

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.:

BAHRAM KAM HABIBI, D.C.
an Individual,
Plaintiff,

v.

OPENBARE DIENST
INTERNATIONALE, LLC, a Limited
Liability Company, and JAILBASE.COM,
and JOHN DOES 1-10

Defendants.

COMPLAINT

COMES NOW, Plaintiff, BAHRAM KAM HABIBI, D.C. by and through the undersigned counsel, and hereby sues Defendants, OPENBARE DIENST INTERNATIONALE, LLC a/k/a Mugshots.com, JAILBASE.COM and JOHN DOES 1-10 and respectfully alleges, states and prays as follows:

NATURE OF THE ACTION

1. This is a civil action brought by Bahram Kam Habibi, D.C. (hereinafter referred to as “Mr. Habibi” or “Plaintiff”) relating to the unlawful publication and dissemination of arrest booking photographs in Florida by entities who despite repeated requests are unresponsive and otherwise refuse to remove said photographs from their online publications.
2. A profitable industry has emerged in which these arrest booking photographs, or mugshots, are published by websites whose operators and owners largely remain a mystery to individuals. The operators of these websites make massive profits from the fees they charge

to remove those photos. Some operators remove photos at no cost if they were dropped, the person was found not guilty, or it they were expunged, but others will still charge. Photos posted on one site may be posted to another, causing a domino effect, damaging the reputation of unconvicted individuals.

3. Thirteen states passed laws that prohibit commercial website operators from requiring a fee to remove mugshot photos. Of these thirteen, five of them require the website operators to remove the photos if the records have been expunged. If a website operator does not abide by the request, civil relief is provided to the individual.
4. All across the country, people have challenged these mugshot posting websites in court using a number of different theories. Some of the different causes of action forwarded by these citizens include invasion of privacy based on false light, invasion of privacy based on unauthorized appropriation of name or likeness, defamation by slander, and unjust enrichment. Their success has varied in part because the website operators typically operate from small island countries where it is difficult to hold these entities and website operators accountable.
5. As of July 1, 2017, Florida joined the increasing list of states who are protecting citizens from having their mugshots published and disseminated on the internet for profit. Florida law now makes it unlawful for any person or entity engaged in the business of publishing through a publicly accessible print or electronic medium or otherwise disseminating arrest booking photographs of persons who have previously been arrested to solicit or accept a fee or other form of payment to remove the photographs.
6. Section 943.0586 further provides that within ten (10) days of receipt of a written request for removal of the arrest booking photograph, the person or entity who published or otherwise

disseminated the photograph must remove the arrest booking photograph without charge. A civil action to enjoin the continued publication or dissemination of the photograph if the photograph is not removed within ten (10) calendar days after receiving the written request was created by statute. A court may also impose a civil penalty of \$1,000 per day for noncompliance with an injunction and is required to award reasonable attorneys' fees and court costs related to the issuance and enforcement of the injunction.

7. This is an action under Florida's Deceptive and Unfair Trade Practices Act as well as the newly enacted Florida Statute 943.0586 to enjoin these entities from continuing to publish and disseminate the mugshots of an innocent individual in the State of Florida whose continued publication of these mugshots is unfairly harming his good name and reputation.

GENERAL ALLEGATIONS

8. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00) in damages, exclusive of interest, attorneys' fees and costs.
9. Plaintiff BAHRAM KAM HABIBI, M.D. is a citizen of Broward County, Florida and is otherwise *sui juris*.
10. Mr. Habibi is board-certified by several medical institutions, and has established a number of private practices and medical facilities over his long career in the community. He is a licensed Chiropractic physician, earning the title after studying at the Life Chiropractic University from 1992 to 1996. He also holds several certifications and professional memberships with medical organizations and boards. Mr. Habibi has worked hard to establish a stellar reputation in the community for his work and civic involvement.
11. Upon information and belief, Defendant, Openbare Dienst Internationale, LLC operates Mugshots.com who may be served at their registered agent's address 35 New Road, P.O. Box

2391 in Belize City, Belize City 00000 BZ but its principal place of business appears to be in Nevis, West Indies. It conducts business in the State of Florida but appears not to be authorized to do so.

12. Upon information and belief, Defendant, Jailbase.com operates out of and may be served at their address Cayon Street, P.O. Box 45 Basseterre, St. Kitts.

13. John Does 1 through 10 are individuals who have participated in managing, organizing, marketing, facilitating, and profiting from the operations of the websites owned and controlled by the other Defendants.

14. Defendants, without the permission, consent or knowledge of the Plaintiff, reproduced, publicly displayed and disseminated the Plaintiff's mugshots on their respective websites.

15. Plaintiff's images have commercial value, as is shown by Defendants profiting from the unlawful appropriation of those images for commercial purposes.

16. Defendants' respective websites, along with Plaintiff's images, were indexed by Google.com, and the images appear under Google Images when a web search for Plaintiff's name is conducted.

17. Each of Defendants' use of the Plaintiff's image is for a commercial purpose among other purposes.

18. The continued use and publication of Plaintiff's image without consent and while profiting from advertising constitutes a recurring violation of Florida law. The continued use and publication of his image also prejudices those in the community that would otherwise place their trust in Mr. Habibi for their medical needs but for the unauthorized publication of his image on Defendants' website.

19. The Defendants solicit customers in the State of Florida as part of this commercial purpose. Upon information and belief, the Defendant may have many paying customers who reside in the State of Florida who each use the Defendants' respective services in the State of Florida. Upon information and belief, the Defendants conduct continuous and systematic business in the State of Florida.
20. Defendant Mugshots.com dedicates a separate page for mugshots taken in the State of Florida (<http://mugshots.com/US-Counties/Florida/>) and further defines its directory of available mugshots by county including Broward County, Florida (<http://mugshots.com/US-Counties/Florida/Broward-County-FL/>)
21. Defendant Jailbase.com for example dedicates a separate page for mugshots taken in Broward County, Florida (<https://www.jailbase.com/en/sources/fl-bso/>)
22. The display by Defendants of Plaintiff's image is intended, among other things, to subject the individual Plaintiff to hatred, contempt, or ridicule or to damage the Plaintiff's personal or business repute, or to impair the Plaintiff's credit.
23. The Defendants are subject to personal jurisdiction in Florida pursuant to *Fla. Stat.* § 48.193(1)(a)(2) because they committed tortious act or acts described in this Complaint within the state.
24. Specifically, the Defendants made false and defamatory statements and published personal information about Mr. Habibi, a Florida resident, knowing and intending that such statements and information would be read by persons within the State of Florida, and the false, defamatory statements and personal information were in fact published within the State of Florida as is more fully alleged below.

25. Defendants purposefully directed their activities toward the State of Florida and could reasonably anticipate being haled into court in Florida based on such activities in Florida and directed at Florida residents. Accordingly, the Defendants have established sufficient minimum contacts with the State of Florida so as to support the exercise of personal jurisdiction over them by a Florida court.
26. Defendants are subject to personal jurisdiction in Florida pursuant to *Fla. Stat.* § 48.193(1)(a)(1) as a result of Defendants operating, conducting, engaging in, and carrying on a business or business venture within this state by publishing mugshots of individuals located throughout the State of Florida and advertising in the State of Florida.
27. Defendants are further subject to personal jurisdiction in Florida pursuant to *Fla. Stat.* § 48.193(1)(a)(6) causing injury to Mr. Habibi within this state arising out of an act or omission by the Defendants outside this state, namely by engaging in soliciting and providing services within the State of Florida including but not limited to the publication of mugshots and personal information belonging to individuals in the State of Florida.
28. Jailbase.com for example advertises its service as an “easy and hassle-free” way to search police records as well as a resource that helps those with friends or family members in Florida to locate missing loved ones.
29. Jailbase.com sells individual booking reports containing booking details (the person’s name, the booking agency, and the date the person was booked) with the original mugshot, charges, age of the person booked, physical details of the person when booked (gender, race, height, weight, eye color, hair), a copy of the source web page where they collected the data from). Jailbase.com also solicits companies and products in the State of Florida to advertise on their website.

30. Mugshots.com advertises its service as a “Google for Mugshots” or “search engine for Official Law Enforcement records, specifically booking photographs, mugshots” and to “provide a legitimate and useful service for both the private and public sectors.
31. Mugshots.com admits to using “third-party advertising companies to serve ads when you visit our Website. These companies may use information (not including your name, address email address or telephone number) about your visits to this and other Web sites in order to provide advertisements about goods and services of interest” to consumers.
32. Unless Defendants are enjoined from further use and publication of Plaintiff’s images and name, Plaintiff will suffer further irreparable harm.
33. Venue is appropriate in Broward County, Florida because it is where the cause of action accrued.
34. All conditions precedent to filing this lawsuit have been performed, waived, or satisfied.

COUNT I – INJUNCTION

Plaintiff, BAHRAM KAM HABIBI, re-alleges and re-adopts the allegations as set forth in paragraphs 1 through 34 above, and incorporates the same as if specifically set forth herein below.

35. Defendants are persons or entities engaged in the business of publishing through a publicly accessible print or electronic medium or otherwise disseminating arrest booking photographs of persons who have previously been arrested and they solicit or accept a fee or other form of payment to remove the photographs as defined in Section 943.0586(1), Florida Statutes.
36. By using Plaintiff’s image in connection with a place, product, merchandise, goods, services or other commercial activities or for advertising or soliciting the purchase of products, merchandise, goods, service, or other commercial activities, Defendants are using Plaintiff’s

booking photograph or mugshot for an illegal commercial purpose within the definition of Section 943.0586(1), Florida Statutes.

37. Plaintiff, through counsel, made a request, in writing, for the removal of an arrest booking photograph or mugshot to the registered agent of the person or entity who published or otherwise disseminated the photograph by registered mail and contained sufficient proof of identification of Mr. Habibi to allow the individuals or entities to remove said booking photographs or mugshots.

38. Defendants failed to remove the arrest booking photographs or mugshots within ten (10) days of receipt of the written request for removal in violation of Section 943.0586(2), Florida Statutes.

39. Section 943.0586(3), Florida Statutes creates a civil cause of action to enjoin the continued publication or dissemination of the photograph if the photograph is not removed within ten (10) calendar days after receipt of the written request for removal. The court may also impose a civil penalty of \$1,000.00 per day for noncompliance with an injunction and shall award reasonable attorney fees and court costs related to the issuance and enforcement of the injunction.

40. As a result of Defendants' actions, Plaintiff has no adequate remedy at law and is suffering, along with his medical practice, and will continue to suffer, irreparable harm unless an injunction is issued to enjoin Defendants from continuing to publish and/or disseminate of the photograph and personal information of Plaintiff on their websites.

41. As a result of the publication and dissemination of the mugshots or photographs, the Plaintiff has suffered embarrassment, mental anguish, inconvenience, loss of business and profits, loss of reputation, loss of good standing in the community, and other tangible and intangible

damages. These damages have occurred in the past and are reasonably expected to continue to occur.

42. The issuance of an injunction will serve the public interest by protecting Plaintiff, an innocent citizen who has been aggrieved by these publications as well as Plaintiff's medical practice. Additionally, consumers of medical and health care services such as the patients and prospective patients of Plaintiff have been affected in that their medical provider's reputation has been damaged.

WHEREFORE, Plaintiff, BAHRAM KAM HABIBI, M.D., prays that this Court enter an injunction against Defendant, OPENBARE DIENST INTERNATIONALE, LLC a/k/a Mugshots.com, JAILBASE.COM and JOHN DOES 1-10, enjoining them from continuing to publish and or disseminate the photographs of Plaintiff, attorney's fees, costs, a daily civil penalty per day for noncompliance with this injunction, and such other and further relief in equity or in law that Plaintiff may be entitled to or that this Court deems just and proper.

COUNT II – DECEPTIVE AND UNFAIR TRADE PRACTICES
CHAPTER 501, PART II FLORIDA STATUTES

Plaintiff, BAHRAM KAM HABIBI, re-alleges and re-adopts the allegations as set forth in paragraphs 1 through 34 above, and incorporates the same as if specifically set forth herein below.

43. Section 501.204(1), Florida Statutes, declares that unfair, deceptive, or unconscionable acts or practices in the conduct of any trade or commerce are unlawful.

44. Defendants, at all times material hereto, were and continue to be in the business of providing good or services as defined within Section 501.203(8), Florida Statutes.

45. Defendants, at all time material hereto, solicited customers within the definition of Section 501.203(7), Florida Statutes.
46. Defendants, at all times material hereto, were engaged in a trade or commerce within the definition of Section 501.203(8).
47. Section 943.0586(4), Florida Statutes provides that “refusal to remove an arrest booking photograph after written request has been made constitutes an unfair or deceptive trade practice in accordance with part II of chapter 501, Florida Statutes.”
48. Defendants are persons or entities engaged in the business of publishing through a publicly accessible print or electronic medium or otherwise disseminating arrest booking photographs of persons who have previously been arrested and they solicit or accept a fee or other form of payment to remove the photographs as defined in Section 943.0586(1), Florida Statutes.
49. By using Plaintiff’s image in connection with a place, product, merchandise, goods, services or other commercial activities or for advertising or soliciting the purchase of products, merchandise, goods, services, or other commercial activities, Defendants are using Plaintiff’s booking photograph or mugshot for an illegal commercial purpose within the definition of Section 943.0586(1), Florida Statutes.
50. Plaintiff, through counsel, made a request, in writing, for the removal of an arrest booking photograph or mugshot to the registered agent of the person or entity who published or otherwise disseminated the photograph by registered mail and contained sufficient proof of identification of Mr. Habibi to allow the individuals or entities to remove said booking photographs or mugshots.

51. Defendants failed to remove the arrest booking photographs or mugshots within ten (10) days of receipt of the written request for removal in violation of Section 943.0586(2), Florida Statutes.
52. Defendants' failure to remove the arrest booking photograph constitutes a deceptive and unfair practice in accordance with part II of chapter 501, Florida Statutes.
53. Plaintiff is entitled to declaratory and equitable relief under Florida Statutes Section 501.211 declaring Defendants' actions or practice to violate Florida's Deceptive and Unfair Trade Practices Act and enjoining Defendants from continuing to publish and disseminate Plaintiff's photograph or mugshots, and enjoining them from publishing Plaintiff's photograph or mugshots in the future.

WHEREFORE, Plaintiff, BAHRAM KAM HABIBI, M.D., prays that this Court enter an injunction against Defendant, OPENBARE DIENST INTERNATIONALE, LLC a/k/a Mugshots.com, JAILBASE.COM and JOHN DOES 1-10, enjoining them from continuing to publish and or disseminate the photographs of Plaintiff, that this Court declare their continued publication and/or dissemination of Plaintiff's photographs to be a deceptive and unfair trade practice, including an award of attorneys' fees pursuant to Section 501.2105, Florida Statutes, costs, a daily civil penalty per day for noncompliance with this injunction, and such other and further relief in equity or in law that Plaintiff may be entitled to or that this Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

DATED: August 1, 2017.

Respectfully submitted,

DAVID DI PIETRO & ASSOCIATES

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