

EXHIBIT 40

From: Cameron Stracher [cameron@gawker.com]
Sent: 10/9/2012 6:12:09 PM
To: dhouston@houstonatlaw.com
Subject: Claim of Terry Bollea
Attachments: gmg.png

Dear Mr. Houston:

I write in response to your undated letter to Nick Denton regarding a news article on Gawker.com about a video depicting Terry Bollea, aka Hulk Hogan, and an unidentified woman. You ask that Gawker disclose the identity of the person who provided the video and "refrain from becoming involved with any use of the video." **Under the circumstances, we respectfully decline your request.**

The existence and content of the video were widely reported prior to Gawker's publication. Indeed, various news outlets had already identified the woman in the video and her husband. Moreover, the video depicts Mr. Bollea having sex with a married woman in the woman's home, under circumstances and in a place where he has no reasonable expectation of privacy. (In fact, it appears that there was a surveillance camera in the bedroom from which the video was made). Finally, the one minute clip shows very little sexual activity and is clearly newsworthy given the public interest in Mr. Bollea's marriage, divorce, and his extramarital activities.

As for the specific claims you allege: 1) Given the wide disclosure of the content of the video prior to publication, the content actually posted, and the newsworthiness of the video, there can be no claim for publication of private facts; 2) given that the video was made by a third party, not Gawker, there can be no claim for intrusion upon seclusion; 3) no false light publicity claim may be maintained where the content of the video is true; 4) there can be no claim for appropriation of Mr. Bollea's name and likeness where the video is not being used for a "commercial" purpose (as the law defines it), is true, and is newsworthy. Your citations to the *Michaels* and *Eastwood* cases are not applicable here. In *Michaels*, the plaintiffs had an expectation of privacy in their own home, defendants had used plaintiffs images to promote the video at issue, and the video was significantly longer than the short clip posted by us. In *Eastwood*, the key issue was the alleged falsity of the publication, which is not relevant here.

If your client wishes to make a statement on the video or any matter related to it, we would be happy to post his response.

Regards,

Cameron Stracher
Litigation Counsel
Gawker Media

Office: 212.743.6513
Cell: 917.501.6202

THE GAWKER MEDIA GROUP
MEMBER JEBEL STRACHER & ASSOCIATES
ESTABLISHED 1999