

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

MICHAEL KRAMER,  
Plaintiff,

-against-

GOOGLE, INC., and ABC CORPORATION,

Nonparty(s)

-and-

AWSM\_Endavors\_Critique,

being the fictitious name of the Defendant unknown  
to Plaintiff, a person who has made anonymous  
defamatory and/or unauthorized statements regarding  
Plaintiff on several blogs over the internet,

Defendant(s).

**SUMMONS**

Index No.

**TO THE ABOVE NAMED DEFENDANT:**

**YOU ARE HEREBY SUMMONED** to answer the Complaint in this Action and to serve a copy of your Answer on the plaintiff's attorneys within 20 days after service of the summons (or within 30 days after service is complete if the summons is not personally delivered to you within the State of New York), and, in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York  
September 4, 2014

Yours, etc.,



DANIEL S. SZALKIEWICZ, ESQ.  
**Daniel Szalkiewicz & Associates, P.C.**  
Attorneys for Plaintiff  
7 Dey Street, Suite 900B  
New York, New York 10007  
Tel: (212) 706-1007

To: Google, Inc.  
76 Ninth Avenue,  
New York, New York 10011

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**NOTICE OF ELECTRONIC  
FILING**

Index No.

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by filing of the accompanying documents with the County Clerk, is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b) (3) of that Section.

The New York State Courts Electronic Filing System (“NYSCEF”) is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and self-represented parties. Counsel and/or parties who do not notify the court of a claimed exemption (see below) as required by Section 202.5-bb(e) must immediately record their representation within the e-filed matter on the Consent page in NYSCEF. Failure to do so may result in an inability to receive electronic notice of document filings.

Exemptions from mandatory e-filing are limited to: 1) attorneys who certify in good faith that they lack the computer equipment and (along with all employees) the requisite knowledge to comply; and 2) self-represented parties who choose not to participate in e-filing. For additional information about electronic filing, including access to Section 202.5-bb, consult the NYSCEF website at [www.nycourts.gov/efile](http://www.nycourts.gov/efile) or contact the NYSCEF Resource Center at 646- 386-3033 or [efile@courts.state.ny.us](mailto:efile@courts.state.ny.us).

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**Daniel Szalkiewicz & Associates, P.C.**  
Attorneys for Plaintiff  
7 Dey Street, Suite 900B  
New York, New York 10007  
Tel: (212) 706-1007  
Fax: (914) 500-2315

To: Google, Inc.  
76 Ninth Avenue,  
New York, New York 10011

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**COMPLAINT**

Index No.

Plaintiff MICHAEL KRAMER (“Plaintiff”), by his attorneys Daniel Szalkiewicz & Associates, P.C., as and for his Complaint against defendant alleges, upon information and belief, as follows:

**NATURE OF THE ACTION**

1. Defendant AWSM\_Endavors\_Critique (“Defendant”) has engaged in a crusade of defamation by posting libelous *per se* statements on Defendant’s blog. These statements falsely charge Plaintiff, a director of a prominent international organization, with committing fraud and theft. The comments are each false and are intended to specifically deter Plaintiff’s sponsors and customers. Defendant’s actions were undertaken maliciously, to injure Plaintiff in

his profession and business and out of a desire to embarrass, harm and hold Plaintiff to public scorn and ridicule.

2. When searching Plaintiff's name and company on Nonparty Google, Inc. ("Nonparty Google"), over 36,800 results are generated and Defendant's defamatory blog appears as the **first and second result**.

### **THE PARTIES**

3. Plaintiff is, and at all times relevant to this action has been, an individual residing in the State of New York, County of New York.

4. Plaintiff is not a public official or public figure.

5. Upon information and belief, Defendant is a resident of the State of New York, County of Kings. Despite due diligence, Plaintiff is ignorant of said Defendant's true name and pleads, pursuant to CPLR §1024, by designating so much of said Defendant's name as is known to Plaintiff.

6. Nonparty Google is, and at all times relevant to this action a domestic corporation located at 76 Ninth Avenue, New York, New York 10011.

### **STATEMENT OF FACTS PERTAINING TO ALL CAUSES OF ACTION**

7. Beginning in 2011, and continuing to the present day, a series of defamatory blog postings were published on the internet by Defendant concerning the Plaintiff. As described below, these defamatory statements were published on the blog entitled "AWSM Endeavors Critique." Nonparty Google is the owner of Blogger.com, the host of this Web site.

### **The Defamatory Statements**

8. Defendant created the above-referenced blog on Google. This blog continues to remain in circulation.

9. On the blog, Defendant published the following false statement concerning plaintiff “a phony inline tournament in Boracay Phillipines that they are advertizing and trying to get paying applicants for.”

10. The phrase “phony inline tournament,” used in the post is intended to be understood and is understood to mean that Plaintiff committed the serious crime of fraud and attacks Plaintiff in his profession. The occurrence did not happen and is false.

11. Defendant additionally entitled a blog post “Phillippines scams continue.”

12. The phrase “scams,” used in the post is intended to be understood and is understood to mean that Plaintiff commits “a fraudulent or deceptive act or operation.<sup>1</sup>” The occurrence did not happen and is false.

13. On the blog, the Defendant wrote Plaintiff “is a pathological liar and thief.”

14. The phrase “is a pathological liar and thief,” used in the post is intended to be understood and is understood to mean that Plaintiff commits the serious crime of larceny. This is false.

15. The Defendant wrote Plaintiff “is for sure a pathological liar & thief and will never change.”

16. The phrase “thief,” used in the post is intended to be understood and is understood to mean that Plaintiff commits the serious crime of larceny. This is false.

17. The Defendant wrote Plaintiff runs a “money scamming business.”

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<sup>1</sup> <http://www.merriam-webster.com/dictionary/scam>

18. The phrase “scams,” used in the post is intended to be understood and is understood to mean that Plaintiff commits “a fraudulent or deceptive act or operation.” The occurrence did not happen and is false.

19. Defendant additionally removed Plaintiff’s personal images and published them on Defendant’s blog.

**FIRST CAUSE OF ACTION**  
**(Libel)**

20. Plaintiff repeats and realleges the allegations stated above as if fully set forth herein.

21. The statements published by Defendant regarding Plaintiff are and were false when made.

22. Defendant acted with knowledge of the falsity of these statements and the implications therefrom, reckless disregard for the truth, and/or with malicious intent, both presumed and actual, in knowingly publishing such false statements to third parties.

23. These statements defame and otherwise impugn Plaintiff’s character, integrity, reputation, charge him with a serious crime, and disparaged the Plaintiff in his profession, trade and/or business and are libelous *per se*.

24. The statements are libelous *per se*, so that general damages may be presumed as a matter of law.

25. However, even if the damages are not presumed, Plaintiff has suffered special damages in that the lies Defendant has spread has severely injured his reputation in the legal profession, and countless other economic damages brought on by the wrongful assertion of fraud and theft.

26. That by reason of the foregoing, Plaintiff has been damaged in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would have otherwise have jurisdiction of this matter.

**SECOND CAUSE OF ACTION**  
**(Tortious Interference with Contract/Prospective Economic Advantage)**

27. Plaintiff repeats and realleges the allegations stated above as if fully set forth herein.

28. Plaintiff engaged in business relations with industry professionals and prospective clients.

29. Defendant interfered with that relation.

30. Defendant acted with the sole purpose of harming Plaintiff or used improper or illegal means that amounted to a crime or independent tort.

31. That by reason of the foregoing, Plaintiff has been damaged in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would have otherwise have jurisdiction of this matter.

**THIRD CAUSE OF ACTION**  
**(Intentional Infliction of Emotional Distress)**

32. Plaintiff repeats and realleges the allegations stated above as if fully set forth herein.

33. Defendant's sole purpose of establishing the defamatory blogs was to harass Plaintiff, and publish to the whole world false and defamatory statements.

34. Defendant has intentionally posted the defamatory statements to inflict emotional distress by continuing to embarrass and humiliate Plaintiff each day the false blog remains in circulation.

35. Defendant intended to cause severe emotional distress or recklessly disregarded the likelihood that such conduct would tend to cause severe emotional distress. Such outrageous behavior is beyond the limits of decency and intolerable in a civilized society.

36. That by reason of the foregoing, Plaintiff has been damaged in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**FOURTH CAUSE OF ACTION**  
**(Prima Facie Tort)**

37. Plaintiff repeats and realleges the allegations stated above as if fully set forth herein.

38. Defendant purposefully inflicted harm on Plaintiff by alleging the Plaintiff commits fraud, theft, and malpractice.

39. As a result, Plaintiff suffered special damages.

40. Defendant had no excuse or justification for the assertion of fraud, theft, and malpractice.

41. That as a result of the foregoing, Plaintiff was damaged in a sum which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**FIFTH CAUSE OF ACTION**

42. Plaintiff repeats and realleges the allegations stated above as if fully set forth herein.

43. Without authorization, Defendant reproduced and published photographs that belonged to Plaintiff, infringing the copyright of Plaintiff.

44. Plaintiff did not authorize Defendant's copying, display or distribution of infringing copies of his work.

45. Defendant knew that it infringed on Plaintiff's copyright and they did not have permission to exploit Plaintiff's photographs.

46. Defendant knew that its acts constituted copyright infringement

47. Defendant's conduct was willful within the meaning of the Copyright Act.

48. As a result of its wrongful conduct, Defendant is liable to Plaintiff for copyright infringement pursuant to 17 U.S.C. § 501. Plaintiff has suffered and will continue to suffer, substantial losses, including but not limited to damage to their business reputation and good will.

**WHEREFORE**, Plaintiff requests judgment against each Defendant:

- (a) for damages in an amount to be determined at trial;
- (b) the costs of this action; and
- (c) such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
September 4, 2014

**Daniel Szalkiewicz & Associates, P.C.**



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By: Daniel S. Szalkiewicz, Esq.