

PUBLIC CITIZEN LITIGATION GROUP

1600 20TH STREET, N.W.
WASHINGTON, D.C. 20009-1001

—
(202) 588-1000

BY TELECOPIER: 404-527-4198

October 17, 2012

J. Randolph Evans, Esquire
Suite 5300
303 Peachtree Street, NE
Atlanta, Georgia 30308

Dear Mr. Evans:

This letter responds to your October 8, 2012 letter to Lipstick Alley, which you chose to send not to Lipstick Alley but rather to the Internet data center that hosted Lipstick Alley's web site at the time of your letter, and to another data center that had previously hosted the site.

Your letter charges Lipstick Alley with legal responsibility for statements posted on Lipstick Alley about the sexual activities and sexual inclinations of the elected mayor of Atlanta, Kasim Reed, and of several high-level city appointees. You claim that, upon receiving your unsworn contention that these posted statements are false, Lipstick Alley becomes legally responsible for knowing that they are, in fact, false; you demand that Lipstick Alley retract that statements; and you assert that if the statements remain posted on or after October 18, Reed reserves the right to sue Lipstick Alley and, indeed, its former hosting companies for defamation.

Your demands reflect a woeful ignorance of the facts and the law. Lipstick Alley is a forum that allows members of the public to express their views about public figures such as elected officials, professional athletes, and popular entertainers and writers. Lipstick Alley's members are predominantly African American females, but all races and genders are welcome. Messages are posted on Lipstick Alley without any involvement by the site's creator, and Lipstick Alley does not express its own views about such subjects. Each of the statements about which you complain has been placed on Lipstick Alley by one of its users.

Lipstick Alley does not know whether its members are telling the truth about Kasim Reed, any more than it knows whether you are telling the truth when you deny the truth of those statements. For all we know, the anonymous users of the web site may have personal knowledge of facts they discuss, but I am confident that you yourself have no personal knowledge about whether Reed or any of the other public officials have engaged in the sexual activities mentioned in your letter. For all of these reasons, Lipstick Alley is in no more position to "retract" the statements that it did not make than it would be to confirm them.

Moreover, a federal statute, 47 U.S.C. § 230, makes Lipstick Alley absolutely immune from

J. Randolph Evans, Esquire
October 17, 2012
page 2

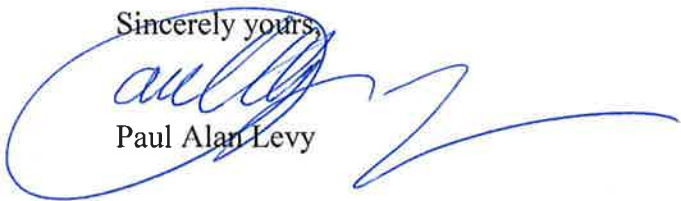
being held liable for statements placed on its interactive web site by other information providers, and indeed from being sued for those statements. *Doe v. MySpace*, 528 F.3d 413 (5th Cir. 2008); *Universal Communications Sys. v. Lycos*, 478 F.3d 413 (1st Cir. 2007); *Whitney Information Network v. XCentric Ventures*, 199 Fed. Appx. 738 (11th Cir. 2006); *Carafano v. Metrosplash.com*, 339 F.3d 1119 (9th Cir. 2003); *Green v. AOL*, 318 F.3d 465 (3d Cir. 2003); *Ben Ezra, Weinstein & Co. v. AOL*, 206 F.3d 980 (10th Cir. 2000); *Zeran v AOL*, 129 F.3d 327 (4th Cir. 1997); *Eckert v. Microsoft Corp.*, 2007 WL 496692 (E.D. Mich. Feb. 13, 2007).

If your client has any claim, the claim would be against the Lipstick Alley users who posted the statements about which you complain. If you seek to identify those users, you will need to sue them for defamation, and then obtain subpoenas from a court of competent jurisdiction in Michigan. Generally speaking, if you comply with the *Dendrite* standards for each of the identities that you seek, Lipstick Alley will review your showing before deciding whether to oppose discovery, or whether to leave it to the posters to defend their own First Amendment right to criticize Reed anonymously. *Dendrite v. Doe*, 342 N.J. Super. 134, 775 A.2d 756 (N.J. App. 2001). But in the event that you file the lawsuit that you threaten against Lipstick Alley, it will defend itself vigorously and, indeed, it reserves the right to seek an award of attorney fees under the relevant anti-SLAPP statute or based on the bringing of frivolous litigation.

You may have noticed that the thread about Reed disappeared temporarily from the Lipstick Alley web site, but that was not my client's doing—it was, rather, due to the weak-kneed response from Lipstick Alley's hosting service at the time, PhoenixNAP, which initially took Lipstick Alley offline altogether, and then restored connectivity on the condition that Lipstick Alley reach a compromise with your client. Instead of consenting to those conditions, Lipstick Alley has found a new hosting service that can be counted on to stand up for its customers' legal rights. I suppose Lipstick Alley can be grateful to you for helping to educate it about what a useless company PhoenixNAP is.

Moreover, Lipstick Alley is not willing to conduct any discussions with you in response to your meritless demand. On some occasions in the past, Lipstick Alley has taken strong statements off the public portions of its web site in response to reasonable requests from representatives of criticized individuals who recognized that Lipstick Alley is not legally liable but provided sensible arguments about why particular messages ought to be removed. But Lipstick Alley does not negotiate with bullies. You may advise your client that he can expect the messages about which you previously complained to remain on the site in perpetuity.

Sincerely yours,


Paul Alan Levy