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UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

Richard M. Raymen and Steven P. Hansen
1957 W. Burnside # 1501
Portland, OR 97209

Plaintiffs,

v.

United Seniors Association, Inc.
d/b/a USA Next
3900 Jermantown Road, Suite 450
Fairfax, Virginia, 22030

and

Mark Montini
199 C Street SE, 4th Floor
Washington, DC 20003

Defendants.

CASE NUMBER 1:05CV00486

JUDGE: Reggie B. Walton

DECK TYPE: TRO/Preliminary Injunction

DATE STAMP: 03/09/2005

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs Richard M. Raymen and Steven P. Hansen, by their attorneys, Proskauer Rose LLP, for their complaint state as follows against defendants United Seniors Association, Inc. ("USA Next"), and Mark Montini (collectively, "Defendants"):

NATURE OF THE ACTION

1. Defendant USA Next has embarked on a homophobic smear campaign to advocate a position on Social Security. As part of that campaign, and without any permission, USA Next has used the plaintiffs' image in advertising, against their will and in a malicious and harmful way. This action arises out of that illegal use of the plaintiffs' image. In 2004, a photo containing plaintiffs' image, taken at the time of their marriage in Portland, Oregon, appeared in one of their hometown papers. In 2005, Defendants misappropriated the plaintiffs' wedding photo and used it to create and publish an advertisement entitled "The Real AARP Agenda." The advertisement, created by defendant Mark Montini, contains two images: one of the plaintiffs on their wedding day, with a green checkmark over it, juxtaposed with a second image of an American soldier bearing a red "X." The advertisement suggests that the American Association of Retired Persons (AARP) is anti-military and pro-gay-marriage, and therefore not credible on the issue of Social Security reform, an issue pending before the U.S. Congress. The advertisement was directed at the Congress and those who may influence its decision-making. The advertisement communicates the message that the plaintiffs, because they are a gay married couple, necessarily are against American troops and therefore are un-American.

2. Using defendant Montini's media consulting business with offices in Washington, DC, Defendants created and published their purposefully inflammatory advertisement in a Washington, DC-based online magazine – *The American Spectator* – with the hope and the expectation that its provocative nature would lead it to be widely republished by others. In fact, the advertisement has been republished and seen by millions of people. Defendants' advertisement has been displayed throughout the national media, including major television networks, newspapers, and on the Internet. In using the plaintiffs' image without permission in their hateful campaign, Defendants have shown callous disregard for the plaintiffs' rights and

feelings. Each of the defendants have admitted that they did not have permission to use the plaintiffs' photo, but have refused to retract the advertisement containing the photo or even to apologize.

3. As a result of the advertisement, the plaintiffs – private citizens – have suffered an extreme invasion of privacy, have been libeled and have suffered a violation of their rights to control how their image is used. Richard Raymen and Steven Hansen did not consent to serve as models for a homophobic and mean-spirited advertising campaign for a political group with whose views they strongly disagree. Accordingly, this Complaint seeks an injunction and damages from Defendants for their malicious misappropriation of the plaintiffs' image for use in the USA Next advertising campaign.

JURISDICTION AND VENUE

4. This Court has jurisdiction of this action under 28 U.S.C. § 1332. The matter in controversy greatly exceeds \$75,000, exclusive of interest and costs, and is between citizens of different states.

5. Venue is proper pursuant to 28 U.S.C. §§ 1391(a). A substantial part of the events or omissions giving rise to the claims occurred in this district. Alternatively, there is no district in which the action may otherwise be brought, and both defendants are subject to personal jurisdiction in this district.

PARTIES

6. Plaintiffs Richard M. Raymen and Steven P. Hansen are individuals residing and domiciled in Portland, Oregon. On March 3, 2004, Raymen and Hansen were married in a civil ceremony in Multnomah County, Oregon.

7. Defendant United Seniors Association, Inc. d/b/a USA Next ("USA Next") is a tax-exempt 501(c)(4) corporation organized and existing under the laws of Delaware, with its

principal place of business at 3900 Jermantown Road, Suite 450, Fairfax, Virginia, 22030. USA Next has a registered agent for service of process within this district. USA Next maintains a website at www.usanext.org, through which it, *inter alia*, solicits payment from members of the public in exchange for membership in its organization. On its IRS Form 990 for the year 2003, USA Next describes its primary Exempt Purpose as “[e]ducating senior citizens on Medicare, Social Security taxes, and other issues related to traditional American values.” Many of USA Next’s activities in serving this Exempt Purpose take place within this district, including, *inter alia*, lobbying and testifying before Congress on various issues and communicating with, to, and through various press organizations located in this district. In 2003, USA Next reported a total gross income through contributions of more than \$25 million.

8. Defendant Mark Montini is a professional political campaign strategist who operates a business venture called Mark Montini International (“MMI”), which maintains a website at www.markmontini.com. On information and belief, Montini resides and is domiciled in the state of Georgia. Montini and MMI maintain a place of business in this district at 199 C Street SE, 4th Floor, Washington, D.C. 20003. Among other activities, MMI offers Montini’s services as a speaker, media consultant and public speaking coach. MMI’s website indicates that Montini “has worked with CEO’s, Members of Congress, Members of Parliament, and leaders from four continents, 33 countries, and all 50 states.”

FACTS OF THE CASE

9. On March 3, 2004, plaintiffs were among more than 300 citizens of Multnomah County, Oregon who availed themselves of the newly established right to same-sex marriage in that jurisdiction. As Steve Hansen and Rick Raymen waited in line at City Hall for their ceremony, dressed in tuxedos, they kissed each other in celebration. A photograph of them kissing was taken by a photographer from a Portland, Oregon newspaper, the *Tribune*. That

photograph was published on or about March 4, 2004, by the *Tribune*, and also appeared on its website.

10. From February 15, 2005, to February 21, 2005, the photograph was published by the Defendants on the website of the publication called *The American Spectator* as part of a paid advertisement (the "Advertisement") placed by the political advocacy group known as USA Next, a defendant in this action. The Advertisement was created for USA Next by political strategist Mark Montini, also a defendant here. Montini has publicly admitted that the advertisement received at least 112,260 viewings on the website of *The American Spectator* alone.

11. Neither USA Next nor Montini requested or received permission from the plaintiffs to use their image from the *Tribune* photograph.

12. Neither USA Next nor Montini requested copyright permission from the *Tribune* prior to their use of the photograph, and neither has ever received any such permission. Defendants USA Next and Montini have admitted to the *Tribune*, to *Editor & Publisher* magazine, and to CNN that they lacked the right to use the photograph containing the plaintiffs' image. Even had they obtained copyright permission to use the photo, Defendants still did not have permission to use plaintiffs' image, which involves separate rights.

13. The Advertisement uses the photo containing the plaintiffs' image as part of a graphic montage. The plaintiffs' image has a green checkmark superimposed over it. To the left of that image appears an image of an American soldier with a red "X" mark superimposed over it. Underneath both images is the caption, "The Real AARP Agenda."

14. The Advertisement is part of a \$10 million campaign by USA Next against the American Association of Retired Persons ("AARP"). The purpose of the Advertisement is to

incite viewer passions against the AARP because of its alleged support of equal marriage rights for same-sex couples and its alleged lack of support of American troops. The Advertisement depicts the plaintiffs as anti-military.

15. The Advertisement also conveys the message that the plaintiffs (whose image was checked) are against American troops (as signified by an "X" through the soldier's picture), and are unpatriotic. This assertion is false. Plaintiffs are patriotic Americans who have always supported our troops in peace and during times of war. Defendants had no basis at all for suggesting that the plaintiffs do not support American troops. Defendants made their assertion about the plaintiffs knowing it to be false or with reckless disregard for the truth.

16. The inflammatory and outrageous nature of the Advertisement naturally attracted media attention and caused the Advertisement to be republished on the Internet, in newspapers, and on television, and thus receive widespread publication far beyond the viewership of *The American Spectator* website. On information and belief, millions of people have seen the advertisement. And, on information and belief, Defendants purposefully designed the Advertisement with this goal in mind, and therefore knew and intended the appearance of the Advertisement online on *The American Spectator* would result in its widespread republication online, in print media, and on television.

17. The Advertisement as it appeared on *The American Spectator* website was interactive, meaning that if a viewer clicked on it, he or she was taken to pages authored by USA Next containing information about that organization and its position on Social Security reform, and soliciting contributions from viewers to USA Next.

18. On information and belief, USA Next has received and continues to receive significant monetary contributions as a result of the Advertisement.

19. When they created and published the Advertisement, Defendants knew or should have known that the publication of the plaintiffs' image in the format in which it appeared would subject them to an invasion of privacy and ridicule.

20. As a result of the publication of the Advertisement, plaintiffs have suffered embarrassment, extreme emotional distress, and invasion of privacy. In addition, as a result of the libelous statement communicated by the Advertisement about plaintiffs, their reputations as patriotic American citizens has been severely damaged.

21. On February 28, 2005, counsel for the plaintiffs sent a letter to defendant USA Next's CEO asking that the Advertisement be retracted and that an apology be made for the unauthorized use of the plaintiffs' image. No direct response has ever been made by any of the defendants to the plaintiffs' request. On February 28, a spokesperson for USA Next misrepresented to reporters for CNN and the Washington Post that USA Next had paid for the rights to use the photograph containing the plaintiffs' image.

22. Indeed, far from being apologetic or acting to stop the harm being done to the plaintiffs, the CEO of USA Next, Charles Jarvis, ridiculed the plaintiffs' concerns, stating that the plaintiffs' protestations were "silly", "a tempest in a teapot" and "a diversionary tactic." The CEO denied that USA Next owed the plaintiffs any apology, an attitude the *Washington Post* aptly summarized as: "Buzz off."

23. While Defendant USA Next was belittling the plaintiffs' claims, Defendant Montini was attempting to create a record to cover up Defendants' wrongdoing. In early March 2005, Montini twice attempted to pay for photographs of the plaintiffs from the *Tribune* to make it look like Defendants properly had used the photo used in the Advertisement. Employees of the *Tribune* thwarted Montini in his subterfuge, and refused Montini's effort to purchase photos

of the Plaintiffs. Even had Montini been able to purchase rights to the photo from the Tribune, neither he nor USA Next would have had the right to use Plaintiffs' image since the use of that image required separate permission from the plaintiffs.

24. At all relevant times herein, on information and belief, Defendants, and each of them, had the right and ability to supervise and/or control the conduct complained of herein and each of them have derived substantial financial and other benefits from such conduct. There is a substantial and continuing connection among them with respect to the tortious acts and other conduct alleged herein.

25. Defendants' conduct, as described above, is causing and, unless enjoined and restrained by this Court, will continue to cause plaintiffs great and irreparable injury that cannot fully be compensated with monetary damages. Plaintiffs therefore have no adequate remedy at law. Plaintiffs are entitled to equitable relief in the form of a permanent injunction prohibiting further tortious acts.

26. Of the jurisdictions whose laws may apply to the facts of this Complaint, the State of Oregon has the strongest interest in seeing its laws applied to these facts.

COUNT ONE: LIBEL
(Against Both Defendants)

27. Plaintiffs incorporate by reference each and every averment contained in paragraphs 1 through 26, inclusive.

28. The Advertisement as described herein contains a defamatory statement about the plaintiffs, stating directly or by implication that the plaintiffs are unpatriotic American citizens who do not support the United States military while our nation is at war.

29. As described herein, by placing the Advertisement on the public website of *The American Spectator*, USA Next and Montini made the defamatory statement about the plaintiffs.

30. In so doing, USA Next and Montini have subjected the plaintiffs to hatred, contempt and ridicule, and have diminished the esteem, respect, goodwill and confidence in which the plaintiffs are held.

31. USA Next and Montini further have caused adverse, derogatory and unpleasant feelings and opinions against the plaintiffs through the statement contained in the Advertisement.

32. USA Next and Montini published the defamatory statement contained in the Advertisement to numerous third parties through wide public dissemination on *The American Spectator's* website as described herein.

33. The numerous third parties who viewed the Advertisement understood the defamatory statement regarding the plaintiffs.

34. The plaintiffs are patriotic American citizens who fully support the United States military.

35. The statement contained in the Advertisement is false.

36. USA Next and Montini published the defamatory statement in the Advertisement maliciously, with knowledge of its falsity or with reckless disregard as to the falsity of the statement.

37. Through their conduct averred herein, Defendants have caused the plaintiffs significant injury, in the form of severe damage to their personal and professional reputations, the risk of threats to their personal safety, and severe emotional distress.

38. The plaintiffs accordingly are entitled to compensatory and punitive damages to remedy their injuries.

COUNT TWO: INVASION OF PRIVACY (APPROPRIATION OF LIKENESS)
(Against Both Defendants)

39. Plaintiffs incorporate by reference each and every averment contained in paragraphs 1 through 38, inclusive.

40. As stated herein, USA Next and Montini obtained and used a photograph containing easily-discernible likenesses of the plaintiffs in the Advertisement.

41. USA Next and Montini obtained and used the likenesses of the plaintiffs without any explicit or implicit permission from the plaintiff.

42. USA Next and Montini benefited commercially from the use of the plaintiffs' likenesses through incorporation of their likenesses in an public advertisement.

43. The Advertisement resulted in commercial benefit to Mark Montini through fees for designing the advertisement.

44. The Advertisement resulted in commercial benefit to USA Next through promotion of the organization's purported message and new membership dues and contributions.

45. Accordingly, USA Next and Montini are required to compensate the plaintiffs for the economic value and unjust enrichment of the commercial benefit each Defendant gained for use of the plaintiffs' likenesses.

46. The plaintiffs accordingly are entitled to compensatory and punitive damages to remedy their injuries.

COUNT THREE: INVASION OF PRIVACY (FALSE LIGHT)
(Against Both Defendants)

47. Plaintiffs incorporate by reference each and every averment contained in paragraphs 1 through 46, inclusive.

48. The Advertisement as described herein contains a statement about the plaintiffs, stating directly or by implication that the plaintiffs are unpatriotic American citizens who do not support the United States military.

49. As described herein, by placing the Advertisement on the public website of *The American Spectator*, USA Next and Montini made the statement about the plaintiffs.

50. This statement is highly offensive to a reasonable person.

51. USA Next and Montini published the statement contained in the Advertisement to numerous third parties through wide public dissemination on *The American Spectator's* website as described herein.

52. The numerous third parties who viewed the Advertisement understood the statement regarding the plaintiffs.

53. The plaintiffs are patriotic American citizens who fully support the United States military.

54. The statement contained in the Advertisement is therefore false and publicly places the plaintiffs in a false light.

55. USA Next and Montini published the false statement in the Advertisement maliciously, with knowledge of its falsity or with reckless disregard as to the falsity of the statement and the false light in which the plaintiffs would be placed.

56. Through their conduct averred herein, Defendants USA Next and Montini have caused the plaintiffs significant injury, in the form of severe damage to their personal and professional reputations, fear for their personal safety, and severe emotional distress.

57. The plaintiffs accordingly are entitled to compensatory and punitive damages to remedy their injuries.

COUNT FOUR: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Against Both Defendants)

58. Plaintiffs incorporate by reference each and every averment contained in paragraphs 1 through 57, inclusive.

59. In developing, promoting, and disseminating the Advertisement as described herein, USA Next and Montini intended to cause or knew with substantial certainty that they would cause the plaintiffs severe emotional distress.

60. In developing, promoting, and disseminating the Advertisement as described herein, USA Next and Montini engaged in outrageous conduct that grossly exceeded the bounds of socially tolerable behavior.

61. The outrageous conduct did in fact cause the plaintiffs to suffer severe emotional distress, in the form of continuing public humiliation and severe fear for their personal safety, as well as psychological harm.

62. The plaintiffs accordingly are entitled to compensatory and punitive damages to remedy their injuries.

* * *

Wherefore, Plaintiffs pray for judgment of at least \$25,000,000 against the Defendants, and each of them, as follows:

1. Permanently enjoining and restraining Defendants, their officers, directors, principals, agents, servants, employees, successors and assigns and all those in active concert or participation with them, from:

a. directly or indirectly reproducing, adapting, distributing, publicly displaying, transmitting, offering, advertising, marketing, publishing, using or otherwise exploiting, by any means, any material or product, in any form, bearing any unauthorized reproduction, imitation or simulation, in whole or in part, of Plaintiffs' likenesses, including but not limited to the image identified in this Complaint;

b. causing, contributing to, enabling, facilitating or participating in any of the conduct described in paragraph 1(a), above;

2. Directing that Defendants be required to account for and relinquish to the plaintiffs all direct and indirect gains, profits and advantages derived by each of them through their use of plaintiffs' image, and otherwise, as may appear proper to the Court;

3. Directing that Defendants USA Next publicly retract their defamatory statements described in this Complaint;

4. Awarding compensatory damages to the plaintiffs, including damages for injury to personal and professional reputation, appropriation of likeness, severe emotional distress, and all other damage arising out of the Defendants' tortious acts as described herein;

5. Awarding exemplary and punitive damages to the plaintiffs;

6. Awarding to the plaintiffs the costs of this action, together with reasonable attorneys' fees; and
7. Awarding such other and further relief as the Court may deem just and proper.
8. Plaintiffs demand a trial by jury.

Dated: March 9, 2005

Respectfully submitted,

PROSKAUER/ROSE LLP

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