

10/08/2018

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

JULIA C. DUDLEY, CLERK
BY: *H. Wheeler*
DEPUTY CLERK

ALICIA CHEW,)
)
Plaintiff,)
)
v.)
)
POPSUGAR, INC.,)
)
Serve:)
)
Sean Macnew, Registered Agent)
111 Sutter St., 15th FL)
San Francisco, CA 94104)
)
Defendant.)

Case No. 3:18CV00094

COMPLAINT

PARTIES

1. Plaintiff, Alicia Chew (“Ms. Chew”), is a model and social media influencer residing in the City of Charlottesville, Virginia that profits from the use of her name, portrait, and picture (her “likeness”) as protected by Va. Code § 8.01-40.
2. Defendant, POPSUGAR, Inc. (“POPSUGAR”), is a Delaware corporation with a principle place of business in the State of California. POPSUGAR publishes articles, advertisements, and photographs on their website, www.popsugar.com (“Website”). At all times relevant to this dispute, POPSUGAR displayed photographs containing Ms. Chew’s likeness, without her authorization, on its Website (“Photographs”).

JURISDICTION AND VENUE

3. This is a civil action seeking damages from POPSUGAR for infringing Ms. Chew’s publicity rights under Virginia Code § 8.01-40.

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1332 because diversity of citizenship exists between the parties and the amount in controversy exceeds \$75,000.
5. This Court has personal jurisdiction over POPSUGAR under Rule 4 of the Federal Rules of Civil Procedure and Virginia Code §§ 8.01-328.1(1), (3), and (4), because POPSUGAR engages generally in activities within Virginia to serve and deliver their Website and Website content including by hosting the Website from a server located in Virginia; because, on information and belief, POPSUGAR specifically hosted and served the Photographs from a server located in Virginia; because the acts complained of affected a Virginia resident with property rights existing and arising in in Virginia, and POPSUGAR knew of this fact; because the Photographs containing Ms. Chew's likeness were taken in Virginia; and because POPSUGAR specifically solicits and engages Virginia-based visitors by, among other things, hosting University of Virginia specific and Virginia Tech specific website categories.
6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district or because a substantial part of property that is the subject of the action is situated in this judicial district.

FACTS

7. Ms. Chew is the exclusive owner of her likeness for advertising purposes or for the purposes of trade as used in the Photographs.

8. Ms. Chew first published the Photographs on her commercial modeling Instagram profile and associated LIKEtoKNOW.it profiles (“Social Media”) between December 22, 2017 and April 5, 2018.
9. Like other social media influencers, Ms. Chew publicly displayed these Photographs along with attached unique URLs as part of a commission program so Ms. Chew could gain compensation for products purchased through the unique URL.
10. Ms. Chew also received a lump sum payment from product suppliers for use of her likeness to endorse their products in the Photographs, in addition to a commission.
11. Sometime after Ms. Chew published the Photographs to her Social Media, POPSUGAR published the Photographs on their Website (“Exhibit A”).
12. POPSUGAR published 419 Photographs on their Website containing Ms. Chew’s likeness for the purposes of advertising or trade, without her consent, whether written or otherwise.
13. On information and belief, POPSUGAR came to publish the Photographs after it had developed and/or otherwise used software to automatically “scrape,” or copy, the Photographs from Ms. Chew’s Social Media, along with other known social media influencers, as part of a massive scheme to usurp the publicity rights of known social media influencers by using their likenesses without their consent and earn a commission from those influencers by replacing the unique URL with its own.
14. On information and belief, POPSUGAR removed Ms. Chew’s unique URL links associated with the Photographs and substituted POPSUGAR’s own unique URL links so that it could profit from Ms. Chew’s likeness as used in advertising or trade.

15. POPSUGAR used Ms. Chew's likeness knowing that it did not have Ms. Chew's consent to do so.
16. On April 17, 2018, Brian Sugar, the Chief Executive Officer of POPSUGAR, admitted to the unauthorized use of the Photographs, as seen in Exhibit B.
17. POPSUGAR never requested Ms. Chew's consent to use her likeness for the purposes of advertising or trade on the Website.
18. Ms. Chew never gave POPSUGAR consent to use her likeness on the Website.
19. On information and belief, to deliver their content POPSUGAR hosts with Amazon Web Services in Virginia, including by serving some or all of the Photographs from this state.
20. POPSUGAR's Website contains Virginia specific categories ("Exhibit C").
21. POPSUGAR's actions caused actual damage to Ms. Chew, insofar as Ms. Chew did not receive a licensing fee for POPSUGAR's use of her likeness, because POPSUGAR did not pay a royalty from the commission it earned or planned to earn, and because POPSUGAR's unauthorized use of her likeness competed with Ms. Chew's own authorized uses of her likeness, among other reasons.

**COUNT I
INFRINGEMENT OF PUBLICITY RIGHTS
UNDER VA. CODE § 8.01-40**

22. Ms. Chew incorporates the preceding paragraphs by reference.
23. POPSUGAR's actions infringed Ms. Chew's rights of publicity in her likeness as provided by Va. Code § 8.01-40.
24. Ms. Chew is entitled to recover the "injuries sustained" by POPSUGAR's unauthorized use, including her actual damages and the actual profits earned by POPSUGAR from their infringing use of her likeness, at least in the amount of \$200,000.

25. Because POPSUGAR used Ms. Chew's likeness knowingly without her consent, Ms.

Chew is entitled to punitive damages to the maximum extent permitted by law, \$350,000.

PRAYER FOR RELIEF

WHEREFORE, Ms. Chew respectfully requests this Court grant the following relief:

- (a) entry of a finding of liability that POPSUGAR, Inc. infringed Ms. Chew's publicity rights;
- (b) entry of an order holding POPSUGAR, Inc. liable for compensatory damages in the amount of \$200,000;
- (c) entry of an order holding POPSUGAR, Inc. liable for punitive damages in the amount of \$350,000;
- (d) entry of an award of prejudgment and post-judgment interest;
- (e) entry of an award of all costs incurred; and
- (f) any other relief the Court deems just and proper.

PLAINTIFF REQUESTS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

Dated: October 8, 2018

Respectfully submitted,

BY COUNSEL

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