

IN THE CIRCUIT COURT FOR THE CITY OF ST. LOUIS
TWENTY SECOND JUDICIAL CIRCUIT
STATE OF MISSOURI

JANE DOE,

Plaintiff,

v.

JOSEPH R. FRANCIS,

Serve At: 1601 Cloverfield Blvd., Ste 420S
Santa Monica, CA 90404

And

MRA HOLDING, LLC,

A California Limited Liability Company;
Serve At: CT Corporation System
7666 E. 61st St., Ste. 240
Tulsa, OK 74133

And

MANTRA FILMS, INC.,

an Oklahoma corporation
Serve At: Brian J. Rayment
7666 E. 61st St., Ste. 240
Tulsa, OK 74133

And

JOHN DOE I,

Serve At: HOLD FOR SERVICE

And

JOHN DOE II,

Serve At: HOLD FOR SERVICE

Defendants.

Case No. 0822-CC01561

PLAINTIFF DEMANDS
TRIAL BY JURY

FILED
APR 30 2008

MARIANO V. FAVAZZA
CLERK, CIRCUIT COURT

PETITION FOR DAMAGES

NOW COMES the Plaintiff, Jane Doe by her attorneys, Stephen B. Evans of the Evans Partnership and Jeffrey Medler of Medler & Roither, and for her Petition for Damages she states as follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. Defendant Joseph R. Francis (“Francis”) is an individual who upon information and belief is a resident of the State of Nevada.
2. Defendant Mantra Films, Inc., (“Mantra”) is an Oklahoma corporation with a principal place of business in California.
3. Defendant MRA Holding, LLC (“MRA”) is a limited liability company with its principal place of business located in California.
4. Defendants John Doe I and John Doe II were at all relevant times herein employed by Defendants Francis, MRA Holdings, LLC and/or Mantra Films, Inc. and/or at all relevant times were otherwise agents of Defendants Francis, MRA Holdings, LLC and/or Mantra Films, Inc.
5. Upon information and belief, at all times material hereto Defendants John Doe I and John Doe II were and remain residents and citizens of the State of Missouri.
6. Upon information and belief, at all times material hereto John Doe I and John Doe II acted within the course and scope of their agency and/or employment with Defendants Francis, MRA and Mantra.
7. All Defendants are subject to personal jurisdiction in the State of Missouri due to the fact that they all conduct continuous and systematic business activities within the State of Missouri, and have all engaged in actions and committed torts inside the State of Missouri and outside of the State of Missouri which have caused injury to the Plaintiff in the State of Missouri

as alleged herein.

8. Venue is proper in this Court as the cause of action of the Plaintiff accrued in the City of St. Louis, and all acts complained of herein occurred in the City of St. Louis.

9. Defendant Mantra produces, markets, distributes and sells videos and DVDs under the trade name "Girls Gone Wild" (hereinafter "GGW").

10. The videos and DVDs produced and marketed by Mantra under the GGW name typically depict young women in a variety of settings wherein they are filmed while partially clothed, partially nude and/or wherein they are shown participating in sexually graphic acts, and contain offensive, sexually graphic and/or pornographic displays occurring in both private and public locations.

11. In September, 2005 (hereafter referred to as the date of the occurrence), Plaintiff was socializing with friends at Rum Jungle (which was then located on Laclede's Landing in the City of St. Louis) when she was approached by Defendants John Doe I and John Doe II.

12. On the date of the occurrence, Defendants John Doe I and John Doe II were employed by Defendants Francis, MRA and Mantra to obtain video footage of young women for Defendants Francis, MRA and/or Mantra to use in the Girls Gone Wild video series, or as John Doe I and John Doe II were agents of Defendants Francis, MRA and Mantra to obtain video footage of young women for Defendants Francis, MRA and Mantra to use in the Girls Gone Wild Video Series.

13. On the date of the occurrence, Defendants John Doe I and John Doe II acted within the scope of their employment and/or agency by Defendants Francis, MRA and/or Mantra when John Doe I and John Doe II filmed young women at Rum Jungle for Defendants Francis, MRA and/or Mantra to use in the Girls Gone Wild video series.

14. On the date of the occurrence, Defendant John Doe II was specifically employed by and otherwise served as an agent acting within the scope of his/her employment and/or agency with Defendants Francis, MRA and/or Mantra to assist Defendant John Doe I in obtaining video footage of young women who were at Rum Jungle for Defendants Francis, MRA Holdings and Mantra Films to use in the Girls Gone Wild video series.

15. On the date of the occurrence when Defendants John Doe I and John Doe II approached Plaintiff, they began to film her. They did not at this time or any other time inform her that her photos, image and/or likeness would be used in the Girls Gone Wild video series, or to promote or advertise the Girls Gone Wild video series.

16. On the date of the occurrence, while being filmed by Defendant John Doe I and John Doe II, Plaintiff was wearing a white spaghetti strap tank top.

17. On the date of this occurrence, Plaintiff turned to face the camera operated by Defendant John Doe I, and then Plaintiff turned away from the camera.

18. Thereafter, John Doe II grabbed the shoulder straps to Plaintiff's top and pulled the shoulder straps off her shoulders and down her arms, causing her top to fall to show her bare breasts.

19. While Defendant John Doe II is pulling her top down, Plaintiff tries to keep her top on, and uses her hands to cover her breasts.

20. Defendant John Doe I filmed Plaintiff while John Doe II pulled her shirt down and Defendant John Doe I filmed Plaintiff's exposed breasts.

21. The pulling down of Plaintiff's shirt and filming of Plaintiff as described above was done by Defendants Francis, MRA, Mantra, John Doe I and John Doe II without Plaintiff's permission or consent, without her prior knowledge, and without her express or implied consent,

before, during or after the filming of her on the date of the occurrence.

22. The pulling down of Plaintiff's shirt and filming of her bare breasts by the Defendants invaded Plaintiff's right to her privacy.

23. Thereafter Defendants Francis, MRA and Mantra produced, marketed, and sold videotapes and DVDs entitled "Girls Gone Wild Sorority Orgy" (hereinafter referred to as the Sorority DVD).

24. The Sorority DVD contains numerous sexually lewd and offensive scenes that involve young women.

25. The Sorority DVD uses Plaintiff's image and likeness, and shows her top being pulled down and shows her bare breasts while she was at Rum Jungle on the date of the occurrence.

26. Thereafter, the Defendants have, in conjunction with each other and with third parties, produced, published, distributed and sold DVDs containing the likeness of Plaintiff, and have done so without Plaintiff's consent or permission. At no time did Plaintiff consent to any use of her photo, her image, or her likeness by any of the Defendants, their employees, or their agents.

27. The Sorority DVD has been marketed, advertised, distributed and sold by the Defendants throughout the United States and specifically within the State of Missouri.

28. The Defendants have used Plaintiff's likeness and image through still photos (obtained from video footage) for the commercial benefit to advertise the Defendants' videos and DVD's. The Defendants have sold and continue to sell the Sorority DVD for their own commercial gain without providing any compensation to Plaintiff. The videos and DVDs referenced herein have been marketed, advertised, distributed and sold by the Defendants

throughout the United States, the world, specifically in the State of Missouri.

29. At no time did Plaintiff consent to any such use by the Defendants of her likeness, her image, photographs of her or parts of her body or the production of videotapes or DVD's containing photos of her or parts of her body.

30. At no time has Plaintiff placed her image and likeness in the public domain or permit the unauthorized commercial use, duplication, display or publication of her likeness, image, or photograph.

31. A copy of the DVD cover for the Sorority DVD as sold by the Defendants is attached hereto as Exhibit A, and incorporated herein as if fully played.

32. At no time was Plaintiff presented with any consent form to sign, nor was she verbally or nonverbally requested to consent to Defendants' actions as set forth herein.

COUNT I
[TORT]

For Count I of her Petition, Plaintiff states as follows:

33. Plaintiff realleges paragraphs 1 through 32 of the Allegations Common to All Counts as if set forth fully herein.

34. On the date of the occurrence the Defendants had a duty to Plaintiff to exercise reasonable care with regard to their conduct about her.

35. The Defendants breached that duty to Plaintiff, and were otherwise negligent by the following acts or omissions:

- A. By pulling Plaintiff's shirt down to expose her bare breasts;
- B. By failing to secure Plaintiff's consent to be filmed;
- C. By failing to secure Plaintiff's consent to pull her shirt down and expose her breasts;
- D. By failing to secure Plaintiff's consent to use her image in the Defendants' Girls Gone Wild DVD's.

36. The aforementioned conduct of the Defendants caused Plaintiff to sustain severe and disabling injuries and damages, all as hereinafter set forth.

37. As a direct and proximate result of the negligence of the Defendants as aforesaid, the Plaintiff was caused to sustain post traumatic stress and psychological injuries.

38. As a direct and proximate result of the aforesaid injuries, Plaintiff was compelled to submit to treatment of physicians and to date has incurred medical expenses, and she shall incur further medical expenses in the future because of such injuries due to the conduct of the Defendants.

WHEREFORE, the Plaintiff prays for judgment against the Defendants in a sum in excess of \$25,000.00 together with her costs herein expended, and for any further relief deemed necessary and just.

COUNT II
[BATTERY]

For Count II of her Petition, Plaintiff states as follows

39. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 32 of the Allegations Common to All Counts and paragraphs 33 through 38 of Count I as if fully set forth.

40. Defendant John Doe II caused physical contact with Plaintiff when John Doe II pulled her shirt down.

41. Plaintiff did not consent to the aforementioned physical contact with her person by John Doe II.

42. Defendant John Doe II did so knowing or John Doe II should have known that such conduct would be considered offensive by Plaintiff.

43. The aforementioned conduct by John Doe II was offensive to Plaintiff, and caused damage to Plaintiff.

WHEREFORE, the Plaintiff prays for judgment against the Defendants in a sum in excess of \$25,000.00 together with her costs herein expended, and for any further relief deemed necessary and just.

COUNT III
[PRIVACY]

For Count III of her Petition, Plaintiff states as follows:

44. Plaintiff realleges paragraphs 1 through 32 of the Allegations Common to All Counts and paragraphs 39 through 43 of Count II as if fully set forth.

45. Plaintiff possesses a special value to her name, likeness, commercial image and photograph, and Plaintiff's likeness, commercial image and photograph have substantial commercial value.

46. Through their aforementioned conduct, the Defendants intentionally utilized Plaintiff's likeness and commercial image in connection with the sale of the Sorority DVD, without the consent of Plaintiff.

47. The Defendants have utilized Plaintiff's likeness and commercial image and for the purpose of promoting the sale and distribution of Sorority DVD, to gain Defendants financial profit and to benefit of Defendants, and the Defendants have financially gained by the unauthorized use of Plaintiff's likeness and image in the sale, advertising and marketing of their products without obtaining permission from Plaintiff to do so.

48. The Defendants have realized substantial profit from the use and unauthorized publication of Plaintiff's likeness and commercial image in the Sorority DVD in amounts at

present unknown to Plaintiff.

49. The Defendants have never compensated Plaintiff for the use and unauthorized publication of her likeness and commercial image as stated herein.

50. The Defendants continue to utilize Plaintiff's likeness and commercial image in the Sorority DVD despite demand from Plaintiff that such unauthorized use and unauthorized publication be terminated.

51. Plaintiff has not profited or been compensated from any of the actions of Defendants in using Plaintiff's likeness and commercial image in the promotion of Defendants' products.

52. The Defendants have knowingly and intentionally, and without the consent of Plaintiff, misappropriated Plaintiff's likeness and commercial image for Defendant's own use and unauthorized publication and profit.

53. In addition to deriving profit from the unauthorized use and publication of Plaintiff's likeness and commercial image, Defendants have damaged Plaintiff by denying Plaintiff the total and exclusive control of the commercial use of her image, likeness and image, and by denying Plaintiff all profit from the use and publication of her likeness and image.

54. The Defendants have also been unjustly enriched by Defendants' unauthorized use and publication of Plaintiff's likeness and commercial image, without payment of any consideration to Plaintiff.

55. The Defendants' retention of the benefits and profits from the unauthorized use and publication of Plaintiff's likeness and commercial image is inequitable.

56. As a result of the foregoing acts of the Defendants, Plaintiff has been damaged.

WHEREFORE, the Plaintiff prays for judgment against the Defendants in a sum **in**

excess of \$25,000.00 together with her costs herein expended, and for any further relief deemed necessary and just.

COUNT IV
[UNJUST ENRICHMENT]

For Count IV of her Petition, Plaintiff states as follows:

57. Plaintiff realleges paragraphs 1 through 32 of the Allegations Common to All Counts and paragraphs 44 through 56 of Count III as if fully set forth herein. The Defendants have financially gained by the unauthorized use of Plaintiff's likeness and image in the sale, advertising and marketing of their products without obtaining permission from Plaintiff to do so, and the Defendants have unjustly profited from the sale of the Sorority DVD that contains images of Plaintiff.

58. The Defendants marketed, distributed and sold the Sorority DVD for profit which was unjust enrichment to the Defendants and which resulted from the unauthorized use of Plaintiff's likeness and image. The Defendants have upon information and belief received and appreciated benefits under circumstances by which it would be unfair and unjust for Defendants to retain the benefits and these ill-gotten gains.

59. Based upon the Defendants unauthorized use of Plaintiff's image and likeness for profit regarding said videos and DVDs and in conjunction with Defendants' failure to provide any reasonable and fair compensation to Plaintiff, the Defendants have received and appreciated benefits under circumstances by which it would be unfair and unjust for Defendant to retain such benefits without compensation to Plaintiff. As a proximate result of the Defendants' unjust enrichment, Plaintiff has been damaged.

WHEREFORE, the Plaintiff prays for judgment against the Defendants in a sum

in excess of \$25,000.00 together with her costs herein expended, and for any further relief deemed necessary and just.

COUNT V
[MISSOURI'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT ("MDPA")]

For Count V of her Petition, Plaintiff states as follows:

61. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 32 of the Allegations Common to All Counts, paragraphs 33 through 38 of Count I, paragraphs 39 through 43 of Count II and paragraphs 44 through 56 of Count III and paragraphs 57 through 60 of Count IV as if fully set forth herein.

62. The Missouri Deceptive and Unfair Trade Practices Act (hereafter the MDPA) makes unlawful "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in a conduct of any trade or commerce."

63. Plaintiff constitutes an aggrieved on person pursuant to the MDPA.

64. Plaintiff also has suffered damages due to the acts of the Defendants within the scope of the MDPA.

65. The Defendants have engaged in activities in the State of Missouri which specifically violate MDPA in that they are unfair methods of competition, unconscionable acts or practices, or are otherwise unfair or deceptive acts or practices in a conduct of any trade or commerce.

66. The Defendants have profited from the filming, production, distribution and sale of the Sorority DVD.

67. As a proximate result of the activities of the Defendants and particularly the sale of the Sorority DVD described herein, Plaintiff has been damaged.

68. Plaintiff seeks declaratory and injunctive relief against all Defendants

specifically enjoining Defendants from further sale and or distribution of the Sorority DVD.

69. Plaintiff seeks financial compensation for the Defendants unauthorized use of her likeness and photos in the Defendants' Sorority DVD.

WHEREFORE, the Plaintiff prays for judgment against the Defendants in a sum in excess of \$25,000.00 together with her attorney fees and her costs herein expended, and for any further relief deemed necessary and just.

COUNT VI
[UNAUTHORIZED PUBLICATION OF LIKENESS]

For Count VI of her Petition, Plaintiff states as follows:

70. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 32 of the Allegations Common to All Counts, paragraphs 33 through 38 of Count I, paragraphs 39 through 43 of Count II and paragraphs 44 through 56 of Count III, paragraphs 57 through 60 of Count IV and paragraphs 61 through 69 of Count V as if fully set forth herein.

71. The Defendants have, individually and in conjunction with each other and with others, published, printed, displayed or otherwise publicly used for purposes of trade, commercial and advertising purposes the photographs, the likeness and video of Plaintiff without the expressed written or oral consent of Plaintiff.

72. These actions occurred in the State of Missouri.

73. Among other things, Defendants have specifically published, distributed, displayed and sold the Sorority DVD in Missouri which features graphic depictions of Plaintiff in the Sorority DVD in the Girls Gone Wild Video Series.

74. By prominently displaying Plaintiff in the opening credits of the Defendants' Sorority DVD, the Defendants emphasize the role of Plaintiff for commercial purposes and have

publicized Plaintiff's likeness without her consent.

75. As a proximate result of the Defendants' actions, Plaintiff has been damaged.

76. Plaintiff seeks to recover damages for all losses and injuries sustained by reason of the Defendants' conduct, including, without limitation, an amount which represents a reasonable royalty on all materials sold by Defendants that contain photographs of Plaintiff, together with punitive and exemplary damages.

WHEREFORE, the Plaintiff prays for judgment against the Defendants in a sum in excess of \$25,000.00 together with her costs herein expended, and for any further relief deemed necessary and just.

COUNT VII
[COMMERCIAL MISAPPROPRIATION OF LIKENESS]

For Count VII of her Petition, Plaintiff states as follows:

77. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 32 of the Allegations Common to All Counts, paragraphs 33 through 38 of Count I, paragraphs 39 through 43 of Count II and paragraphs 44 through 56 of Count III, paragraphs 57 through 60 of Count IV, paragraphs 61 through 69 of Count V and paragraphs 70 through 76 of Count VI as if fully set forth herein.

78. The Defendants sold the aforescribed Sorority DVD for their own commercial gain without providing any compensation to Plaintiff.

79. Defendants have also used photographs of the Plaintiff to advertise products and portions of DVDs in which Plaintiff has no involvement and does not otherwise participate.

80. Plaintiff has not consented to any use of her photographs, videotape or likeness by the Defendants.

81. The Defendants have commercially exploited the property value of Plaintiff's name, likeness and personality without the consent of Plaintiff and without providing Plaintiff with any compensation.

82. As a proximate result of the Defendants' actions, Plaintiff have been damaged.

83. Plaintiff seeks to recover damages for all losses and injuries sustained by reason of the Defendants' conduct, including, without limitation, an amount which represents a reasonable royalty on all materials sold by Defendants that contain photographs of Plaintiff, together with punitive and exemplary damages.

WHEREFORE, the Plaintiff prays for judgment against the Defendants in a sum in excess of \$25,000.00 together with her costs herein expended, and for any further relief deemed necessary and just.


Respectfully submitted
EVANS PARTNERSHIP

By: _____
Stephen B. Evans, No. 40305
Attorney for Plaintiff Plaintiff
8000 Maryland Avenue, Suite 640
St. Louis, Missouri 63105
Telephone: (314) 721-1024
Facsimile: (314) 721-1741
Steve@EvansLaw-stl.com


By: _____
MEDLER & ROITHER, L.L.C.
Jeffrey Medler, No. 44971
Attorney for Plaintiff Plaintiff
8000 Maryland Avenue, Suite 640
St. Louis, Missouri 63105
Telephone: (314) 862-8888
Facsimile: (314) 862-8988
jmedler@medlerroither.com

Respectfully submitted
EVANS PARTNERSHIP

By: 

Stephen B. Evans, No. 40305
Attorney for Plaintiff 
8000 Maryland Avenue, Suite 640
St. Louis, Missouri 63105
Telephone: (314) 721-1024
Facsimile: (314) 721-1741
Steve@EvansLaw-stl.com

By: 

MEDLER & ROITNER, L.L.C.
Jeffrey Medler, No. 44971
Attorney for Plaintiff 
8000 Maryland Avenue, Suite 640
St. Louis, Missouri 63105
Telephone: (314) 862-8888
Facsimile: (314) 862-8988
jmedler@medlerroither.com