

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

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U.S. DISTRICT COURT
N.D. OF ALABAMA

DAVID SNOW,)
)
 Plaintiff,)
)
 v.)
)
 WHOLE FOODS MARKET, INC.,)
)
 Defendant.)

JURY DEMAND

CASE NO. _____

CV-08-CO-0058-W

COMPLAINT

This action is brought under Alabama Tort Law claims of "False Light" Invasion of Privacy, "Commercial Gain" Invasion of Privacy, as well as claims of breach of verbal contract and fraud.

Jurisdiction

Jurisdiction in this action is based on 28 U. S. Code § 1332, in that there is complete diversity between the parties and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

Parties

1. The Plaintiff, David Snow, is an individual over the age of nineteen (19) years old, and is a resident of the State of Alabama. His farm, Snow's Bend Farm, is located in Coker, Alabama, which is within this judicial district and division.

2. The Defendant, Whole Foods Market, Inc. ("Whole Foods" or "Defendant") is a corporation organized and existing under the laws of the State of Texas, with its principle place of business located at 550 Bowie Street, Austin, TX, 78703.

Defendant is a publicly-owned company which is engaged, directly and through its owned and controlled subsidiaries, affiliates and agents, in the business of owning and operating a chain of supermarket grocery and food stores in the United States, Canada, and the United Kingdom.

3. Defendant conducts business in the State of Alabama and in the Northern District of Alabama. Whole Foods is subject to the jurisdiction and the venue of this Court.

4. Whole Foods may be served with process by and through its registered agent CT Corporation System, 1021 Main Street, Suite 1150, Houston, TX, 77002.

Factual Allegations

5. Since approximately 2003, Plaintiff, along with partner, Margaret Ann Toohey, have owned and maintained Snow's Bend Farm, producing a wide variety of fruits and vegetables, as well as various types of flowers.

6. Since starting Snow's Bend Farm, Plaintiff has earned the reputation of being able to deliver high quality produce and, therefore, is able to sell to many fine, "high end" restaurants in the Birmingham area, such as Bottega, Highlands Bar & Grill, Chez Fon Fon, and Satterfields. During the summer months Snow's Bend Farm sells produce and flowers at the Pepper Place Market. Additionally, Plaintiff sells produce to individuals who live in Tuscaloosa County, Alabama.

7. Defendant Whole Foods Market owns and operates only one supermarket retail store in Alabama, recently opening in the Mountain Brook area of Birmingham at address 3100 Cahaba Village Plaza, Birmingham, Alabama, 35243.

8. As the opening of Defendant's Mountain Brook location drew near, Plaintiff was contacted by Alex Rilko, South-Eastern Produce Coordinator for Whole Foods regarding potentially buying from Plaintiff.

9. Defendant wished to send a team to Plaintiff's farm to interview Plaintiff and photograph the farm. When this event occurred in January of 2007, Plaintiff requested, and Defendant agreed, that none of the information collected by Defendant's team (interviews nor photographs) were to be used in any way by Defendant unless Defendant patronized Snow's Bend.

10. After the January 2007 meeting at Plaintiff's farm, Plaintiff did not hear from Mr. Rilko or any other agent or employee of Defendant again until May of 2007.

11. In an e-mail correspondence dated May 9, 2007, Mr. Rilko apologized to Mr. Snow for the delay in responding to him regarding purchasing produce from Snow's Bend Farm. Mr. Rilko included a price listing of the various items Whole Foods could purchase from growers such as Plaintiff. This was the final communication Plaintiff ever received from any agent or employee of Defendant.

12. Defendant has never attempted to purchase anything from Snow's Bend Farm or Mr. Snow at any time.

13. Despite Defendant's failure to buy from Plaintiff as was agreed upon as a condition of Defendant's usage of Plaintiff's likeness or information collected during the January 2007 meeting, Defendant has published Plaintiff's name (incorrectly as Damon Snow), and photographic image on its website, in a section devoted to local growers.

The words "Supporting Local" appear by both Plaintiff's name and photograph on the webpage. Attached hereto are relevant pages from Defendant's website.

COUNT I
"FALSE LIGHT" INVASION OF PRIVACY

14. Plaintiff incorporates the contents of paragraphs 1 through 13 of this Complaint as if set forth here in their entirety.

15. Despite the fact that Defendant has failed to patronize Plaintiff or Snow's Bend Farm in any way, shape or form, Defendant presents to the public, through the usage of Plaintiff's image, name and information on their website, the "false light" impression that Plaintiff is a local grower with which Defendant conducts business.

16. This impression is reasonably offensive to Plaintiff, not only because it is patently false, but also because Defendant's usage of Plaintiff's information and image are without authorization.

17. WHEREFORE, the Plaintiff demands judgment against the Defendant for damages, actual and compensatory, injunctive relief, attorneys' fees, and such other relief as this Court deems appropriate.

COUNT II
"COMMERCIAL USE" INVASION OF PRIVACY

18. Plaintiff incorporates the contest of paragraphs 1 through 17 of this Complaint as if set forth here in their entirety.

19. Defendant appropriated Plaintiff's likeness and personality without consent for the purpose of commercial gain.

20. By posting Plaintiff's image and name on its website, Defendant implicitly represents that some of the produce provided in Defendant's stores came from Plaintiff's organic farm, thereby appropriating the public good will associated with Plaintiff's successful presence throughout the Birmingham area.

21. Therefore, any profit Defendant acquires as a result of this false implication represents an injurious and erroneous earning that is wholly unjust.

22. WHEREFORE, the Plaintiff demands judgment against the Defendant for damages, actual and compensatory, injunctive relief, attorneys' fees, and such other relief as this Court deems appropriate.

COUNT III
FRAUDULENT MISREPRESENTATION

23. Plaintiff incorporates the content of paragraphs 1 through 22 of this Complaint as if set forth here in their entirety.

24. Defendant knowingly used Plaintiff's name and likeness, despite Plaintiff's request, and Defendant's agreement with that request forming a verbal contract, that should Defendant not purchase any items from Plaintiff's farm the use of his likeness was prohibited.

25. Plaintiff relied on this verbal agreement, and therefore agreed to the interviews and the photographs of himself and the farm.

26. Taking advantage of Plaintiff's reliance on the agreement, Defendant took the interviews and photographs and used them for their own commercial gain.

27. WHEREFORE, the Plaintiff demands judgment against the Defendant for damages, actual and compensatory, injunctive relief, attorneys' fees, and such other relief as this Court deems appropriate.

COUNT IV
BREACH OF CONTRACT

28. Plaintiff adopts and realleges the allegations set forth in paragraphs 1 through 27 of this Complaint as if set forth fully and completely.

29. Whole Foods willfully and recklessly breached the terms of the verbal contract entered into when Defendant interviewed and photographed Plaintiff at his farm.

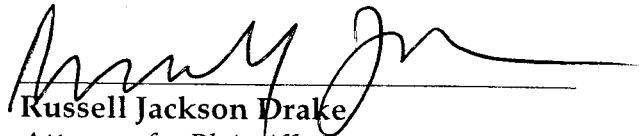
25. The terms of the verbal agreement between the Plaintiff and the Defendant regarding the usage of Plaintiff's image or interviews were unambiguous and the Defendant knowingly made use of the information and the pictures of Plaintiff and Snow's Bend Farm.

26. As a result of this breach, Plaintiff's accumulated goodwill has been appropriated for the personal gain of the Defendant, without Plaintiff's consent.

27. In light of the Defendant's disregard for the agreement entered into between Defendant and Plaintiff in January 2007, which is evidenced by Defendant's willful breach of that agreement, Plaintiff believes punitive damages to be appropriate. Plaintiff seeks an amount to be determined by the jury, which Plaintiff believes will be in excess of \$100,000.00.

28. WHEREFORE, the Plaintiff demands judgment against the Defendant for damages, actual and compensatory, injunctive relief, attorneys' fees, and such other relief as this Court deems appropriate.

Respectfully Submitted,

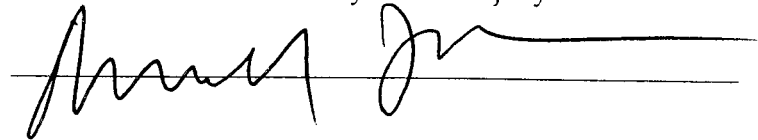


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Plaintiff demands trial by a struck jury.



REQUEST FOR SERVICE BY CERTIFIED MAIL

Please serve Defendant by Certified Mail at the following address:

Whole Foods Market, Inc.
c/o Registered Agent: CT Corporation System
1021 Main Street, Suite 1150
Houston, TX 77002