

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Case No. 12012447 CI-011

Plaintiff,

vs.

GAWKER MEDIA, LLC aka GAWKER
MEDIA; NICK DENTON; A.J. DAULERIO,

Defendants.

**PLAINTIFF'S OBJECTION AND MOTION TO EXCLUDE
DEPOSITION TESTIMONY OF MINDGEEK CORPORATE
REPRESENTATIVE AND EXHIBITS AT TRIAL**

Plaintiff, Terry Bollea professionally known as Hulk Hogan, hereby objects to and moves this Court for an Order excluding from the trial of this case the deposition testimony of the corporate representative of MindGeek and the exhibits Gawker Defendants seek to introduce through such testimony, and in support states as follows:

STATEMENT OF FACTS

On February 18, 2016, Brett Goldenberg, a corporate representative of MindGeek, was deposed, via videoconference, in Montreal, Canada. MindGeek is a global IT company primarily involved in content delivery of, and streaming media for, Internet pornography.

Mr. Goldenberg appeared voluntarily for this deposition, pursuant to a Notice filed by Gawker Defendants. Gawker Defendants sought to ask Mr. Goldenberg about the availability of "previews" for certain celebrity sex tapes on a "channel" operated by VividCeleb.com (the legal owner and copyright holder of many such videos) on one of MindGeek's websites, Pornhub.com. The website, Pornhub.com, is a site which allows users to upload pornographic

videos for the general public to view free of charge. VividCeleb.com uses PornHub to advertise the celebrity sex tapes it owns, and has paid millions of dollars to acquire.

Gawker Defendants' Notice for the deposition was limited to the very narrowly defined topic areas they wished to discuss. In preparing for the deposition, Mr. Bollea's counsel investigated the VividCeleb.com materials Gawker Defendants intended to use at the deposition, and discovered PornHub's Terms and Conditions governing the use of the website. A link to these terms and conditions appears at the bottom of the page Gawker Defendants introduced at the deposition. These terms and conditions contain numerous terms governing the content which PornHub permits users, including Vivid, to upload to its website. In particular, these Terms and Conditions contain restrictions on content that involves invasions of privacy, infringement of the right of publicity, and violation of copyright. They also require the participants in **any videos** posted to PornHub to have **consented** to videos of them naked and engaged in sexual activity being publicly posted.

Mr. Bollea also located documents **produced by Gawker Defendants** in discovery relating to YouPorn, another MindGeek owned and operated website. Specifically, YouPorn e-mailed Gawker.com to advise them of YouPorn's blog which had published an article on traffic statistics and common searches during 2012. This blog confirms that, during 2012, Mr. Bollea was the sixth overall celebrity searched on YouPorn's website, and the only male to appear in the ranking. YouPorn's email to Gawker stated that Mr. Bollea was one "of the most searched for celebrities on YouPorn.com in 2012."

Accordingly, on February 11, 2016, Mr. Bollea Cross-Noticed the MindGeek corporate representative deposition on additional topics, some of which went beyond the scope of the limited notice served by Gawker Defendants. A copy of the Cross-Notice is attached as **Exhibit**

A. Mr. Bollea provided a copy of his Cross-Notice to counsel for MindGeek via e-mail on February 11, 2016, along with a request that any objections to the additional topics be raised immediately. A copy of this e-mail is attached as **Exhibit B**.

Gawker Defendants and MindGeek never filed any objections to the Cross-Notice. Instead, during the February 18, 2016 deposition, counsel for MindGeek and Gawker Defendants made numerous improper speaking objections, objections to “scope” and “relevancy,” and **guided the witness** as to how to respond to several questions. The witness also was instructed not to answer questions seeking relevant testimony, even though those instructions were not based on the assertion of any privilege. As a result, Mr. Bollea was deprived of the opportunity to conduct a meaningful cross-examination of the witness, and to elicit testimony on issues relevant to this case. This was, essentially, equivalent to being denied the right to depose and cross-examine MindGeek at all, and the proper remedy for such obstruction is exclusion of the witness’ testimony at trial.

ARGUMENT

Florida Rule of Civil Procedure 1.310(c) states in part:

“Any objection during a deposition shall be stated concisely and in a nonargumentative and nonsuggestive manner.”

“Speaking objections to deposition questions are frequently designed to obscure or hide the search for the truth by influencing the testimony of a witness.” 2013 Florida Handbook on Civil Discovery Practice, Ch. 7, p. 51. Florida Rule of Professional Conduct 4-3.4 prohibits lawyers from “unlawfully obstruct[ing] another party’s access to evidence.” Objections should be asserted by saying: “I object to the form of the question.” 2013 Florida Handbook on Civil Discovery Practice, Ch. 7, p. 52.

The Florida Bar Guidelines for Professional Conduct, section F, paragraphs 7-9 state:

7. Counsel defending a deposition should limit objections to those that are well founded and permitted by the Florida or Federal Rules of Civil Procedure or applicable case law. Counsel should remember that most objections are preserved and need be interposed only when the form of the question is defective or when privileged information is sought. When objecting to the form of a question, counsel simply should state: "I object to the form of the question." The grounds should not be stated unless asked for by the examining attorney. When the grounds are requested, they should be stated succinctly.
8. While a question is pending, counsel should not coach the deponent nor suggest answers, through objections or otherwise.
9. Counsel should refrain from self-serving speeches during depositions.

The Sixth Judicial Circuit has also adopted its own Standards of Professional Courtesy, which largely track the Florida Bar guidelines. *See*, Administrative Order 2013-046. The Standards of Professional Courtesy for the Sixth Judicial Circuit, section F, paragraphs 8 through 11, state:

8. We will limit objections to those that are well founded and necessary to protect a client's interest. Most objections are preserved and must be interposed only when the form of a question is defective or privilege information is sought.
9. While a question is pending, we will not, through objections or otherwise, coach the deponent or suggest answers.
10. We will not direct a deponent to refuse to answer questions unless they seek privileged information, are manifestly irrelevant, are calculated to harass, or are not calculated to lead to admissible evidence.
11. We will not make self-serving speeches during depositions.

In *Quantachrome Corp. v. Micromeritics Instrument Corp.*, 189 F.R.D. 697, 700 (S.D. Fla. 1999), the Court found:

Additionally, numerous times during the course of the depositions, counsel for Micromeritics made speaking objections which amounted to providing the witness with counsel's preferred answer to the question. Testimony taken during a deposition is to be completely that of the deponent, not a version of the testimony which has been edited or glossed by the deponent's lawyer. *See Hall v. Clifton Precision*, 150 F.R.D. 525 (E.D.Pa.1993). Accordingly, the witness must be allowed to provide an answer to the best of his ability, free from any influence by his counsel

Rule 1.310(c) prohibits instructions to deponents not to answer questions unless necessary to assert a **privilege**. *Smith v. Gardy*, 569 So.2d 504 (Fla. 4th DCA 1990). It is improper to instruct a witness not to answer questions based on relevancy or form objections. *Quantachrome Corp.*, 189 F.R.D. 697 (S.D. Fla. 1999). Counsel for Gawker Defendants raised numerous improper objections at the deposition based on relevancy and scope. Counsel for the deponent raised similar objections, provided commentary and suggestive statements, and also instructed the witness to not answer questions for reasons other than privilege. These objections and instructions deprived Mr. Bollea of a meaningful opportunity to examine and cross-examine the witness, and unfairly prejudiced Mr. Bollea. As a result, the deposition and the exhibits Gawker Defendants seek to introduce by virtue thereof should be excluded in their entirety.

WHEREFORE, Plaintiff respectfully requests that this Court exclude the deposition testimony of, and all exhibits sought to be introduced through, the corporate representative of MindGeek in their entirety, as well as such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

/s/ Kenneth G. Turkel

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail via the e-portal system this 24th day of February, 2016 to the following:

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