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Hedge Fund Spars With a Nameless Blogger

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Andrew Ross Sorkin

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That is what David Einhorn, the outspoken hedge fund manager, wanted to know after one of his firm's investments was disclosed by an anonymous blogger last year. Who was the leaker?

Mr. Einhorn was so irate about the leak of his investment — a stake in Micron Technology — that he has gone to court in hopes of unmasking the blogger.

In a legal motion that has quietly attracted attention from various corners of Wall Street, Mr. Einhorn's firm, Greenlight Capital, asked a court to force Seeking Alpha — the website that published the anonymous blog post — to identify the writer by name so that, as the firm argued in its legal brief, it "can sue the pseudonymous poster under his or her real name."

Judge Carol R. Edmead of New York State Supreme Court had ordered representatives of Seeking Alpha to appear in court on Tuesday to explain why she should not grant Greenlight's motion, but that hearing has been postponed until April 1.

The case could be a watershed for both the reporting of financial news using anonymous sources, and perhaps more important, the increasing trend of confidential information being posted anonymously on social media like Twitter and the comment sections of established news websites.

Leaks to the media are a well-worn tradition on Wall Street. Yet rarely do firms go after the leakers — or the media outlets that published the leaked information — in court. It is not necessarily a criminal violation to leak confidential information, but it may be a civil violation if an individual breached a fiduciary duty or breached a specific agreement to keep certain information private.

Journalists have traditionally been protected by state shield laws or other court protections that allow them to publish confidential information without disclosing the identity of their sources. Even when courts do get involved, many journalists are willing to go to jail rather than comply with judges' orders.

But what happens when the source of the information bypasses journalists or news organizations and goes directly to the public through an anonymous blog or social media? Are those individuals protected by a journalistic privilege? What if their motives go beyond mere reporting? And are courts willing to appear to limit freedom of speech rights to intervene in what is largely a commercial matter?

While some lawyers suggest this is a First Amendment case, others say its import is in protecting trade secrets. "Laws prohibiting trade-secret misappropriation by definition restrict speech," Eric W. Ostroff, a commercial litigation and trade secret lawyer with Meland Budwick, P. A.,wrote on his blog. "Allowing someone to hide behind an online pseudonym could render these laws ineffective."

The author of the article disclosing Mr. Einhorn's investment in Micron is not a journalist. The anonymous person blogs under the moniker "Valuable Insights" and is described as an "analyst and fund manager with almost 20 years' investment experience." The blogger also indicated that he owned shares of Micron, raising questions about possible market manipulation.

Mr. Einhorn contended in the petition that "the only persons who lawfully possessed information regarding Greenlight's position in Micron were persons with a contractual, fiduciary or other duty to maintain the confidentiality of Greenlight's position: Greenlight's employees, counsel, prime and executing brokers and other agents."

The number of people who could have been privy to Mr. Einhorn's investment in Micron are many: his employees, his outside lawyers, and army of bankers and traders who helped him build the investment position.

On Nov. 14, just after 9:30 a.m., Valuable Insights, using the stock symbol for Micron, published a short note, the equivalent of a long Twitter post, that said: "Expect one mega hedge fund rock star to show up as $MU holder today, not Ackman, Icahn or Loeb …" After a reader speculated it was Mr. Einhorn, Valuable Insights replied: "You heard it here first."

Shares of Micron jumped on the news that Mr. Einhorn was amassing a position. Mr. Einhorn argues that the surge in Micron's shares made it more expensive to buy them.

As it happens, on that same day, Mr. Einhorn was preparing a filing with the Securities and Exchange Commission seeking "confidential treatment" of the stake in Micron so that the firm would not have to publicly disclose it in its 13F filing, which details a firm's investment stakes from the previous quarter. He filed it later the same day.

Several weeks later, Mr. Einhorn disclosed the position himself at a Robin Hood event in which investors made contributions to charity to hear investment ideas from hedge fund managers like Mr. Einhorn.

Mr. Einhorn is petitioning the court to force Seeking Alpha, which has several hundred bloggers who are industry insiders, many of whom publish articles and comments anonymously, to disclose the identity of Valuable Insights. Seeking Alpha, which is based in Tel Aviv, has not responded to the petition. A spokesman based in New York declined to comment, as did a spokesman for Mr. Einhorn.

In an industry whose lifeblood is information, this case underscores the struggle between secrecy and transparency.

If Mr. Einhorn were to prevail, the case could have a chilling effect on the free flow of information to traditional news outlets.

But the result could force Seeking Alpha, which traffics in financial rumors and speculation for more than two million registered users, and other sites like it to change their practices, preventing anonymous contributions.

And Mr. Einhorn, a longtime champion of transparency when he singles out companies and other market participants, may find himself at the center of a tricky balancing act.