

**CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK**

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ROY DEN HOLLANDER,

Plaintiff,

-against-

PRESSREADER, Inc.
(formerly NEWSPAPERDIRECT, INC.,
NY DOS ID 2390795)

Defendant.

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Index No. CV-24897 NY/2018

Jury Trial Requested

FIRST AMENDED COMPLAINT

Plaintiff Roy Den Hollander, a sole practitioner attorney with an international law and business consulting practice, here representing himself, brings (1) a claim against Defendant PressReader, Inc. (“PressReader”) for violating Plaintiff’s right to publicity under New York Civil Rights Law §§ 50 & 51 by publishing an article using Plaintiff’s name without his consent (Ex. A); and (2) a claim under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq., (“RICO”) for engaging in wire fraud, 18 U.S.C. 1343, that injured Plaintiff’s businesses.

Plaintiff alleges as follows:

VENUE

1. Plaintiff resides at 545 East 14th Street, apartment 10D in New York County, N.Y.

SUBJECT MATTER JURISDICTION

2. Plaintiff requests damages in the amount of \$6,000 under the right to publicity claim and an amount of \$5,000 under the RICO claim, which when tripled is \$15,000, plus expenses and costs.

PERSONAL JURISDICTION OVER DEFENDANT

3. This Honorable Court has personal jurisdiction over Defendant PressReader under CPLR § 302(a)(1) because PressReader transacts business within New York State and contracts with businesses in New York State to provide its services.

4. PressReader previously operated as “NewspaperDirect, Inc.” (<http://www.newspaperdirect.com>, last visited October 11, 2018). NewspaperDirect, Inc. was a foreign corporation authorized to do business in New York State by the Secretary of State but on July 16, 2018, surrendered that authority. (Ex. B).

5. The events complained of in this action took place before July 16, 2018.

THE PARTIES

Plaintiff Roy Den Hollander

6. Plaintiff, Roy Den Hollander, is admitted to practice law in the courts of the State of New York, U.S. District Courts for the Southern and Eastern Districts of New York, and the U.S. Court of Appeals for the Second Circuit.

7. Since 2008, Plaintiff has specialized in equal rights litigation that opposes preferential treatment for males and females, and his business consultancy has provided advice on that issue.

8. Plaintiff’s legal practice and business consultancy also involve various other matters with clients both domestic and international.

9. Plaintiff has received significant media attention in print, radio and television to the extent that he became a public figure in the ongoing cultural wars—complete with threatening emails and even a letter threatening death that contained white powder.

10. Plaintiff’s public figure status is not limited to the U.S. but also extends overseas to among other places that former British penal colony—Australia. *See* Tory Shepherd, *Freedom*

of religion cannot trump other rights, The Advertiser, April 3, 2018; Amy McNeilage, *University of South Australia distances itself from males studies proposals*, The Sydney Morning Herald, January 14, 2014; Tory Shepherd, *University of South Australia gives controversial Male Studies course the snip*, The Advertiser-Sunday Mail Messenger, January, 14, 2014; Tory Shepherd, *Pathetic bid for victimhood by portraying women as villains*, The Advertiser-Sunday Mail Messenger, January 14, 2014; Tory Shepherd, *LECTURERS in a 'world-first' male studies course at the University of South Australia under scrutiny*, The Advertiser-Sunday Mail Messenger, January 12, 2014.

11. Plaintiff has received commercially beneficial publicity from the news media, which results in attracting clients to his law practice and business consultancy.

12. The use of Plaintiff's name as a lawyer and business consultant, therefore, has commercial value.

Defendant PressReader, Inc.

13. PressReader is a digital newspaper and magazine distribution and publishing company with headquarters in Vancouver, Canada (<https://about.pressreader.com>, last visited October 11, 2018) and offices in Dublin, Ireland and Manila, Philippines.

14. PressReader has contracted with thousands of newspaper and magazine publishers and their reporters across the globe, including in New York State and New York City, to market, sell and print the articles by those reporters around the world by way of the Internet and mobile telephone apps.

15. PressReader uses a platform that allows people to read, share and talk about stories from over 7,000 publications and their reporters. (<https://about.pressreader.com>, last visited October 11, 2018). PressReader has seven (7) million monthly active users worldwide, including many

in New York State (<http://media.pressreader.com/2017/11/17/pressreader-opens-european-headquarters-dublin>, last visited October 11, 2018) and New York City, which is the headquarters for Plaintiff's law and consultancy businesses.

16. PressReader contracted with the N.Y. Public Library to provide its services to library customers. (<https://www.nypl.org/collections/articles-databases/pressreader>, last visited October 11, 2018).

17. PressReader contracted with the N.Y. Daily News to carry that newspaper on its platform. (<https://www.pressreader.com/usa/new-york-daily-news/textview>, last visited October 11, 2018).

18. PressReader contracted with the N.Y. Post to carry that newspaper on its platform. (nypost.newspaperdirect.com/epaper/Interstitial.aspx, last visited October 11, 2018).

19. PressReader contracted with The New York Times to carry that newspaper on its platform. (<https://goodereader.com/blog/electronic-readers/the-new-york-times-now-on-pressreader>, last visited October 11, 2018).

20. PressReader also has a contract under which it publishes articles by Tory Shepherd, an Australian reporter.

21. In April 2018, PressReader published through its online and mobile apps platforms the April 4, 2018, article *Misplaced fear of gay revenge*, written by Tory Shepherd. (Ex. A).

22. On January 13, 2014, PressReader published through its online and mobile apps platforms the article *Collision Course* by Tory Shepherd, which is still available through PressReader. (Ex. C).

23. At the time of both publications, PressReader was operating as NewspaperDirect, Inc., and was authorized to do business in New York State. (See Ex. B).

FIRST CLAIM FOR RELIEF

Right of Privacy under Article 5 of the N.Y. Civil Rights Law §§ 50 & 51

24. Plaintiff repeats and realleges each and every allegation above as if fully set forth herein.

25. N.Y. Civil Rights Law § 50 makes a right of publicity violation a misdemeanor:

A person, firm or corporation that uses . . . for the purposes of trade, the name . . . of any living person without having first obtained the written consent of such person . . . is guilty of a misdemeanor.

26. N.Y. Civil Rights Law § 51 provides a private cause of action for protecting the unauthorized use of a person's name:

Any person whose name . . . is used within this state . . . for the purposes of trade without the written consent first obtained as above provided [in section 50] . . . may also sue and recover damages for any injuries sustained by reason of such use

27. Courts give these statutes a liberal construction consistent with the beneficial and remedial purposes of sections 50 and 51.

28. Violation of Civil Rights Law § 51 requires the use of a person's identity, such as his name, within New York State, for trade purposes, and without written consent.

29. Civil Rights Law § 51 applies in cases where a plaintiff generally seeks publicity, or uses his name for commercial purposes but has not given his written consent for a particular use.

30. PressReader published Tory Shepherd's article in New York State by way of the Internet and mobile apps.

31. The lead sentence of the 2018 article states, "Self-described 'anti-feminist lawyer' Roy Den Hollander once likened the position of men in society to black people in 1950s America 'sitting in the back of the bus.'" (Ex. A).

32. PressReader's use of Plaintiff's name was without his permission, as was Shepherd's use of his name.

33. Except for the first sentence, the article dealt with submissions by Australians to an Australian Federal Government panel concerning the Australian Government's review of religious freedom in Australia.

34. In 2017, the Australian Federal Parliament passed the marriage equality act that allowed two people, regardless of sex, to marry.

35. The Australian Federal Government also appointed a panel to receive submissions on the conflict between gay rights and religious freedom in Australia.

36. Plaintiff does not live in Australia, has never lived in Australia, has never visited Australia, did not submit any comments to the Australian panel and has never been involved in a case dealing with gay rights versus religious freedom—anywhere.

37. The publication of Plaintiff's name in the very first sentence of the article, which virtually all readers of any article view before deciding to read further, was clearly intended to exploit the public figure notoriety of Plaintiff's name in order to deceive viewers into believing the article was about Plaintiff and Feminism so that they would read the remainder of the article.

38. PressReader basically stole the economic value of Plaintiff's name to further the services it provides.

39. The very first sentence uses Plaintiff's full legal name for which Plaintiff neither provided written nor oral consent to either PressReader or Tory Shepherd.

40. PressReader published the article as part of its commercial business operation and Tory Shepherd wrote the article with the intent to have PressReader publish it pursuant to the PressReader contract that applies to Shepherd.

41. The PressReader published article does not fall within the public interest exception to Civil Rights Law § 51 because Plaintiff has no relationship whatsoever to the substance of the article concerning the conflict in Australia between religious freedom and gay rights.

42. As such, PressReader's use of Plaintiff's name was for a commercially exploitive aim rather than for the purpose of informing the public about a newsworthy or public interest situation.

43. The use of Plaintiff's name has financial value that PressReader seized for itself without consent; thereby, depriving Plaintiff of the income associated with the licensing of his name.

44. The right of publicity is proprietary in nature, so Plaintiff requests compensatory damages in the amount of \$6,000 for harm to Plaintiff's economic interests that were affected by the wrongful exploitation of his name by PressReader.

SECOND CLAIM FOR RELIEF

Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq., by engaging in wire fraud, 18 U.S.C. 1343.

45. Plaintiff repeats and realleges each and every allegation above as if fully set forth herein.

46. Section 1964 of RICO has a number of requirements that are listed below along with how they apply to this case against PressReader.

The Enterprise

47. An Enterprise can be a legal entity, such as a corporation, or a group of persons who associate together for a common purpose of engaging in a course of conduct and that affect interstate or foreign commerce.

48. PressReader and Tory Shepherd via a contract associate together for the purpose of publishing her articles to PressReader's subscribers around the globe by way of international commerce.

Pattern of Racketeering Activity and Predicate Acts

49. A Pattern of Racketeering Activity requires that a defendant commit two or more “predicate acts” (also called racketeering activities) that are related and connected in time.

50. Here the two “predicate acts” by PressReader are two instances of wire fraud in publishing the two articles by Shepherd.

Wire fraud predicate act

51. Wire fraud under 18 U.S.C. § 1343 requires a scheme or artifice to defraud by means of false pretenses, representations or promises (scheme includes half-truths, concealment of material facts, and deceit); causing such misrepresentations to be transmitted or making a communication in furtherance of the scheme by wire, radio or television communication in interstate or foreign commerce; and intentionally devising, participating in, or abetting such a scheme, which is inferred by a person’s pattern of conduct and the nature of the scheme.

52. The purpose of the wire fraud statute is to protect businesses and property.

53. Plaintiff has two businesses, a legal and business consultancy, with property interests in both. (Ex. D).

54. The Enterprise scheme in publishing world-wide the two articles was to harm Plaintiff’s legal practice and business consultancy because Plaintiff is considered an enemy of the Enterprise in the ongoing culture wars.

55. The Enterprise scheme was to deceive the public about the nature and objectives of Plaintiff’s law practice and business consultancy; thereby, causing his businesses financial harm.

56. The Enterprise created and published the 2018 article that falsely depicted Plaintiff’s law and business practices as that of “traditional oppressors” furthering the oppression of women, gays and minorities; as identical with the pigs in Orwell’s *Animal Farm* declaring their

superiority over others; as typical of “despot[s]”; as bilious; as advocating doctors to violate their profession’s ethics; as “right off the rails”; as opposed to same-sex marriages; and as furthering fear mongering.

57. The Enterprise created and continues to publish the 2014 article that falsely depicted Plaintiff’s law practice and business consultancy as advocating “extreme views on men’s rights”; as supporting “websites that rail against feminism”; as “regularly refer[ing] to women as ‘bitches’ and ‘whores’ and “has been described as a hate site by the civil rights organisation (sic) Southern Poverty Law Centre”; as advocating violence; as advocating the burning of women at the stake; as part of the lunatic fringe “margins”; and “anathema to the vision of an equal and fair” treatment for all.

Two or more predicate acts of wire fraud

58. The RICO pattern of racketeering activity requires the commission of at least two predicate acts, which here are the Enterprise creating and publishing over the wires two articles that falsely depict Plaintiff’s businesses in an effort to financially harm them.

Predicate acts are related.

59. “Predicate acts” are considered related under RICO when they have the same purpose, participants, targets and method of commission.

60. Here the purpose, participants, targets and method of commission of the wire frauds are the same.

The Prohibited RICO 18 U.S.C. § 1962(c) Activity

61. 18 U.S.C. § 1962(c) states the conduct under RICO that is illegal:

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity

62. To violate RICO, a defendant is required to play some part in conducting, participating or directing the affairs of the Enterprise in which it functions. Here, PressReader publishes over the wires the false, prevaricating and dissembling articles that Shepherd writes.

CONCLUSION

63. PressReader has violated Plaintiff's right to publicity by publicly using his name without his permission.

64. PressReader has also violated RICO by allying itself with Tory Shepherd so as to further her misandrist campaign to financially destroy Plaintiff's businesses.

Dated: February 7, 2019
New York, N.Y.

Respectfully submitted,

Roy Den Hollander, Esq.
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