid and other things like that, as long as they're not
23 directing it towards codes like this.

24 THE COURT: Well, I'll just have to see it as it
25 comes. I don't want to have to rule on that now. I know just

1 in my own little messing around on my phone, I see that they
2 may be seeking financial assistance with attorneys' fees. You
3 know, that I'm not -- that doesn't have anything to do with
4 this issue. So I don't know what else you're referring to, but
5 just -- I mean, I think it's common sense what the Court's
6 focus is.

7 MR. DeBACKER: That should be sufficient, Your
8 Honor. Thank you.

9 THE COURT: All right. And, you know, on the word
10 patent trolls, that really is -- it was on *60 Minutes* as well.
11 I saw a little piece -- I think it was *60 Minutes*. I think
12 that is -- I'm not going to rule that they are not able to use
13 that term in any of their communications. So that part -- if
14 that is part of the plaintiff's request, that is denied.

15 Let me ask plaintiff, are there any other requested
16 relief?

17 MR. ADAMS: No, Your Honor.

18 THE COURT: Okay. Anything further from plaintiff?

19 MR. ADAMS: No, Your Honor.

20 THE COURT: Defense, anything further?

21 MR. DeBACKER: No, Your Honor.

22 THE COURT: Let me ask the attorney in chambers
23 that's assigned to manage this case, Mr. Phillips, are there
24 any other issues or clarifications we need to take up before we
25 end the conference call?

1 THE LAW CLERK: Just one thing, Judge. The record
2 speaks for itself. So my understanding is we're not going to
3 follow this up with a written order from the Court, but we will
4 follow it up with just a notation from me on the docket sheet
5 that is a minute entry that just described what was discussed
6 and will essentially state as ruled on record.

7 THE COURT: Yes. Without getting into any of the
8 details.

9 THE LAW CLERK: Right.

10 THE COURT: Okay. Anything else, Mr. Phillips, you
11 can think of that we need to take up?

12 THE LAW CLERK: No. I think that's it. Thank you,
13 Judge.

14 THE COURT: Okay. Everyone. Thank you very much.
15 And this will end our conference call. Goodbye.

16 (Proceedings concluded at 3:32 p.m.)

17 * * * * *

18 CERTIFICATE

19 I certify that the foregoing is a correct transcript
20 from the record of proceedings in the above-entitled matter.

21

22 April 20, 2020

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/s/Jean M. Crawford
JEAN M. CRAWFORD, RDR, CRR
United States Court Reporter