

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

JUL 15 2014

DAVID J. MALAND, CLERK
BY
DEPUTY _____

HOLLIE TOUPS

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VS.

CASE NO. 1:14-cv-0127

GOOGLE, INC., YAHOO!, INC. AND
WWW.MYEX.COM

**PLAINTIFF'S FIRST AMENDED COMPLAINT
AND REQUEST FOR INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, HOLLIE TOUPS, files Plaintiff's First Amended Complaint and Request for Injunctive Relief, complaining of Google, Inc., AND WWW.MYEX.COM, Defendants, and for a cause of action would show the following.

PARTIES

1. Plaintiff HOLLIE TOUPS, is an individual residing in Jefferson County, Texas and is appearing in court through her attorney of record.
2. Defendant GOOGLE, INC., can be served through its attorney of record.
3. Defendant WWW.MYEX.COM, can be served with process through

Websolutions Netherlands BV, Attn: Legal Department, Singel 850, 1017
AZ Amsterdam, The Netherlands.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to federal question jurisdiction, 28 U.S.C. §§ 1331. This Court has jurisdiction over the pendent state law claim. Venue is proper in this District and Division of Federal Court.

FACTS AND CAUSES OF ACTION

5. This is a lawsuit brought pursuant to the United States Copyright Act of 1976, 17 U.S.C. §§ 101-810, as amended. The Plaintiff Hollie Toups (“Toups”) is the victim of what is called “revenge porn” websites, www.texxxan.com, www.texxxans.com, www.myex.com and others. Toups and other plaintiffs filed suit in Orange County, state court against these texxxan websites in Cause No. D-130,018-C. Toups was successful in obtaining a temporary injunction shutting down the texxxan websites up until the time of trial. Toups is seeking a permanent injunction in that state court action to permanently shut down those websites.

6. Although Toups has pursued state court remedies against the two (2) texxxan websites, the Defendants in this matter continue to host, post

and provide links to intimate photographs or images of Toups that she copyrighted pursuant to the Copyright Act. Toups' copyright is Registration Number Vau-1-147-235, with an effective date of registration of July 14, 2013. See Exhibit "1". Toups has copyrighted ten (10) intimate images of herself. After copyrighting her intimate images, Toups provided notice to both Defendants of their ongoing copyright violations by (1) Google continuing to host or make accessible through its search/images function, her copyrighted, intimate images, and (2) by www.myex.com continuing to post her copyrighted images in its "revenge porn" website. Toups followed the procedure required by both www.myex.com and Google to provide notice to them of their copyright violations. Toups' notice to both Defendants included the following information: (1) the internet Google search function for images and the webpage www.myex.com contain, post or host Toups' copyrighted images; (2) a statement that Toups had not assigned or otherwise granted any rights to any third party in the contents at issue now or previously appearing at the particular internet locations in question; (3) that Toups is the exclusive copyright holder of all the images at issue; (4) that the infringed copyrighted images were specifically identified by Toups and

that sufficient identification information was provided to Defendants; (5) that the use, posting or publication of the copyrighted images were all contrary to federal law; and (6) that Toups would retain an attorney if she was not successful in having her copyrighted images removed by these Defendants.

7. Although Toups provided proper notice to each of these Defendants, requesting that they take down these copyrighted images, the Defendants refused to do so. The website www.myex.com would take down the images, only to put them up again later. Toups followed Google's rather onerous process for removal of her copyrighted images from Google's search/images function, including Toups providing all required information to Google's email address at removal@google.com. At this time, however, Google stubbornly refuses to take down one last remaining copyrighted image from its search/images function. For the reasons set forth above, therefore, both Defendants have knowingly breached the Copyright Act, and have caused Toups actual damages.

8. Toups brings this lawsuit under Section 102 of the Copyright Act for Defendants' continuing and everyday violations of Toups' lawfully protected rights under the Copyright Act. Toups would show the Court

that copyright protection extends to Toups' copyrighted images on the links that are being hosted by these Defendants and this website at issue. Section 102 of the Act defines a protected work or authorship to include pictorial, graphic or other works, that include Toups' images at issue. Under Section 106 of the Copyright Act, Toups has the exclusive rights and the exclusive use of these images as the copyright holder, which includes the right to copy, distribute or display any and all of these images at issue. That is, neither Google nor www.myex.com have any legal rights to display, post, publicize or profit from Toups' copyrighted images, but Defendants brazenly are ignoring federal law.

9. Further, the Defendants cannot avail themselves of a "fair use" defense under Section 107 of the Copyright Act. This defense is not applicable, because under the Fair Use Doctrine a copyrighted work is not subject to a copyright infringement lawsuit **only** if its use is for such things as teaching, scholarship, research or news reporting. The hosting and posting of Toups' copyrighted images do not fall within the purview of this affirmative defense. That is, neither Defendant are engaging in teaching, scholarship, research or news reporting by posting Toups' intimate, copyrighted images. Further, neither Defendant is a non-profit

educational institution. Instead, both Defendants' breaches of the Copyright Act are intended only to appeal to the prurient interests of viewers and to put profits over the rights of people, like Touns.

10. Touns, therefore, is seeking damages for each of the Defendants' breaches of the Copyright Act by willfully displaying, hosting or posting Touns' copyrighted images. Touns is also seeking a temporary injunction and ultimately a final injunction after trial, requiring these Defendants to no longer breach her copyrights by hosting or posting these images or providing links that would show these images. Touns seeks a temporary injunction and a final injunction in accordance with the 17 U.S.C. Section 502(a) of the Copyright Act, which expressly authorizes such relief. Touns also seeks injunctive relief under Fed. R. Civ. P. 65. In this regard, Touns would show the following: (1) Touns is sustaining an irreparable injury each time Defendants exhibit her copyrighted images, because (a) these intimate images are being hosted and displayed against her will and in violation of the Copyright Act, and (b) the display of her copyrighted images subjects Touns to severe ridicule, threat and humiliation; (2) Touns has no adequate remedy at law if the Court does not enjoin these Defendants from violating the Copyright Act, because a subsequent

monetary judgment cannot fully compensate Toups for her ongoing humiliation and the ongoing ridicule and threats against her; (3) as a valid copyright holder, Toups has a substantial likelihood of success on the merits; (4) there is no hardship upon the Defendants to cease hosting, posting or displaying Toups' copyrighted images, because there can be no hardship to stop Defendants from brazenly violating federal law; while the hardship on Toups by Defendants' continued violations of her rights under the Copyright Act is very substantial; and (5) the public has a legitimate interest in ensuring that these Defendants comply with federal copyright law. The Copyright Act provides no statutory or legal immunity for disreputable websites such as www.myex.com or for multi-billion dollar corporations that believe they are above the law.

11. Toups is seeking to recover her actual damages under 17 U.S.C. Section 504. Toups seeks to recover her actual damages to be proven at trial, as well as the recovery of all the profits of the Defendants that can be traced to their actual infringement of Toups' copyrights. Alternatively, Toups may elect to recover statutory damages instead of her actual damages. Toups shall make that election prior to the entry of any final judgment in this case, pursuant to 17 U.S.C. § 504. Toups is seeking

damages of \$30,000.00 from each Defendant, for a total of \$60,000.00, for each day that each Defendant continues to knowingly host or post her copyrighted images. Pursuant to 17 U.S.C. § 505, Toups also seeks to recover all of her reasonable and necessary attorneys' fees, costs and expenses incurred in prosecuting this cause of action, both at the trial court level and for any necessary appeals. Toups has retained the services of Undersigned attorney of record, who is Board Certified in Civil Trial Law, who is handling this case at the rate of \$350.00 per hour. Toups reasonably believes that her reasonable and necessary attorneys' fees and expenses incurred through a trial of this case would be approximately \$40,000.00. Toups reasonably believes that her reasonable and necessary attorneys' fees, costs and expenses incurred in any appeal to the United States Court of Appeal for the Fifth Circuit would be approximately \$10,000.00 to \$15,000.00, conditioned upon success on appeal. Toups reasonably believes that her reasonable and necessary attorneys' fees, costs and expenses incurred in any application or response to a Petition for Certiorari to the United States Supreme Court would be approximately \$10,000.00 to \$15,000.00, conditioned upon success before the United States Supreme Court.

12. Toups is also asserting against each Defendant a Texas state law pendent claim for invasion of privacy. Toups asserts this cause of action, because both Defendants are knowingly hosting or posting her intimate, copyrighted images. Under Texas law, a claim for invasion of privacy consists of the following two separate torts, which Toups pleads against both of these Defendants: (1) wrongful appropriation of her likeness; and (2) intrusion on her seclusion. For her claim that Defendants have wrongfully appropriated Toups' likeness, Plaintiff would show the following: (1) The Defendants appropriated Toups' likeness (*i.e.*, her copyrighted, intimate images) for the value associated with those images; (2) Toups can be recognized or identified by Defendants' publication of her copyrighted, intimate images; (3) Defendants have received and continue to receive some benefit from the appropriation of Toups' images; and (4) Toups has suffered an injury as a result of the Defendants' wrongful appropriation. *See Brown v. Ames*, 201 F. 3d 654, 657-58 (5th Cir. 2000) (applying Texas law). For her claim for intrusion on her seclusion, Toups would show that the Defendants have intentionally intruded on Toups' solitude or private affairs, by knowingly hosting or posting her intimate, copyrighted images. *See Valenzuela v. Aquino*, 853 S. W. 2d 512 (Tex.

1993). The acts and omissions of the Defendants in perpetrating these torts have proximately caused Toups actual damages consisting of (1) mental anguish with physical or bodily manifestations, and (2) loss of earning capacity. Toups is seeking damages from each Defendant for their invasion of privacy in the amount of \$50,000.00 each, for a total of \$100,000.00 in actual, tort damages.

13. For all relief and damages pled above, Toups now sues.

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendants be cited to appear and answer herein. Plaintiff requests that she obtain a Judgment against all Defendants for all her actual damages, or alternatively for statutory damages. Plaintiff also requests that she recover temporary injunctive and final injunctive relief against each Defendant in this case to enjoin any further violations of the Copyright Act regarding Toups' copyrights. Plaintiff also requests that she recover all her reasonable and necessary attorneys' fees, court costs and expenses. Finally, Plaintiff requests such other and further relief, at law or in equity, to which she may show herself to be justly entitled.

Respectfully submitted,

/s/ John S. Morgan
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading has been furnished to the following counsel of record, via facsimile, on this 27th day of June, 2014:

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/s/ John S. Morgan
JOHN S. MORGAN

EXHIBIT “1”

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
VAu 1-147-235

Effective date of registration:
July 14, 2013

Title

Title of Work: RVP photos

Completion/Publication

Year of Completion: 2006

Author

■ Author: Hollie Toups
Author Created: photograph(s)
Citizen of: United States

Copyright claimant

Copyright Claimant: Hollie Toups
8772 Holmes Road, Nederland, TX 77627

Certification

Name: Hollie Toups
Date: July 14, 2013

Registration #: VAU001147235

Service Request #: 1-963828201



Hollie Toups
8772 Holmes Road
Nederland, TX 77627