

STATE OF MICHIGAN

IN THE THIRTIETH CIRCUIT COURT FOR THE COUNTY OF INGHAM

AMINUR KHAN, an Individual,

Plaintiff,

V.

CALL PHOTOGRAPHY,
a domestic corporation,

Defendant.

Case No.: 12-366-CZ

Hon.

JOYCE DRAGANCHUK

THE LAW OFFICE OF EDWAR A. ZEINEH
EDWAR A. ZEINEH (P71923)
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2012 APR -9 P 2:19
FILED
JANE ERYANTON
CLERK OF THE 30TH
JUDICIAL CIRCUIT COURT
COUNTY OF INGHAM

COMPLAINT AND JURY DEMAND

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint. Neither has a complaint been filed and later dismissed by the parties in issue.

JURISDICTION AND PARTIES

1. Plaintiff AMINUR KHAN is a resident of the City of Chicago, County of Cook, State of Illinois.
2. At the time of the allegations herein, Plaintiff resided in the City of Lansing, County of Ingham, State of Michigan.

3. Defendant CALL PHOTOGRAPHY, LLC is a domestic for profit corporation. Defendant maintains a registered agent at 950 W. University Drive, Ste 300, Rochester, MI 48135. Defendant maintains a mailing address at P.O. Box 336, Whitmore Lake, MI 48189.
4. At all times relevant hereto, Defendant acted through its actual and/or apparent agents, servants, and employees, who at all times relevant hereto performed within the scope of their agency and/or employment.
5. The events giving rise to this cause of action occurred in Ingham County, State of Michigan.
6. That the amount in controversy exceeds \$25,000.00 exclusive of interest, costs, and attorney fees.

FACTUAL BACKGROUND

7. Plaintiff incorporates by reference all paragraphs above as though fully pled herein.
8. At all times pertinent, Plaintiff was a law student at Thomas M. Cooley Law School (hereinafter "Cooley Law School") located at 300 South Capital Avenue, Lansing, MI 48901.
9. Plaintiff has suffered with aesthetic difficulties with the complexion of his face for the majority of his adolescence and adult life.
10. Upon information and belief, Cooley Law School contracts with Defendant to provide "senior pictures" to Cooley Law School's graduating class.
11. In February 2011, Plaintiff appeared at Cooley Law School and was photographed by Defendant Call Photography

12. On November 22, 2011 Defendant circulated an email (hereinafter the "Email") to Plaintiff's entire graduating class, and May 2011, September 2011, January 2012 and may 2012 graduating classes and perhaps others, announcing that:

We offer two types of retouching: complexion and extensive. Complexion retouching includes softening of lines under eyes, under eye darkness, removing blemishes, stray hairs, and minor glass glare.

Extensive retouching can include major changes to hair, teeth whitening, and major glass glare. Please call our office if you are unsure which type of retouching you need.

[Plaintiff's Photograph]

If you have already made you composite selection, it is not too late to order retouching for the composite board.

If you haven't made a selection, the deadline to make your selection is \$5.00 [sic].

Click here to **Order Online**

If this link does not work, login at www.callphotography.com.

Customer ID **223033**

Web password **0**

OR, call 800-997-4980 and place your order with our helpful staff.

13. The Email was sent from Defendant's email address at cpSERVICE@charter.net
14. The Email contained a side-by-side comparison of Plaintiff's complexion before and after Defendant's retouching process.
15. This side-by-side comparison accentuated the extensive blemishes on Plaintiff's face and quickly became the subject of conversation throughout Cooley Law School and Plaintiff's colleagues.

16. Plaintiff did not, and has not ever given Defendant permission to use his photograph for commercial or any other purpose.

COUNT I
VIOLATION OF PRIVACY RIGHTS

Appropriation of Plaintiff's Likeness for Defendant's Commercial Advantage

17. Plaintiff incorporates by reference all paragraphs above as though fully pled herein.

18. The Michigan Supreme Court has recognized the right of privacy and that tort claims can be brought for invasions of privacy rights.

19. One such cause of action arises where a defendant appropriates the plaintiff's name or likeness for defendant's advantage.

20. Defendant included Plaintiff's photograph in the November 22, 2011 Email.

21. The Email is an advertisement is for a complexion and extensive retouching service offered by Defendant.

22. The Email advertisement is intended to solicit business from the recipients of the Email.

23. Business derived from the Email generates monetary income for Defendant.

24. It is to Defendant's advantage to generate monetary income.

25. Defendant made use of Plaintiff's likeness without Plaintiff's permission to do so.

26. As a direct and proximate cause of Defendant's conduct, Plaintiff has been subject to substantial damages including extreme mental and emotional distress, humiliation, embarrassment, outrage and other mental anguish that naturally flow from Defendant's conduct.

COUNT II

NEGLIGENCE

Defendant Negligently Circulated an Embarrassing Photograph of Plaintiff

27. Plaintiff incorporates by reference all paragraphs above as though fully pled herein.
28. Defendant, directly or through its agents, actual or apparent, had a duty to manage and preserve Plaintiff's photographs in a manner that would not expose Plaintiff to undue embarrassment and humiliation.
29. Defendant breached said duty by negligently sending the Email to students at Cooley Law School and perhaps others.
30. As a direct and proximate cause of Defendant's conduct, Plaintiff has been subject to substantial damages including extreme mental and emotional distress, humiliation, embarrassment, outrage and other mental anguish that naturally flow from Defendant's conduct.

COUNT III

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

31. Plaintiff incorporates by reference all paragraphs above as though fully set forth herein.
32. That Defendant's appropriation of Plaintiff's photograph was so outrageous and deplorable that it shocks the conscious of an orderly society.
33. That Plaintiff's damages are a direct and proximate cause of Defendant's conduct.
34. That Defendant's conduct caused extreme mental and emotional distress to the Plaintiff and resulted in humiliation, embarrassment, outrage and other mental anguish that naturally flow from Defendant's conduct.

PRAYER FOR RELIEF

PLAINTIFF REQUESTS that this Honorable Court enter judgment against Defendant in whatever amount Plaintiff is found to be entitled, together with costs, interest, and attorney fees as provided by law.

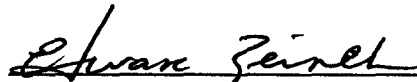
JURY DEMAND

Plaintiff respectfully demands a trial by jury.

Respectfully Submitted,

THE LAW OFFICE OF EDWAR A. ZEINEH

DATED: APRIL 3, 2012



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