

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON**

JANE DOE,	:	Case No. 2:09-cv-219-WOB
PLAINTIFF,	:	
	:	Judge William O. Bertelsman
	:	
vs.	:	PLAINTIFF’S MEMORANDUM CONTRA
	:	DEFENDANTS DIRTY WORLD, LLC AND
	:	NIK LAMAS-RICHIE’S MOTION TO
DIRTY WORLD ENTERTAINMENT	:	DISMISS
RECORDINGS, LLC d/b/a Thedirty.com	:	
and	:	
HOONAN KARAMIAN,	:	
	:	
DEFENDANTS	:	

The plaintiff hereby responds to the Defendant Dirty World, LLC’s Motion for Summary Judgment. This Memorandum of Law shall address the reasons why no affirmative defense is available to these Defendants under the Communications Decency Act, 47 U.S.C. § 230(c) (“CDA”). Additionally, this Memorandum of Law shall explain why Defendants’ own actions and omissions are actionable as defamation and for other reasons, with no defense available to these Defendants which justifies the granting of a Motion for Summary Judgment.

I. INTRODUCTION

Defendants’ Memorandum in Support of Motion for Summary Judgment is, perhaps, a textbook example of cherrypicking case law out of context, and contradictory statement of facts at every turn. The entire Memorandum in Support makes at best passing reference to only seven comments of Plaintiff from her Deposition. By contrast, it cites to an affidavit sworn to by Defendant Nik Lamas-Richie (“Richie”) no less than thirty-six times. The contents of Mr. Lamas-Richie’s affidavit must be viewed, however, to the contradictory statements which he

made while under oath in Deposition.¹ For example, at the very beginning of the deposition, Richie claims to be the editor of www.thedirty.com. (“Q. What do you do? What is your role in thedirty.com? A. I'm the editor.” Richie Depo. p. 9). Later, he says “Umm, I am the editor as far as I do—I do control, like, comments.” (Richie Depo. p. 11.) Then when he wants all blame to fall on third parties he claims to not be an editor. (“Q. And you edit it, correct? A. No. I put my line at the end of it. I don't edit posts.” Richie Depo. p. 47). Much more recently, Richie again claims to be, now, not just an editor, but “Editor-In-Chief” of www.thedirty.com. (Doc 64-2, Richie Aff. ¶ 1.)

Likewise, Richie is extremely generous to himself with any numbers. When bragging about the popularity of his site, he claims, “[W]e get, you know, thousands of submissions a day and we weed it down to the top 150, 200.” that at most 10% of the “thousands of submissions a day” ever get posted. (Richie Depo. p. 9.) However later on, Richie claims that as much as “30 or 25 percent actually make the website.” (Richie Depo. p. 23.)

Richie, when he wants to look responsible, claims to personally weed through the “thousands” of **SUBMISSIONS** he receives, and then weeds it down to the “top 150, 200” posts which he actually puts up on his site. (Richie Depo. p. 9.) Elsewhere in the deposition, when he remembers he is being held accountable for his complete control of the website and the harm it causes, he claims that the process isn't run entirely by him, but that it is automatic. (*See* Richie Depo. p. 13.) Then later, he remembers (one can only assume) that he controls the entire process again:

[Y]ou just upload your submission. So, you would say the picture and our process automatically, you know, resizes the image, puts the watermark, puts your saying and adds the Dirty Army, so it's coming from a third party, and it -- then it

¹ The deposition of Nik Lamas-Ritchie is filed at Doc 66, with the redacted version at 67.

goes to **our list of submissions** and then we go through them and look at each image and see, you know, read the—**read the stuff and see what's good enough** (Richie Depo. p. 22-23, emphasis added)

Richie claims that www.thedirty.com has a “removal department,” and when asked about said “removal committee,” he admits grudgingly that that is, “Um, pretty much me.” (Richie Depo. p. 21.)

When he wants to make himself look responsible and conscientious, Richie claims that “I’m there [on the site] to monitor stuff and make sure we’re putting up as much truthful information as possible.” (Richie Depo. p. 27) But when questioning gets more intense, Richie retreats to “It’s not my job to fact-check every single post,” (Richie Depo. p. 68.) and ultimately states his **true** opinion about www.thedirty.com: “It’s the Internet, you can say whatever you want on the Internet.” (Richie Depo. p. 70.)

Defendants spend the overwhelming body of their Memorandum in Support rearguing their attempt to claim a defense under the Communication Decency Act (“CDA”), a defense which was already overruled by this Court. (Doc. #47). However the evidence already present in this case at this early juncture is clearly enough to demonstrate that Defendants actions place them outside the protection of the CDA. They claim repeatedly that they are an “interactive computer service” for an obvious reason: they must be classified as such to be protected by the CDA. The evidence refutes the website www.thedirty.com can be classified as such.

II. MATERIAL FACTS

Richie’s dubious affidavit does not change or even challenge the undisputed facts: Multiple defamatory posts about the Plaintiff were put on the internet on the website www.thedirty.com between October 2009 and January 2010. (Richie Aff. ¶ 16.) Some, if not all,

of the posts were created by the Defendants. (Richie Aff. ¶¶ 22, 24.) (*See also* Richie Depo. pp. 74 – 75, regarding other postings by the defendant Ritchie.) Plaintiff repeatedly asked that the defamatory posts about her be taken down, and at all times the Defendants refused. Defamatory posts were not removed until after litigation was initiated. Defendants posted and/or maintained the posts on the website after they knew the posts were false, or with wanton disregard for their truth, refusing to remove them. (*See* Richie Depo. p. 74.)

III. ARGUMENT

A. **DEFENDANTS ARE NOT PROTECTED BY THE CDA.**

Much of the argument as to an affirmative defense under the CDA was already argued by the Defendants, and responded to by Plaintiff, in the Defendants' motions for 12(b)(6) dismissal. Both motions have been overruled by this Court. (Doc. # 44.) Defendants raise, here again, a defense under the CDA that they are not entitled to, for multiple reasons, each of which shall be addressed in turn.

The Sixth Circuit has clearly stated that it **does not accept** a broad interpretation of the CDA. *Doe v. SexSearch.com*, 551 F.3d 412, 415 (6th Cir. 2008):

We do not adopt the district court's discussion of the Act, which would read § 230 more broadly than any previous Court of Appeals decision has read it, potentially abrogating all state- or common-law causes of action brought against interactive Internet services.

This case is the **perfect** example of why such a ruling has been made. Defendants cite even state court law in other circuits to try desperately to characterize their defamatory behavior as something protected by the CDA. However, the Sixth Circuit has specifically rejected a broad analysis of the CDA, and “explicitly reserve[d] the question of its scope for another day” *Id.* at 416.

The Defendants' argument, if accepted by this court, would make it such that any actor can make any comment they want, no matter how defamatory, of any victim, as long as they do it on the internet. Such a broad interpretation of the CDA is unacceptable, and must not be allowed if the internet is to have any possibility of being a safe place for our citizens to exchange ideas.

1. Defendants are the "actual" authors and posters of all postings on the website www.thedirty.com.

It was revealed during deposition that all posts that go up on www.thedirty.com are posted there by Nik Richie himself:

I'm the editor. I'm the guy that kind of looks for -- out of the stuff we get -- we get, you know, thousands of submissions a day and *we weed it down to the top 150, 200*. . . . I look for the stuff that's more realistic, in my opinion. (Richie Depo. p. 9, emphasis added)

[W]e moderate it. Everything goes through checks, (Richie Depo. p. 13.)

[Y]ou just upload your submission. . . . [T]hen it goes to our list of submissions and then we go through them and look at each image and see, you know, **read the -- read the stuff and see what's good enough to make -- like, I would say, out of the submissions only probably like 30 percent, 30 or 25 percent actually make the website.** (Richie Depo. p. 22-23, emphasis added)

I'm just trying to get up what I think is truthful and **what I personally believe, you know, is a good post.** (Richie Depo. Pp 55-56, emphasis added.)

Richie clearly states in his own words why www.thedirty.com is not an "interactive computer service." By Richie's own statements, there are no posts put up on the site by any third party. Richie asks for and receives thousands of "submissions" a day from readers of his site. He then sifts through them to choose the very select few that he wants to actually put up on his site. Every single thing anyone reads on that site is **always** put on that site by Richie himself, not any third party. This makes www.thedirty.com not an interactive computer service, but a tabloid. Allowing Defendants protection under the CDA would be like allowing a tabloid to defame any

person it chooses in any way it likes, simply because it allows for a “comments” section on its website.

“Congress has conferred immunity from tort liability as an incentive to Internet Service Providers to self-police the internet for obscenity and other offensive material, even when the self-policing is unsuccessful or not even attempted.” *Blumenthal v. Drudge*, 992 F.Supp. 44, 52 (Dist. D.C. 1998). This is not what Richie does. He totally determines, and he himself posts to the internet, every single “submission” which ends up on the site. Defendants hypothetical on page 17 of their Memorandum in Support (Doc. # 64-1 at 17) fails to mention the most important fact, and the most damning one for Richie: all five “submissions” were put on the internet by Richie himself, not some third party user.

Thedirty.com is not an “open forum.” It is a closed forum, a very closed forum, a forum of one. Richie says of his work on the site, “But it’s, you know, it’s -- I want to say a 24/7 job, because I eat, breathe and sleep it, but I would say, like, 10 to 12 hours a day.” (Richie Depo. p. 19.) Richie takes every “submission” he receives and changes it to suit his purposes.

(Dr. Phil:) “When **every single** picture gets submitted, you write a comment, don’t you?”

(Richie:) “Yes, I do.”

(Dr. Phil transcript, p. 10, emphasis added).² Richie has publicly claimed that everything he puts up on his site is his own words. “**If I put it out there on my site, it’s what I say, and people follow me.**” (Dr. Phil Transcript, p. 13, emphasis added.)

The opposite of an “interactive computer service,” as defined by the CDA, is an “internet content provider.” CDA, 47 U.S.C. § 203(f)(3). This is clearly the type of website that www.thedirty.com is. “The term ‘information content provider’ means any person or entity that

² The Dr. Phil Show transcript is Exhibit 2 to Nik Lamas-Ritchie’s deposition.

is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.” *Id.* “This is a broad definition, covering even those who are responsible for the development of content ‘only in part.’” *Universal Commc’ns Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 419 (1st Cir. 2007).

Richie brags in public about **his** writing. “I break national news stories... we break –we break... stories...—people doing drugs, club owners hooking up with minors... I put people out of business...”(Dr. Phil transcript, p. 22) This is reflected in Richie’s stated inspiration for his defamation clearinghouse website: “I was looking at reality TV and how popular it was, and how popular celebrity gossip was, and I thought no one actually did reality internet. How could the tables be turned in a gossip-type manner where it’s about real people.” (Dr. Phil transcript, p. 2).

2. Even when viewed as the operator of an interactive computer service, Defendants can be held liable because their website is specifically designed to encourage the posting of, and assist in the development of, defamatory material.

The CDA holds that an interactive computer service provider is responsible for the development of offensive comment “if it in some way specifically encourages development of what is offensive about the content.” *Federal Trade Commission v. Accusearch Inc.*, 570 F.3d 1187, 1199 (10th Cir. 2009). This is exactly the entire design and purpose of www.thedirty.com. Says Richie, “I have a cult following, it’s called the Dirty Army, and they are civilian paparazzi, and they go out and they’re fans of the site... They take a picture with their camera phone or they send in images...” (Dr. Phil Transcript, p. 13.)

The entire purpose and nature of www.thedirty.com is to encourage and assist in the development of defamatory material. Nik Richie reads all submissions. (*See* Richie Depo. p.

23). He replies to it. He adds to it. (Dr. Phil. Transcript, p. 10). He validates and rewards the posters with praise and encouragement for their offensive content. He taunts victims in front of his audience, including the Plaintiff (*see* Richie Depo. pp. 29, 74-75), thereby encouraging his readers to post more about that victim, as well as to generate similar submissions about others, in the hopes that Richie will select theirs to expound upon.

3. Plaintiff has a right to protection from defamation, which was violated by Defendants.

a. Plaintiff is not a public figure.

Defendants' argument that Plaintiff is a public figure by merit of being a cheerleader is at its core offensive. Defendants' description of what they think a cheerleader is and what degree of public scorn it thereby subjects them to is reminiscent of a 1950s rape defendant explaining to the jury how the victim "was asking for it," because she was wearing a skirt that was too short.

Public figures gain a monetary benefit from their fame. Plaintiff derives no such benefit, and more to the point Defendants have offered no such evidence she does. On simple policy grounds, it is imperative that we not allow such an offensive premise to be accepted in any way by any court. The danger such a presumption would expose any of the tens of thousands of American daughters who cheerlead for their high school or college is unthinkable.

Defendants argue that cheerleaders "generally exist as a form of entertainment and their *raison d'etre* is to attract attention from fans, often by being physically attractive and wearing provocative, tantalizing uniforms and dancing in an evocative manner." (Doc. # 64-1, pp. 32 – 33). This is more than just shameful overt sexism, it is also a perfect illustration as to the mindset of Defendants, and what is so morally bankrupt, as well as legally wrong, about their entire enterprise. How many Bengal fans could name a single cheerleader by name or recognize them

in public in their “street clothes”? Few to none. They are not public figures. They are private women who cheerlead. Bengal football players, in contrast, are public figures.

b. Defendants acted with malice, knew their comments were false but posted anyway, refused to remove them, and acted with reckless disregard to the truth.

Plaintiff repeatedly notified Defendant about the falseness of Richie’s posts and requested they be taken down. *See* Sarah Jones depo., Doc 64-4 p. 135; Ritchie Depo. pp. 39-40. He had reason to sincerely doubt the validity of the information on his site, yet refused to do anything. In fact, instead of attending to the defamatory material Richie taunted plaintiff on his site:

Q Do you recall posting under a Nik, under a Nik, this post to Sarah. “If you know the truth, then why do you care? With all the media attention, this is only going to get worse for you. Your lawyer’s trying to make a name for himself using you as his pawn. If anything, me just seeing your face on the news right now will get you fired from your job. All you had to do was read the FAQ section like every other normal person to get stuff removed. You dug your own grave here, Sarah. I am a very reasonable person. Hope it was worth it. Nik.”

A Can I see it? Yeah, it looks like me. (Richie Depo. p. 74.)

Richie has admitted that he knew about the falsity of the things he admittedly reviewed and permitted to be posted, and refused to remove it.

Q Here's my question. Did you believe Sarah Jones had had sex with every member of the Cincinnati Bengals professional football team?

A No. (Richie Depo. p. 39).

If this Court decides to treat Plaintiff as a celebrity, then Defendant is still liable for defamation. He admitted in his deposition that he did not believe that Plaintiff had had sex with every member of the Cincinnati Bengals football team, yet he refused to take the offensive defamatory post down. Defendants clearly either knew that the posts were false (as Richie just admitted above) or entertained serious doubts as to their accuracy such that they acted with reckless disregard for the truth. *Kentucky Kingdom Amusement Co. v. Belo Kentucky, Inc.*, 179

S.W.3d 785, 789 (Ky. 2005). Why Defendants would argue that no such proof exists when Richie himself admitted to the fact is baffling.

Defendants' malice is also quite obvious, by Richie's own posts on his site.

"I think they all need to be kicked off and the Cincinnati Bengals should start over. Note to self. Never try to battle the Dirty Army. Nik." . . . I love how the Dirty Army has war mentality. Why go after one ugly cheerleader when you can go after all the brown baggers." (Richie Depo. p. 75).

When asked if he believes that the purpose of his websites publications is to embarrass, humiliate, or hurt someone, Richie cavalierly acknowledges it without remorse:

(Dr. Phil:) Do you think that these posts that are put up are intended to embarrass or humiliate or hurt someone?

(Richie:) . . . yes, in a certain way, it is... (Dr. Phil Transcript, p. 6).

IV. CONCLUSION

The website www.thedirty.com is not a passive website. It is also not an interactive computer service provider. In fact, to call it a business at all is in and of itself a generous interpretation of the word. They are professional slanderers and tortfeasors. Nik Richie and Dirty World defame people as an enterprise. Defendants have attempted to argue to this Court that there is no evil so great, no defamation so grave and unforgivable, that it may not be entered into blithely and without consequence or accountability—as long as one does it on an internet website.

www.thedirty.com destroys reputations. It destroys lives. Nik Richie knows it, and Nik Richie does not care. The Defendants bask in the glory of the hurt they cause, because it makes them money. Any defense of their actions by the CDA would be an abuse of the act and an injustice to the nation, especially all of Nik Richie's victims. The law, as well as the upstanding moral standards and decency of the Commonwealth of Kentucky, demand that Defendants'

Motion for Summary Judgment should—must—be dismissed.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served upon the persons named below by the Court's ECF system on October 12, 2011.

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