

**U.S. DISTRICT COURT
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE, AT GREENEVILLE**

2008 APR 22 P 1:53

FILED

**ROBIN READ, individually and in her
Capacity as administratrix of the Estate of
Brandon Michael Read, deceased, and
MICHAEL A. READ**

Plaintiffs

VERSUS

CASE NO. 08-cv-116

LIFEWEAVER, LLC, and DAN FRASER

Defendants

COMPLAINT

1. The individual plaintiffs are citizens and residents of the State of Tennessee. Plaintiff, The Estate of Brandon Michael Read, was opened by the Greene County, Tennessee Chancery Court, Probate Division, in December, 2007. Defendant, Lifeweaver, LLC is a limited liability corporation organized under the laws of the State of Arizona, having its principal place of business in a state other than the state of Tennessee. Defendant, Dan Fraser, upon information and belief, is a citizen and resident of the State of Arizona. The matter in controversy exceeds, exclusive of interest and costs, the sum specified by 28 U.S.C. 1332.

2. Plaintiffs are the parents of the late Brandon Michael Read. Brandon Michael Read was born June 5, 1983. The said Brandon Michael Read died intestate on September 6, 2004 as a result of an IED explosion, which he encountered while in the service of his country as member of the United States Armed Forces in Iraq.

The decedent left surviving as his heirs his parents, the individual plaintiffs herein.

3. In September, 2007, plaintiff, Robin Read, learned that the defendants, jointly and severally, were selling, for profit, “anti war t-shirts” with the names of all of the thousands of American service members killed in Iraq, including plaintiffs’ decedent. Defendants, jointly and severally, continue to do so despite the fact that, on May 24, 2007, the Governor of Arizona, Janet Napolitano, signed a law making it illegal to utilize the names of those killed in the service of our country in the recent Iraq war without their families’ permission.

4. Attached hereto and incorporated herewith as Exhibit A is an article put on the national news wire by the Associated Press on Saturday, May 26, 2007. This article states that Fraser, by and through his supposed liability company alter ego, Lifeweaver, LLC, said that he would actively violate the laws of the State of Arizona, citing First Amendment considerations.

5. Attached hereto and incorporated herewith as Exhibit B to this complaint is a letter which was sent to both defendants from plaintiffs’ counsel dated September 24, 2007.

This letter states the following: (a) that the defendants, jointly and severally, were selling, for profit, t-shirts bearing the names of all Americans soldiers killed in the service of the United States in the Iraq war through May 29, 2007; (b) that these names included the name of plaintiff’s decedent;(c) that Mr. Fraser was aware, as early as September 24, 2007, that he did not have permission to use the name of plaintiff’s decedent nor his likeness for any commercial venture.

The letter also impliedly stated that although plaintiffs recognized that, in a free country such as ours, the defendants had certain rights of free speech, the figurative “tip of the nose” at which the fist of defendants’ free speech rights ended was the point at which plaintiffs’ decedent’s name and likeness were used by the defendants, jointly and severally, for profit.

Plaintiff, Robin Read, merely demanded that defendants provide proof that her son’s name had been removed from their product, and that any further product defendants, jointly and severally, sold did not contain the name of plaintiffs’ decedent. These actions were to have been accomplished by October 15, 2007. The deadline passed, and neither plaintiff nor her attorney received any notice from either of the defendants or anyone purporting to represent the defendants that this request had been complied with.

6. Upon information and belief, plaintiffs aver that the name and/or likeness of her late son continues to be used, without their permission and that of his estate, and in violation of certain Tennessee and Federal common law and statutory enactments prohibiting the use of a name or the likeness of another person for profit without just consideration being paid therefor.

7. Plaintiff avers that the defendants, jointly and severally, purposely availed themselves of the privilege of acting in this forum, to wit, the Eastern District of Tennessee, or causing a consequence in the forum state. It is shown to the Court that by selling their product containing the un-consented to use of plaintiffs’ decedent’s name or likeness, for profit, by way of the internet, defendants, jointly and severally, have “purposely availed themselves of the privilege of acting in this forum.”

Similarly, plaintiff avers that she received notice that her son's name and/or likeness was being used illegally, or, if not illegally, improperly and without just compensation therefor, as a direct consequence of defendants' joint and several sale of this product over the internet in the stream of interstate commerce, and particularly in this forum.

Finally, plaintiff avers that the acts of the defendants, jointly and severally, have a substantial enough connection with the State of Tennessee, and particularly the Eastern District of the State of Tennessee, to make the exercise of jurisdiction over these defendants reasonable. Defendants have purposely entered the worldwide stream of commerce through the worldwide internet and are, for profit, using the name and likeness of plaintiff's decedent.

8. Plaintiffs attaches hereto and incorporates herewith as Exhibit C copies of certain pages from the website of the defendant, Lifeweaver, LLC, which were printed on February 4, 2008 from their attorneys' office computer.

Included thereon is a page showing that the defendants, jointly and severally, are selling these shirts for the price of \$22.00 apiece. Also, while defendant, Fraser, states that he has given between \$3-4,000.00 to as of yet unnamed charitable organizations in the memory of all of our brave soldiers who were killed in Iraq, it is shown to the Court that not one cent has gone directly to any of the families whose children were killed in the service of their country in Iraq, or their estates, including plaintiffs.

9. Plaintiffs allege, upon information and belief, that the defendants, jointly and severally, have made over \$75,000.00 in profit by the sale of these t-shirts.

Thus, plaintiff avers that they, individually and on behalf of their late son's estate, should be awarded judgment against the defendants, jointly and severally, in the sum of at least \$75,000.00, said sum representing the gross profit from the t-shirts sold.

10. Plaintiffs avers that the defendants, jointly and severally, were requested to stop using the name and likeness of their son by October 15, 2007, but that they have failed, refused and neglected to do so and, in fact, have continued to do so in flagrant disregard of the laws of many jurisdictions. Thus, plaintiffs aver that, on behalf of the estate of Brandon Michael Read, the estate is entitled to judgment against the defendants, jointly and severally, in the sum of \$100,000.00, said sum representing the gross price of all such offending t-shirts sold after October 15, 2007.

11. Plaintiffs aver that the defendants, jointly and severally, have committed the tort of negligent infliction of emotional distress. They are, jointly and severally, and have been since specifically since October 15, 2007, the deadline on which they were requested to cease and desist, utilizing the name and likeness of their dead son, a fallen hero in the war against terror in Iraq, for personal profit, when the defendants knew or should have known, as reasonable persons, that the use of such name would cause the reasonable person emotional distress. Plaintiffs, in their individual capacities aver that they are entitled to \$100,000.00 apiece in compensatory damages against the defendants, jointly and severally, for their negligent infliction of emotional distress.

12. Plaintiffs incorporate the terms and provisions of the immediately preceding numbered paragraph and aver that the defendants, jointly and severally, have committed the tort of intentional infliction of emotional distress upon them, and aver that

they are entitled to a judgment for compensatory damages against the defendants, jointly and severally, in the sum of \$100,000.00 each.

13. Plaintiffs incorporate paragraphs 1 through 12, supra, and aver that a reasonable, prudent person, living in the Eastern District of the State of Tennessee, the jurisdiction of this Court, and in the United States as a whole, would look at defendants' actions in utilizing (a) the name and/or likeness of the late Brandon Michael Read, a fallen soldier, and (b) continuing to use that likeness after a request was made to cease and desist, both for profit, and would scream at the top of their lungs, "that's outrageous!"

Thus, plaintiffs plead the tort of outrageous conduct and aver that the defendants, jointly and severally, have committed the tort of outrageous conduct, and that they should be awarded compensatory damages against the defendants, jointly and severally in the total sum of \$200,000.00.

14. Plaintiffs incorporate paragraphs 1 through 13, supra, and aver that all the actions of defendants, jointly and severally, described hereinabove were done willfully, wantonly, and without any remorse or feeling for the persons and/or entities affected, of such an outrageous, unauthorized commercial use the name and/or likeness of a dead serviceman, killed in the service of his country in Iraq, who did nothing but sacrifice his life for his fellow countrymen.

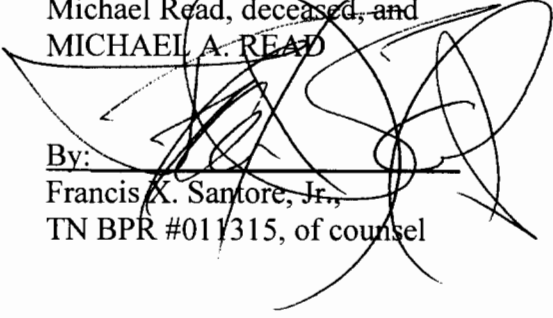
Therefore, plaintiffs, individually and for their son's estate aver that they should be awarded judgment against the defendants, jointly and severally, for punitive damages.

15. Plaintiffs incorporate paragraphs 1 through 14, supra, and aver that this Court should issue a permanent injunction inhibiting and restraining the defendants, their attorneys and agents, under the penalty prescribed by law, from continued use of the name and/or likeness of their late son.

WHEREFORE, plaintiffs demand judgment against the defendants, jointly and severally, in the sum of one million (\$1,000,000.00) dollars in compensatory damages and demand judgment against the defendants, jointly and severally in the sum of nine million (\$9,000,000.00) dollars for punitive damages.

Plaintiffs demand a jury to try this case.

ROBIN READ, individually and as
Administratrix of the Estate of Brandon
Michael Read, deceased, and
MICHAEL A. READ

By: 
Francis X. Santore, Jr.,
TN BPR #011315, of counsel

SANTORE AND SANTORE
Attorneys at Law
P.O. Box 113
Greeneville, TN 37744-0113
423-639-3511

Attorneys for Plaintiffs