

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.08-80730-CIV-MARRA/JOHNSON

HEATHER KERTESZ,

Plaintiff,

vs.

JOHN DOE d/b/a COLLEGEWILDPARTIES.COM,  
CYBERHEAT, INC., an Arizona corporation,  
TOPBUCKS, INC., an Arizona corporation,  
PINK VISUALS, INC., an Arizona corporation,  
and JOHN DOES 2 through 7, Florida  
corporations, Florida limited liability companies  
and/or Florida residents,

Defendants.

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**AMENDED COMPLAINT**

Plaintiff, HEATHER KERTESZ, ("KERTESZ" or "Plaintiff"), by and through undersigned counsel, hereby brings the following Amended Complaint for Damages and Demand for Jury Trial against Defendants John Doe d/b/a/Collegewildparties.com ("CWP"), Cyberheat, Inc. ("Cyberheat"), Topbucks, Inc. ("Topbucks"), and Pink Visuals, Inc. ("Pink Visuals") (collectively, the "Website Defendants"), and JOHN DOES 2 through 7 who are Florida corporations, Florida limited liability companies and/or Florida residents (the "JOHN DOES"), in support thereof states as follows:

**THE PARTIES & JURISDICTION**

1. This is an action for injunctive relief and damages in an amount within the jurisdiction of this Court.
2. Plaintiff, Heather Kertesz, is an individual who is a resident of Palm Beach County, Florida.

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3. Defendant, John Doe is an individual or entity that does business as and operates CWP, a pornographic interactive website accessible throughout the world, and specifically in the State of Florida at the URL [www.collegewildparties.com](http://www.collegewildparties.com).

4. Defendant, Cyberheat is an Arizona corporation with its registered office located at 6614 E. Tanque Verde Road, Tucson, AZ 85715.

5. Defendant, Topbucks is an Arizona corporation with its registered office located at 6614 E. Tanque Verde Road, Tucson, AZ 85715.

6. Defendant, Pink Visuals is an Arizona corporation with registered office located at 6614 E. Tanque Verde Road, Tucson, AZ 85715.

7. Defendants CWP, Cyberheat, Topbucks, and Pink Visuals are subject to personal jurisdiction in Florida since the causes of action set forth below arise from the Website Defendants' conduct, either personally or through an agent, of:

(a) Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.

(b) Committing a tortious act within this state.

(f) Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if, at or about the time of the injury, either:

1. The defendant was engaged in solicitation or service activities within this state;  
or

2. Products, materials, or things processed, serviced, or manufactured by the

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defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use.

8. Defendants CWP, Cyberheat, Topbucks, and Pink Visuals are also subject to personal jurisdiction in Florida since they are engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise.

9. At all relevant times Website Defendants engaged in the publication, sale, and distribution of pornography, and the advertising and selling of subscriptions and memberships to view pornography, to Florida residents on their interactive websites. In the course of this activity, Website Defendants committed a tort injuring plaintiff in the state of Florida.

10. JOHN DOES 2 through 7 are Florida corporations, Florida limited liability companies, and/or Florida residents who, at all relevant times, engaged in the production of pornographic still photographs and films that the Website Defendants published, sold and distributed on their interactive websites.

11. Pursuant to 18 USC § 2257, JOHN DOES are required to verify and maintain records of the name and date of birth of any individual who appears in the pornography they produce. Moreover, pursuant to 18 USC § 2257, the Website Defendants are required to publish on their websites a statement describing where such records are located.

12. The statement published on the collegewildparties.com website identifies the following Florida individuals and entities as producers of the pornography on the collegewildparties.com website:

- a. “Azure Entertainment”

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- b. “Zmaster”
- c. “MRM Productions”
- d. “Thrown Out”
- e. “Cash Models”
- f. “Photo Gregg - PG Productions, Inc.”

Upon information and belief, one or more of the Florida individuals and entities listed above, or other Florida individuals or entities not yet identified, are the JOHN DOE Defendants.

13. Venue is proper in this Court because all or a substantial part of the conduct alleged herein occurred in Palm Beach County and/or the causes of action accrued in Palm Beach County.

14. All conditions precedent to the bringing of this action have either been performed, waived or excused.

#### **FACTS**

15. Plaintiff is a twenty-two year old college senior at Lynn University in Boca Raton, Florida majoring in psychology. At all relevant times Plaintiff was over the age of 21 and *sui juris*.

16. CWP is a pornographic website located on the Internet and accessible in Florida at the URL [www.collegewildparties.com](http://www.collegewildparties.com). CWP is in the business of selling memberships to view pornography on-line. Memberships range from \$4.95 for a three-day trial membership, to \$69.95 for a ninety-day membership. CWP advertises that “Members get access to 147 CWP episodes & 3063 total episodes across our network.” Members receive access to a plethora of pornography, including downloadable pornographic videos and pictures.

17. CWP regularly enters into contracts for the sale of memberships to its website with

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Florida residents.

18. Like most pornographic websites, CWP has its own “specialty” or “niche” of pornography it displays. CWP specializes in pictures and videos of pornography in the context of parties that take place on or near college campuses or where college students are in attendance, including students that attend colleges and universities in the State of Florida.

19. To obtain the photographs and videos posted on its website, CWP and/or its agents, including JOHN DOES 2 through 7, host parties and invite college and university students to attend. Often these parties take place in residential homes in areas not zoned for adult entertainment establishments or similar uses. These parties feature men and women engaged in explicit sexual acts including human genitals in a state of sexual stimulation, arousal, or tumescence; acts of human anilingus, buggery, cunnilingus, fellatio, masturbation, sexual intercourse, sodomy; and fondling or other erotic touching of human genitals, pubic region, buttock, anus, or female breast between willing participants.

20. The Website Defendants contract with production companies such as JOHN DOES 2 through 7 to produce still photographs and films of the acts of pornography that take place during the parties that are depicted on the CWP website. The still photographs and films taken at the parties also include photographs and video footage of individuals in attendance at the parties who are not engaged in pornographic acts, and CWP posts these videos and still photographs on its web site as well.

21. On every page of the CWP website is an advertising banner emblazoned with the CWP logo that extends the full width of the screen. The advertising banner boasts “Over 90 Full-

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Length Wild Episodes Inside!” and reads “Real College Kids Get Wild, Sexy, And Out of Control At These Wild XXX Parties.” The advertising banner also depicts a photomontage of individuals at a party, some participating in sexual activity, and some observing sexual activity, including a male and female engaged in sodomy while onlookers view. This banner appears as the first image seen on each and every page on the CWP website.

22. Cyberheat, at all relevant times, operated dozens of commercial interactive web sites that sell memberships to a vast collection of pornography. Upon information and belief, one of the websites that Cyberheat operates is [www.collegewildparties.com](http://www.collegewildparties.com).

23. Cyberheat promotes its business through an affiliate marketing program called Topbucks. Topbucks pays “webmasters” to steer consumers to Cyberheat’s websites. Cyberheat’s affiliate program also provides a number of other services to its webmasters, including free web hosting, marketing and promotional tools, and real-time access to detailed sales statistics.

24. Topbucks owns the affiliate program used by Cyberheat to promote its business. Topbucks’ website found at URL [www.topbucks.com](http://www.topbucks.com), acts as a marketing company for the various pornographic websites operated by Cyberheat. One of the websites that Topbucks advertises as an affiliated website is [www.collegewildparties.com](http://www.collegewildparties.com). Webmasters in the Topbucks program are paid to advertise Cyberheat’s websites, earning money each time they refer a customer who subscribes to one of the adult websites Cyberheat operates. Upon information and belief, Topbucks has entered into a substantial number of contracts with and paid commissions to Florida residents to promote Cyberheat’s websites.

25. Pink Visuals is a provider of pornography that it describes as “online sexually-graphic

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reality content and reality-themed videos and DVDs.” Pink Visuals promotes its pornographic offerings on its website located at URL [www.pinkvisual.com](http://www.pinkvisual.com). Upon information and belief, Pink Visuals obtains and produces the videos and still photos taken at parties depicted on CWP’s website.

26. CWP, TopBucks, CyberHeat, and Pink Visuals are affiliated companies that, working together with JOHN DOES 2 through 7, film, produce, distribute, and operate a network of web sites that share pornographic content with each other, and ultimately share in revenues. These websites are accessible to and regularly sell memberships and content to residents of the State of Florida.

27. On or about March 23, 2007, Plaintiff attended a house party in Boca Raton, Florida thrown by CWP. The party took place in a single family residence located on NE 5<sup>th</sup> Street in an area zoned only for residential uses (“the Premises”).

28. Unbeknownst to Plaintiff, on or about March 23, 2007, JOHN DOES 2 through 7, with the agreement, sponsorship and consent of the Website Defendants and/or Website Defendants’ agents, were filming pornography at the Premises that was later published on the Website Defendants’ websites.

29. Plaintiff was not warned upon entering the Premises that video and still photos for a pornographic website were being filmed there. Plaintiff was not required to sign a release or waiver upon entering the premises, nor was she advised of the activities that were transpiring inside. No signs or notices were posted at the premises regarding the activities occurring there.

30. Approximately 15 minutes after entering the Premises, and after having had her photograph taken without her permission, Plaintiff was approached by an agent of the Defendants and was asked for the first time to sign a waiver and release. Plaintiff refused. Upon refusing, the

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agent of the Defendants informed Plaintiff that she needed to leave the premises. Thereupon, Plaintiff left.

31. At no time did Plaintiff consent to the Defendants' filming, recording or use of her image or likeness in any manner.

32. At no time did Plaintiff consent to the Defendants' use of her image or likeness to promote, advertise, or market CWP or any website of Website Defendants.

33. Defendants, without the Plaintiff's consent, have used Plaintiff's image and likeness for commercial purposes.

34. Specifically, on the CWP website, Defendants' posted and used Plaintiff's image and likeness in the photomontage in the advertising banner that appears on every page of the CWP website. Plaintiff's image and likeness appeared as the first image seen by all users upon gaining access to collegewildparties.com.

35. In the image, Plaintiff's head and face are seen smiling while viewing a male and female engaging in sodomy. Upon closer inspection however, it is apparent that Plaintiff's head and face were cropped or "Photoshopped" from a separate image and strategically placed on the banner to appear as if she was watching the couple at the time it took place.

36. Also on the CWP website, Defendants used Plaintiff's image and likeness to entice users into becoming a member so that they can view a pornographic 29-minute video entitled "Stallion Straddling" and 153 related pictures. Plaintiff's image appears in the forefront of a large photo above an explicit and prurient description of the video.

37. The website subscriptions, which allow access to the referenced videos and



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photographs, have been marketed, advertised, distributed and sold by the Defendants throughout the United States and the world, including in the state of Florida.

**COUNT I- UNAUTHORIZED PUBLICATION OF LIKENESS**  
**UNDER FLORIDA STATUTE §540.08**

38. Plaintiff repeats and realleges its allegations in paragraphs 1 through 37 as if fully set forth herein.

39. The Defendants, individually and in conjunction with each other and others, photographed and used Plaintiff's likeness and image for their commercial gain without Plaintiff's written or oral consent to such use, for purposes of commerce or advertising.

40. The Defendants, individually and in conjunction with each other and others, published, printed, displayed or otherwise publicly used the portrait, photograph, or other likeness of the Plaintiff, without Plaintiff's written or oral consent to such use, for purposes of commerce or advertising.

41. The Defendants' use of Plaintiffs' image and likeness without her consent for the commercial, advertising and promotional benefit of the Defendants violates Florida Statute §540.08.

42. As a direct and proximate cause of the Defendants' violation of Florida Statute §540.08, the Plaintiff has suffered damages and seeks to recover damages for her losses and injuries sustained by reason thereof, including an amount which would have been a reasonable royalty, as well as punitive or exemplary damages as provided for in Florida Statute §540.08(2).

WHEREFORE, Plaintiff demands judgment pursuant to F.S. §540.08 against the Defendants, jointly and severally, for damages to recover for loss and injury sustained by Defendants' violation of F.S.

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§540.08, and damages representing a reasonable royalty to Plaintiff, together with costs, interest and all other relief as this Court deems just and proper.

**COUNT II- FALSE LIGHT INVASION OF PRIVACY**

43. Plaintiff repeats and realleges its allegations in paragraphs 1 through 37 as if fully set forth herein.

44. The Defendants photographed and used Plaintiff's likeness and image for their commercial gain without the consent of Plaintiff in a manner that implies that she endorsed the pornography produced by and published by the Defendants.

45. Defendants used Plaintiff's likeness and image for their commercial and advertising gain without the consent of Plaintiff in a manner that implies that she endorsed the website and the products which it offers, including the downloadable full-length video entitled "Stallion Straddling." Plaintiff does not endorse the website, the products which it offers or any of the graphic sexual conduct depicted on the website or in its videos, including "Stallion Straddling."

46. Defendants' acts of photographing and publicizing Plaintiff's image and likeness on the CWP website has falsely painted Plaintiff in a light that is highly offensive to a reasonable and prudent person and to Plaintiff, who is deeply offended and aggrieved by such publicity.

47. Defendants' acts of publicizing Plaintiff's image and likeness on the CWP website were with knowledge of, or in reckless disregard as to, the falsity by which Plaintiff was depicted on the website since she at no time consented to her image or likeness being published, and never endorsed Defendants' website, which contains pornography. Moreover, Defendants' intentional "Photoshopping" of Plaintiff's image to create the appearance that Plaintiff was a willing and pleased

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observer to explicit sexual activity is a gross and reckless misrepresentation of Plaintiff's character.

48. As a direct and proximate cause of the Defendants' reckless misrepresentation of Plaintiff's image and character, Plaintiff has been and continues to be embarrassed, humiliated, and offended, and has thus suffered and continues to suffer damages.

49. Unless Defendants, their employees and agents are enjoined from further reckless misrepresentation of Plaintiff's image and character, Plaintiff will continue to suffer immediate and irreparable harm. Plaintiff has no adequate remedy at law to compensate her for the harm that Defendants inflicted and continue to inflict by their gross misrepresentation of her.

\_\_\_\_ WHEREFORE, Plaintiff demands injunctive relief against Defendants from publishing and posting Plaintiff's image on their websites; from utilizing Plaintiff's image to advertise and promote the Defendants' products and services; and from distributing products containing Plaintiff's image, and prays for an Order directing the immediate destruction of any electronic files, pictures, videos, or any other products containing Plaintiff's image that are in the Defendants' possession, and for judgment for the full amount of her damages against the Defendants, jointly and severally, together with costs, interest and all other relief as this Court deems just and proper.

**COUNT III- UNJUST ENRICHMENT**

50. Plaintiff repeats and realleges its allegations in paragraphs 1 through 37 as if fully set forth herein.

51. Defendants marketed, distributed and sold pornography for a profit through the unauthorized use of Plaintiff's image and likeness.

52. Defendants marketed, distributed and sold memberships to pornographic websites for

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a profit through the unauthorized use of Plaintiff's image and likeness.

53. Defendants used Plaintiff's image and likeness without authorization and without providing Plaintiff with fair and reasonable compensation.

54. Defendants have received and appreciated benefits from the use of Plaintiff's image and likeness without authorization which, given the circumstances, would be unfair and unjust for Defendants to retain.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, for the unjust enrichment received by Defendants, together with costs, interest and all other relief as this Court deems just and proper.

**COUNT IV-DECLARATORY AND INJUNCTIVE RELIEF**  
**PURSUANT TO §501.201 et seq FLORIDA STATUTES**

55. Plaintiff repeats and realleges its allegations in paragraphs 1 through 37 as if fully set forth herein.

56. The Defendants have engaged in deceptive, unfair, unethical, unconscionable and unscrupulous acts under Florida's Deceptive and Unfair Trade Practices Act during the, and as a mode of, operation of their business, which includes without limitation, as set forth above, a) organizing parties in residentially zoned areas in which they film pornography; b) failing to immediately notify all party attendees, which may include minors, of the events transpiring at the parties; c) failing to obtain written waivers from all party attendees; d) taking photographs and shooting video of party attendees without their express consent; e) utilizing those photographs and video to advertise and promote their business without authorization; f) falsely portraying an

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unsuspecting person by using unauthorized images of him/her in connection with Defendants' pornographic- based businesses; g) grossly misrepresenting a person's involvement with pornography via "Photoshopping" of images; h) failing to compensate for images that are used without authorization and which use aids in the promotion of Defendants' products and services; and I) distributing and widely disseminating unauthorized images through the use of Defendants' networks and affiliates.

57. The Defendants' conduct, from which they make a profit, offends established public policy and is substantially injurious to the consuming public.

58. Plaintiff has suffered injury and actual damages as a result of the Defendants' deceptive, unfair, unethical, unconscionable and unscrupulous acts.

WHEREFORE, Plaintiff demands that this Court declare the Defendants' conduct in violation of Florida's Deceptive and Unfair Trade Practices Act, and enjoin the Defendants, jointly and severally, from continuing to engage in such acts, together with an award of attorney fees and costs pursuant to Florida's Deceptive and Unfair Trade Practices Act and all other relief as this Court deems just and proper.

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**DEMAND FOR JURY TRIAL**

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

Dated July 10, 2008.

Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10<sup>th</sup> day of July, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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**SERVICE LIST**

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**United States District Court, Southern District of Florida**

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