

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Civil Division

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)
THE HUMANE SOCIETY OF)
THE UNITED STATES,)
)
Plaintiff,) Case No. 07-0623 (CKK)
)
v.)
) **ORAL HEARING REQUESTED**
AMAZON.COM, INC., ET AL.,)
)
Defendants.)
)
-----X

AMAZON’S MOTION TO DISMISS HSUS’S AMENDED COMPLAINT

Defendant Amazon.com, Inc. (“Amazon”) hereby moves to dismiss Plaintiff The Humane Society of the United States’ (“HSUS”) Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction and 12(b)(6) for failure to state a claim upon which relief may be granted. This Motion is accompanied by a Memorandum of Points and Authorities in Support of Amazon’s Motion to Dismiss the Amended Complaint, and the Declarations of David A. Zapolsky and Constance M. Pendleton in support with exhibits thereto relating to items referenced in the Amended Complaint. Grounds for dismissal are as follows:

1. Counts I-VII must be dismissed because the Animal Welfare Act (“AWA”), 7 U.S.C. § 2156(c), and its recent amendment, the Animal Fighting Prohibition Enforcement Act of 2007, the federal Depiction of Animal Cruelty statute, 18 U.S.C. § 48(a), and the D.C. Cruelty to Animals statute, D.C. Code Ann. § 22-1015(a)(1) do not provide a private right of action and HSUS cannot overcome this requirement by styling its claims as D.C. consumer protection violations.

2. Counts I-VII must be dismissed because HSUS lacks prudential and Article III standing and therefore there is no case or controversy. HSUS cannot circumvent standing requirement by styling its claims as D.C. consumer protection violations.

3. Count I must be dismissed because it is moot with regard to the videos since they are not being offered for sale on Amazon and will be taken down upon adequate notice.

4. Counts I-VII must be dismissed because they are barred by the absolute immunity provided “interactive computer service providers,” such as Amazon, under Section 230 of the Communications Decency Act of 1996, 47 U.S.C. § 230.

5. Counts I-VII must be dismissed because, as a distributor offering an online mechanism for subscribing or selling videos, Amazon has no liability or duty to stop distributing publications absent knowledge that the publications are unlawful. Mere notice of a claim of illegality does not impose liability on Amazon. Amazon has neither the duty nor the ability to investigate ads in the magazines, particularly those ads that on their face are not unlawful.

6. Counts I-VII must be dismissed because the First Amendment bars all of HSUS’s claims against Amazon. The magazines are pure editorial, political speech – not catalogues or commercial speech – and the content-based ban and treble damages HSUS seeks cannot survive strict scrutiny. If applied to Amazon, the AWA and its recent amendment would not survive a constitutional challenge as overbroad and void for vagueness. Most importantly, the ban HSUS seeks would be an unconstitutional prior restraint on speech.

7. Counts I-VII must be dismissed because HSUS’s claims fail to state any claim under the CPPA, a consumer protection statute targeting fraudulent trade practices because (1) the CPPA does not apply to the sale of goods absent fraudulent misrepresentations and Amazon did not mislead any consumer as to the legal status of the magazines and videos, which have never been declared illegal; (2) no actionable “consumer-merchant” relationship exists between HSUS and Amazon because the one subscriber to the Magazines was an HSUS member who cannot reasonably have been deceived as to the Magazines’ legal status; (3) Amazon makes no representations and disclaims any warranty as to the legality of publications offered through its

site; (4) the CPPA encompasses federal law only to the extent the federal law related to warranties and does not extend beyond the actual seller of goods; (5) magazines, much less Amazon, an online conduit for subscriptions, have never been held to “promote” animal fighting in violation of the AWA, to the extent, if any, that violation of the AWA is actionable under the CPPA; and (6) the CPPA does not apply to magazines containing ads for products that are legal in certain jurisdictions or for certain uses just because customers in other jurisdictions or customers with other purposes may view them.

8. Counts VI and VII for conspiracy must be dismissed because the D.C. and federal conspiracy statutes confer no private right of action and HSUS has failed to state a claim for any acts that are themselves actionable. Because there is no independent unlawful act, HSUS’s D.C. and federal conspiracy claims necessarily fail.

Dated this 18th day of July, 2007.

Respectfully submitted,

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
AMAZON'S MOTION TO DISMISS HSUS'S AMENDED COMPLAINT**

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