

CHARLES CARREON (OSB: 93469)
Online Media Law, PLLC
1131 Barrington Circle
Ashland, Oregon 97520
Tel: 541/482-2321

REC'D 06 AUG 03 12:27USDC-OR

Attorney for Plaintiff American Buddha

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

AMERICAN BUDDHA, an Oregon Nonprofit)
Corporation,)

Plaintiff,)

vs.)

THE CITY OF ASHLAND AND THE)
WASHINGTON POST COMPANY,)

Defendants.)

Case No.:

COMPLAINT FOR VIOLATION OF FIRST
AND FOURTEENTH AMENDMENTS AND
17 U.S.C. § 512(f), AND FOR
DECLARATORY RELIEF

JURY DEMAND

For its complaint against defendants, plaintiff American Buddha alleges:

The Parties

1. Plaintiff is an Oregon nonprofit corporation operating an Internet website at www.American-Buddha.com ("Plaintiff's Website"), with its office in Ashland, Jackson County, Oregon.

2. Defendant The City of Ashland (the "City") is a municipal subdivision of the State of Oregon, in Jackson County, Oregon. The City operates and financially subsidizes the Ashland Fiber Network, a provider of Internet services, including the hosting of websites, for residents of Ashland, Oregon.

3. Defendant The Washington Post Company (“WAPO”) is the owner of The Washington Post, Newsweek, Newsweek International, and numerous other media companies, with its corporate headquarters in Washington, D.C.

Jurisdiction and Venue

4. This is an action alleging a constitutional violation of Plaintiff’s First and Fourteenth Amendment rights, and for violation of the copyright laws of the United States, in particular, the provisions of the Digital Millennium Copyright Act, 17 U.S.C. § 512(f); wherefore jurisdiction is proper under 28 U.S.C. § 1338. Plaintiff further alleges claims under the Declaratory Relief Act, 28 U.S.C. § 2201. This Court has federal jurisdiction under 28 U.S.C. § 1331. Venue is proper in this district under 28 U.S.C. § 1391(b)(2).

Background Facts

5. Plaintiff realleges and incorporates each and every allegation contained herein as if fully set forth hereat.

6. On August 2, 2006, WAPO falsely communicated to the City that Plaintiff’s website was displaying copyright-infringing material. Ashland Fiber Net then disabled Plaintiff’s Website without prior notice to Plaintiff. In addition to disabling Plaintiff’s Website, the joint actions of WAPO and the City disabled many other websites hosted on the same Internet server as Plaintiff’s Website. The City restored access to Plaintiff’s Website only after being contacted by counsel for Plaintiff.

FIRST CLAIM FOR RELIEF

Deprivation of Constitutional Rights

7. Plaintiff realleges all matters set forth throughout this complaint in full hereat.

8. The City operates the Ashland Fiber Net as a public forum for the use of its residents, and permits content to be displayed on the Internet by means of websites that are served through the Ashland Fiber Net.

9. Plaintiff is a resident of Ashland, Oregon, and Plaintiff's Website is published to the Internet via the Ashland Fiber Net.

10. Plaintiff's Website is dedicated to open discussion and free speech, and hosts a library of content, as well as original artistic productions. Plaintiff's Website is a membership website with approximately 35,000 members that agree to an anti-piracy pledge in order to gain limited access for study and educational purposes to copyrighted material, and provides a venue for the display of satirical, provocative content.

11. On information and belief, WAPO contacted the City and complained about one photographic parody of a newspaper columnist displayed on Plaintiff's Website. Thereafter, and without prior notice, the City disabled Plaintiff's Website, and many other websites hosted on the same Internet server.

12. The City disabled Plaintiff's Website based on a constitutionally improper governmental scheme that:

- a. Enabled the City to engage in prior restraint of speech;
- b. Vested discretion to silence speech in a public forum in a single agency or individual;
- c. Permitted invidious content discrimination as a basis for disabling websites;
- d. Provided no notice to Plaintiff that Plaintiff's Website was going to be disabled; and,
- e. Caused the disablement of Plaintiff's Website for reasons of disagreement with its content.

13. By disabling Plaintiff's Website, the City deprived Plaintiff of its rights of free expression, guaranteed under the First Amendment of the United States Constitution.

14. Plaintiff's right to publish Plaintiff's Website to the Internet via the Ashland Fiber Net was a property right acquired by Plaintiff's payment of consideration. By depriving Plaintiff of access to the Internet without notice and an opportunity to be heard prior to

the deprivation, the City violated Plaintiff's rights under the Fourteenth Amendment of the United States Constitution to not be deprived of property without due process of law.

15. The City stands in a position to repeat its acts of disabling Plaintiff's Website on any occasion, thus the violative acts of the City are susceptible of repetition, and unconstitutionally chill freedom of speech.

16. The City's actions are an unconstitutional deprivation of Plaintiff's rights made actionable under 42 U.S.C. § 1983.

17. Plaintiff lacks any remedy at law.

SECOND CLAIM FOR RELIEF

Violation of 17 U.S.C. § 512(f)

18. Plaintiff realleges and incorporates each and every allegation contained herein as if fully set forth hereat.

19. WAPO materially misrepresented, under the asserted authority of 17 U.S.C. § 512, that Plaintiff's Website was displaying material that infringed WAPO's copyrights.

20. WAPO's misrepresentation caused injury to Plaintiff, including costs and attorneys fees, as made specifically recoverable pursuant to subsection (f) of § 512.

THIRD CLAIM FOR RELIEF

Declaratory Relief Under 28 U.S.C. § 2201, Against All Defendants

21. Plaintiff realleges and incorporates each and every allegation contained herein as if fully set forth hereat.

22. An actual controversy exists between the plaintiff and defendants, in that Plaintiff claims the right to publish Plaintiff's Website on the Internet through the public forum made available generally to the citizens of Ashland, Oregon, without prior restraint or other interference by the City, the Ashland Fiber Net, or WAPO.

23. Defendants deny that Plaintiff has such a right.

24. Wherefore, plaintiff is entitled to a declaration of rights.

WHEREFORE, plaintiff prays for judgment against defendants as follows:

1) ON THE FIRST CLAIM FOR RELIEF AGAINST THE CITY:

- a) For injunctive relief declaring that the City's scheme for regulating speech on websites publishing to the Internet via the Ashland Fiber Net is an unconstitutional, content-based, prior restraint of speech that vests excessive discretion in the regulator;
- b) For injunctive relief declaring that the City's scheme is unconstitutional because it fails to provide adequate notice and an opportunity to be heard before deprivation of a property right;

2) ON THE SECOND CLAIM FOR RELIEF AGAINST WAPO:

- a) For an order directing WAPO to cease its efforts to obtain the disablement of Plaintiff's Website, or any other efforts to induce the City to curtail Plaintiff's ability to publish Plaintiff's Website to the Internet;
- b) For costs and attorney's fees incurred in this action;

3) ON THE THIRD CLAIM FOR RELIEF AGAINST ALL DEFENDANTS, for a declaration that plaintiff has the right to publish Plaintiff's Website on the Internet through the public forum made available generally to the citizens of Ashland, Oregon, without prior restraint or other interference by the City, the Ashland Fiber Net, or WAPO; and

4) ON ALL CLAIMS FOR RELIEF, for orders

- a) Entering Judgment against defendants for Plaintiff's costs, attorneys' fees and,
- b) For such further relief as the Court deems just.

Dated: August 3, 2006

ONLINE MEDIA LAW, PLLC

By: 
CHARLES CARREON (93469)

Attorney for Plaintiff American Buddha

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), plaintiff demands a jury trial.

Dated: August 3, 2006

ONLINE MEDIA LAW, PLLC

By: 
CHARLES CARREON (93469)

Attorney for Plaintiff American Buddha