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Melbourne criminal lawyer Zarah Garde-Wilson ramps up battle against Google

EXCLUSIVE

By ANGELICA SNOWDEN, JOURNALIST

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A battle between one of Melbourne's best known criminal lawyers and Google is heating up, with the solicitor accusing the tech giant of dashing her chances to sue a negative reviewer who she did not represent and says left "highly offensive" comments about her business.

Zarah Garde-Wilson — who has appeared for gangland figures Carl Williams, Tony Mokbel and Rob Karam — lodged fresh documents with the Federal Court on Monday in a bid to press Google for more information about their data retention policies, which could unmask the identity of the reviewer with a screen name of "Mohamed Ahmed".

"For Google LLC to automatically delete records of activity in relation to one of its registered accounts is akin to a gun manufacturer who removes a gun's serial number and permanent record from its database," the submission read.

"It is foreseeable the instrument could be used for harm and this information could be useful to someone wanting to trace the owner of the gun and sue or prosecute them."

Ms Garde-Wilson will decide whether to pursue legal action against Google after an administrative hearing on Thursday, when her lawyer will argue that Google deleted information — including an IP address, phone numbers and email addresses — about the reviewer and did not retain a backup even though it knew the data could be valuable.

The latest court document filed on Monday said: "The prospective applicant ... demonstrated she wanted the identity of the anonymous party publishing the negative Google review.

"She has been deprived of her ability to sue this party by the breach of Google LLC's duty to preserve records. The prospective applicant wishes to assess if she can bring causes of action against the prospective respondent for not preserving IP logs needed to identify the party."

The latest court documents said the evidence needed by Ms Garde-Wilson was likely deleted on US soil. It said the US tort of “negligent spoliation claim” — destruction or failure to save evidence — allowed a plaintiff to claim damages even when they did not have a “key piece of evidence” because the defendant had a “duty” to preserve it or predict the information sought could be used for future legal proceedings.

“Google LLC has breached that duty by losing the evidence ... (and) undermines the prospective applicant’s ability to prove their claim; and they have suffered the loss of suing the party for defamation,” they read.

Ms Garde-Wilson publicly refuted the review, saying the reviewer was never a client, was possibly a legal practitioner and the review was “fraudulent and grossly defamatory”.

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