

**IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
PENNSYLVANIA  
CIVIL ACTION**

IRISH PUB AND INN, INC., CATHY	:	
BURKE AND RICHARD BURKE	:	
	:	No.:
vs.	:	
	:	
METRO CORP. d/b/a	:	
PHILADELPHIA MAGAZINE	:	

**JURISDICTION**

1. This is a civil action seeking damages against Defendant for trade label, tortious interference with economic opportunity, intentional infliction of emotional distress and defamation. The Court has jurisdiction of this action under 28 U.S.C. § 1332 (complete diversity of citizenship and damages in excess of \$75,000.00).

**PARTIES**

2. Plaintiff, Irish Pub and Inn, Inc., is a corporation organized and existing under the law of the State of New Jersey, with its principal office located at 164 Saint James Place, Atlantic City, NJ 08401.

3. Plaintiffs, Cathy and Richard Burke, wife and husband, are and were adult individuals who are citizens and residents of the State of New Jersey and the United States of America at all times relevant to this Complaint.

4. Defendant, Metro Corp. d/b/a Philadelphia Magazine, upon information and belief, is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal office located at 1818 Market Street, 36th floor, Philadelphia, PA 19103.

## COUNT I

5. On November 11, 2006, Defendant distributed, at no charge, to over five hundred (500) women a publication known as Philadelphia Magazine's A.C. Now Winter 2006-07 Edition (the "Publication"), at the Borgata Hotel and Casino at a function sponsored by Wine Spectator magazine on behalf of an organization known as Women in Wine. Presumably, thereafter, the Publication was distributed to many other people and outlets.

6. In the Publication, comprised of seventy six (76) pages, Defendant provides glowing reviews of over eighty (80) bars, restaurants and nightclubs in Atlantic City, effectively recommending and endorsing these establishments to the recipients of the Publication . Upon information and belief, the eleven (11) casinos in Atlantic City represent the vast majority, if not the totality, of the paid advertising in the Publication. The Publication's review of every bar, restaurant and nightclub in the casinos is exceedingly positive.

7. On one page of the Publication ( page 55), Defendant abruptly changes its approach from recommending and endorsing establishments in Atlantic City to alerting the recipients of the Publication about three businesses, including the Irish Pub and Inn, which Defendant characterizes as "Dive Bars".

8. Defendant characterizes the customers of the Irish Pub and Inn as likely to be "broken-down blackjack addicts" and "self-professed black sheep of the family".

9. The action of labeling Plaintiff, the Irish Pub and Inn, as a "Dive Bar" is actionable under New Jersey law as the tort of trade libel or, as is sometimes characterized, product disparagement. Trade libel or product disparagement protects an injured party or parties by compensating them for pecuniary harm caused by false statements about their products.

10. Plaintiffs have retained a nationally known restaurant consulting firm with over forty (40) years experience in the business, GEC Consultants, Inc. to analyze the industry and

public perception of the term "Dive Bar" and to determine the potential financial impact on Plaintiffs of being characterized as operating or owning a "Dive Bar".

11. GEC Consultants, Inc. in a formal opinion, dated November 7, 2007, attached hereto as Exhibit "A", has interpreted the characterization as a "Dive Bar" to include, inter alia, "An establishment serving liquor and/or food that caters to low types of customers who are primarily heavy drinkers of cheap alcoholic beverages. This patronage may include real-time alcoholics, drug addicts, social misfits, troublemakers and those with a tendency for anti-social behavior.... These establishments are easily identified in their neighborhoods by loud noises coming out of the building at all hours, and disreputable characters entering, leaving or lounging about the entrance, and with exterior often surrounded by discarded beer cans, bottles and other bar debris. Their community records are usually scored with many disorderly conduct charges on customers, fights and other serious felonies registered by the police and DUI accidents attributable to the bar's patrons." (pg. 1 , Exhibit "A")

12. GEC Consultants, Inc., after being provided with numerous examples of positive reviews, opinions, activities and awards bestowed upon the Irish Pub and Inn by publications (national, regional and local) and highly reputable and established civic and charitable organizations, has concluded that it is "unfathomable to me to believe that people with such stellar reputations would have anything to do with a "Dive" bar."(pg. 4, Exhibit "A")

13. Defendant falsely characterized the Irish Pub and Inn as a "Dive Bar" by intentionally and/or recklessly disregarding the facts, thereby causing pecuniary harm to Plaintiffs. The pecuniary harm is certainly increased when one considers that the primary competition for the Irish Pub and Inn is the casinos, who, as noted above, are the primary, if not exclusive, advertisers for the Publication and, not coincidentally, the recipients of consistently glowing endorsements in the Publication.

14. The extent of the pecuniary harm may be exacerbated by recent events in Atlantic City noted by GEC Consultants, Inc., to wit: "To my mind, the labeling of the Irish Pub

and Inn as a “Dive bar” is especially dangerous and life threatening to this business at a time when the government of Atlantic City is actively pursuing to impose eminent domain on private properties so that the casinos can develop those properties for their expansions. See the Public Notice attached as Exhibit 1 which was sent to me on this matter. This is currently being done in the neighborhood of the Irish Pub and Inn. Obviously, the city is targeting run-down properties, i.e., “Dive bars”.” (pg. 4, Exhibit “A”)

WHEREFORE, Plaintiffs demand judgment against Defendant for compensatory damages and punitive damages, attorney’s fees, plus the costs of this action and such other relief as the Court deems just and equitable.

## COUNT II

15. Plaintiffs allegations set forth in paragraphs 1-14 of Count I of this complaint are incorporated as if same were set forth length herein.

16. Plaintiffs have long envisioned expansion of their original operation at the Atlantic City location, which was started in 1972. In fact, they have opened two (2) additional successful establishments in Philadelphia using the same name and business model as the original location.

17. Moreover, Plaintiffs have discussed the potential of a regional and/or national brand extension through franchising and/or an Initial Public Offering (IPO)

18. GEC Consultants, Inc. has concluded, “that the label of being a “Dive” bar/restaurant would all but preclude a successful IPO as envisioned; primarily because the likely purchasers of such an offering would be high-end business people and institutional investors who would certainly not want their names to be associated with such a designated business.” (pg. 4, Exhibit “A”).

19. Therefore, Defendant, a highly recognized publication, has tortiously interfered with a prospective economic advantage of Plaintiffs by falsely characterizing the Irish Pub and Inn as a “Dive Bar”.

WHEREFORE, Plaintiffs demand judgment against Defendant for compensatory damages and punitive damage, attorneys fees, plus the costs of this action and such other relief as the Court deems just and equitable.

### **COUNT III**

20. Plaintiff allegations set forth in paragraphs 1-19 of Count I and II are incorporated as if were set forth at length herein.

21. As outlined in Exhibit “A”, Plaintiffs have a long-standing reputation for sponsoring and promoting charitable and civic activities and institutions and for “being active members of the communities where they operate; taking clear, strong positions on important industry issues and always practicing the highest standards of ethics and integrity in its business behavior.” (pg.4, Exhibit “A”)

22. Based on all the hard work and dedication for decades of Plaintiffs Cathy and Richard Burke, the Irish Pub and Inn and Plaintiffs Cathy and Richard Burke enjoy a stellar reputation in the Atlantic City, New Jersey, Philadelphia and New York region.

23. Defendant, by distributing the Publication and labeling the Irish Pub and Inn as a “Dive Bar”, has displayed conduct which amounts to an intentional infliction of serious emotional distress with regard to Plaintiffs Cathy and Richard Burke.

WHEREFORE, Plaintiffs demand judgment against Defendant for compensatory damages and punitive damage, attorneys fees, plus the costs of this action and such other relief as the Court deems just and equitable.

**COUNT IV**

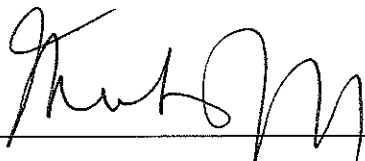
24. Plaintiffs allegations set forth in paragraphs 1-23 of Counts I, II, III are incorporated as if were set forth at length herein.

25. By distributing the Publication to over five hundred (500) women and others and naming the Irish Pub and Inn as a "Dive Bar", Defendant intended to and likely succeeded in causing the readers of the Publication to view of the Irish Pub and Inn as a disreputable establishment to be avoided at all cost. Clearly such a characterization is defamatory in its nature.

26. In response to the Publication, Plaintiffs contacted Larry Platt, Editor of Philadelphia Magazine, and demanded a retraction. Following receipt of Plaintiffs' demand for a retraction, Defendant failed and refused, and still continues to fail and refuse, to comply with such demand.

27. As a result of Defendant's defamatory actions, Plaintiffs have incurred great injury to their corporate and personal reputations and have and will continue to suffer economic loss.

WHEREFORE, Plaintiffs demand judgment against Defendant for compensatory damages and punitive damage, attorneys fees, plus the costs of this action and such other relief as the Court deems just and equitable.



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MICHAEL J. MALLOY, ESQUIRE  
Identification No.: 24446  
10 Veterans Square  
Media, PA 19063  
(610) 565-9145  
(610) 565-1602 - fax