

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 13-61582-CIV-COHN/SELTZER

STACEY MATTOCKS,

Plaintiff,

v.

BLACK ENTERTAINMENT
TELEVISION LLC,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE is before the Court on Defendant's Motion for Summary Judgment [DE 70] ("Motion"). The Court has carefully reviewed the Motion and all related filings and is otherwise fully advised in the premises.¹

¹ Also pending are several other motions: Defendant's Motion to Dismiss Second Amended Complaint [DE 55], Plaintiff's Motion to Exclude or Limit Testimony and Opinions of Defendant's Expert Guy Hagen [DE 67], Plaintiff's Motion to Exclude or Limit Testimony and Opinions of Defendant's Expert Aram Sinnreich [DE 68], Defendant's Motion to Exclude the Report and Testimony of Fernando Torres [DE 69], and Plaintiffs' Omnibus Motion to Strike Portions of Defendant's Reply in Support of Motion to Exclude the Report and Testimony of Fernando Torres and Defendant's Reply in Support of Motion for Summary Judgment, or in the Alternative, Motion for Leave to File Sur-Replies [DE 91]. Defendant's Motion to Dismiss generally raises the same arguments presented in the Motion for Summary Judgment. But the Court finds it more appropriate to decide these issues based on the summary-judgment record rather than on the pleadings alone. Further, because Defendant is entitled to summary judgment without regard to the disputed expert testimony, the Court need not resolve the parties' expert-related motions. Accordingly, all motions other than the Motion for Summary Judgment will be denied as moot.

I. Background

A. Facts²

From 2006 to 2009, the CW Network (“CWN”) broadcasted the television series The Game, a dramatic comedy about the lives of professional football players and their wives and girlfriends (the “Series”). See DE 71 at 1, ¶ 1 (Def.’s Statement of Material Facts); DE 83 at 1, ¶ 1 (Pl.’s Resp. to Def.’s Statement of Material Facts). After CWN cancelled the Series in 2009, Defendant Black Entertainment Television LLC (“BET”) acquired syndication rights to televise seasons one through three of the Series. See DE 71 at 1, ¶¶ 1-2; DE 83 at 1, ¶¶ 1-2. BET began airing re-runs of the Series in 2010. See DE 71 at 1, ¶ 2; DE 83 at 1, ¶ 2. In March of that year, BET acquired an exclusive license to produce new episodes of the Series, premiering in January 2011. See DE 71 at 1, ¶ 3; DE 83 at 1, ¶ 3. BET has since televised at least three new seasons of the Series. See id.

Facebook is an “online social network where members develop personalized web profiles to interact and share information with other members.” Lane v. Facebook, Inc., 696 F.3d 811, 816 (9th Cir. 2012). The shared information “varies considerably, and it can include news headlines, photographs, videos, personal stories, and activity updates.” Id. Typically, members “publish information they want to share to their personal profile, and the information is thereby broadcasted to the members’ online ‘friends’ (i.e., other members in their online network).” Id.

² In her Response to Defendant’s Statement of Material Facts [DE 83], Plaintiff disputes certain facts in that Statement without citing any supporting evidence. See S.D. Fla. L.R. 56.1(a)(2), (b). To the extent those facts are consistent with the record, they are deemed admitted. See id.

Facebook “Fan” Pages are created with a specific focus—such as a corporate brand, place, organization, or public figure—allowing fans of that subject to express support for or interest in the topic. See DE 70-11 at 1 (“Facebook Pages Terms”). Unlike Facebook members’ personal profiles, Fan Pages can be viewed by anyone who visits them. See id.; DE 71 at 2, ¶ 5; DE 83 at 1, ¶ 5. Facebook treats officially sponsored Fan Pages differently than unofficial Fan Pages. See DE 71 at 2, ¶ 6; DE 83 at 1, ¶ 6. According to Facebook’s Terms of Service,

- A. A Page for a brand, entity (place or organization), or public figure may be administered only by an authorized representative of that brand, entity (place or organization) or public figure (an “official Page”).
- B. Any user may create a Page to express support for or interest in a brand, entity (place or organization), or public figure, provided that it does not mislead others into thinking it is an official Page, or violate someone’s rights. If your Page is not the official Page of a brand, entity (place or organization) or public figure, you must:
 - i. not speak in the voice of, or post content as though it was coming from, the authorized representative of the Page’s subject matter; and
 - ii. make clear that the Page is not the official Page of the brand, entity (place or organization) or public figure.

DE 70-11 at 1.

Facebook users can “like” a Facebook Page (including a Fan Page), or specific postings on a Page, by clicking a “like” button supplied by Facebook. See DE 71 at 2, ¶ 7; DE 83 at 1, ¶ 7. As one appellate court has explained,

“Liking” on Facebook is a way for Facebook users to share information with each other. The “like” button, which is represented by a thumbs-up icon, and the word “like” appear next to different types of Facebook content. Liking something on Facebook “is an easy way to let someone

know that you enjoy it.” What does it mean to “Like” something?, Facebook, <http://www.facebook.com/help/452446998120360> (last visited Sept. 17, 2013). Liking a Facebook Page “means you are connecting to that Page. When you connect to a Page, it will appear in your timeline and you will appear on the Page as a person who likes that Page. The Page will also be able to post content into your News Feed.” What’s the difference between liking an item a friend posts and liking a Page?, Facebook, <http://www.facebook.com/help/452446998120360> (last visited Sept. 17, 2013).

Bland v. Roberts, 730 F.3d 368, 385 (4th Cir. 2013). Any Facebook user who “likes” a specific Page or posted content remains in control of his or her “like” at all times and is free to “unlike” the Page or content by clicking an “unlike” button provided by Facebook. See DE 71 at 3, ¶ 8; DE 83 at 2, ¶ 8.

In 2008, when the Series was airing on CWN, Plaintiff Stacey Mattocks created a Facebook Page focusing on the Series (the “FB Page”). See DE 71 at 3, ¶ 9; DE 83 at 2, ¶ 9. Due to Facebook’s policies, Mattocks could not, and did not, post any BET-owned or third-party-owned content from the Series. See DE 71 at 3, ¶ 10; DE 83 at 2, ¶ 10. Nor could Mattocks hold her FB Page out to the public as the “official” Series Fan Page sponsored or operated by BET. See id.

Around October 2010, BET contacted Mattocks after learning that she had created a Fan Page for the Series. See DE 71 at 3, ¶ 12; DE 83 at 2, ¶ 12. In January 2011, BET hired Mattocks to perform part-time work for the company, paying her thirty dollars an hour. See DE 71 at 3-4, ¶¶ 13, 19; DE 83 at 2-3, ¶¶ 13, 19. Mattocks’s duties included managing the FB Page. See DE 71 at 3, ¶ 14; DE 83 at 2, ¶ 14.

Thereafter, BET prominently displayed its trademarks and logos in the top header of the FB Page, encouraged BET’s viewers to “like” the Page, and provided

Mattocks with exclusive content, including links to video clips and photographs, to post on the Page. See DE 71 at 3-4, ¶ 15; DE 83 at 2, ¶ 15. BET regularly instructed Mattocks to post, or not to post, certain information on the Page. See DE 70-13 at 30-40 (Mattocks Dep., Exs. 42, 48-51, 53); DE 83-16 at 1-3, DE 83-25 at 1-3 (Lespinasse Dep., Exs. 16, 25). Mattocks posted most of the content on the FB Page, but BET employees also occasionally posted material. See DE 71 at 4, ¶ 16; DE 83 at 2-3, ¶ 16. Too, Mattocks helped BET protect its intellectual property by notifying the company when she discovered third parties streaming episodes of the Series without permission. See DE 71 at 4, ¶ 24; DE 83 at 4, ¶ 24. While Mattocks worked for BET, the number of “likes” on the FB Page grew from around two million to over six million. See DE 71 at 4, ¶ 20; DE 83 at 3, ¶ 20.

In February 2011, BET and Mattocks entered into a Letter Agreement. See DE 70-13 at 12 (Mattocks Dep., Ex. 14). BET agreed not to exclude Mattocks from the Page by changing her administrative rights. See id. In exchange, Mattocks granted BET administrative access to the FB Page and agreed that BET could “update the content on the Page from time to time as determined by BET in its sole discretion.” Id. Mattocks admits that these terms entitled BET to “full access” to the Page “in every respect.” DE 70-1 at 13 (Mattocks Dep. at 92).

After signing the Letter Agreement, the parties discussed the possibility of BET employing Mattocks full-time. See DE 71 at 5, ¶ 27; DE 83 at 4-5, ¶ 27. During the course of these discussions, in June 2012, Mattocks informed BET that she would “restrict BET’s administrative access” to the FB Page “[u]ntil such time as we can reach an amicable and mutually beneficial resolution” concerning her employment. DE 70-13 at 17 (Mattocks Dep., Ex. 26). The same day, Mattocks demoted BET’s administrative

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