

DOCKET NO: DBD-CV-08-4008461-S	:	SUPERIOR COURT
	:	
CARL GLATZEL, JR., ET AL,	:	J.D. OF DANBURY
	:	
Plaintiffs,	:	AT DANBURY
	:	
v.	:	
	:	
GERALD D. BRITTLE, ET AL.,	:	DECEMBER 23, 2010
	:	
Defendants.	:	

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT IUNIVERSE
INCORPORATED'S MOTION TO STRIKE COUNTS ONE THROUGH FOUR
OF THE AMENDED COMPLAINT DATED NOVEMBER 9, 2010**

Pursuant to Connecticut Practice Book sections 10-39 to -45, Defendant iUniverse Incorporated (“iUniverse”), hereby submits this memorandum of law in support of its motion to strike Counts One through Four of Plaintiffs’ Amended Complaint dated November 9, 2010 (the “Second Amended Complaint”) as against it. Plaintiffs Carl Glatzel, Jr. and David Glatzel (“Plaintiffs” or the “Glatzels”) brought this action alleging that the republishing of a book entitled “The Devil in Connecticut” invaded their privacy and defamed them because the book stated that certain incidents in their youths had been caused by demonic possession or influence.

As alleged by Plaintiffs, the book, originally published in 1983, was written by defendant Gerald Brittle based upon an account provided by defendant Lorraine Warren, a famed paranormal investigator. Brittle and Warren arranged for the book to be republished in 2006 using services provided by defendant iUniverse. Plaintiffs previously asserted a variety of claims against

iUniverse based upon republication of the book, including “invasion of right to privacy,” libel, negligent and intentional infliction of emotional distress, unjust enrichment, and a statutory unfair trade practices (CUTPA) claim. On October 25, 2010, the Court (Maronich, J.) issued a Ruling striking all of the Plaintiffs’ claims except for a lone libel count. (Dkt. # 124.00.) With respect to the “invasion of privacy” count, Judge Maronich held that Connecticut law recognizes four distinct causes of action for invasion of privacy and Plaintiffs had failed to articulate which legal theories they intended to pursue, as required. He also concluded, however, that even when viewed in the light most favorable to the non-movant, the Plaintiffs’ allegations were insufficient to support a claim under *any* of the four recognized categories of invasion of privacy. Nonetheless, in their Second Amended Complaint, without addressing the Court’s substantive conclusions, Plaintiffs merely replead their invasion of privacy claims by separating them into four counts: Count One (invasion of right to privacy by way of intrusion upon seclusion), Count Two (invasion of right to privacy by way of appropriation of name or likeness), Count Three (invasion of right to privacy by way of publicity given to private life) and Count Four (invasion of right to privacy by way of publicity placing the Plaintiffs in a false light). Interlaced among these counts are several new paragraphs which merely parrot the claim elements set forth in the Court’s Ruling, but contain no new facts to support them.

Even as repled, therefore, each of the four invasion of privacy counts fails to state a legally cognizable claim for relief as against iUniverse. Count One, invasion of right to privacy by way of

intrusion upon seclusion, fails to allege any physical or other act of intrusion by iUniverse. As before, Plaintiffs cannot escape the fact that the book was written by others many years ago and originally published by Bantam Books in 1983, making public all of the information contained in the 2006 republication. Thus, the republication did not intrude on any private affairs or disclose any private facts regarding either David or Carl Glatzel, Jr., precluding recovery on the First as well as the Third Counts. Count Two must fail absent allegations that iUniverse used Plaintiffs' names or likenesses for advertising, endorsement, or other business purposes. Finally, given that all of the material allegedly painting Plaintiffs in a false light was already in the public domain, the allegations are legally insufficient to support a claim that the republication would be highly offensive to a reasonable person, a required element for several counts, including Count Four.¹

In addition, Paragraph 2 of the prayer for relief should be stricken to conform to the Court's October 25th Ruling, as Paragraph 2 expressly seeks relief under the Connecticut Unfair Trade Practices Act, and Plaintiffs have not attempted to replead their stricken CUTPA claim.

¹ iUniverse raises in this motion those pleading deficiencies recognized in the Court's Ruling which remain in the Second Amended Complaint. By addressing herein only certain pleading deficiencies, iUniverse in no way waives other pleading deficiencies or defenses, all of which iUniverse expressly reserves.

I. STANDARD FOR MOTION TO STRIKE

A motion to strike challenges the legal sufficiency of the allegations in a complaint to state a claim upon which relief can be granted. Connecticut Practice Book § 10-39(a) (2010); see also Vacco v. Microsoft Corp., 260 Conn. 59, 64-65, (2002); Greco v. United Techs. Corp., 277 Conn. 337, 347 (2006) (“A motion to strike challenges the legal sufficiency of a pleading.”). A motion to strike “admits all *facts* well pleaded; it does not admit *legal conclusions or the truth or accuracy of opinions* stated in the pleadings.” Mingachos v. CBS, Inc., 196 Conn. 91, 108 (1985) (citations omitted). A motion to strike should be granted where, taking all the factual allegations in the complaint as true, there is no basis for relief. See Gordon v. Bridgeport Hous. Auth., 208 Conn. 161, 170 (1988).

II. ARGUMENT

As explained above, Judge Maronich previously ruled that Plaintiffs failed to plead sufficient facts to state a claim for relief under any of the four recognized theories of invasion of privacy. (Dkt. # 124 at 3-5) (“The court finds the allegations legally insufficient to support recovery under any of the four categories of invasion of privacy.”) Therefore, it is appropriate to analyze the new allegations of the Second Amended Complaint in view of both the original pleading and the Court’s decision, to determine whether Plaintiffs have remedied these flaws. For the reasons set forth below, Plaintiffs’ Second Amended Complaint again fails to state a legally

cognizable claim for relief for any of the four types of invasion of privacy, and Counts One through Four should be stricken.

A. Plaintiffs' Allegations.

As alleged by Plaintiffs, during his childhood, David Glatzel suffered from behavioral problems, learning disabilities and probably mental illness. (Am. Compl. ¶ 6.) From 1979 until 1982, David Glatzel suffered from several episodes of increased symptoms. (Id.) His older brother, Carl Glatzel, Jr., was present during those episodes. (Id. ¶ 7.) Defendant Lorraine Warren, a paranormal investigator, investigated David Glatzel's symptoms and concluded that supernatural forces caused the episodes. (Id. ¶¶ 5, 8.) (See also Second Am. Compl. ¶¶ 5-9.)

Warren published an account of her experience with the Glatzel family to Gerald Brittle for purposes of contributing to creation of the book "The Devil in Connecticut" (the "Book"), which was authored by Brittle. (Am. Compl. ¶ 8.) The Book was published in November 1983 by Bantam Books. (Id.) It was advertised by Brittle and Warren as an accurate, non-fictional account of Warren's observations. (Id. ¶ 14.) According to Plaintiffs, the Book actually was based on a fictionalized account of their lives (id. ¶ 13), stating that David Glatzel "was possessed by demons" and that Carl Glatzel, Jr. "was influenced by demonic forces into committing assaults and batteries on members of the Glatzel family and others." (Id. ¶ 11.) (See also Second Am. Compl. ¶¶ 10-19.)

Twenty-three years later, in 2006, the Book was republished by Brittle, Warren and iUniverse, without the prior knowledge or consent of either plaintiff. (Am. Compl. ¶¶ 8, 15.) The Book was offered and sold to readers in the state of Connecticut and throughout the United States and Europe. (Id. ¶¶ 8, 10, 15.) Brittle, Warren and iUniverse sold an option to produce a movie based on the Book, and a screenplay was created. (Id. ¶¶ 29-30.) The screenplay, like the book, depicted David Glatzel as possessed by demons and Carl Glatzel, Jr. as influenced by demonic forces. (Id. ¶ 30.)² Plaintiffs allege that the Book contains false and derogatory statements and that they have suffered harm. (Am. Compl. ¶¶ 22, 23, 38, 42 and 43.) (See also Second Am. Compl. ¶¶ 13-19, 30-31.)

B. Amended Count One Fails To State A Cause Of Action For Invasion Of The Right To Privacy by Way of Intrusion Upon Seclusion.

“One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns is subject to liability to the other for invasion of his privacy if the intrusion would be highly offensive to a reasonable person.” Restatement (Second) of Torts § 652B (1977). “This is said to consist of intentional interference with another’s interest in solitude or seclusion, either as to his person or as to his private affairs or concerns.” William L. Prosser & W. Page Keeton, *The Law of Torts* (5th ed. 1984) § 117, p. 854. As explained below, however, this cause of action is *not* concerned with intrusions in the form of unwanted publicity.

² There is no allegation that the screenplay was ever made into a film.

Gleason v. Smolinski, No. NNHCV065005107S, 2009 Conn. Super. LEXIS 1982, at *8-9 (Super. Ct. July 20, 2009).

Count One of the Second Amended Complaint alleges as follows:

32. Defendants iUniverse, Lorraine Warren and Gerald Brittle have invaded the Plaintiffs' personal and private spaces.
33. Plaintiffs David Glatzel and Carl Glatzel had secluded and insulated themselves from their childhood lives of controversy and had a reasonable expectation of privacy.
34. Notwithstanding Plaintiffs' expectation for privacy, Defendants individually and collectively intentionally intruded and/or interfered upon the Plaintiffs' solitude, seclusion, private affairs, and/or privacy by republishing "The Devil in Connecticut" in 2006.
35. Defendants' intrusion into Plaintiffs privacy was objectionable and of the type that would be highly offensive to the reasonable person.
36. The events publicized by Defendants were private and the interference with the Plaintiffs' privacy was substantial.

(Second Am. Compl. Count One, ¶¶ 32-36.)

These allegations fail to state a claim, for several reasons. First, like the original complaint, the Amended Complaint fails to allege an actual *intrusion*, physical or otherwise. Instead, the only conduct complained of in these allegations, as with the original pleading found defective by Judge Maronich, is purported invasion "by republishing 'The Devil in Connecticut' in 2006." (Id. ¶ 34.) The remaining allegations do not plead any facts, but are pure legal conclusions which need not be credited on a motion to strike. E.g., Fort Trumbull Conservancy, L.L.C. v.

Alves, 262 Conn. 480, 498 (2003) (“A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged.”) (Internal quotation marks omitted.)

The act of republishing information already obtained and published by others, moreover, is not encompassed by the tort of invasion of privacy by way of intrusion upon seclusion. As explained by the Restatement,

The invasion may be by physical intrusion into a place in which the plaintiff has secluded himself, as when the defendant forces his way into the plaintiff’s room in a hotel or insists over the plaintiff’s objection in entering his home. It may also be by the use of the defendant’s senses, with or without mechanical aids, to oversee or overhear the plaintiff’s private affairs, as by looking into his upstairs windows with binoculars or taping his telephone wires. It may be by some other form of investigation or examination into his private concerns, as by opening his private and personal mail, searching his safe or his wallet, examining his private bank account, or compelling him by a forged court order to permit an inspection of his personal documents. The intrusion itself makes the defendant subject to liability, even though there is no publication or other use of any kind of the photograph or information outlined.

Restatement (Second) of Torts § 652B cmt (b). Here, the above conclusory allegations notwithstanding, Plaintiffs allege no facts in any way suggesting that iUniverse invaded their home or intruded upon their seclusion in obtaining information that is contained in the Book. Indeed, as alleged by Plaintiffs, Lorraine Warren investigated David Glatzel’s symptoms and episodes in the Glatzel home (presumably with consent, as there is no allegation otherwise) decades ago. (Second Am. Compl. ¶¶ 5-10.) She published an account of her experience with the Glatzel family to Gerald Brittle for purposes of contributing to creation of the Book, which was

published in 1983. (Id. ¶¶ 10-13.) iUniverse is not alleged to have had any involvement whatsoever in obtaining the information published in the Book. (Id.)

The Gleason decision is instructive. Gleason involved a newspaper that published an article about the former love interest of a missing person, chronicling her multiple marriages and divorces and various tragic events involving her children, and publishing photos of her taken in public. Gleason, 2009 Conn. Super. LEXIS 1982, at *2. The court granted a motion to strike plaintiff's claim for intrusion upon seclusion, because plaintiff did not allege any type of offensive investigation or other unlawful intrusion. The court reasoned, "Publication of private information alone is not legally sufficient to sustain this particular cause of action, which is concerned with the methods used when obtaining private information, rather than its subsequent dissemination." Id. at *8-9 (emphasis added). Similarly, in this case, Plaintiffs complain only about the Book's republication, not about the means by which the information in the Book was obtained. Indeed, Judge Maronich already found that the Book's republication was insufficient "to allege an intrusion, actual or otherwise," thus defeating the claim. (Dkt. #124 at 4.)

Nor can Plaintiffs allege the necessary element of intrusion upon private matters, given the original publication in 1983 of all of the information that was republished in 2006. (See Dkt. # 124 at 4.) ("The plaintiffs' complaint admits that all of the information republished by the defendants in 2006 was previously made public through the book's original publication by Bantam Books in 1983. Thus there is no disclosure of private facts."); see Second Am. Compl. ¶¶ 12-13.)

Amended Count One, therefore, fails to state a legally cognizable claim for invasion of privacy by way of intrusion upon seclusion and should be stricken.

C. Amended Count Two Fails To State A Cause Of Action For Invasion Of The Right To Privacy by Way of Appropriation of Name or Likeness.

Courts have provided relief under this theory to a plaintiff “when his name or picture, or other likeness, has been used without his consent to advertise the defendant’s product, or to accompany an article sold, to add luster to the name of a corporation, or for other business purposes.” W. Prosser & W. Keeton, supra, § 117 at p. 852. “The common form of invasion of privacy under the rule here stated is the appropriation and use of the plaintiff’s name or likeness to advertise the defendant’s business or product, or for some similar commercial purpose.”

Restatement (Second) of Torts § 652C cmt.b.

With regard to this claim, Count Two of the Second Amended Complaint alleges that:

32. Defendants have used the name and likeness of Plaintiffs for commercial purposes.
33. Defendants have misappropriated the name and likeness of Plaintiffs for commercial gain.
34. Plaintiffs have suffered a commercial loss as a result of Defendants’ misappropriation and commercial exploitation of their names and likenesses.
35. Plaintiffs never gave permission for the use of their names and likenesses in any publication or project of Defendants.

36. Notwithstanding the lack of permission, Defendants have continuously used the Plaintiffs' names and likenesses in the publication, screen play and material to promote their publication.

(Second Am. Compl. Count Two, ¶¶ 32-36.) Again, putting aside legal conclusions contained in these paragraphs, at most Plaintiffs allege, as they alleged unsuccessfully before (Dkt. # 124 at 4), that their names and likenesses were used in the republished Book or in media related to it. There is no allegation that the Plaintiffs' names, photos, or other likenesses were used to advertise or promote any separate product, service or company. Absent such an allegation, Count Two must fail. As explained by the Restatement,

The value of the plaintiff's name is not appropriated by mere mention of it, or by reference to it in connection with legitimate mention of his public activities; nor is the value of his likeness appropriated when it is published for purposes other than taking advantage of his reputation, prestige, or other value associated with him, for purposes of publicity. No one has the right to object merely because his name or his appearance is brought before the public, since neither is in any way a private matter and both are open to public observation. It is only when the publicity is given for the purpose of appropriating to the defendant's benefit the commercial or other values associated with the name or the likeness that the right of privacy is invaded. The fact that the defendant is engaged in the business of publication, for example of a newspaper, out of which he makes or seeks to make a profit, is not enough to make the incidental publication a commercial use of the name or likeness. Thus a newspaper, although it is not a philanthropic institution, does not become liable under the rule stated in this Section to every person whose name or likeness it publishes.

Restatement (Second) of Torts § 652C cmt.d. A frequent example is that of an actress, whose photograph is used without her permission, in an advertisement for defendant's bread, under the caption "Keep That Sylph-Like Figure by Eating More of [defendant's] Rye and Whole Wheat

Bread.” Id. § 652C cmt.b, illustration 1. Such an association draws upon the actress’s fame or reputation to sell a good, appropriating the value of her photograph or personality to the defendant’s benefit.

In contrast, the Glatzels do not allege that they were deprived of any property interest or promotional value inhering in their names or likenesses. Indeed, Plaintiffs allege that they have “lived quietly,” “secluded and insulated themselves from their childhood lives of controversy,” and “are not public figures.” Such allegations belie any claim that their right to publicity was appropriated or that they were deprived of any commercial value associated with their names or likenesses. (Second Am. Compl. ¶ 20; Count One ¶ 33; Count Three ¶ 35); see Lerman v. Flynt Distrib. Co., 745 F.2d 123, 134 (2d Cir. 1984) (dismissing right of publicity claim, court reasoned that plaintiffs’ insistence that she is a private person “does not square with her claim that her right to publicity was appropriated”); see also Gleason, 2009 Conn. Super. LEXIS 1982, at *12 (striking claim brought by woman who was subject of newspaper article because publication of her name and photo in connection with news story did not evidence an “appropriation”). Thus, Plaintiffs’ allegations that iUniverse merely used their names and likenesses in the republication of the Book or related media are insufficient to state a claim for appropriation of name or likeness and Count Two should be stricken.

D. Amended Count Three Fails To State A Cause Of Action For Invasion Of The Right To Privacy by Way of Publicity Given to Private Life.

For this claim, three requirements must be met: “(1) the disclosure of the private facts must be a public disclosure . . . (2) the facts disclosed to the public must be private facts and not public ones; and (3) the matter made public must be one which would be highly offensive and objectionable to a reasonable person of ordinary sensibilities.” W. Prosser & W. Keeton, supra, § 117 at pp. 856-57. (Dkt. # 124 at 4.) See also Perkins v. Freedom of Info. Comm’n, 228 Conn. 158 (1993) (approving test in Restatement (Second) of Torts § 652D, that “[o]ne who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public”).

Count Three of the Second Amended Complaint alleges that:

32. Defendants have given public disclosure to matters concerning private facts regarding the lives of the Plaintiffs.
33. Plaintiffs are highly offended by this publicity.
34. The matters made public by the Defendants are highly offensive and objectionable to reasonable persons of ordinary sensibilities.
35. The publicity is not a matter of public concern and the Plaintiffs are not public figures.

(Second Am. Compl. Count Three, ¶¶ 32-35.) These allegations contain no facts, but merely parrot the legal requirements, in a vain attempt to meet the pleading standard for this claim. As

before, Plaintiffs' invasion of privacy claim based on disclosure of private facts must fail, for the fundamental reason that the facts contained in the republished Book were not private. Plaintiffs admit that "'The Devil in Connecticut' was initially published by Bantam Books in November of 1983," before being republished in July of 2006 (Second Am. Compl. ¶¶ 12-13.) As reasoned in the Court's Ruling, "[t]he plaintiffs' complaint admits that all of the information published by the defendants in 2006 was previously made public through the book's original publication by Bantam Books in 1983. Thus, there is no disclosure of private facts." (Dkt. #124 at 4 (emphasis added).) It bears observation, moreover, that if the facts of demonic possession and influence stated in the Book were deemed true (as a claim for disclosure of private *facts* presumes), then they would certainly be of legitimate concern to the public, and so Plaintiffs' claim would fail on that ground as well. See Restatement (Second) of Torts, § 652D cmt.d ("When the subject-matter of the publicity is of legitimate public concern, there is no invasion of privacy.").

In short, Count Three of Plaintiffs' Second Amended Complaint must be stricken for the same reason that Plaintiff's invasion of privacy claim was deemed defective under this theory in their last complaint. See Goodrich v. Waterbury Republican-American, Inc., 188 Conn. 107, 134 (1982) ("[T]he articles here merely published information about the plaintiff's finances that were already matters of public record, such as liens and lawsuits filed against him, and this fact defeats the claim that his privacy was invaded by their publication."); see also Brown v. Hearst Corp., 862 F. Supp. 622, 631 (D. Mass. 1994) (there can be no invasion of privacy where the facts, though

highly personal, are already in the public domain), aff'd, 54 F. 3d 21 (1st Cir. 1995); Veilleux v. NBC, 206 F.3d 92, 132 (1st Cir. 2000) (same); Interphase Garment Solutions, LLC v. Fox Television Stations, Inc., 566 F. Supp. 2d 460, 467 (D. Md. 2008) (information that was already in the public domain when published by defendant cannot qualify as private facts).

E. Amended Count Four Fails To State A Cause Of Action For Invasion Of The Right To Privacy by Way of Publicity Placing the Plaintiffs in a False Light.

“[A] false light invasion of privacy occurs if (a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. . . . This form of invasion of privacy protects one’s interest in not being placed before the public in an objectionable false light or false position, or in other words, otherwise than as he is. . . . The essence of a false light privacy claim is that the matter published concerning the plaintiff (1) is not true . . . and (2) is such a major misrepresentation of his character, history, activities or beliefs that serious offense may reasonably be expected to be taken by a reasonable man in his position.” Goodrich, 188 Conn. at 131 (citations and internal quotation marks omitted).

Plaintiffs allege in their Second Amended Complaint that:

32. Defendants have given publicity to a matter concerning Plaintiffs that places Plaintiffs before the public in a false light.
33. The Defendants acted in reckless disregard as to the falsity of the publicized matters and the false light the Plaintiffs would be placed.

34. The Defendants published matters containing facts which were not true and were a major misrepresentation of the Plaintiffs' character, history, activities, and beliefs.
35. Serious offense may reasonably be expected to be taken by [] reasonable men in the Plaintiffs' position and the publication would be highly offensive to a reasonable person.

(Second Am. Compl. Count Four, ¶¶ 32-35.) These allegations fail to state a legally cognizable claim because the Second Amended Complaint fails to plead conduct on the part of iUniverse that would be highly offensive to a reasonable person. Goodrich, 188 Conn. at 131; Restatement (Second) of Torts § 652E (1977). There are no facts alleged showing that iUniverse – a self-publishing company which provided services to assist Brittle and Warren in republishing the Book – had any reason to believe that any content in the Book was untrue. There is no allegation that Plaintiffs objected to the Book at any time before it was republished, despite its original publication in 1983. Nor is there any allegation that the republication made any further revelations beyond the facts disclosed and made public by the original publication. The mere republication of a publicly available work, originally published by a well-known publishing house, Bantam Books, through a self-publishing company, does not demonstrate an intrusion that would be highly offensive to a reasonable person, Plaintiffs' conclusory allegations notwithstanding. Indeed, as Judge Maronich already determined in striking Plaintiffs' intentional infliction of emotional distress claim, "This court cannot find the republication of the book, 'The Devil in Connecticut,' which was previously published and has been in the public domain since 1983, to

meet the test of extreme and outrageous conduct.” (Dkt. # 124 at 7.)³ So, too, mere republication of the Book cannot constitute conduct that would be “highly offensive” to a reasonable person.

Given the failure to plead activity that would be highly offensive to a reasonable person, Count Four of the Second Amended Complaint should be stricken. Mastroberti v. Hall, No. 058336, 1993 Conn. Super. LEXIS 481, at *5-6 (Super. Ct. Feb. 18, 1993) (granting motion to strike); see also Carlisle v. Fawcett Publ’ns, Inc., 201 Cal. App. 2d 733, 748 (Cal. App. 1962) (magazine story recounting, years later, actress Janet Leigh’s brief underage marriage to plaintiff did not give rise to privacy claim).

Moreover, to state a claim, Plaintiffs must plead facts – and not just parroted legal requirements – that iUniverse had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the Plaintiffs would be placed. Honan v. Dimyan, 52 Conn. App. 123, 132-33 (App. Ct. 1999). As with their prior Complaint, Plaintiffs fail to plead such facts. They allege no complaint or objection about the Book that could provide notice of the alleged falsity, or any other facts about what iUniverse knew or should have known. Absent any such factual allegations, the legal conclusions pled by Plaintiffs are subject to a motion to strike. Weil v. Southwestern Bell Yellow Pages, Inc., No. CV030830197S, 2004 Conn. Super. LEXIS 3157, at *7-8 (Super. Ct. Oct. 29, 2004) (striking false light invasion of privacy claim

³ Notably, Plaintiffs have not even rep[re]sented their emotional distress claims or attempted to allege that iUniverse’s conduct was objectively extreme and outrageous.

based on placement of listing for plaintiff's judo business under section for "Escort services," absent factual allegation as to what the defendant knew about the nature of the plaintiff's business).

Accordingly, Count Four of the Second Amended Complaint should be stricken.

F. Paragraph 2 of Plaintiffs' Claim for Relief Must be Stricken.


Lastly, Paragraph 2 of the claim for relief must be stricken, as it expressly relates to relief under the Connecticut Unfair Trade Practices Act. In its Ruling, the Court granted iUniverse's motion to strike Plaintiffs' CUTPA claim, and Plaintiffs have not attempted to replead that claim. (See Dkt. #124.00 at 9-10; Second Am. Compl. at 10 ¶ 2 (seeking damages, punitive damages, attorneys fees, and other relief under CUTPA).) Accordingly, Paragraph 2 of the claim for relief of Plaintiffs' Second Amended Complaint must be stricken.

III. CONCLUSION

For the above-stated reasons, iUniverse respectfully requests that this Court strike Counts One through Four of the Amended Complaint as well as paragraph 2 of the claim for relief.

Respectfully submitted,

**DEFENDANT,
iUNIVERSE INCORPORATED**

By 
Jonathan B. Tropp
Catherine Dugan O'Connor

Day Pitney LLP
One Canterbury Green
Stamford, Connecticut 06901-2047
Tel: (203) 977-7300
Fax: (203) 977-7301
jtropp@daypitney.com

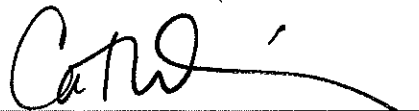
coconnor@daypitney.com
Juris No. 14230
Attorneys for Defendant
iUniverse Incorporated

CERTIFICATION

THIS IS TO CERTIFY that a copy of the foregoing Memorandum of Law In Support of Defendant's Motion to Strike Counts One through Four of Plaintiffs' Amended Complaint dated November 9, 2010 was sent on December 23, 2010, by first class mail, postage prepaid, to:

Max Rosenberg, Esq.
Ryan K. Miller, Esq.
Rosenberg & Press LLC
3333 Main Street, Suite 203
Stratford, CT 06614

Arthur Carl Laske
The Laske Law Firm LLC
1129 Post Road
Fairfield, CT 06824


Catherine Dugan O'Connor