

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS – EASTERN DIVISION**

MEANITH HUON,)	
)	
Plaintiff,)	
)	
v.)	Case No. 11-cv-03054
)	
ABOVETHELAW.COM, et al.,)	Judge Aspen
)	
Defendants.)	Magistrate Judge Gilbert

**SUMMARY OF THE
MEMORANDUM IN SUPPORT OF ABOVE THE LAW DEFENDANTS’
MOTION TO DISMISS PURSUANT TO RULE 12(b)(6) AND ITS EXHIBITS**

The ATL Defendants¹ are filing this summary of their memorandum in support of their Rule 12(b)(6) motion to dismiss (“Memorandum”) pursuant to the Court’s December 5, 2011, order.

Background. Plaintiff Meanith Huon alleges several claims against the ATL Defendants based on a post that was published on the blog AboveTheLaw.com (the “Post”). All of Plaintiff’s legal theories fail. The Post quoted and discussed a news report about Plaintiff’s trial for sexual assault. At Paragraphs 24-25 of the Second Amended Complaint, Plaintiff identifies forty separate reasons why he believes the Post is actionable.

Defamation and false light claims. For the most part, Plaintiff disputes the accuracy of the trial testimony that the Post describes; however, the Post’s description of the trial is privileged as a fair report of a governmental proceeding. The Post’s commentary on the trial testimony is privileged for the same reason and also as an expression of opinion and rhetorical hyperbole. Plaintiff also fails to state a claim for defamation or false light invasion of privacy

¹ The ATL Defendants are Breaking Media, LLC (erroneously sued as AboveTheLaw.com, BreakingMedia.com, and Breaking Media), David Lat, Elie Mystal, John Lerner, and David Minkin.

because he does not allege special damages. Finally, many of the statements that Plaintiff identifies in Paragraphs 24-25 of his Second Amended Complaint are clearly not actionable because they plainly do not refer to Plaintiff, would not tend to harm his reputation, or simply do not appear in the Post at all.

Other causes of action. Plaintiff also alleges claims of intentional infliction of emotional distress, conspiracy, and cyberstalking. The emotional distress claim fails for the same reasons as the defamation and false light claims and also because Plaintiff does not allege “extreme and outrageous” conduct. Plaintiff’s cyberstalking claim is based on Illinois’s criminal stalking law. The Court should not allow a private cause of action under that statute, which at any rate would not apply here. The Court should dismiss Plaintiff’s conspiracy claim along with his other claims and also because Plaintiff has simply recited the elements of a conspiracy claim without alleging any facts at all.

Chart attached to Memorandum. Because of the volume of Plaintiff’s allegations, the ATL Defendants attached a chart to their Memorandum that specifies which defenses apply to which of Plaintiff’s allegations. The ATL Defendants believe that this chart will aid the Court in considering their arguments for dismissal. For each of Plaintiff’s allegations, the chart provides the corresponding language of the Post (if any exists) and identifies the defenses that apply to that allegation. Additionally, to the extent that any portion of the transcript of Plaintiff’s trial is relevant to consideration of an allegation, the chart lists the page of the transcript on which the relevant testimony occurs.

Exhibit A – the Post. Exhibit A to the Memorandum is a copy of the Post. Plaintiff attached portions of the Post as an exhibit to the Second Amended Complaint, but the version attached to the Memorandum is complete and more easily readable.

Exhibit B – the trial transcript. Exhibit B to the Memorandum is a copy of the transcript of the first day of Plaintiff’s trial (omitting 119 pages of voir dire that are not relevant to this case). Names and addresses have been redacted from the transcript pursuant to Magistrate Judge Gilbert’s October 12, 2011, order. In the chart that is attached to the Memorandum, the ATL Defendants identify the pages of the transcript relating to each of Plaintiff’s allegations in this case (as applicable). The ATL Defendants have requested that the Court take judicial notice of the trial transcript and consider it in deciding the motion to dismiss and have requested in the alternative that the Court convert the ATL Defendants’ motion to a motion for summary judgment pursuant to Rule 12(d).

Dated: December 12, 2011

Respectfully submitted,

BREAKING MEDIA, LLC (erroneously sued as AboveTheLaw.com, BreakingMedia.com, and Breaking Media), DAVID LAT, ELIE MYSTAL, JOHN LERNER, AND DAVID MINKIN

By: /s/ Steven P. Mandell
One of their attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that he caused to be served and filed the foregoing ***Summary of the Memorandum in Support of Above The Law Defendants' Motion to Dismiss Pursuant to Rule 12(b)(6) and Its Exhibits***, a copy of which is hereby electronically filed with the United States District Court, Northern District, Eastern Division, and the same being served pursuant to CM/ECF this 12th day of December, 2011 on the following attorney of record:

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_____/s/ Steven P. Mandell_____