

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

KATY JOHNSON,  
individually,

Case No.

**2003CA004867AF**

Plaintiff,

vs.

TUCKER MAX,  
individually,

Defendant.

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RECEIVED FOR FILING**

**MAY - 2 2003**

**DOROTHY H. WILKEN  
CLERK OF CIRCUIT COURT  
CIRCUIT CIVIL DIVISION**

**COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES**

Plaintiff, KATY JOHNSON, individually, sues Defendant, TUCKER MAX, individually, for injunctive relief and damages and further alleges:

**Introduction**

1. Plaintiff brings this action for injunctive relief and to recover money damages and against Defendant. Defendant maintains an adult website which contains content which constitutes public disclosure of embarrassing private facts. Defendant has made use of Plaintiff's name, portrait photograph and other likeness to promote his website, books merchandise and career as an authority on "picking up" women. Defendant has committed a battery upon Plaintiff. Defendant's conduct as set forth below has caused and will continue to cause damages to Plaintiff unless enjoined.

**Jurisdiction and Venue**

2. This is an action for injunctive relief and damages in excess of \$15,000.00. This Court has subject matter jurisdiction over this case pursuant to Article

V, Section 5 of the Florida Constitution, Florida Statutes, Section 26.012, and in accordance with Florida common law.

3. This Defendant is subject to the jurisdiction of this Court pursuant to Florida's Long Arm Statute, § 48.193, Florida Statutes as certain complained of acts were committed within the State of Florida, more specifically, Palm Beach County, Florida.

4. Venue is proper in Palm Beach County, Florida because the causes of action as set forth herein accrued in Palm Beach County, Florida.

#### Parties

5. Plaintiff, KATY JOHNSON, is a resident of Delray Beach, Florida and is otherwise *sui juris*.

6. Defendant, TUCKER MAX, is a resident of Chicago, Illinois and is otherwise *sui juris*.

#### General Allegations Applicable to All Counts

7. Plaintiff is former Miss Vermont 1999 and Miss Vermont USA 2001.

8. Plaintiff maintains a children's website which details her personal and professional resume as well as a character education comic strip for young girls and related book and merchandise for purchase.

9. Plaintiff commercially exploits her name and likeness in connection with this business, and has never publicized any facts relative to her relationships, or her personal and/or intimate affairs.

10. Defendant maintains an adult website at which details his personal biographical information and private sexual exploits with various women, as well as

related books and merchandise for purchase including women's panties, thongs, aprons, jackets, shirts and hats (the "Website").

11. Defendant has, and continues to clearly identify Plaintiff on said Website, and has, and continues to post on said Website Plaintiff's name, likeness, photograph in several places in the form of advertising slogans, and links to "The Miss Vermont Story," a nine (9) page narrative which purports to detail private facts relative to his alleged intimate and sexual relationship between the Plaintiff and Defendant (the "Narrative"). Said Narrative is written as if it was fact and is intended to be understood as factual.

12. Throughout Defendant's written recollection of his relationship with Plaintiff, Defendant repeatedly characterizes the Plaintiff as unintelligent, naïve and/or promiscuous.

13. Defendant uses the highlighted words "Katy," "Katy Johnson" and "Miss Vermont" in various sections of the Website as hyperlinks to attract visitors to the portion of the Website which contains the narrative. In these same sections of the Website, Defendant offers his books and merchandise for sale. On the page of the Website which contains the actual Narrative, Defendant offers his merchandise and books for sale. Defendant even offers a link on his adult Website to Plaintiff's children's website without Plaintiff's consent.

14. Such characterizations, the narrative, as well as the use of Plaintiff's name, portrait, photograph and other likeness for such commercial, promotional and advertising purposes has directly and proximately caused great harm to her person, career and business, and continues to be the source of great embarrassment and harm. Such harm and embarrassment continues and escalates each day Defendant continues to make reference to Plaintiff, her likeness, her title as "Miss Vermont," the stories of Defendant's alleged intimate relationship with Plaintiff, and uses and displays portraits, photographs or images of Plaintiff.

15. Plaintiff has never consented to Defendant's use of her name, likeness, photographic images or title "Miss Vermont." Plaintiff has neither consented to public dissemination of facts or stories about her personal and intimate life.

16. Plaintiff has retained the undersigned firm to represent her in this matter and has agreed to pay it a reasonable fee for its legal and paralegal services.

17. All prerequisites to filing the herein action have been satisfied or waived and all conditions precedent have been met, excused or waived.

**COUNT I – UNAUTHORIZED USE OF NAME AND LIKENESS UNDER § 540.08,  
FLA.STAT.**

Plaintiff re-alleges and incorporates herein by reference all allegations made in Paragraphs 1 through 17 above as if more fully set forth herein.

18. Defendant has, and continues to make use of Plaintiff's name, portrait, photograph and other likeness for advertising and other commercial purposes.

19. More specifically, Defendant has, and continues to use the names "Katy," "Katy Johnson," "Miss Vermont," photographs of Plaintiff, as well as stories about Defendant's alleged intimate and sexual relationship with Plaintiff and a link to her children's website.

20. Such references to Plaintiff and her title have been utilized as "meta-tags" or "search terms" with various major search engines through which Defendant's adult Website is promoted and advertised.

21. Said uses of Plaintiff's name and likeness were, and are made, for advertising and other commercial purposes, including, but not limited to, promotion and advertising of Defendant's Website, merchandise, books, television appearances and career.

22. Neither Plaintiff, nor any agent of her, has ever consented to, or authorized said uses of Plaintiff's name, portrait, photograph or other likeness, or link to her website.

23. As a direct and proximate result of Defendant's past and continued use of Plaintiff's name, portrait, photograph and other likeness, Plaintiff has suffered great harm, embarrassment, and other damages.

24. Each day Defendant is permitted to continue his use of Plaintiff's name, portrait, photograph, or other likeness, Plaintiff's harm grows exponentially.

WHEREFORE, Plaintiff demands entry of a temporary and permanent injunction restraining and enjoining Defendant from further use of Plaintiff's name, portrait, photograph or other likeness including any references to "Katy," "Katy Johnson," "Miss Vermont," displays of photographs of Plaintiff, and from use of any other characterization of Plaintiff in any media, including, but not limited to, Defendant's website(s), television appearances, books, advertisements, press conferences and interviews, including any such press conferences and interviews about the instant litigation. Plaintiff further demands entry of judgment against the Defendant for compensatory damages, taxable costs as the prevailing party, attorneys' fees and all further relief which this Court deems just and proper under all of the facts and circumstances of this matter.

#### **COUNT II – COMMON LAW INVASION OF PRIVACY**

Plaintiff re-alleges and incorporates herein by reference all allegations made in Paragraphs 1 through 17 above as if more fully set forth herein.

25. Defendant has, and continues to publicly disseminate private facts of and concerning Plaintiff without her consent.

26. The matter which was, and is being, publicly disseminated by Defendant is of such a character that it is offensive and objectionable to a reasonable person of ordinary sensibilities.

27. Plaintiff has, in fact, objected to the public dissemination of these matters, and has, in fact, become offended thereby.

28. As a direct and proximate result of Defendant's past and continued public dissemination of said private facts, Plaintiff's privacy has been invaded and she has suffered great harm, embarrassment, and other damages.

29. Each day Defendant is permitted to continue his dissemination of said private facts, Plaintiff's harm grows exponentially.

WHEREFORE, Plaintiff demands entry of a temporary and permanent injunction restraining and enjoining Defendant from further dissemination of private facts, notwithstanding their truth or falsehood, including any references to "Katy," "Katy Johnson," "Miss Vermont" and any other characterization of Plaintiff in any media, including, but not limited to, Defendant's website(s), television appearances, books, advertisements, press conferences and interviews, including any such press conferences and interviews about the instant litigation. Plaintiff further demands entry of judgment against the Defendant for compensatory damages, taxable costs as the prevailing party, attorneys' fees and all further relief which this Court deems just and proper under all of the facts and circumstances of this matter.

### **COUNT III – COMMON LAW BATTERY**

Plaintiff re-alleges and incorporates herein by reference all allegations made in Paragraphs 1 through 17 above as if more fully set forth herein.

30. In August of 2001, in Palm Beach County, Florida, more specifically, in front of the restaurant Max's Grille in Boca Raton, Florida, Defendant made physical contact or impact with Plaintiff.

31. At such time, Defendant made such physical contact willingly, wantonly, and with malicious intent in order to cause harmful or offensive touching to the Plaintiff.

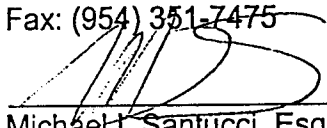
32. At such time, Plaintiff did, in fact, sustain a harmful and offensive bodily contact from the Defendant.

33. As a direct and proximate result of the harmful and offensive contact, the Plaintiff suffered bodily injury and sustained significant pain, suffering and other damages.

WHEREFORE, Plaintiff demands entry of judgment against the Defendant for compensatory damages, taxable costs as the prevailing party, attorneys' fees and all further relief which this Court deems just and proper under all of the facts and circumstances of this matter.

Respectfully submitted,

Law Offices of  
**MICHAEL I. SANTUCCI, P.A.**  
500 West Cypress Creek Road  
Suite 500  
Fort Lauderdale, Florida 33309  
Phone: (954) 351-7474  
Fax: (954) 351-7475

By:   
Michael I. Santucci, Esq.  
FBN: 0105260



IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
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KATY JOHNSON,  
individually,

Case No.

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individually,

Defendant.

**MOTION TO SEAL FILE AND TO PREVENT PUBLIC COMMENT OR  
DISSEMINATION OF FACTS OF OR INFORMATION CONCERNING LITIGATION**

COMES NOW, Plaintiff, KATY JOHNSON, ("JOHNSON"), through her undersigned counsel, MICHAEL I. SANTUCCI, P.A., and hereby requests this Honorable Court to issue an order sealing the Clerk's file in this matter, and preventing public comment or dissemination of facts of or information concerning the instant action.

**INTRODUCTION**

1. Plaintiff has filed a complaint for injunctive relief and damages against Defendant to remedy the embarrassment and other damage which has been done to her business, career and person as a result of Defendant's use of JOHNSON's name, photograph and likeness on his adult website, and the publication of private stories about their alleged sexual affairs.

2. On Thursday, May 01, 2003, Defendant was scheduled to appear on the television show "MTV Sex2k" to promote his website and books bearing JOHNSON's name and likeness. Without an order of this Court compelling Defendant to immediately remove all references to

JOHNSON from his website, further enjoining him from making reference to JOHNSON on the imminent television broadcast, in books and online, and/or discussing the facts of the instant action publicly, the harm she has already suffered will escalate to new heights.

3. Plaintiff believes that the very fact of her filing the instant action to prevent further use of her name and likeness, and to prevent further dissemination of the very private intimate matters will be used by Defendant to further embarrass Plaintiff publicly, and to further promote his website, books, merchandise and career.

4. Furthermore, publicity about this litigation could prejudice the parties and obstruct the fair administration of justice being that Plaintiff is a local resident of Palm County, Florida.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court issue an order sealing the Clerk's file in this matter, and preventing public comment or dissemination of facts of or information concerning this the instant action. In the alternative, Plaintiff requests that this Honorable Court, at the very least, permit the parties to file certain pleadings such as those containing discovery or affidavits or deposition transcripts under seal.

Respectfully submitted,

Law Offices of  
**MICHAEL I. SANTUCCI, P.A.**  
500 West Cypress Creek Road  
Suite 500  
Fort Lauderdale, Florida 33309  
Phone: (954) 351-7474  
Fax: (954) 351-7475

By: 

Michael I. Santucci, Esq.  
FBN: 0105260

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a good faith effort shall be made to serve the foregoing document on the Defendant together with initial process in this action.

A handwritten signature in black ink, appearing to read 'M. Santucci', written over a horizontal line.

Michael I. Santucci

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KATY JOHNSON,  
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\_\_\_\_\_ /

**EMERGENCY MOTION FOR TEMPORARY INJUNCTION WITH SUPPORTING  
MEMORANDUM OF LAW**

Plaintiff, KATY JOHNSON, ("JOHNSON"), through her undersigned counsel, MICHAEL I. SANTUCCI, P.A., hereby requests this Honorable Court to issue a temporary injunction without notice, under Fla. R. Civ. P. 1.610, on an emergency basis, enjoining and restraining Defendant, TUCKER MAX, to refrain from certain acts more specifically described below.

**INTRODUCTION**

1. Contemporaneously herewith, Plaintiff has filed a complaint for injunctive relief and damages against Defendant to remedy the embarrassment and other damage which has been done to her business, career and person as a result of Defendant's use of JOHNSON's name, photograph and likeness on his adult website, and the publication of private stories about their alleged sexual affairs. On Thursday, May 01, 2003, Defendant was scheduled to appear on the television show "MTV Sex2k" to promote his website and books bearing JOHNSON's name and likeness. Without an order of this Court compelling Defendant to immediately remove all

Without an order of this Court compelling Defendant to immediately remove all references to JOHNSON from his website, and further enjoining him from making reference to JOHNSON on the imminent television broadcast, in books and online, the harm she has already suffered will escalate to new heights. Plaintiff has also alleged a cause of action against Defendant in her complaint for battery which occurred in Boca Raton, Florida in 2001.

### STATEMENT OF FACTS

1. Plaintiff JOHNSON is a two-time winner of the Miss Delaware/Miss Delaware USA pageants, writer and cartoonist who publishes cartoon books intended to promote, and teach young girls, values such as self esteem, confidence, respect, integrity, responsibility and beauty. Her books are available through her website located at [www.katyjohnson.com](http://www.katyjohnson.com), and through certain pageantry magazines.<sup>1</sup>

2. Defendant maintains a website which, in graphic detail, describes his claimed sexual exploits with various women (the "Website"). The Website contains a nine (9) page narrative about the details of his claimed private sexual affairs with Plaintiff.<sup>2</sup> In various places throughout the Website, Plaintiff's name "Katy," and "Katy Johnson," as well as her photograph and references to "Miss Vermont" are featured with links to said narrative. On the same pages as these references and on the page containing the narrative itself, Defendant offers merchandise for sale including women's panties, thong underwear, aprons, mugs, hats and other clothing bearing Defendant's name, as well as his book entitled "The Definitive Book of Pick-Up Lines" and "Belligerence and Debauchery – The Tucker Max Stories." All of said merchandise can be purchased online through Defendant's Website. On the same website, Defendant also promotes

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<sup>1</sup> See Aff's of Katy Johnson, and Kathleen B. Johnson, Esg. attached as Exhibits "A" and "B" hereto.

<sup>2</sup> See Aff's. of Katy Johnson, Kathleen B. Johnson, Esq. attached as Exhibits "A" and "B" hereto.

his forthcoming appearance on the MTV show called "MTV Sex2K" which is scheduled to air this week, on May 1, 2003. It is believed that Defendant's Website, and claims about JOHNSON will be referenced and cross-promoted during said broadcast. Defendant makes further use of JOHNSON's name and likeness on his Website by providing a link to JOHNSON's website <www.katyjohnson.com> within the body of his narrative.<sup>3</sup>

3. Plaintiff has never consented to or authorized Defendant to use her name and likeness for such a commercial purpose, nor did she ever authorize such private information, notwithstanding its truth or falsity, to be disclosed publicly. Said website has been viewed, and said narrative has been read by Plaintiff's family, friends, business associates, and former classmates at Stetson University College of Law, which she recently attended. (See Affidavit of Katy Johnson attached as Exhibit "A" hereto).<sup>4</sup>

4. The section of Defendant's Website entitled "The Miss Vermont Story" at <http://tuckermax.com/Stories/missvermont.htm> [*a true and correct copy of which is attached to the affidavits hereto*] which purports to detail private facts relative to the relationship between the JOHNSON and Defendant and is summarized *to wit* as follows:

- Plaintiff and Defendant met at The Athletic Club of Boca Raton during the summer of 2001.
- Plaintiff and Defendant arranged for a meeting at Defendant's father's restaurant "Max's Grille" in Boca Raton.
- On the same evening, Defendant alleges Plaintiff and Defendant thereafter engaged in sexual intercourse in Plaintiff's white Ford Explorer.

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<sup>3</sup> Aff's. Katy Johnson and Kathleen B. Johnson.

<sup>4</sup> Affidavit of Katy Johnson and Kathleen Johnson.

- On a subsequent occasion, Defendant invited Plaintiff to his residence in Palm Beach County where Defendant alleges Plaintiff performed oral sex in Defendant's kitchen.
- Plaintiff and Defendant "saw each other somewhat consistently over the next few weeks".
- Defendant thereafter invited Plaintiff to attend a wedding in North Carolina.
- Defendant alleges Plaintiff and Defendant engaged in sexual relations in every state en route to North Carolina, with the exception of South Carolina.
- Defendant alleges that while attending the wedding reception Plaintiff became intoxicated and "passed out" in a private room.
- Defendant further alleges that immediately prior to the conclusion of their relationship, Plaintiff performed oral sex in the bathroom of Defendant's father's restaurant "Max's Grille" in Boca Raton.

#### **STANDARD FOR EMERGENCY TEMPORARY INJUNCTIVE RELIEF**

Fla. R. Civ. P. 1.610 provides that:

"A temporary injunction may be granted without written or oral notice to the adverse party only if:

(A) it appears from the specific facts shown by affidavit or verified pleading that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts that have been made to give notice and the reasons why notice should not be required." Id.

Although Fla. R. Civ. P. 1.610(b) requires a bond be given by the movant in an amount the court deems proper, Plaintiff urges this Honorable Court to consider the limited nature of the injunction sought, namely the mere removal of any references to "Katy," "Katy Johnson" and "Miss Vermont," as well as her image, from the Website and broadcast. Such a narrowly-

tailored preliminary injunction would pose the most minimal threat to Defendant, if any. Plaintiff also urges this Court to consider the irrefutable evidence justifying the requested injunction, as well as the likelihood of Plaintiff's success on the merits on each and all of its claims.

### ARGUMENT

#### Unauthorized Use of Name and Likeness

§ 540.08, Fla. Stat. provides for a cause of action to enjoin the unauthorized commercial use of anyone's name and likeness. It states:

"No person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use...." § 540.08(1), Fla. Stat.

Under the Florida statute proscribing unauthorized publication of person's name or likeness for trade, commercial, or advertising purposes, terms "trade," "commercial," and "advertising purpose" mean using a person's name or likeness to directly promote a product or service. See, Lane v. MRA Holdings, LLC, 2002 WL 31940726 (M.D. Fla. 2002); Also see Nottage v. American Exp. Co., 452 So. 2d 1066 (Fla. 3<sup>rd</sup> DCA 1984)( Petition, filed by condominium doorman whose picture was used in promotional advertisement depicting building where he worked, sufficiently alleged commercial exploitation and legal damage so as to state a cause of action for unauthorized publication of likeness).

The Website pages attached as exhibits to the affidavits of Katy and Kathleen B. Johnson clearly reveal the commercial purpose for which JOHNSON's name, image and likeness are being used. The Website speaks for itself. Defendant has, and currently continues to, publish, display and otherwise publicly use, JOHNSON's photograph as well as the highlighted links and



captions “Miss Vermont,” “Katy” and “Katy Johnson” for the commercial purpose of selling his adult books and merchandise and promoting himself as a self-proclaimed “pick-up artist”. Even the GOOGLE search engine result attached to the affidavits demonstrates how the search term “Miss Vermont” now functions as an advertising slogan for Defendant’s adult Website. A search of this term “Miss Vermont” renders Defendant’s website on the first page of results. Young girls who are seeking for JOHNSON’s website or on that pageant could therefore very easily be misdirected to Defendant’s adult website. No consent has ever been given for any such use.

Various defenses to the cause of action under § 540.08, Fla. Stat. are delineated therein.

§ 540.08, Fla. Stat. states that:

“The provisions of this section shall not apply to:

- (a) The publication, printing, display, or use of the name or likeness of any person in any newspaper, magazine, book, news broadcast or telecast, or other news medium or publication as part of any *bona fide news report or presentation having a current and legitimate public interest* and where such name or likeness is not used for advertising purposes;
- (b) The use of such name, portrait, photograph, or other likeness in connection with the resale or other distribution of literary, musical, or artistic productions or other articles of merchandise or property where such person has *consented* to the use of her or his name, portrait, photograph, or likeness on or in connection with the initial sale or distribution thereof; or
- (c) Any photograph of a person solely as a member of the public and where such person is *not named* or otherwise identified in or in connection with the use of such photograph.” § 540.08(3), Fla. Stat. [*emphasis added*].

These safe havens provided by subsection (3) of the statute simply do not apply to the instant matter.<sup>5</sup> First, it should be clear from even a precursory review of Defendant’s Website

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<sup>5</sup>Messenger by Messenger v. Gruner + Jahr USA Pub., 1998, 994 F.Supp. 525, question certified 175 F.3d 262, certified question accepted 93 N.Y.2d 948, 694 N.Y.S.2d 342, 716 N.E.2d 177, certified question answered 94 N.Y.2d 436, 706 N.Y.S.2d 52, 727 N.E.2d 549, answer to certified question conformed to 208 F.3d 122, certiorari denied 121 S.Ct. 57, 531 U.S. 818, 148 L.Ed.2d 25(Florida statute exempting from liability publications on matters of public interest, regardless of how fictional use of plaintiff’s name or likeness may be, did not bar model’s

that it does not consist of bona fide news reports or any publications having current and legitimate public interest. Defendant's site consists solely of claimed stories of his own private sexual exploits with various women. This site is supplemented with advertisements and links for sale of his own merchandise and books regarding these same exploits and techniques for "picking-up" women. Furthermore, to even apply, subsection (3)(a) above requires that the name and likeness of the claimant not be used for advertising purposes. Defendant's Website contains references to "Miss Vermont" on the very same pages as his offers for sale of his books and merchandise. In the very same section of the Website which contains the nine (9) page narrative about JOHNSON, a direct, highlighted link is provided to the section of the site where Defendant's merchandise is displayed and sold.

Even if Defendant attempts to argue that JOHNSON's public status as Miss Vermont and Miss Vermont USA somehow thrusts his Website into the category of a "presentation having a current and legitimate public interest," this subsection still requires that the public interest being served be "*current*." (See § 540.03(3)(a), Fla Stat). JOHNSON is not the current Miss Vermont, or the current Miss Vermont USA.<sup>6</sup> She was crowned Miss Vermont in 1999 and Miss Vermont USA in 2001.<sup>7</sup> Such facts do not transform Defendant's adult Website into a matter of "current and legitimate public interest." Defendant is clearly intending to pawn off of the name and title of JOHNSON for the purpose of promoting this merchandise and his books. The safe haven carved out for bona fide news reports therefore does not apply.

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commercial misappropriation claim against magazine for its use of her photograph to illustrate letter in sexual advice column about teenage girl who had sexual intercourse with multiple partners).

<sup>6</sup> Aff's Katy Johnson and Kathleen B. Johnson, Exh's "A" and "B" hereto.

<sup>7</sup> Aff Katy Johnson, Par. 3; Aff. Kathleen B. Johnson, Par.3 (Exh's "A" and "B" hereto).

The other safe havens created by the other two subsections of 540.08(3), namely subsections (b) and (c) also do not apply. Subsection (b) requires the consent of the claimant. For example, in *Nat'l. Football League v. Alley, Inc.*, 624 F. Supp. 6 (S.D. Fla. 1983), a professional football players' contractual consent to appear in game telecasts constituted waiver of rights under §540.08. *Id.* Throughout the affidavits of Katy Johnson and Kathleen B. Johnson, they clearly testify that no consent whatsoever has ever been given to Defendant to use JOHNSON's name, image or likeness in any way, much less for such an adult commercial purpose.

Subsection (c) requires that the claimant's not be named or otherwise identified. For example, in *Epic Metals Corp. v. CONDEC, Inc.*, 867 F. Supp. 1009 (M.D. Fla. 1994), the claim under § 540.08 was barred since the claimants head was down in the subject photograph, he was standing behind a stack of lumber, he was not named, and the claimant himself testified that no one had in fact recognized him in the photograph. *Id.* Quite to the contrary, KATY JOHNSON's name, title and references to her appear in various places throughout Defendant's Website. She is by no means an unidentified, incidental person appearing on the site. She is in fact well identified with a nine (9) page narrative which is one of the featured stories on the site. The attached affidavits indicate that many people, including JOHNSON's own mother recognized her clear head-shot photograph, and clear identification by first and last name and title "Miss Vermont."

As such, there is a likelihood the JOHNSON will prevail on the merits of her claim under § 540.08, Fla. Stat. If the Defendant's conduct is not enjoined, additional and more significant harm will immediately follow. It is believed that Defendant will use these references to

JOHNSON and facts about the herein litigation on his website in public appearances, in his books and on television to promote his products and career.

### Invasion of Privacy

A cause of action exists under Florida law for the common-law tort of invasion of privacy based on commercial misappropriation of likeness, notwithstanding the statute proscribing unauthorized publication of person's name or likeness for trade, commercial, or advertising purposes. *Lane, supra*. In *Cason v. Baskin*, 20 So. 2d 243 (Fla. 1944), the supreme court recognized the tort of invasion of privacy as a distinct cause of action. *Heekin v. CBS Broadcasting, Inc.*, 789 So. 2d 355, 357 (Fla. 2<sup>nd</sup> DCA 2001). Under Florida law, the elements of common law invasion of privacy based on commercial misappropriation of likeness coincide with the elements of unauthorized publication of name or likeness in violation of statute. *Lane, supra*. Subsection 6 of § 540.08, Fla. Stat. specifically states that: "The remedies provided for in this section shall be in addition to and not in limitation of the remedies and rights of any person under the common law against the invasion of her or his privacy." § 540.08(6), Fla. Stat. The elements of the tort of invasion of privacy are public disclosure, the facts disclosed to the public were private facts, and the matter made public is one which would be offensive and objectionable to a reasonable man of ordinary sensibilities. *Cape Publications, Inc. v. Hitchner*, 514 So. 2d 1136, 1137 (Fla. 5<sup>th</sup> DCA 1987) *decision quashed in part* 549 So. 2d 1374 (Fla. 1989) (citing Prosser, *Law of Torts*, § 117 (4th Ed.1971)).

Truth is not a defense against an action for invasion of privacy. *Cape Publications, Inc. v. Hitchner*, 514 So. 2d 1136, 1137 (Fla. 5<sup>th</sup> DCA 1987)(citing 9 Fla.Jur.2d Defamation or Privacy, § 147. The tort remedies the public disclosure of private facts, *even if truthful*, so long as they are private information which a reasonable person would find objectionable. *Heekin, supra*, at

358. Absence of malice does not constitute a defense but may be an element in assessing damages. *Id.* at § 148. The court held that neither the truth of the information published nor the absence of malicious motives in its publication is a defense to an action for invasion of privacy. *Heekin, supra*, citing *Cason, supra* at 245. Further, in an action for invasion of privacy, the plaintiff is not required to plead or prove special damages. *Id.* The elimination of several well-recognized defenses to libel and slander actions and the change in the burden of proof on damages make it clear that invasion of privacy is a separate cause of action from libel and slander. *Id.* There is not even a heightened burden of any kind for public figure plaintiffs. *Heekin, supra*, at 358.

The stories, facts and claims which are contained within Defendant's nine (9) page narrative entitled "The Miss Vermont Story," relate to Defendant's claims regarding his private, intimate and sexual relationship with JOHNSON, and certainly were not anticipated by JOHNSON to be described, whether true or false, to a world-wide public audience on the internet, on television or in print media. The fact that Defendant is disseminating such information cannot be questioned. Again, his Website speaks for itself. Any reasonable person would find the public dissemination of their private and intimate relationships and sexual activities to be objectionable.

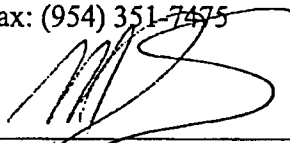
Therefore, there is a likelihood the JOHNSON will prevail on the merits of her claim for common law invasion of privacy. If the Defendant's conduct is not enjoined, additional and more significant harm will immediately follow.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter the attached proposed temporary injunction against the Defendant TUCKER MAX, his agents, servants,

employees, attorneys and those persons in active concert or participation with him who receive actual notice of the requested injunction. Plaintiff further requests all other relief that this Court deems to be just and proper under all of the facts and circumstances of this matter, including, without limitation, attorneys' fees and costs.

Dated: 5/1/03

Respectfully submitted,  
Law Offices of  
**MICHAEL I. SANTUCCI, P.A.**  
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Suite 500  
Fort Lauderdale, Florida 33309  
Phone: (954) 351-7474  
Fax: (954) 351-7475

By:   
\_\_\_\_\_  
Michael I. Santucci, Esq.  
FBN: 0105260

**CERTIFICATE OF EFFORTS TO PUT DEFENDANT ON NOTICE UNDER RULE  
1.620, FLORIDA RULES OF CIVIL PROCEDURE**

I DO HEREBY CERTIFY that a good faith effort was made to locate and serve the Defendant with the herein Emergency Motion for Temporary Injunction With Supporting Memorandum of Law. The undersigned has engaged the services of former F.B.I. Regional Director, Alfred La Manna of Compass Investigations, Inc., for this purpose. We have thus far been unsuccessful in our attempts to locate Defendant at his record addresses, and believe that he is out of town in shootings for various television and media events.

It is the belief of the undersigned, as well as the Plaintiff and affiants, that notice to the Defendant should not be required as a prerequisite to injunctive relief because:

1. Such notice will give Defendant the opportunity to further promote, (*through negative publicity*), his Website, merchandise, books and television appearance thereby escalating the harm to Plaintiff; and
2. Time simply did not permit service of process or prior notice of any kind to Defendant as the first airing of the show "MTV Sex2k" is imminent.

5/1/03  
Date

  
Michael I. Santucci, Esq.

## TABLE OF AUTHORITIES

Fla. R. Civ. P. 1.610

§ 540.08, Fla. Stat.

*Cape Publications, Inc. v. Hitchner*, 514 So. 2d 1136, 1137 (Fla. 5<sup>th</sup> DCA 1987)

*Cason v. Baskin*, 20 So. 2d 243 (Fla. 1944)

*Epic Metals Corp. v. CONDEC, Inc.*, 867 F. Supp. 1009 (M.D. Fla. 1994)

*Heekin v. CBS Broadcasting, Inc.*, 789 So. 2d 355, 357 (Fla. 2<sup>nd</sup> DCA 2001)

*Lane v. MRA Holdings, LLC*, 2002 WL 31940726 (M.D. Fla. 2002)

*Messenger by Messenger v. Gruner + Jahr USA Pub.*, 994 F. Supp. 525 (S.D. N.Y. 1998)

*Nat'l. Football League v. Alley, Inc.*, 624 F. Supp. 6 (S.D. Fla. 1983)

*Nottage v. American Exp. Co.*, 452 So. 2d 1066 (Fla. 3<sup>rd</sup> DCA 1984)



IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

KATY JOHNSON,  
individually,

Case No.

Plaintiff,

vs.

TUCKER MAX,  
individually,

Defendant.

\_\_\_\_\_/ )  
STATE OF VERMONT )  
COUNTY OF CHITTENDEN )

**AFFIDAVIT OF PLAINTIFF KATY JOHNSON**

I, Katy Johnson, do hereby affirm and declare the following facts upon penalty of perjury:

1. I am above the age of twenty-one (21) and am competent to testify as the herein matters. Unless otherwise indicated, all facts testified to herein are based on personal knowledge.
2. My name is Katy Johnson and I am the Plaintiff in the above captioned matter. I have recently attended the Stetson University College of Law in the Summer of 2000 and the Fall of 2001.
3. I am a two-time winner of the Miss Vermont Pageants. I was crowned Miss Vermont in 1999 and Miss Vermont USA in 2001. I commercially exploit my name, likeness, image and title in connection with several business and public interest ventures. I am

both a writer and cartoonist, and I publish cartoon books intended to promote, and teach young girls, values such as self-esteem, confidence, respect, integrity, responsibility and beauty. My books are available through my website located at [www.katyjohnson.com](http://www.katyjohnson.com), and through certain pageantry magazines, including Pageantry Magazine for which I am a columnist. (See Exhibit "1" hereto).

4. I have been informed by my many of my friends, family members, business associates and former classmates that Defendant maintains a website which, in graphic detail, describes his claimed sexual exploits with various women (the "Website"). I have been told further by them that the Website contains a nine (9) page narrative about the details of his claimed private sexual affairs with me. (See Exhibit "2" hereto).
5. I personally viewed the website and discovered that such a website did, in fact, exist. In various places throughout the Website, my name, "Katy" and "Katy Johnson" and references to "Miss Vermont" are featured with links to the narrative.
6. On the same pages as these references and on the page containing the narrative itself, Defendant offers merchandise for sale including women's panties, thong underwear, aprons, mugs, hats and other clothing bearing his name, as well as his books entitled "The Definitive Book of Pick-Up Lines" and "Belligerence and Debauchery – The Tucker Max Stories." All of this

merchandise can be purchased online through Defendant's Website.

7. On the same Website, Defendant also promotes his forthcoming appearance on the MTV show called "MTV Sex2K" which is scheduled to begin airing this week, on May 2, 2003. Based upon my knowledge of, and conversations with Defendant, I believe that his Website, and claims about me will be referenced and cross-promoted during this television broadcast. I believe that he will use this, and any publicity he receives from the show, or this lawsuit to promote his Website, books and merchandise, and further embarrass me and my family.
8. Defendant is making further use of my name and likeness on his Website by providing a link to my website <[www.katyjohnson.com](http://www.katyjohnson.com)> within the body of his narrative. (See Exhibit "2" hereto). My website is directed to and created primarily for pre-teen girls and their families in search of wholesome family values. Now any search of my title "Miss Vermont" in the major online search engines will produce results which include Defendant TUCKER MAX's Website. (See Exhibit "3" hereto). The young girls who search the internet for my name and website will now be given the option to be directed to Defendant TUCKER MAX's adult website instead.

9. I never consented to, or authorized, Defendant to use my name and likeness in any way, nor did I ever authorize such private information, notwithstanding its truth or falsity, to be disclosed publicly.
10. I have suffered great embarrassment and harm at the hands of Defendant TUCKER MAX. Many of my family members, friends, business associates and former classmates have already read Defendant's stories. I fear that more will continue to read these stories, including my father, and associate me with TUCKER MAX and his adult audience.
11. Each day that my name, likeness, image, reference to my website and these stories continue to be publicly displayed to the world on Defendant's Website the damage to my person and career therefore grows exponentially.

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MAY-01-2003 THU 11:57 AM LAW OFFICES

FURTHER THIS AFFIANT SAYETH NAUGHT.

May 1, 2003 Katy Johnson  
Date Katy Johnson

Before me, a Notary Public in and for Chittenden County, Vermont  
personally appeared Katy Johnson known to me to be the person whose name is  
subscribed to the foregoing instrument, and acknowledges to me that he/she executed  
the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this 1<sup>st</sup> day of May, 2003.

My commission expires: 2-10-07

[Signature]  
Notary Public



IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

KATY JOHNSON,  
individually,

Case No.

Plaintiff,

vs.

TUCKER MAX,  
individually,

Defendant.

\_\_\_\_\_ /

STATE OF FLORIDA            )  
COUNTY OF PALM BEACH    )

**AFFIDAVIT OF KATHLEEN B. JOHNSON, ESQ.**

I, Kathleen B. Johnson, do hereby affirm and declare the following facts upon penalty of perjury:

1. I am above the age of twenty-one (21) and am competent to testify as the herein matters. Unless otherwise indicated, all facts testified to herein are based on personal knowledge.

2. My name is Kathleen B. Johnson and I am the mother of the Plaintiff in the above captioned matter. I have been a member of the Florida Bar for the past thirty (30) years, and have practiced in Palm Beach, County for many of those years. I act as a manager and business agent to my daughter, Katy Johnson, and help to manage her business relative to her column in Pageant Magazine, and her website found at [www.katyjohnson.com](http://www.katyjohnson.com).

3. My daughter Katy Johnson was crowned Miss Vermont 1999 and Miss Vermont USA 2001. Together in a general partnership with my daughter, we commercially exploit her name, likeness, image and title in connection with several business and public interest ventures. She is both a writer and cartoonist, and publishes cartoon books intended to promote, and teach young girls, values such as self-esteem, confidence, respect, integrity, responsibility and beauty. Her books are available through our website located at [www.katyjohnson.com](http://www.katyjohnson.com), and through certain pageantry magazines including Pageantry Magazine for which she is a columnist. (See Exhibit "1" hereto).

4. I have been informed by my many of my friends, family members, business associates and former classmates that Defendant maintains an adult website which, in graphic detail, describes his claimed sexual exploits with various women (the "Website"). I have been told further by them that the Website contains a nine (9) page narrative about the details of his claimed private sexual affairs with my daughter Katy Johnson. (See Exhibit "2" hereto).

5. I personally viewed the website and discovered that such a website did, in fact, exist. In various places throughout the Website, the name, "Katy" and "Katy Johnson" and references to "Miss Vermont" are featured with links to the narrative.

7. On the same pages as these references and on the page containing the narrative itself, Defendant offers merchandise for sale including women's panties, thong underwear, aprons, mugs, hats and other clothing bearing his name, as well as his books entitled "The Definitive Book of Pick-Up Lines" and "Belligerence and

Debauchery – The Tucker Max Stories.” All of this merchandise can be purchased online through Defendant’s Website.

8. On the same Website, Defendant also promotes his forthcoming appearance on the MTV show called “MTV SEX2K” which is scheduled to begin airing this week, on May 1, 2003 at 10PM EST. From these promotions, and the television commercials I have viewed, I believe that his Website, and claims about my daughter will be referenced and cross-promoted during this television broadcast. I believe that he will use this, and any publicity he receives from the show, or this lawsuit to promote his Website, books and merchandise, and further embarrass me, my daughter and my family.

9. Defendant is making further use of my daughter’s name and likeness on his Website by providing a link to our website <[www.katyjohnson.com](http://www.katyjohnson.com)> within the body of his narrative. (See Exhibit “2” hereto). Our website is directed to and created primarily for pre-teen girls and their families in search of role models who teach wholesome family values. Now any search of the title “Miss Vermont” in the major online search engines will produce results which include Defendant TUCKER MAX’s Website. (See Exhibit “3” hereto). The young girls who search the internet for her name and website will now be given the option to be directed to Defendant TUCKER MAX’s adult website instead.

10. Neither I, nor KATY JOHNSON have ever consented to, or authorized, Defendant to use her name and likeness in any way, nor did either of us ever authorize such private information, notwithstanding its truth or falsity, to be disclosed publicly.



11. KATY JOHSON has suffered great embarrassment and harm at the hands of Defendant TUCKER MAX. Many of our family members, friends, business associates and former classmates have told us that they have already read Defendant's stories. I fear that more will continue to read these stories and associate her with TUCKER MAX and his adult audience. My daughter's relationships with the Miss Vermont and Miss Vermont USA pageants and Pageantry Magazine are now in immediate jeopardy.

12. Each day that her name, likeness, image, reference to our website and these stories continue to be publicly displayed to the world on Defendant's Website the damage to my daughter's person and career grows exponentially. There is no amount of money that can adequately remedy the continuing damage that has been done to KATY JOHNSON, our family and our business.

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

KATY JOHNSON,  
individually,

Plaintiff,

vs.

TUCKER MAX,  
individually,

Defendant.

Case No. 2003 CA 004867 AF

FILED  
03 MAY - 6 AM 9:05  
CLERK OF COURT  
Palm Beach County  
Florida

**TEMPORARY INJUNCTION**

Plaintiff's Emergency Motion for Temporary Injunction was thoroughly reviewed by this Court and has otherwise been advised in the premises.

IT IS ORDERED AND ADJUDGED as follows: This Court hereby enters a temporary injunction restraining and enjoining action against Defendant TUCKER MAX, an individual, as well as his servants, employees, attorneys, related entities, and those persons in active concert or participation with him who receive actual notice of this temporary injunction from:

1. Making any use of Plaintiff's name, portrait, photograph or other likeness for any advertising or other commercial purpose. This injunction shall apply, without limitation, to any use or inclusion by Defendant of, or reference to, the name "Katy Johnson," "Katy," "Johnson" or title "Miss Vermont" in any periodicals or books, and on his website located at [www.tuckermax.com](http://www.tuckermax.com), or at any other website, owned, maintained or controlled, directly or indirectly, by Defendant;

2. Disclosing any stories, facts or information, notwithstanding its truth, about any intimate or sexual act engaged in by Plaintiff

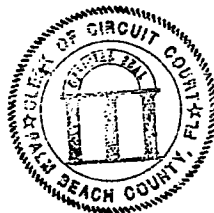
3. Providing any link to Plaintiff's website located at www.katyjohnson.com, from any website owned, maintained or controlled, directly or indirectly, by Defendant including, without limitation, the website located at www.tuckermx.com; and from

4. ~~Making any public statements, whether written or oral, about the subject matter of this litigation.~~ ~~Dr~~

It is hereby further ORDERED AND ADJUDGED that the Plaintiff shall post a bond in the amount of \$ 10,000 for any potential damages to the Defendant that may result if it is ultimately decided that injunctive relief is not warranted under the facts and circumstances of this case.

ORDERED at Palm Beach County, Florida on May 6th, 2003.

Diana Lewis  
Circuit Court Judge



PALM BEACH COUNTY - STATE OF FLORIDA  
I HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY OF RECORD IN MY OFFICE

THIS 6 DAY OF May 20 03  
DOROTHY H. WILKEN  
CLERK CIRCUIT COURT

BY Carey A. Fox DC