

PUBLIC CITIZEN LITIGATION GROUP

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June 14, 2012

Neil Meyer, Esquire
Stone, Meyer, Genow, Smelkinson & Binder
Fifth Floor
9665 Wilshire Boulevard
Beverly Hills, California 90212

Dear Mr. Meyer:

I write in response to your June 13 letter to Lipstick Alley, complaining about users of the Lipstick Alley message boards having posted statements relating to whether your client, an actor named Chris Evans, has sought treatment for a sexually transmitted disease. You demand that Lipstick Alley remove “all references” to Evans from its site, and that it do so within hours of the demand; you threaten that if this action is not taken, Evans will file suit. And you assert that Lipstick Alley is “specifically prohibited” from either publishing your letter or even mentioning it publicly.

Lipstick Alley is not going to comply with any of your demands. And, indeed, I cannot think of a strategy better suited to drawing both yourself and Evans into disrepute than by sending a letter such as yours. Given that you are billed as an “entertainment lawyer,” it is amazing that you may never have taken the “Streisand effect” into account in deciding whether to send your letter.

Lipstick Alley is a message board forum, aimed particularly at an audience of African-American women but open to all members of the public. By completing a free registration, members of the public can choose a unique username and, eventually, a unique avatar or image, and post messages about issues of interest to themselves and other readers. There is no charge for posting or for reading content, or indeed for any of the other activities that are open either to the general public or only to registered members, such as creating “threads” or topics for comment, and sending private messages among members. The Evans-related material about which you complain, appearing at <http://www.lipstickalley.com/f15/chris-evans-might-have-std-allegedly-404365/> and <http://www.lipstickalley.com/f15/can-we-have-chris-evans-thead-401077/>, consists entirely of items posted by Lipstick Alley’s users.

As a lawyer with more than twenty-five years experience, you should be well-acquainted with section 230 of the Communications Decency Act, which protects Lipstick Alley from suit on each of the causes of action cited in your letter. *E.g.*, *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1125 (9th Cir. 2003); *Ben Ezra, Weinstein & Co. v. America Online*, 206 F.3d 980, 983 (10th Cir.

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2000); *Barrett v. Rosenthal*, 40 Cal.4th 33, 51 Cal. Rptr.3d 55, 146 P.3d 510, 514, 525 (Cal. 2006). You are apparently trying to evade that immunity by making a reference to a right of publicity cause of action, but if Chris Evans is as great an actor as you claim, Evans is a public figure who is appropriately a subject of public comment, and the right of publicity cannot be asserted against such discussions just because they appear in a forum that carries advertising. *Gionfriddo v. Major League Baseball*, 94 Cal. App.4th 400, 410-414 (Cal. App. 2001). Indeed, unless there is a likelihood of confusing the public into believing that the celebrity has consented to the use of Evans' name and image, the state-law cause of action would violate the First Amendment. *L.L. Bean v. Drake Publishers*, 811 F.2d 26, 32-33 (1st Cir. 1987). Moreover, even if the right of publicity is otherwise deemed an "intellectual property" claim within the meaning of 47 U.S.C. § 230(e)(2), the Court of Appeals for the Ninth Circuit has held that section 230 immunity extends to state-law intellectual property claims. *Perfect 10 v. CCBill*, 488 F.3d 1102 (9th Cir. 2007).

Finally, there are some oddities about your letter that make me wonder how seriously you are taking the matter. The letter is signed as having been dictated but not read, and although the photograph of Evans that appears on Lipstick Alley certainly makes it appear that "Chris" is a male, you refer to Evans using both male and female pronouns. And the closing sentence of your letter asserts that your demand is a "confidential legal communication" and purports to forbid Lipstick Alley from publishing the letter or even "reporting publicly on its substance," even though it is well-known that demand letters such as yours are often publicized and that there is no legal reason why they cannot be published. In fact, I am going to be publishing your letter side-by-side with my own so that the public can judge accordingly.

Because I don't have addresses for Chris Evans, who is cc'd on your letter, I'd be grateful if you would forward this letter to Evans. Assuming that the Megan Moss who is also cc'd on your letter is Megan Moss Pachon, of the ID publicity firm, I am sending a copy directly to her.

Sincerely yours,


Paul Alan Levy

cc: Megan Moss Pachon
(323) 822-4880