

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT – CHANCERY DIVISION**

MORIA BERNSTEIN, individually, and on behalf )  
of all those similarly situated, )  
)  
)  
Plaintiff, )  
)  
v. )  
)  
AVVO, INC. )  
)  
Defendant. )

No. 2016CH01634  
CALENDAR/ROOM 04  
TIME 00:00  
Class Action  
Jury Trial Demanded

FILED - 1  
2016 FEB -4 PM 2:32  
CIRCUIT COURT OF COOK  
COUNTY ILLINOIS  
CHANCERY DIV.  
DOROTHY BRUNY CLERK

**CLASS ACTION COMPLAINT**

Plaintiff MORIA BERNSTEIN (“Plaintiff”), on behalf of herself and all others similarly situated, by and through counsel at Zimmerman Law Offices, P.C., brings this action against Defendant AVVO, INC. (“Defendant”), as follows:

**INTRODUCTION**

1. Plaintiff brings this suit on behalf of herself and a class of similarly situated individuals licensed to practice law in the Illinois who have not paid Defendant to advertise or market on Defendant’s website. As set forth below, Defendant operates a website in which it creates separate individual webpage profiles for all licensed attorneys in Illinois and other states throughout the country. Defendant obtains this roster without any of the attorneys’ involvement or consent, but instead does so by compiling the list from public records like bar admissions or other court records.
2. Defendant makes money off of its website by selling advertising and marketing space on these attorneys’ profiles – without the attorneys’ consent – to other attorneys who agree

to pay Defendant a marketing fee. In doing so, Defendant uses attorneys' names and likenesses for its own commercial benefit.

### **PARTIES**

3. Plaintiff MORIA BERNSTEIN is an attorney licensed to practice law in the state of Illinois who specializes in the practice area of family law and residential real estate.

4. Defendant AVVO, INC. is a corporation organized under the laws of the state of Washington, with its principle place of business in Seattle, Washington.

### **JURISDICTION AND VENUE**

5. This Court has personal jurisdiction over Defendant because Defendant is a corporation doing business within the State of Illinois. Defendant markets, sells, and collects money from Illinois attorneys for its marketing and advertising campaigns detailed herein. Defendant uses the names and/or likenesses of Illinois-licensed attorneys to sell advertising and marketing programs to other Illinois attorneys who pay Defendant a marketing fee. Defendant's purposeful availment of its contacts with Illinois and Illinois attorneys is such that it would not be unfair or unexpected to subject Defendant to suit within this Court pursuant to 735 ILCS 5/2-209(a)(1), (a)(2) and (b)(4).

6. Venue is proper pursuant to 735 ILCS 5/2-101, because Defendant is a non-resident of Illinois doing business in Illinois. This action may, therefore, be commenced in any county in Illinois.

### **FACTUAL ALLEGATIONS**

#### **Defendant's Business Practices**

7. Defendant is in the business of creating an online directory of lawyers in Illinois and other states across the country. It obtains the roster of attorneys to be included in its online

directory, not from the attorneys themselves, but instead from scouring public records such as bar admissions and other court or regulatory records. As such, Defendant creates its directory listing of attorneys without any input, involvement, or consent of the attorneys listed in the directory.

8. Defendant does not charge attorneys for whom it creates a profile page, nor does it charge consumers for visiting Defendant's website or accessing its online directory. Rather, Defendant's revenues derive from the use and appropriation of these attorneys' names and likenesses to sell advertising and marketing space to other attorneys who pay Defendant a marketing fee.

9. Specifically, one of Defendant's programs is called "Avvo Advertising," in which attorneys may subscribe. Avvo Advertising is a fee-based marketing plan for which Defendant charges participating attorneys a recurring monthly marketing fee. In exchange, the attorneys who pay Defendant a marketing fee and subscribe to Avvo Advertising ("Avvo Advertising Attorneys") will have their ads prominently displayed as "Sponsored Listings" within the profile pages of attorneys who do not pay Defendant a fee ("Non-Paying Attorneys"). *See Description of Avvo Advertising Program*, attached hereto as Exhibit 1, at p. 1.

10. Defendant chooses the profile pages of Non-Paying Attorneys on which to place ads for Avvo Advertising Attorneys "based on practice area and geography to make sure [Avvo Advertising Attorneys] [are] reaching the clients who need [their] services." *See Exhibit 1*, at p. 1. As a result, Defendant places advertising material for Avvo Advertising Attorneys on the profile pages of Non-Paying Attorneys who practice in the same geographic location, practice in the same area of law, and who often compete for the same clients as the Avvo Advertising Attorneys.

11. Defendant places advertisements and marketing information for Avvo Advertising Attorneys on Non-Paying Attorneys' profile pages without notifying the Non-Paying Attorneys or obtaining their consent. Nowhere in the "Terms and Conditions" does Defendant inform Non-Paying Attorneys that advertisements will be placed on their profile pages.<sup>1</sup>

12. Another of Defendant's programs is called "Avvo Pro," in which attorneys may subscribe if they pay Defendant a monthly marketing fee. Defendant promises subscribers of the Avvo Pro program ("Avvo Pro Attorneys") that "[Avvo Advertising Attorneys'] sponsored ads won't appear on [Avvo Pro Attorneys'] profiles, keeping the focus on the services [Avvo Pro Attorneys] can provide." See *Description of Avvo Pro Program*, attached hereto as Exhibit 2, at p. 1.

13. Defendant's implementation of the Avvo Pro program is a means to coerce Non-Paying Attorneys into paying Defendant a marketing fee so that Defendant will not misappropriate Non-Paying Attorneys' identities or sell advertising space to Non-Paying Attorneys' competitors.

#### **Plaintiff's Profile Page on Defendant's Website**

14. Plaintiff is a Non-Paying Attorney who does not subscribe to either the Avvo Advertising program or the Avvo Pro program.

15. Defendant created a profile webpage for Plaintiff, in which Defendant lists Plaintiff's name, address, years of experience, areas of practice, employment information, educational information, and an Avvo rating.

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<sup>1</sup> See "Terms and Conditions," located at [www.avvo.com/support/terms](http://www.avvo.com/support/terms).

16. Plaintiff never consented to Defendant's creation of a profile page with her name, employment and educational information, professional characteristics, or other appropriations of her likenesses or identity. Defendant created this profile page without Plaintiff's consent.

17. Also without Plaintiff's consent, Defendant sold to Avvo Advertising Attorneys the right to place their advertisements or marketing profiles on the profile page identified by Plaintiff's name and likeness. As a result, anyone visiting the profile page identifying Plaintiff's name and likeness will see advertisements or marketing profiles of Avvo Advertising Attorneys who practice in the same geographic location and in the same practice areas as Plaintiff.

18. The profile page for Plaintiff contains advertisements for Jessica Interlandi ("Ms. Interlandi"), Robert Downs ("Mr. Downs"), Jonathan Shimberg ("Mr. Shimberg"), and Michael Craven ("Mr. Craven"). See Exhibit 3, at pp. 1-2. The advertisements state that Ms. Interlandi, Mr. Downs, Mr. Shimberg, and Mr. Craven are all family law attorneys, just like Plaintiff. Plaintiff never consented to the sale of space on her profile page to Ms. Interlandi, Mr. Downs, Mr. Shimberg, and Mr. Craven in exchange for Defendant's collection of a marketing fee.

### **CLASS ALLEGATIONS**

19. Plaintiff brings this action pursuant to 735 ILCS 5/2-801, on behalf of a class of similarly situated individuals and entities ("the Class") defined as follows:

All individuals licensed to practice law in the State of Illinois for whom Avvo, Inc., without consent, created a profile page on its website on which Avvo, Inc., without consent, placed advertising material from other attorneys, individuals, or entities.

Excluded from the Class are: (1) Defendant, Defendant's agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, and those entities' current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) any person who executes and files a timely request for exclusion from the Class; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

20. The members of the Class are so numerous that joinder of all members is impracticable. Defendant's own website provides that it maintains profiles for 97% of all attorneys in the United States.<sup>2</sup> Based on the vast majority of attorneys licensed in Illinois who do not subscribe to either the Avvo Advertising program or the Avvo Pro program, it is likely that the Class comprises of thousands of members, if not more. The exact number of Class members can be determined from records maintained by Defendant.

21. Common questions of law and fact exist as to all members of the Class, including, but not limited to:

- A. Whether Plaintiff and members of the Class have a protected legal interest in their respective names and/or likenesses;
- B. Whether Defendant misappropriated Plaintiff's and the Class's names and/or likenesses;
- C. Whether Defendant's use of Plaintiff's and the Class's identities violated the Right of Publicity Act;
- D. Whether Defendant's use of Plaintiff's and the Class's names and likenesses infringed on their common law right of privacy; and
- E. Whether the profits that Defendant received by selling advertising and marketing space on Plaintiff's and the Class's Avvo profile pages constitute actual damages.

22. Common questions of law and fact that exist as to the Class predominate over questions, if any, affecting solely individual Class members.

23. Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained competent counsel experienced in class action litigation in state and federal courts nationwide, and Plaintiff has no interest adverse to any member of the Class. Plaintiff intends to prosecute this case vigorously on behalf of herself and the Class.

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<sup>2</sup> See [www.avvo.com](http://www.avvo.com).

24. Defendant has acted on grounds generally applicable to the entire Class. Defendant engages in the same business practice of creating profile pages for attorneys without their consent and selling advertising space on those pages to Avvo Advertising Attorneys.

25. A class action is an appropriate method for the fair and efficient adjudication of this controversy, because it involves a uniform course of conduct equally applicable to Plaintiff and all members of the Class. A class action can therefore best secure the economies of time, effort, and expense or accomplish the other ends of equity and justice that this action seeks to obtain.

**COUNT I**  
**(Violation of the Right of Publicity Act)**

26. Plaintiff repeats and incorporates by reference paragraphs 1-25 of this Complaint as if fully set forth herein.

27. The Right of Publicity Act provides, “A person may not use an individual’s identity for commercial purposes during the individual’s lifetime without having obtained previous written consent from the appropriate person or persons...or their authorized representative.” 765 ILCS 1075/30(a).

28. The Right of Publicity Act may be enforced by any individual or his or her authorized representative. *See* 765 ILCS 1075/20(a)(1).

29. “A person who violates the [Right of Publicity Act] may be liable for either of the following, whichever is greater: (1) actual damages, profits derived from the unauthorized use, or both; or (2) \$1,000.” 765 ILCS 1075/40(a)(1)-(2). In order to show profits, a plaintiff must “prove the damages or gross revenue attributable to the unauthorized use[.]” 765 ILCS 1075/45(a). Punitive damages may also be awarded for willful violations. 765 ILCS 1075/40(b).

30. The profile pages created for Plaintiff and members of the Class on Defendant's website appropriate Plaintiff's and Class members' identity because the profile pages contain their names, years of experience, current employers, former employers, educational information, and other professional characteristics. Plaintiff and members of the Class are clearly identified through the profile pages Defendant created in their names and likenesses.

31. Defendant's use of Plaintiff's and Class members' identities was for a commercial purpose because Defendant used Plaintiff's and Class members' profile pages to sell advertising or marketing space to Avvo Advertising Attorneys.

32. Plaintiff and Class members did not consent, in writing or otherwise, to Defendant's creation of profile pages that appropriate their identities. Further, Plaintiff and Class members did not consent, in writing or otherwise, that Defendant sell advertising and marketing space on the profile pages that appropriate their identities, nor did they consent for Defendant to use their identities for any other commercial purpose.

33. Defendant profited from its unauthorized use of Plaintiff's and Class members' identities because it collected marketing fees from Avvo Advertising Attorneys who bought advertising space on Plaintiff's and Class members' profile pages. Further, by threatening that advertising and marketing materials for competing Avvo Advertising Attorneys will be posted on Non-Paying Attorneys' profile pages, Defendant was able to sell more Avvo Pro subscriptions and profit therefrom.

34. The gross revenue attributable to the unauthorized use of Plaintiff's and Class members' identities includes, but is not limited to, the profit that Defendant made from selling Avvo Advertising subscriptions and Avvo Pro subscriptions, as this revenue was generated



through the sale and threat of sale of advertising and marketing space on Plaintiff's and Class members' profile pages. This gross revenue may be identified through Defendant's records.

35. As such, Defendant's unauthorized use of Plaintiff's and Class members' identities for a commercial purpose violated section 1075/30(a) of the Right of Publicity Act.

WHEREFORE, Plaintiff, individually, and on behalf of all others similarly situated, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Illinois, and certifying the Class defined herein;
- B. Designating Plaintiff as a representative of the Class, and her undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Defendant;
- D. Awarding Plaintiff and the Class injunctive relief ordering Defendant to stop using their likenesses and identities for Defendant's own benefit;
- E. Awarding Plaintiff and the Class all equitable and monetary relief in an amount to be determined at trial, including pre-judgment and post-judgment interest;
- F. Awarding Plaintiff and the Class actual, statutory and punitive damages, attorney's fees and costs, including interest thereon, as allowed or required by law; and
- G. Granting all such further and other relief as the Court deems just and appropriate.

**COUNT II**  
**(Misappropriation of Identity)**

36. Plaintiff repeats and incorporates by reference paragraphs 1-25 of this Complaint as if fully set forth herein.

37. Misappropriation of identity is a tort in Illinois arising from the common law right to privacy, and it is "designed to prevent the commercial use of one's name or image without

consent.” *Petty v. Chrysler Corp.*, 343 Ill.App.3d 815, 826 (1st Dist. 2003) (citing *Ainsworth v. Century Supply Co.*, 295 Ill.App.3d 644, 648 (2nd Dist. 1998)).

38. To succeed on a tort claim for misappropriation of identity, a plaintiff must show: (1) an appropriation of one’s name or likeness; (2) without consent; (3) for another’s use or benefit. *Dwyer v. Am. Exp. Co.*, 273 Ill.App.3d 742, 748 (1st Dist. 1995). A plaintiff “need not prove actual damages, because the court will presume damages if someone infringes another’s right to control his identity.” *Petty*, 343 Ill.App.3d at 826.

39. The rights and remedies available under the common law right of privacy and the Right of Publicity Act are supplemental to one another. *See* 765 ILCS 1075/60.

40. As set forth above, Defendant’s creation of profile pages on the Avvo website appropriated Plaintiff’s and Class members’ names and likenesses.

41. As set forth above, Defendant’s use of Plaintiff’s and Class members’ names and likenesses was done without their consent.

42. As set forth above, Defendant benefitted from its appropriation of Plaintiff’s and Class members’ names and likenesses. These benefits include, but are not limited to, the profits Defendant generated from attorneys who paid Defendant a marketing fee for Avvo Advertising subscriptions and Avvo Pro subscriptions.

43. By misappropriating Plaintiff’s and Class members’ names and likenesses, Defendant infringed on Plaintiff’s and Class members’ right to control their identities in violation of their common law right of privacy.

WHEREFORE, Plaintiff, individually, and on behalf of all others similarly situated, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Illinois, and certifying the Class defined herein;

- B. Designating Plaintiff as a representative of the Class, and her undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Defendant;
- D. Awarding Plaintiff and the Class injunctive relief ordering Defendant to stop using their likenesses and identities for Defendant's own benefit;
- E. Awarding Plaintiff and the Class all equitable and monetary relief in an amount to be determined at trial, including pre-judgment and post-judgment interest;
- F. Awarding Plaintiff and the Class actual and punitive damages, attorney's fees and costs, including interest thereon, as allowed or required by law; and
- G. Granting all such further and other relief as the Court deems just and appropriate.

**JURY DEMAND**

Plaintiff demands a trial by jury on all counts so triable.

Plaintiff MORIA BERNSTEIN, individually, and on behalf of all others similarly situated,

By: \_\_\_\_\_

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