

IN DISTRICT COURT, COUNTY OF CASS, STATE OF NORTH DAKOTA

<p>John Doe,  Plaintiff,  v.  Ed Falk,  Defendant.</p>	<p>File No. _____  <b>COMPLAINT</b></p>
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Plaintiff John Doe ("Doe"), for his complaint against Defendant Ed Falk, alleges and states as follows:

**NATURE OF ACTION**

1. This is an action for defamation pursuant to North Dakota Century Code § 14-02-03, intentional interference with prospective business advantage, intentional infliction of emotional distress, and invasion of privacy/false light. These causes of action arise from Defendant Ed Falk's scurrilous efforts to damage Plaintiff's reputation and his ability to conduct business in North Dakota. Defendant has publicly and falsely accused Doe of owning and operating illicit porn sites on the Internet and engaging in Internet scams, fraud and other criminal and dishonest activity on the Internet. Defendant's outrageous and utterly unfounded allegations have been published on the Internet, and have caused Doe to suffer damage in North Dakota to his reputation, his emotional well-being, and his prospective relations with actual or potential clients. Accordingly, Doe seeks compensatory and punitive damages to redress the substantial injuries inflicted upon him by the wrongful conduct of Defendant.

**PARTIES**

2. Plaintiff John Doe ("Doe") is an individual residing in the City of Fargo, County of Cass, State of North Dakota. Doe is a pseudonym for Plaintiff and due to the injuries already

caused by Defendant's conduct, Plaintiff is proceeding in this action as Doe to avoid further injury flowing from the violations of his privacy and injury to his reputation caused by Defendant.

3. Defendant Ed Falk is an individual, and upon information and belief, resides at 600 Fairmont Avenue in the City of Mountain View, County of Santa Clara, California.

4. This Court has personal jurisdiction over Defendant pursuant to North Dakota State Long Arm Statute, N.D.R.Civ.P. 4(b)(2)(C). By way of example, and without limitation, Defendant's specific contact with the State of North Dakota giving rise to this action includes his intentional conduct of publishing defamatory statements that are calculated to cause injury to Doe in the State of North Dakota.

#### **FACTUAL BACKGROUND**

5. Upon information and belief, Falk created, and presently operates and maintains, an Internet website called [www.rahul.net/falk](http://www.rahul.net/falk) ("the Falk Website").

6. Entry of Doe's real name and "Fargo" as a query on either of the two most popular Internet search engines, [www.google.com](http://www.google.com) and [www.yahoo.com](http://www.yahoo.com), produces the Falk Website on the first page of the search results.

7. The Falk Website may be viewed, and allows readers in the state of North Dakota to read its contents, 24 hours a day, 7 days a week. Upon information and belief, numerous third parties in North Dakota have viewed the Falk Website in North Dakota.

8. Defendant published a false statement on the Falk Website that Plaintiff was engaged in a "make.money.fast pyramid scam" on the Internet. Defendant intended to convey, and did convey, to the community in North Dakota, the impression that Plaintiff was engaged in criminal and/or dishonest activity by operating an Internet pyramid scam. The truth is that

Plaintiff has never been involved in any pyramid scam or any other criminal activity on the Internet, has never been affiliated with or have any ownership interest in "make.money.fast."

9. Defendant published a false statement on the Falk Website that the "make.money.fast pyramid scam" on the Internet "provided insight into the way he [Plaintiff] works." Defendant intended to convey, and did convey, to the community in North Dakota, the impression that Doe engages in criminal and/or dishonest activity on the Internet, and could not be trusted professionally or otherwise. The truth is that Plaintiff has never been involved in a pyramid scam or any other criminal activity on the Internet, and prior to Defendant's scurrilous statements possessed a good name and character among business partners and customers for moral worth and integrity in his business activities.

10. Defendant published a false statement on the Falk Website that Plaintiff owned the pornographic website "Sexzilla.com" until 2004. Defendant intended to convey, and did convey, to the community in North Dakota, the impression that Plaintiff owned an Internet web site that published illicit and unsavory pornographic materials. The truth is that Plaintiff was never employed by and never had any ownership interest in Sexzilla.com.

11. Defendant published a false statement on the Falk Website that Plaintiff owned Netzilla, a company "which managed to break into a misconfigured server at Access1." Defendant intended to convey, and did convey, to the community in North Dakota, the impression that Plaintiff was involved in criminal and/or dishonest business activity. The truth is that Plaintiff was not related to, affiliated with, employed by, and never had any ownership interest in Netzilla or any company "which managed to break into a misconfigured server at Access1."

12. Defendant published a false statement on the Falk Website that Plaintiff owned Netzilla, and Sprint closed Internet access to Doe's Netzilla. Defendant intended to convey, and did convey, to the community in North Dakota, the impression that Plaintiff was involved in improper and/or dishonest business activity on the Internet that resulted in a third party's termination of his company's Internet access. The truth is that Plaintiff was not affiliated with, employed by, and never had any ownership interest in Netzilla or any company in which Sprint closed Internet access.

13. Defendant published a false statement on the Falk Website that "RRNet kicked [Doe] off the site a long time ago, but Netzilla spam continued to arrive because [Doe] would hire college students to sign up with RRNet and post spam." Defendant intended to convey, and did convey, to the community in North Dakota, the impression that Plaintiff was involved in improper and dishonest business activity on the Internet that resulted in RRNet "kicking him off" the Internet, and that Plaintiff hired college students to continue dishonest activities on Plaintiff's behalf. The truth is that Plaintiff had never been kicked off the Internet by RRNet, had never been involved in an Internet spam, and had never hired college students to promote an Internet scam.

14. Defendant published the following false statement on the Falk Website with regard to a netzilla website: "The phone numbers are still the same as when the web site *was registered to [Doe].*" (emphasis added). The assertion that the web site was registered to Plaintiff is false. The Falk Website then goes on to assert that: "As of 2004, the domain is *no longer owned by [Doe].*" (emphasis added). The sentence implies that the domain was previously owned by Doe. That implication is similarly false. Due to the pornographic nature of the netzilla.net site and sexzilla.com website described below, the assertions that Doe is

associated with netzilla.net are defamatory. The same defamation flows from all references connecting Plaintiff to netzilla, NetZilla, and sexzilla.com on the Falk Website.

15. Defendant published the following false statement on the Falk Website with regard to a "sexzilla.com" website: "As of 2004, the domain is *no longer owned* by [Doe]." (emphasis added) and "Netzilla was owned by [Doe]." By that language, the Falk Website falsely asserts that Plaintiff formerly owned sexzilla.com.

16. False references to contact names associated with Netzilla also appear on the Falk Website, including Plaintiff's address and the expressly "unconfirmed" reference to Kimberly [Doe].

17. The Falk Website also falsely asserts: "Netzilla also owned the domains *jam.net* and *newsfeeds.com*" and "newfeeds.com ... belongs to NetZilla." The assertion that Netzilla owns newsfeeds.com is false. The Falk Website also falsely alleges that Newsfeed.com is an alias for Netzilla and that Newsfeed.com was originally a "rogue site." The Falk Website further asserts "More recently, Newsfeeds seems to have become a legitimate business", thereby implying and suggesting by innuendo that Newsfeeds was formerly not a legitimate business. Because the Plaintiff does have an association with newsfeeds.com, the asserted relationship between newsfeeds.com and Netzilla defames Plaintiff. Similarly, the innuendo that Newsfeeds was formerly not a legitimate business defames Plaintiff.

18. On August 25, 2004 and October 14, 2004, Plaintiff demanded retraction and correction in writing, by Defendant of the above-described defamatory statements. Following receipt of Plaintiff's demand for retraction, Defendant failed and refused, and still continues to fail and refuse, to retract and correct the false statements.

**FIRST CAUSE OF ACTION  
(Defamation)**

19. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 18 as though fully set forth herein.

20. Defendant published to third parties, including without limitation, third parties in the state of North Dakota, defamatory statements regarding Plaintiff including but not limited to those described above, in the manner and to the extent alleged herein. Each and all of the above-described statements, and others, made by Defendant are false and untrue.

21. By publishing the above-described false and defamatory statements on the Falk Website, Defendant intended to convey, and did convey, to the community in North Dakota, the impression that Plaintiff engaged in fraud, forgery, pyramid scams, breaking into servers, and other criminal activity on the Internet. Such false and defamatory statements published by Defendant are libelous *per se*.

22. By publishing the above-described false and defamatory statements on the Falk Website, Defendant intended to convey, and did convey, to the community in North Dakota, the impression that Plaintiff engaged in dishonest, improper and/or unlawful business practices. Such false and defamatory statements published by Defendant injured the business reputation of Plaintiff, exposed Plaintiff to public hatred, contempt or ridicule in reference to his trade, occupation, office, or profession, and are libelous *per se* under North Dakota law including N.D.C.C. § 14-02-03.

23. By publishing the above-described false and defamatory statements on the Falk Website, Defendant intended to convey, and did convey, to the community in North Dakota, the impression that Plaintiff owned a pornographic website that published illicit, immoral and unsavory materials. Such false and defamatory statements published by Defendant exposed

Plaintiff to public hatred, contempt or ridicule and injured Plaintiff in his occupation, profession and business.

24. Plaintiff, before and at the time of Defendant's defamation, possessed a good name and character among neighbors and acquaintances for moral worth and integrity, and was never suspected of engaging in Internet fraud, Internet scams, forgery or of any other crime, dishonest business activity, or publication of immoral or illicit materials, .

25. Defendant's above-described false and defamatory statements were made with the intent to harm Plaintiff, including without limitation, the intent to cause injury to Plaintiff in the state of North Dakota. Plaintiff has been damaged by the conduct of Defendant, including without limitation, harm to Plaintiff's personal standing and reputation in the state of North Dakota, and is therefore entitled to recover damages in an amount to be proven at trial.

26. Defendant published the above-described statements with malice, in that Defendant knew of the falsity of the statements at the time of publication, or published with reckless disregard as to the truth or falsity of the statements because Defendant ignored repeated and emphatic denials by Plaintiff of the truth of the statements, and never made any attempt to contact any other party regarding falsity of the allegation. In addition, Defendant was motivated by ill-will toward Plaintiff and/or his conduct was so outrageous that malice may be implied.

27. Because of the oppressive, willful and malicious publication by Defendant, Plaintiff reserves the right to amend this Complaint to seek to recover exemplary damages.

**SECOND CAUSE OF ACTION**  
**(Intentional Interference With Prospective Business Advantage)**

28. Plaintiff hereby incorporates the allegations contained in paragraphs 1 through 27 as though fully set forth herein.

29. Plaintiff had a prospective economic advantages in his relationships with actual and prospective customers and business partners.

30. Defendant maliciously and purposely interfered with the actual and prospective business relations between Plaintiff and his existing and prospective customers and business partners, intending to cause injury to Plaintiff. Specifically, Defendant published the Falk Website and thereby made available to Plaintiff's actual and prospective customers and business partners the above-described false and defamatory statements, including the false statements that Plaintiff engaged in unlawful, fraudulent and dishonest business activities.

31. Defendant's interference with Plaintiff's prospective economic advantage was accomplished through fraud, as the above-described statements of Defendant regarding Plaintiff constitute fraudulent misrepresentations.

32. Defendant's fraudulent misrepresentations were made for the purpose of inducing third parties, including but not limited to actual and/or prospective customers and business partners of Plaintiff, to rely upon such misrepresentations and act and/or refrain from acting by declining to purchase services from Plaintiff, ceasing the use of services provided by Plaintiff, declining to increase the services obtained from Plaintiff, declining to engage in a business relationship with Plaintiff, and ceasing the positive description to others of Plaintiff and his Internet businesses.

33. Defendant's interference was done with the intent to cause harm to Plaintiff and to interfere with his prospective economic advantages, and Defendant's interferences proximately caused damage to Plaintiff in an amount to be proven at trial.



**THIRD CAUSE OF ACTION**  
**(Negligent Interference With Prospective Business Advantage)**

34. Plaintiff hereby incorporates the allegations contained in paragraphs 1 through 33 as though fully set forth herein.

35. Defendant negligently interfered with the actual and prospective business relations between Plaintiff and his existing and prospective customers and business partners, caused injury to Plaintiff. Specifically, Defendant negligently published the Falk Website and thereby made available to Plaintiff's actual and prospective customers and business partners the above-described false and defamatory statements, including the false statements that Plaintiff engaged in unlawful, fraudulent and dishonest business activities.

36. Defendant's fraudulent misrepresentations were made with the purpose or reasonably foreseeable effect of inducing third parties, including but not limited to actual and/or prospective customers and business partners of Plaintiff, to rely upon such misrepresentations and act and/or refrain from acting by declining to purchase services from Plaintiff, ceasing the use of services provided by Plaintiff, declining to increase the services obtained from Plaintiff, declining to engage in a business relationship with Plaintiff, and ceasing the positive description to others of Plaintiff and his Internet businesses.

37. Defendant's interference was done with the intent or reasonably foreseeable effect of causing harm to Plaintiff and to interfere with his prospective economic advantages, and Defendant's interferences proximately caused damage to Plaintiff in an amount to be proven at trial.

**FOURTH CAUSE OF ACTION**  
**(Intentional Infliction Of Emotional Distress)**

38. Plaintiff hereby incorporates the allegations contained in paragraphs 1 through 37 as though fully set forth herein.

39. Defendant, through the above-described scurrilous and outrageous conduct and false statements, intentionally and/or recklessly, inflicted emotional distress upon Plaintiff. Defendant published his false statement about Plaintiff certain or substantially certain that such emotional distress would result from his conduct.

40. Plaintiff is entitled to recover damages for the emotional distress caused by Defendant in an amount to be proven at trial.

**FIFTH CAUSE OF ACTION**  
**(Negligent Infliction Of Emotional Distress)**

41. Plaintiff hereby incorporates the allegations contained in paragraphs 1 through 40 as though fully set forth herein.

42. Defendant, through the above-described scurrilous and outrageous conduct and false statements, negligently inflicted emotional distress upon Plaintiff.

43. As a result of Defendant's conduct, Plaintiff suffered bodily harm.

44. Plaintiff is entitled to recover damages for the emotional distress caused by Defendant in an amount to be proven at trial.

**SIXTH CAUSE OF ACTION**  
**(Invasion of Privacy/False Light)**

45. Plaintiff hereby incorporates the allegations contained in paragraphs 1 through 44 as though fully set forth herein.

46. Defendant further published Plaintiff's unlisted, private phone number.

47. Defendant, through the above-described scurrilous conduct, false statements, and public disclosure, gave publicity to matters concerning Plaintiff that unreasonably places him in a false light and violates his right of privacy.

48. The false light in which Plaintiff has been placed would be highly offensive to a reasonable person.

49. Defendant knew of the falsity of the publicized matter and the false light in which Plaintiff would be placed and/or acted with reckless disregard for the truth or falsity of the publicized matter and the false light in which the Plaintiff would be placed. Defendant further knew of the private nature of the information posted about the Plaintiff on the Falk Website.

50. Defendant's scurrilous conduct and false statements, and placement of Plaintiff in a false light, and invasion of privacy proximately caused Plaintiff to suffer emotional distress.

51. Plaintiff is entitled to recover damages for the emotional distress caused by Defendant in an amount to be proven at trial.

WHEREFORE, Plaintiff prays for the order and judgment of this court granting the following relief in favor of Plaintiff and against Defendant Falk:

1. For an injunction prohibiting the distribution of false and misleading information by Defendant regarding Plaintiff;
2. For money damages in an amount to be determined;
3. For costs and disbursements in this action;
4. For attorneys' fees; and
5. For such other and further relief as the court may deem just and proper.

**JURY DEMAND**

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


Dated: 2/16/05



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Dated: 2-14-2005



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