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Internet Battle Raises Questions About the First Amendment

By ADAM LIPTAK

The beauty queen and the cad both have Web sites.

Katy Johnson, who was Miss Vermont in 1999 and again in 2001, uses her site to promote what she calls her "platform of character education."

"She is founder of Say Nay Today and the Sobriety Society," the site says, "and her article 'ABC's of Abstinence' was featured in Teen magazine."

Tucker Max's site promotes something like the opposite of character education. It contains a form through which women can apply for a date with him, pictures of his former girlfriends and reports on what Mr. Max calls his "belligerence and debauchery."





Until a Florida judge issued an unusual order last month, Mr. Max's site also contained a long account of his relationship with Ms. Johnson, whom he portrayed, according to court papers, as vapid, promiscuous and an unlikely candidate for membership in the Sobriety Society.

The order, entered by Judge Diana Lewis of Circuit Court in West Palm Beach, forbids Mr. Max to write about Ms. Johnson. It has alarmed experts in First Amendment law, who say that such orders prohibiting future publication, prior restraints, are essentially unknown in American law. Moreover, they say, claims like Ms. Johnson's, for invasion of privacy, have almost never been considered enough to justify prior restraints.

Ms. Johnson's lawsuit also highlights some shifting legal distinctions in the Internet era, between private matters and public ones and between speech and property.

Judge Lewis ruled on May 6, before Mr. Max was notified of the suit and without holding a hearing. She told Mr. Max that he could not use "Katy" on his site. Nor could he use Ms. Johnson's last name, full name or the words "Miss Vermont."

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The judge also prohibited Mr. Max from "disclosing any stories, facts or information, notwithstanding its truth, about any intimate or sexual acts engaged in by" Ms. Johnson. That prohibition is not limited to his Web site. Finally, Judge Lewis ordered Mr. Max to sever the virtual remains of his relationship with Ms. Johnson. He is no longer allowed to link to her Web site.

The page of Mr. Max's site that used to contain his rambling memoir now has only a reference to the court order.

Ms. Johnson did not respond to telephone and e-mail messages seeking comment. In her lawsuit, Ms. Johnson maintained that Mr. Max had invaded her privacy by publishing accurate information about her and had used her name and picture for commercial purposes. Her lawyer, Michael I. Santucci of Fort Lauderdale, declined to be interviewed. He has asked Judge Lewis to seal

the court file in the case, a request on which she has not yet ruled, and to prohibit Mr. Max from talking about the suit, a request she has rejected.

Mr. Santucci did provide a copy of a news release he issued after the order was issued.

"This victory should send a clear message to all parasitic smut peddlers who live off the good names of others," he said in the release, which also noted that Ms. Johnson "emphatically denies the story contained on Tucker Max's Web site."

Mr. Santucci did not respond to an e-mail message asking whether his issuing a news release was at odds with his request to seal the court file on privacy grounds.

John C. Carey, a lawyer at Stroock & Stroock & Lavan in Miami, recently agreed to represent Mr. Max. Mr. Carey said he would soon ask Judge Lewis to withdraw her order and dismiss the case.

"Katy Johnson holds herself out publicly, for her own commercial gain, as a champion of abstinence and a woman of virtue," Mr. Carey said. "The public has a legitimate interest in knowing whether or not her own behavior is consistent with the virtuous image that she publicly seeks to promote."

Through his lawyer and his publicity agent, Mr. Max declined to be

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interviewed.

Ms. Johnson's site is www.katyjohnson.com. Mr. Max's is www.tuckermax.com. Both Ms. Johnson and Mr. Max sell T-shirts and the books they have written on their sites. Ms. Johnson's book is "True Beauty: A Sunny Face Means a Happy Heart." Mr. Max's is "The Definitive Book of Pick-Up Lines."

That the sites are also used to make money should make no difference in whether Mr. Max may be forbidden to write about Ms. Johnson, said Gregg D. Thomas, an expert in First Amendment law at Holland & Knight in Tampa, Fla.

"This is clearly a suppression of free speech," Mr. Thomas said of Judge Lewis's order.

Prior restraints based on invasion of privacy are unusual.

"It has happened perishingly rarely," said Diane L. Zimmerman, a law professor at New York University and an expert in First Amendment and privacy law. "When it has happened it has generated enormous controversy."

Professor Zimmerman noted the example of "Titicut Follies," a documentary about patients in a mental hospital that was banned on privacy grounds in 1969 by Massachusetts's highest court. A judge lifted the ban in 1991.

The prohibition on linking to Ms. Johnson's site is "kooky," said Susan P. Crawford, who teaches Internet law at Cardozo School of Law at Yeshiva University.

"To block the ability to link," Professor Crawford said, "is in effect to say her site is her own private property."

While a prior restraint may not be warranted, legal experts said, Ms. Johnson's invasion-of-privacy claim, so long as it seeks only money, may be justified.

But that, too, raises difficult issues, Professor Zimmerman said.

"If you're telling people they can't talk about something like this," she said of Mr. Max's memoir, "you're also telling them they can't talk about their own lives."



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