

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

GLENN REIT, D.D.S.,

Plaintiff,

- against -

YELP! INC. and JOHN DOE, aka  
"MICHAEL S.",

Defendants.

Index No.:

Date Purchased:

SUMMON  
**FILED**

10600555

MAR 04 2010

COUNTY CLERK'S OFFICE  
NEW YORK


To the above named defendants:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer on Plaintiff's attorneys, Holland & Knight LLP, within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and, in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Plaintiff designates New York County as the place of trial. The basis of venue is that Plaintiff resides in and has his principal place of business in New York County. This action is not based on a consumer credit transaction.

Dated: New York, New York  
March 3, 2010

HOLLAND & KNIGHT LLP

By:   
Richard Raysman

31 W. 52<sup>nd</sup> Street  
New York, New York 10019  
(212) 513-3200

Attorneys for Plaintiff  
*Dr. Glenn Reit, D.D.S.*

# 9216253\_v2

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

GLENN REIT, D.D.S.,

Plaintiff,

- against -

YELP! INC. and JOHN DOE, aka  
"MICHAEL S.",

Defendants.

Index No.:

Date Filed:

10600555

COMPLAINT

Plaintiff, Dr. Glenn Reit, D.D.S. ("Dr. Reit"), by and through his attorneys, Holland & Knight LLP, respectfully complains against Defendants Yelp! Inc. ("Yelp") and Michael S. as follows:

**FILED**

**MAR 04 2010**

NATURE OF THE ACTION

**COUNTY CLERK'S OFFICE**

**NEW YORK**

1. Plaintiff seeks preliminary and permanent injunctions ordering Yelp to delete all references to Dr. Reit on its website in order to prevent the continuing defamation of Dr. Reit and damage to his dental practice.

2. Dr. Reit seeks monetary damages from Yelp and Michael S. in the form of compensatory damages for defamation to Dr. Reit and to Dr. Reit's dental practice, together with punitive damages for Yelp's purposeful and self-serving acts of complicity.

THE PARTIES

3. Dr. Reit is a dentist with the principal place of business for his dental practice located at 1498 Third Avenue, New York, NY 10028. Dr. Reit is a resident of the State of New York, City of New York, residing at 389 East 89<sup>th</sup> Street, New York, NY 10128.

4. Upon information and belief, Yelp! Inc. is a corporation existing under the laws of Delaware with a principal place of business at 706 Mission Street, San Francisco, California 94103.

5. Upon information and belief, Yelp conducts business in the City of New York, State of New York and is registered as a foreign corporation in New York.

6. Michael S. is an anonymous poster on Yelp. Dr. Reit does not know his (or her) identity.

7. Yelp and Michael S. have committed tortious acts against Dr. Reit causing injury to Dr. Reit and his dental practice.

8. At all times material to this action, Yelp, itself and through its agents, regularly solicited and transacted business in the State of New York and this County, by, among other things, Yelp's interactive website, including but not limited to the domain name [www.yelp.com](http://www.yelp.com) (the "Interactive Website"). Upon information and belief, Yelp is the registered owner of the Internet domain name [www.yelp.com](http://www.yelp.com).

9. The Interactive Website allows consumers and businesses in the State of New York and this County to post and view reviews and complaints about professionals and other businesses to its website.

10. Upon information and belief, Yelp solicits and sells advertising to businesses via the said Interactive Website and through individual sales representatives.

#### FACTUAL BACKGROUND

11. The Plaintiff, Dr. Glenn Reit, D.D.S is a dentist with a general practice of dentistry on the East side of New York. He is a 1976 graduate of George Washington University and a 1980 graduate of Georgetown Dental School and has been a practicing dentist for over 30

years. Reit's general dental practice consists of performing oral examinations, taking x-rays, filling cavities, installing implants and crowns, gum surgery, extractions, root canals, reconstruction, cosmetic procedures and general dentistry. He has never had a malpractice claim filed against him and has a clean record with the National Practitioner Data Bank.

12. After graduating from dental school, Reit spent 25 years practicing dentistry in California. On October 21, 2007 Reit purchased a dental practice on the upper East side of Manhattan which is currently his primary dental practice.

13. Between December, 2008 and January, 2009 Reit fully renovated his office. He purchased over \$100,000 of new dental equipment. He also spent over \$50,000 on construction including installing new floors and ceilings, installing new electrical lines, and installing new plumbing.

14. Defendant Yelp operates a website which encourages the general public to write and post reviews, comments and opinions about their experiences with various businesses such as restaurants, stores, professional practices and local tradesmen.

15. Defendant "Michael S." is an anonymous poster who wrote and posted a defamatory review about Reit.

#### THE DEFAMATION CLAIM

16. Defamation of a person in his or her profession is such a serious offense as to be recognized in the law as one of the four "per se" defamatory violations.

17. On May 6, 2009 the following false and defamatory statement was published on the website of the defendant Yelp by the anonymous poster "Michael S." under the name of "Glen [sic] Reit":

" 5/6/2009

So - just to start off - one of the reviews under this heading refers to Dr. Reitman, whom I have heard is a decent dentist; however, this entry is truly for Dr. Glen Reit on 3rd avenue.

Beware of this dentist and this office!

I have never experienced such unprofessional service in such a disgusting office as I had in the office of Dr. Glen Reit. I went there in some amount of urgency after having broken a tooth. I had an Empire Blue EPO (another term for HMO), so my dental provider options were limited. Dr. Reit had just purchased the practice from retired dentist and was just settling in.

I walked into the office and was in shock regarding the appearance. I am not from New York, but have adjusted fairly well to encountering dark, small, old, smelly offices as the norm, but I always thought this would not be tolerated in medical offices - apparently I was wrong! It looked like it was from the 50s - bright blue pleather couch, brass furnishings, dingy carpet. But that was just the reception area! The examination rooms are not at all better, in fact, they aren't rooms at all. There is one main exam room with several chairs separated by half walls similar to cubicles, so you can hear everything that is being said about every patient - so much for privacy or confidentiality. The equipment is old and dirty. There was dust on the instruments that were supposed to be going [sic] into my mouth! I am considering reporting the office to OSHA.

I allowed the barely competent xray tech to snap a couple of painful xrays, but refused to have the hygienist put any of the instruments in my mouth. Dr. Reit introduced himself and failed to ask me any questions about my medical or dental history, but felt completely comfortable to criticize the work my NC dentist had performed. He demanded payment before performing any work, so I walked out.

As a health care professional myself, I was shocked to think that somebody could behave this way and conduct health care services in that condition.

As for my tooth, I flew to Florida to have my cousin fix it for free. (the "Michael S." Posting)"

18. The statements in the Michael S. Posting are false and defamatory as follows:

a. the posting states that there is "unprofessional service". This is a false statement. Dr. Reit has always given and continues to give highly professional service.

b. the posting states that the office is a "disgusting office". This is a false statement. Dr. Reit's office is ultra clean, sanitary and has never received any health code violations from New York State regulatory authorities.

c. the posting states that the office is "dark". This is a false statement. Dr. Reit's office is bright with glass windows present in the dental operatories measuring twenty-one feet in length by twelve feet in height overlooking Third Avenue on the second floor of a five story brownstone.

d. the posting states that the office is "small". This is a false statement. Dr. Reit's office is spacious with four dental operatories.

e. the posting states that the office is "old". This is a false statement. Dr. Reit's office is newly renovated.

f. the posting states that the office is "smelly". This is a false statement. Dr. Reit's office is not "smelly", it has no smell at all.

g. the posting states that the office "looked like it was from the 50s – bright blue pleather couch, brass furnishings, dingy carpet." This is a false statement. Dr. Reit does not have a bright blue pleather couch, brass furnishings or a dingy carpet. Dr. Reit's office was completely renovated in January, 2009 and all furnishings are new and bright.

h. The posting states that "you can hear everything that is being said about every patient – so much for privacy and confidentiality". This is a false statement. Dr. Reit's office keeps the utmost privacy and confidentiality of all patients.

i. The posting states that "the equipment is old and dirty". This is a false statement. In January, 2009, Dr. Reit purchased and installed all new equipment which is kept in immaculate condition.

j. The posting states "there was dust on the instruments that were gong (sic) into my mouth". This is a false statement. There is no dust on Dr. Reit's instruments which are completely sterilized, sealed in dated sterilization packets which meet all state and federal OSHA regulations for dental sterilization. In addition weekly sterilization monitors regulated by outside sterilization monitoring companies are used to insure continued sterility of all dental instruments.

k. The posting states that "I allowed the barely competent xray tech to snap a couple of painful xrays". This is a false statement. Dr. Reit's x-ray technicians are fully trained in x-ray technology and in working with Reit's patients in a professional manner.

l. The posting states that "Dr. Reit introduced himself and failed to ask me any questions about my medical or dental history". This is a false statement. When examining any new or existing patient, Dr. Reit always inquires about the patient's medical and dental history.

19. Dr. Reit does not know who "Michael S." is.

20. Dr. Reit has always worked diligently and extensively to maintain the highest professional standards and to develop a professional reputation for himself and his dental practice. That reputation is currently being threatened by the false and defamatory Michael S. Posting.

21. Since the Michael S. Posting, Dr. Reit has lost a considerable amount of business. Prior to the Michael S. Posting, Reit received 10 to 15 calls a day for appointments. Since the Michael S. Posting, Dr. Reit is receiving only 4 to 5 calls a day for appointments.

#### YELP'S MANAGEMENT OF THE REIT REVIEWS

22. Under his name on the Yelp website, Dr. Reit also had 10 positive reviews.

23. After the Michael S. Posting went up under Dr. Reit's name, Dr. Reit contacted Yelp by e-mail and by telephone in an effort to get the posting deleted. Yelp refused to take down the posting.

24. By on or about November 5, 2009 Yelp removed all of the positive postings under Dr. Reit's name and retained only the Michael S. Posting.

25. Ultimately, Yelp removed all of the postings from Dr. Reit's professional profile on Yelp, yet even today, the Michael S. Posting appears on the Yelp website under "Michael S.'s Reviews" and comes up as a search engine's result for users searching for Dr. Reit online.

26. Dr. Reit's first name is misspelled on Yelp as "Glen" Reit. Currently, whenever "Glen Reit" is entered into the Google search engine, the Michael S. Posting with the false and defamatory statement comes up as the second listing on the Google search stating "May 6, 2009 ... I have never experienced such unprofessional service in such a disgusting office as I had in the office of Dr. Glen Reit."



27. Currently, whenever "dr glenn reit ny" is entered into the Google search engine, the Michael S. Posting with the false and defamatory statement comes up as the third listing on the Google search.

28. Upon information and belief, the Michael S. Posting is somehow optimized, or linked to outside web-content, so that the review always comes up as a second or third listing in a Glenn Reit search using the Google search engine.

29. Upon information and belief, based upon Yelp's business model as set out below, Reit believes that the Michael S. Posting is being retained on the Yelp site to encourage Reit to sign up for Yelp advertising.

EFFECT OF MICHAEL S.'s REVIEWS ON DR. REIT'S DENTAL PRACTICE

30. Reit is on the approved list of many insurance companies including Aetna, Cigna, Delta, Guardian, MetLife, Twenty First Century, United Concordia and United Health Care.

31. Upon information and belief, potential patients whose companies provide dental insurance and who desire a dentist on the upper East side look at the insurance company websites and may have several dentists to choose from. Upon information and belief, these potential patients "Google" Reit's name before calling him. Upon information and belief, when the potential patients "Google" Reit's name, and the Michael S. Posting appears, they do not call Dr. Reit but simply call the next dentist on the recommended list. In addition on many occasions new patients who have called the office to schedule an appointment, subsequently call back the office prior to their appointment to cancel and fail to reschedule presumably after stumbling on the Michael S. review.



32. Upon information and belief, if Dr. Reit's review on the Michael S's Reviews Yelp site is not removed, it will ultimately drive Dr. Reit out of business. Online reviews are so ubiquitous that no marketing strategy Dr. Reit could follow would repair the damage to his professional reputation and practice.

#### YELP'S BUSINESS MODEL

33. Upon information and belief, Yelp engages in a business practice of deleting positive reviews and retaining negative reviews in order to encourage business owners to advertise on Yelp.

34. Upon information and belief, Yelp solicits advertising from businesses listed on the Yelp website at a cost of \$300 a month or more. As noted on Yelp's website, "Sponsors can highlight a single review at the top of their page, which is clearly marked with a heading denoting their sponsorship...Following that, review order is determined by a combination of recency and user voting, and this methodology is applied to all businesses, sponsors or not." Without further inquiry, there is no way of determining what is meant by a "combination of recency and user voting" and whether Yelp employees have a decision input into review order and on what criteria.

35. Upon information and belief, Yelp's sales force uses negative reviews on the Yelp website as leads for new advertising business.

36. Upon information and belief, Yelp sales representatives orally tell business owners that if the business owner commits to pay for advertising, the Yelp sales representative will assist in deleting a number of troubling negative reviews, even though Yelp denies this in the frequently asked questions on the website. Upon information and belief, if a business owner

does not sign up for advertising, Yelp deletes positive reviews and retains negative reviews of that business owner.

37. Upon information and belief, by managing the content on the Yelp website so that negative reviews remain and positive reviews are deleted for the purpose of generating advertising revenues, Yelp is "responsible in part for development of information" which makes it an information content provider under the Communications Decency Act ("CDA") §230 and thus no longer eligible for the CDA §230 immunity afforded to an Interactive Computer Service.

38. On Yelp's "Business Owner's Guide", under the heading "Common Questions and Tricky Situations", Yelp states that " We remove some of the guesswork by screening out reviews that are written by less established users. The process is entirely automated to avoid human bias, and it affects both positive and negative reviews... Please note that our support team cannot manually restore reviews." Yelp has also stated in an e-mail to Dr. Reit that "We do have, as I believe you know, an automated software system that scans our listing for potentially untrustworthy users, and may elect to suppress this review in time." Upon information and belief the foregoing statement is false. Upon information and belief, the system is not "entirely automated" and Yelp manipulates the reviews so that the negative reviews become more prominent and the positive reviews become less prominent or disappear entirely from the website. In addition, Yelp's "automated system" completely removed ten positive reviews on the Yelp website of Dr. Glen Reit which implies human intervention by Yelp.

39. Upon information and belief, Yelp's self described "entirely automated" process is completely undefined and not available to the public. Without further inquiry, there is no way for Dr. Reit to determine how this "automated" process works or whether Yelp employees

actually make decisions about which reviews are retained, which reviews are deleted and the listing order of the reviews.

40. Upon information and belief, Yelp has engaged in a conspiracy to injure Dr. Reit in his trade, business and reputation including without limitation Dr. Reit's dental practice.

FIRST CAUSE OF ACTION  
(Defamation Against Michael S.)

41. Dr. Reit repeats and realleges the allegations set forth in paragraphs 1 through 40 hereof as if fully set forth herein.

42. The Michael S. Posting is false and defamatory.

43. Michael S. (i) made a false and defamatory statement concerning Dr. Reit, (ii) Michael S. published the statement without privilege to a third party, (iii) Michael S.'s fault in publishing the statement amounted to negligence at a minimum, and likely to malicious intent, and (iv) either the statement is actionable as a matter of law irrespective of special harm or the statement's publication caused Dr. Reit special harm.

44. The Michael S. Posting injures Reit in his profession and thus is a per se defamatory statement.

45. Michael S.'s defamatory acts have been committed with the intent to cause damage to Dr. Reit.

46. Dr. Reit has been and continues to be damaged by Michael S.'s activities and conduct, and unless Michael S.'s conduct is enjoined, Dr. Reit will suffer irreparable injury in his profession.

47. Michael S.'s continued misconduct is causing irreparable harm to Dr. Reit in his profession so as to severely and negatively impact Dr. Reit's ability to conduct his dental practice.

48. Dr. Reit has been and continues to be injured by Michael S.'s activities and conduct, and unless his conduct is enjoined, Dr. Reit will suffer irreparable injury in his profession.

49. Dr. Reit has no adequate remedy at law.

50. Dr. Reit should be awarded injunctive relief and damages in an amount to be determined at trial for injuries sustained by Dr. Reit in consequence of Michael S.'s acts complained of herein.

SECOND CAUSE OF ACTION  
(Defamation Against Yelp)

51. Dr. Reit repeats and realleges the allegations set forth in paragraphs 1 through 50 hereof as if fully set forth herein.

52. The Michael S. Posting is false and defamatory.

53. The Michael S. Posting on Yelp (i) is a false and defamatory statement concerning Dr. Reit, (ii) Yelp published the statement without privilege to a third party, (iii) Yelp's fault in publishing the statement amounted to a minimum of negligence, and (iv) either the statement is actionable as a matter of law irrespective of special harm or the statement's publication caused Dr. Reit special harm.

54. The Michael S. Posting injures Dr. Reit in his profession and thus is a per se defamatory statement.

55. On information and belief, Yelp's defamatory acts were committed with the intent to cause damage to Dr. Reit.

56. Dr. Reit has been and continues to be injured by Yelp's actions, and unless Yelp's conduct is enjoined, Dr. Reit will suffer irreparable injury to his profession.

57. Yelp's continued misconduct is causing irreparable harm to Dr. Reit in his profession so as to severely and negatively impact Dr. Reit's ability to conduct his dental practice.

58. Dr. Reit has been and continues to be injured by Yelp's activities and conduct, and unless their conduct is enjoined, Dr. Reit will suffer irreparable injury in his profession.

59. Dr. Reit has no adequate remedy at law.

60. Dr. Reit should be awarded injunctive relief and damages in an amount to be determined at trial for injuries sustained by Dr. Reit in consequence of Yelp's acts complained of herein.

### THIRD CAUSE OF ACTION

(Injury to Reputation, Trade, Business and Profession Against Yelp)

61. Dr. Reit repeats and realleges the allegations set forth in paragraphs 1 through 61 hereof as if fully set forth herein.

62. The Michael S. Posting is false and defamatory.

63. On information and belief, Yelp, by its aforesaid business practices, has engaged in a conspiracy with Michael S. to defame Dr. Reit and has defamed Dr. Reit with Yelp as a content provider.

64. The Michael S. Posting on Yelp (i) is a false and defamatory statement concerning Dr. Reit, (ii) Yelp published the statement without privilege to a third party, (iii) Yelp's fault in publishing the statement amounted to at least negligence, and (iv) either the statement is actionable as a matter of law irrespective of special harm or the statement's publication caused Reit special harm.

65. The Michael S. Posting injures Dr. Reit in his profession and thus is a per se defamatory statement.

66. On information and belief, Yelp's defamatory acts have been committed with the intent to cause damage to Dr. Reit, in order to compel Dr. Reit to purchase advertising from Yelp.

67. Dr. Reit has been and continues to be damaged by Yelp's activities and conduct, and unless Yelp's conduct is enjoined, Dr. Reit will suffer irreparable injury in his profession.

68. Yelp's continued misconduct is causing irreparable harm to Dr. Reit in his profession so as to severely and negatively impact Dr. Reit's ability to conduct his dental practice.

69. Dr. Reit has been and continues to be injured by Yelp's activities and conduct, and unless their conduct is enjoined, Dr. Reit will suffer irreparable injury in his profession.

70. Dr. Reit has no adequate remedy at law.

71. Reit should be awarded injunctive relief and damages in an amount to be determined at trial for injuries sustained by Reit in consequence of Yelp's acts complained of herein.

FOURTH CAUSE OF ACTION  
(Deceptive Acts and Practices Against Yelp)

72. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 71 hereof, as if fully set forth herein.

73. Yelp's acts constitute deceptive acts and practices, in violation of N.Y. General Business Law §§ 349-350 and other laws, in the conduct of business, trade and commerce, by virtue of their: (a) providing deceptive terms on their website that encourage both business consumers/users and individual consumers/users of the site to believe that the reviews they consume are not manipulated by Yelp, and (b) deleting positive postings and highlighting negative postings, creating false and damaging profiles, for the purpose of selling advertising.

74. Yelp's deceptive practices prey particularly on small practices or businesses, like Dr. Reit's dentistry practice.

75. As a result of defendants' deceptive acts and practices, Dr. Reit has incurred substantial costs and expenses which would not have been incurred but for the aforesaid deceptive acts and practices.

76. Under the current circumstances, in which Yelp has not removed the Michael S. Posting, damages cannot be calculated with any certainty at this time and are demanded in an amount to be proven at trial.

77. Plaintiff also demands attorneys' fees.

78. Dr. Reit has no adequate remedy at law.

WHEREFORE, plaintiff Dr. Reit demands judgment against the Defendants as follows:

1. Preliminarily and permanently enjoining Defendants, their officers, directors, agents, servants, employees, attorneys and all persons and entities in active concert and participation with them, from:

a. in any manner using, referencing, stating or mentioning the names "Glen Reit" or "Glenn Reit" on the Yelp website or any other website controlled by Yelp, and specifically removing the "Glen Reit" entry from the Michael S. Posting location;

b. doing any other acts or things calculated or likely to cause harm to Dr. Reit in his profession;

2. Preliminarily ordering Yelp to furnish the identity and contact information of Michael S.;

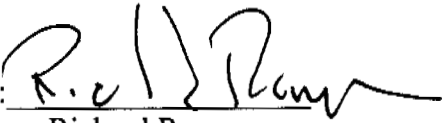


3. Awarding Dr. Reit damages against the Defendants in an amount to be determined at trial for injuries sustained by Dr. Reit in consequence of the Defendants' acts complained of herein, such damages to be in an amount of no less than \$3,000,000 of compensatory damages and \$7,000,000 of punitive damages; and

4. Awarding Dr. Reit such other and further relief as the Court deems just, equitable and proper.

Dated: New York, New York  
March 3, 2010

HOLLAND & KNIGHT LLP

By:   
Richard Raysman  
Katherine A. Skeele

31 West 52<sup>nd</sup> Street  
New York, NY 10019  
212-513-3200  
richard.raysman@hklaw.com  
katherine.skeele@hklaw.com

Attorneys for Plaintiff  
*Dr. Glenn Reit, D.D.S.*

# 9135115\_v6

Index No.

Year 20

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

GLENN REIT, D.D.S.,

Plaintiff,

- against -

YELP! INC. and JOHN DOE, aka "MICHAEL S.",

Defendants.

COMPLAINT

HOLLAND & KNIGHT LLP

Attorneys for

Plaintiff  
31 West 52nd Street  
New York, N.Y. 10019  
(212) 513-3200

Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a.

Dated: ..... Signature .....

Print Signer's Name.....

Service of a copy of the within ..... is hereby admitted.

Dated:

.....  
Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

NOTICE OF ENTRY that the within is a (certified) true copy of a  
entered in the office of the clerk of the within-named Court on 20

NOTICE OF SETTLEMENT that an Order of which the within is a true copy will be presented for settlement to the  
Hon. , one of the judges of the within-named Court,  
at  
on 20 , at M.

Dated: