

Hall v Lipstickalley.com
2011 NY Slip Op 33764(U)
May 2, 2011
Supreme Court, New York County
Docket Number: 101342/11
Judge: Eileen A. Rakower
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Rakower
Justice

PART 15

LESLIE HALL
- v -
UPSTOCKALLOY.COM

INDEX NO. 101342/11
MOTION DATE _____
MOTION SEQ. NO. 002
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1</u>
Answering Affidavits — Exhibits _____	<u>2, 3, 4</u>
Replying Affidavits _____	<u>5</u>

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED
MAY 05 2011
NEW YORK
COUNTY CLERK'S OFFICE

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

Dated: 5/2/11

HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE _____ FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----X
LESLIE HALL and JERMAINE HALL,

Petitioners,

- against -

LIPSTICKALLEY.COM,

Respondent.

-----X
HON. EILEEN A. RAKOWER, J.S.C.

Index No.
101342/11

**DECISION
and ORDER**

Mot. Seq.
002

Leslie Hall and Jermaine Hall (collectively "Petitioners") seek an order compelling pre-action discovery pursuant to CPLR §3102(c) from respondent lipstickalley.com ("Respondent"). Specifically, Petitioners seek information identifying "the name(s), address(es), telephone number(s) and e-mail address(es) of the person or persons who posted statements on lipstickalley.com ... under the username 'BETonBLACK'" (hereinafter "unknown user(s)") Petitioners are a married couple. Leslie is the owner of a marketing company called Iced Media. Jermaine is the Editor of Vibe Magazine. Petitioners seek to uncover information identifying the unknown user(s) for purposes of serving a summons and complaint upon the unknown user(s) for defamatory statements made against Petitioners.

Respondent opposes the order to show cause on the grounds that the court lacks personal jurisdiction over it. Respondent submits a memorandum of law, an affidavit from Respondent's counsel, and an affidavit from Christine Charity, President of Verve Hosting ("Verve"), which owns Lipstick Alley. Charity states that Verve is a Michigan corporation which has its principal place of business in Pontiac, Michigan. Charity states that Verve and Lipstick Alley "do not now, and have not ever, maintained a physical office, owned property, or had a mailing address, telephone number, or fax number in the State of New York." Nor have they ever "targeted the State of New York for business development," or had any employees, agents, or business representatives in the State. Charity further states that Verve and Lipstick Alley do not have any servers in New York, and are not registered to do

business in New York.

As to the nature of the website, Charity explains that Lipstick Alley is an internet message board and discussion forum directed primarily toward African-American woman “where members of the public can gather to discuss a variety of topics.” Membership and activity on the website is free to the public, and the website generates all of its revenue through advertising. “Advertising space,” according to Charity, “is sold to a California company that is solely responsible for selecting the ads that will appear on Lipstick Alley.” Charity further states that all messages are posted on the website without any involvement by Verve, and that Verve generally does not become aware of any specific posts until it receives a complaint.

CPLR §302(a)(1) states, in relevant part:

(a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary . . . who in person, or through an agent:

(1) transacts any business within the state or contracts anywhere to supply goods or services in the state . . .

With the advent of the internet, courts have recognized that “technological advances in communication enable a party to transact enormous volumes of business within a state without physically entering it.” (*Deutsche bank Securities, Inc. v. Montana Board of Investments*, 7 NY3d 65[2006]). Under a CPLR §302(a)(1) analysis, “the guiding principle which has emerged from the case law is that whether the exercise of personal jurisdiction is permissible is directly proportionate to the nature and quality of commercial activity that an entity conducts over the internet.” (*Citigroup, Inc. v. City Holding Company*, 97 F.Supp.2d 549,565[SDNY 2000]). Not all activity conducted via a company’s website rises to the level necessary to confer personal jurisdiction. In order to make such a determination courts look to such factors as “the extent of the website’s interactive nature, whether the company has substantially solicited New York business through its website, and whether defendant’s servicing of New York Customers has been “systematic and continuous.”(*Bankrate, Inc. v. Mainline Tavistock, Inc.*, 856 NYS2d 496[Sup. Ct. Kings Cnty. 2008]). For example, in *Citigroup*, the court found that defendant’s

[* 4]
lending website:

involved more than a passive posting of information about [defendant's] loan products and services. Customers in New York may apply for loans on-line as well as print out an application for submission by facsimile, they may click on a "hyper link" to "chat" on-line with a . . . representative, and they may e-mail [defendant] with home loan questions and receive a response from an "online representative . . . in less than an hour."(*Citigroup* at 565).

Here, the court finds that Respondent's website does not render it subject to personal jurisdiction in New York. It is clear from the record that Lipstick Alley is merely a passive website which allows users to comment on and discuss various issues with other users. There is virtually no interaction between Respondent and users; nor is there anything in the record to show that Respondent either solicited business in New York, or systematically and continuously provided services to persons in New York.

Wherefore it is hereby

ORDERED that the petition is denied and the proceeding is dismissed.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: May 2, 2011



EILEEN A. RAKOWER, J.S.C.

FILED

MAY 05 2011

NEW YORK
COUNTY CLERK'S OFFICE