

JURISDICTION AND VENUE

3. The original jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1332 because the parties have complete diversity of citizenship and the amount in controversy exceeds \$75,000.

4. This Court has personal jurisdiction over Defendants in that, among other things: (a) Defendants are engaged in tortious conduct within the Commonwealth of Pennsylvania and in this District, including by using Plaintiff's image without her authorization; (b) Defendants' conduct causes injury to Plaintiff within the Commonwealth of Pennsylvania and (c) all Defendants purposely avail themselves of conducting activities within the Commonwealth of Pennsylvania and their respective websites actively engage Pennsylvania-based users and offer a high degree of interactivity with same.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the acts, omissions and events giving rise to the claims asserted in this Complaint occurred in this judicial district.

PARTIES

6. Plaintiff, Karen Hepp, is an adult individual residing at 737 South Latches Lane, Merion Station, Pennsylvania 19066.

7. Defendant Facebook, on information and belief, is a for-profit corporation organized and existing under the laws of Delaware, having its registered agent, Corporation Service Company, located at 251 Little Falls Drive, Wilmington, Delaware 19808.

8. Defendant Facebook owns and operates "Facebook.com," one of the world's largest social media internet sites.

9. Defendant, Imgur, on information and belief, is a for-profit corporation organized and existing under the laws of Delaware, having its registered agent, Incorporating Services, Ltd., located at 3500 S. Dupont Highway, Dover, Delaware 19901.

10. Defendant Imgur is an internet-based online image-sharing business that owns and operates the website known as “Imgur.com.”

11. According to its feature article on Wikipedia, Imgur is a nationally and globally ranked commercial image hosting service. A true and correct copy of said article is attached hereto, made a part hereof and marked as Exhibit “A.” See <https://en.wikipedia.org/wiki/Imgur>.

12. A simple search on the Imgur website for the term “Pennsylvania” yielded 1,272 unique image results. A true and correct copy of said search result is attached hereto, made a part hereof and marked as Exhibit “B.”

13. On information and belief, many of the subjects on the images and copy related thereto relate to postings made by Imgur users who are Pennsylvania residents and/or Pennsylvania companies. See Exhibit “B.”

14. Imgur actively solicits advertisers and advertising on its website, denoted by a “promoted” tag which signals to users that an image post is commercially sponsored. A true and correct copy of Imgur’s dedicated page discussing advertising is attached hereto, made a part hereof and marked as Exhibit “C.”

15. Imgur’s advertising solicitation form includes a box to designate the geographical “location” of the potential advertiser. See Exhibit “C.”

16. As Imgur’s advertising entreaties appear on its pages searched by potential Pennsylvania advertisers, it is fair to say that Imgur is actively engaging in and soliciting business in Pennsylvania.

17. On information and belief, Defendant Imgur targets age-specific Pennsylvanians through advertising based upon personal data mined and/or obtained through information provided by its users.

18. Imgur also engages in the online sale of merchandise (including clothing and mugs) as evidenced via its “Imgurian Store” page. A true and correct copy of Imgur’s “Imgurian Store” page is attached hereto, made a part hereof and marked as Exhibit “D.”

19. On information and belief, Imgur is targeting and merchandising its wares to Pennsylvania residents on its “Imgurian Store” page. See Exhibit “D.”

20. Defendant Reddit, on information and belief, is a for-profit corporation organized and existing under the laws of Delaware, having its registered agent, Corporation Service Company, located at 251 Little Falls Drive, Wilmington, Delaware 19808.

21. Defendant Reddit is an American social news aggregation company that owns and operates the website known as “Reddit.com.”

22. On information and belief, Defendant Reddit was valued at \$1.8 billion during a \$200 million round of new venture funding as of 2017.

23. On information and belief, Defendant Reddit generates revenue in part through advertising and premium memberships that remove ads from its website. True and correct copies of Reddit’s solicitation page to advertisers and its premium “ad free” invitation page are attached hereto, made a part hereof and marked as Exhibit “E.”

24. A search for the term “Philadelphia” on the Reddit site reveals 122,000 members/users actively engaged on the site. A true and correct copy of said search result is attached hereto, made a part hereof and marked as Exhibit “F.”

25. On information and belief, Defendant Reddit targets age-specific Pennsylvanians through advertising based upon personal data mined and/or obtained through information provided by its users.

26. Defendant Giphy, on information and belief, is a for-profit corporation organized and existing under the laws of Delaware, having its registered agent, Corporation Service Company, located at 251 Little Falls Drive, Wilmington, Delaware 19808.

27. Defendant Giphy owns and operates a website known as “Giphy.com” that consists of an online database and search engine that allows users to search for and share short looping videos called “GIFs.”

28. On information and belief, Defendant Giphy has more than 700 million daily users on its website who are sharing and reading GIFs.

29. Defendant Giphy directly solicits national and local advertisers and then targets their advertisements to Pennsylvania members/users on its website. A true and correct copy of Giphy’s solicitation page to advertisers is attached hereto, made a part hereof and marked as Exhibit “G.”

30. Defendant Giphy also solicits artists who create content for its website.

31. Defendant Giphy encourages its users to contract with artists and provides instructions on how to hire a Giphy artist. A true and correct copy of Defendant Giphy’s “hire a GIF artist page” is attached hereto, made a part hereof and marked as Exhibit “H.”

32. By way of example, one such GIF artist is Rory McManus, who is a Pennsylvania-based artist who has 41.3 million GIF views. A true and correct copy of Rory McManus’ Giphy page is attached hereto, made a part hereof and marked as Exhibit “I.”

33. Recognizing the important of branding for public figures, Defendant Giphy offers specific “brand channels,” which are “channels ... reserved strictly for brands, talent, and other organizations and public figures uploading content they own.” A true and correct copy of Giphy’s “for agencies” page is attached hereto, made a part hereof and marked as Exhibit “J.”

34. Defendant WCGZ, S.R.O., on information and belief, is a limited liability company existing under the laws of the Czech Republic and having a place of business at Praha 1 - Nové Město, Krakovská 1366/25, PSČ 110 00 Czech Republic.

35. Defendant WCGZ S.R.O., owns and operates “XNXX.com,” a popular adult-oriented website featuring pornographic materials.

36. Defendants Does 1 through 10 are the owners and operators of other websites and/or media outlets. Plaintiff is unaware of the true names or capacities of Does 1 through 10. Plaintiff is informed and believes, and on that basis avers, that Does 1 through 10 either (a) directly performed the acts alleged herein, (b) were acting as the agents, principals, alter egos, employees, or representatives of the other Defendants, and/or (c) otherwise participated in the acts alleged herein with the other Defendants. Accordingly, Defendants Does 1 through 10 each are liable for all of the acts alleged herein because they were the cause in fact and proximate cause of all injuries suffered by Plaintiff as alleged herein. Plaintiff will amend the Complaint to state the true names of Defendants Does 1 through 10 when their identities are discovered.

FACTS GIVING RISE TO THIS ACTION

37. Plaintiff is a professional television news anchor and joined the FOX 29 News team (Philadelphia-based) in November of 2010.

38. Plaintiff is a co-anchor of the 4 am to 6 am hours of "Good Day Philadelphia," a morning news program, and joins the set as co-host for the final hour of the show from 9 am to 10 am.

39. Prior to joining FOX 29, Plaintiff worked at WNYW-TV in New York City, anchoring Good Day Wakeup.

40. Plaintiff joined Fox 5 in January of 2005 as the weekend anchor.

41. Plaintiff previously worked for NBC-owned-and-operated stations for 8 years including: WNBC in New York; WCAU in Philadelphia; and WVIT in Connecticut. Her career began in Binghamton, New York and Rochester, New York.

42. Plaintiff graduated from New York University and hails from the Philadelphia region.

43. Approximately two years ago, Plaintiff discovered through her co-workers and managers, that, without her consent, a photograph of her taken by a security camera in a convenience store located in New York City was being used in online advertisements for erectile dysfunction and dating websites.

44. Plaintiff was unaware that her photograph was taken in said convenience store and does not know the identity or the location of the store or how her photograph was secured. A true and correct copy of the photograph is attached hereto, made a part thereof and marked as Exhibit “K.” Said photograph shall be referred to hereafter as “the photo.”

45. Plaintiff has since learned that the photo has appeared illegally on many other websites.

46. The photo was featured in a Facebook advertisement soliciting users to “meet and chat with single women.” A true and correct copy of said advertisement is attached hereto, made a part hereof and marked as Exhibit “L.”

47. The photo was featured on Imgur under the heading “milf,” which is a derogatory and degrading slang acronym that refers to a sexually attractive woman with young children. The Imgur link address is <https://i.imgur.com/0lulkf2.jpg>. A true and correct copy of said photograph within the Imgur website is attached hereto, made a part hereof and marked as Exhibit “M.”

48. The photo was featured on Reddit titled “Amazing” in the subgroup r/obsf (“older but still \$#^@able”) and posted by a user known as “pepsi_next.” There is a hyperlink for the photograph which links to the Imgur site. The Reddit url address is <https://www.reddit.com/r/obsf/comments/5owd59/amazing/dcnh8wj/>. On information and belief, the subject web address is no longer live. A true and correct copy of said photograph within the Reddit website is attached hereto, made a part hereof and marked as Exhibit “N.”

49. The photo was modified and featured on Giphy wherein a video appears in the background of a man -- who is hiding behind a glass commercial freezer door and masturbating - - to what would appear, from his perspective, to be the backside of Plaintiff. The Giphy url addresses of this combination image/video are as follows: 1) <https://i.giphy.com/media/NfApNcuyg8mzK/giphy.mp4;> 2) [https://media.giphy.com/media/NfApNcuyg8mzK/giphy.gif,](https://media.giphy.com/media/NfApNcuyg8mzK/giphy.gif) and 3) <https://media.giphy.com/media/l41YmuCE7ZZQeQd1e/giphy.gif>. On information and belief, the above web addresses are no longer live. A true and correct copy of said image/video within the Giphy website is attached hereto, made a part hereof and marked as Exhibit “O.”

50. The photo was featured on the XNXX site in the “milf” gallery 44/46 and can be easily downloaded. The XNXX site url address is https://multi xnxx.com/gallery/1116129/a34b/milf_gallery_44_46/. A true and correct copy of said photograph within the XNXX website is attached hereto, made a part hereof and marked as Exhibit “P.”

51. Plaintiff has built a considerable following of her image/brand on social media sites over the past years.

52. For example, on her Instagram page, Plaintiff currently has 22,500 followers and regularly posts to that site. A true and correct copy of her Instagram page is attached hereto, made a part hereof and marked as Exhibit “Q.”

53. Plaintiff has a considerable Twitter following (almost 30,000 followers) and in many of her highly watched tweeted images she is featured with her co-anchors, Thomas Drayton, Alex Holley, Mike Jerrick and countless celebrities, including, but not limited to, John Travolta, Vivica Fox and soccer star Carli Lloyd. A true and correct copy of her Twitter metrics report is attached hereto, made a part hereof and marked as Exhibit “R.”

54. In terms of measuring the impact of Plaintiff’s online presence, Plaintiff’s daily social media posting activity reaches thousands of online viewers. A true and correct copy of a report detailing the impact of Plaintiff’s social media activity is attached hereto, made a part hereof and marked as Exhibit “S.”

55. Plaintiff’s employer, Fox 29 News and its brand, usually controls over 50% of the market share for social media presence in the region and Plaintiff typically scores in the top personalities who are employed by Fox 29 News. As of February 11, 2020, Plaintiff had an SEI (“social equity score”) of 67.7, which is on the higher scale for the network affiliate. A true and correct copy of a sample “daily report” for Plaintiff’s social media ranking is attached hereto, made a part hereof and marked as Exhibit “T.”

COUNT I
(Violation of 42 Pa. Cons. Stat. § 8316)

56. The averments contained in Paragraphs 1 through 55 of this Complaint are incorporated herein by reference as though set forth in full.

57. Plaintiff is a well-known public figure who has spent years honing her skills as a professional television broadcaster.

58. Plaintiff is well-regarded in the Philadelphia community and has earned an excellent reputation as a moral and upstanding community leader and public person.

59. Her image, both on television and on social media, has high intrinsic commercial value.

60. Through their actions, described *supra*, Defendants have appropriated Plaintiff's likeness, which has commercial value, and used same for commercial purposes without Plaintiff's written consent.

61. Defendants knew, based upon Plaintiff's notoriety, that the photo depicted Plaintiff and no one else.

62. Plaintiff's image is instantly identifiable and automatically associated with Plaintiff's professional persona.

63. Defendants' sexualization of Plaintiff's image and use for prurient and illicit purposes is abhorrent and disgusting.

64. Defendants' actions with respect to Plaintiff's image have caused serious, permanent and irreparable harm to Plaintiff's image and reputation.

65. Plaintiff seeks an affirmative injunction mandating that all Defendants remove Plaintiff's image immediately from their respective websites.

66. Plaintiff seeks compensatory damages to redress Defendants' wrongful use of Plaintiff's image.

COUNT II
(Pennsylvania common law right of publicity)

67. Plaintiff incorporates by reference paragraphs 1 through 66 as if set forth in full.

68. Defendants appropriated Plaintiff's valuable likeness, without authorization, and used it to their commercial advantage.

69. Under the common law in Pennsylvania, Plaintiff maintains an exclusive entitlement to control the commercial value of her name and/or likeness and to prevent others from exploiting it without permission.

70. Under the circumstances presented here, Plaintiff would never have permitted any of the Defendants to use her image to promote prurient and base interests.

71. Defendants' actions with respect to Plaintiff's image have caused serious, permanent and irreparable harm to Plaintiff's reputation, brand and image.

72. Plaintiff seeks an injunction mandating that all Defendants remove Plaintiff's image immediately from their respective websites.

73. Plaintiff seeks compensatory damages to redress Defendants' wrongful use of Plaintiff's image.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter judgment in her favor on each and every claim for relief set forth above and award her relief including, but not limited to, an Order:

1. Preliminarily and permanently enjoining Defendants, their officers, employees, agents, subsidiaries, representatives, distributors, dealers, members, affiliates, licensees, internet service providers, and all persons acting in concert or participation with them from publishing Plaintiff's photograph.

2. Requiring Defendants to take down Plaintiff's photograph and any and all related images/videos and advertisements using Plaintiff's image for promotion on all websites, threads and chat rooms.

3. Requiring Defendants to provide Plaintiff with an accounting of any and all revenue and profits derived from the exploitation of Plaintiff's image.

4. Awarding Plaintiff monetary relief including damages sustained by Plaintiff in an amount not yet determined, including actual damages, reputational damages, and/or Defendants' profits in an amount in excess of \$10,000,000.

5. Awarding Plaintiff her costs and attorneys' fees in this action.

6. Awarding such other and further relief as this Court may deem just and appropriate.

Plaintiff demands a trial by jury.

Respectfully submitted,

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Dated: February 18, 2020

CERTIFICATION OF SERVICE

I, Samuel B. Fineman, Esquire, hereby certify that a true and correct copy of the foregoing Amended Complaint of Plaintiff, pursuant to Rule 15(a)(1)(B), was served via First-class, U.S. mail and e-mail upon the following counsel of record on the date set forth below:

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