

2013 WL 5823864 (Md.Cir.Ct.) (Trial Pleading)  
Circuit Court of Maryland.  
Montgomery County

Estate of Albert James SELL, by its Personal Representative Connie Sell, Plaintiff,  
v.  
Sacha Baron COHEN Todd Lewis One Amercia Productions, Inc. Twentieth Century Fox Film  
Corporration MTV Networks d/b/a Comedy Central USA Network YouTube, Inc., Defendants.

No. 383486V.  
October 25, 2013.

**Verified Complaint**

Tsimpedes Law Firm, [Athan T. Tsimpedes](#), Esq., 1920 N Street, NW, Suite 300, Washington, DC 20036, Tel: 202-464-9910,  
Email: [athan@tsimpedeslaw.com](mailto:athan@tsimpedeslaw.com).

COMES NOW, the Estate of Jim Sell by its personal representative Connie Sell, through counsel, Athan Tsimpedes Esq., complains of Defendants SACHA BARON COHEN, TODD LEWIS, ONE AMERCIA PRODUCTIONS INC., TWENTIETH CENTURY FOX FILM CORPORRATION, MTV NETWORKS d/b/a COMEDY CENTRAL, USA NETWORK, YOUTUBE, INC. and states as follows:

**NATURE OF CASE**

This lawsuit arises from the fraudulently obtained appearance of ALBERT JAMES SELL, now deceased, in the movie “Borat: Cultural Learnings of America for Make Benefit Glorious Nation of Kazakhstan” (the “Borat” movie) and the intentional acts Defendants committed against ALBERT JAMES SELL to portray him negatively and falsely for commercial gain. While at his employment in 2005 at Criswell Chevrolet in Gaithersburg Maryland, ALBERT JAMES SELL, now deceased, was targeted by defendants and **exploited** for commercial purposes under false and misleading pretenses through representations made by defendants that duped and deceived SELL to provide services as a car salesman with the BORAT movie falsely portraying Sell as a racist or bigot towards certain ethnic groups and falsely portrays Mr. Sell as having sold COHEN a dilapidated ice cream truck which never occurred. SACHA BARON COHEN represented himself as a Kazakhstan TV station owner, with a fake accent, who along with TODD LEWIS and the remaining defendants, duped SELL into providing services and falsely portraying him to the public and intended to do so by defendants through the production and broadcasting of the movie “Borat” that continues to this day. The Borat movie continues generates revenue having exceeded 300 Million Dollars and is shown in various television markets, the internet and by DVD sales throughout the United States that includes new material and in constantly changing new DVD versions that necessitates this court to enjoin the defendants from further distribution of SELL's likeness and falsely portraying him.

**JURISDICTION AND VENUE**

1. This court has jurisdiction pursuant to MD Code 6-103 as the acts, in whole or part, giving rise to this complaint occurred in Montgomery County.
2. Venue is proper as the acts complained of giving rise to this lawsuit occurred in part in Montgomery County which acts continues to cause harm.

## PARTIES

3. Plaintiff CONNIE SELL brings this action on behalf of her late husband's estate as the personal representative of the Estate of ALBERT JAMES SELL who passed away on October 25, 2012 after being suddenly and unexpectedly diagnosed with advanced brain cancer.

4. Defendant SACHA BARON COHEN<sup>1</sup> is a resident of the State of California and an actor who has benefited commercial and unjustly by falsely portraying himself to obtain services from SELL and falsely portraying SELL through various media outlets for commercial purposes that was intended to be relied upon by Mr. Sell

5. Defendant ONE AMERICA PRODCUTIONS, INC. (“OAP”) is a corporation created by Defendants, to assist defendants to mislead individuals and **exploit** them commercially. At all time relevant OAP misrepresented its purpose as a production company hired by a Kazakhstan TV Station owner (SACHA COHEN) who wanted to buy and film the car purchase process can be shown in Kazakhstan for the benefit of the people there.

6. Defendant TODD LEWIS, upon information and belief Defendant Todd Lewis is a resident of the State of California residing in the city of Los Angeles.

7. Defendant TWENTIETH CENTRY FOX FILM CORPORATION (“FOX”) is a Delaware Corporation headquartered in Los Angeles, California. FOX is a production and film company that procedures, directs and promoted the movie BORAT that published the commercial likeness of SELL that was wrongfully **exploited** for **financial** gain by defendants while portraying SELL in a false light in the movie Borat which through DVD sales and TV broadcasting has exceeded 300 million dollars in revenue while the costs associated with the movie were estimated at 18 million dollars.

8. Defendant MTV Networks d/b/a Comedy Central (“COMEDY CENTRAL”) is a Delaware corporation that provides television programming and that participated in the filming, production and/or distribution of the Borat Movie and for all allegations relevant hereto, committed torts in the State of Maryland. Upon information and belief, Comedy Central obtained broadcast rights from FOX and/or the remaining defendants and did broadcast the BORAT movie through 2013 continuing the wrongful acts and harm against Mr. Sell<sup>2</sup> throughout the United States and Maryland.

9. On information and belief, USA Network is a subsidiary of NBCUniversal (“USA NETWORK”). USA NETWORK is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business located at 30 Rockefeller Plaza, New York, New York 10112. USA Network may be served in Delaware through its registered agent for service of process, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. Upon information and belief the USA Network obtained the rights to broadcast for 11 Million Dollars and did broadcast BORAT throughout the United States and Maryland between 2007 and 2013.

10. Defendant YouTube, Inc. (“YOUTUBE”) is a Delaware corporation that provides Internet services and participated in the filming, production and/or distribution of the Borat Movie and for all allegations relevant hereto, committed acts torts relevant to this action in the State of Maryland.

## BACKGRIOUND FACTS

11. ALBERT JAMES SELL (“SELL”) provided for his family through years of service as a car salesman at Criswell Chevrolet located in Gaithersburg, MD.

12. In the summer or early fall of 2005, defendants including LEWIS and COHEN targeted SELL. SELL was contacted by TODD LEWIS who represented to SELL that he had a client coming from overseas, a Kazakhstan TV Station owner, to purchase

and film the car buying process at Criswell Chevrolet to be shown in Kazakhstan to help the public there understand how the car buying process works in the US.

13. LEWIS represented to Mr. Sell that he would spend a few hours with a Kazakhstan TV Station owner who was coming to the US to film the process of purchasing a car and would buy a car that would be shown in Kazakhstan.

14. Based on the representations of LEWIS, SELL agreed to provide his services in the car buying process and be filmed for the TV Station owner from Kazakhstan based on the facts represented which were unfortunately false.

15. Unbeknownst to SELL, the TV Station owner from Kazakhstan was non other than the actor SACHA BARON COHEN who had misrepresented himself and his purpose to SELL by and through his agents including TODD LEWIS, the production company and/or remaining defendants and their agents.

16. In summer or early fall of 2005, COHEN appeared at Criswell Chevrolet and represented himself through a false image, character and accent that he was there to purchase a vehicle and film its process to show how the process works in his home country of Kazakhstan.

17. LEWIS and COHEN, who were in character to deceive SELL, never informed SELL or anyone else at Criswell Chevrolet who they really were nor the commercial purpose behind the false and deceptive statements to lure SELL in providing services and to believe that the defendants were intending to purchase a vehicle through his efforts at Criswell Chevrolet which was not the case at all.

18. At all times relevant, LEWIS and COHEN misrepresented themselves to obtain the consumer services and assistance of Mr. Sell to create the impression that he was unaware of the car buying process and falsely attributing offending and deliberate mischaracterizations or statements to SELL intending to **exploit** and use Mr. Sell's good will and likeness for commercial purposes for the defendants' mutual benefit and profit.

19. Defendant LEWIS had promised to pay SELL a hundred and fifty dollars for his time to assist the alleged Kazakhstan TV station Owner to purchase and film the car buying procedure for viewing in and for the people of Kazakhstan that Mr. Sell believed was sincere and for the purpose stated.

20. At all times relevant, SELL relied upon the false representations of TODD LEWIS and COHEN of their purpose and intent in obtaining the services and statements of SELL.

21. At all times relevant, SELL did not know the intent of the Defendants' conduct including their true names or purpose, or that they were actors and not for the stated purpose of documenting a car purchase (that never occurred) to humiliate, embarrass, defame and falsely portray SELL.

22. SELL is not the only one harmed by the false and deceptive practices of Defendants.

23. In an issue of People Magazine, an article details what happened to other innocent victims in the highly over-rated movie:

\* Jim Sell-A car salesman at Criswell Automotive in Gaithersburg, Maryland, he used to sell 35-40 cars a month. But after Borat wasted hours of his time, Sell isn't selling because he's become the butt of a national joke. He says he's only sold 3 cars in the last month.

\* Dharma Arthur-The producer, er ... EX-producer, at WAPT-TV, in Jackson, Mississippi, lost her job after booking Borat for an interview on her newscast, believing he was a legitimate foreign journalist. She wrote to Newsweek: Because of him, my boss lost faith in [me]. A man who [causes] so much harm ... is lauded as a comedic genius.

\* Joe Behar-With his wife, he owns the Four Seasons Kosher Bed & Breakfast in Newton, Massachusetts, at which Borat stays before running out in disgust at “the Jewish cockroaches.” Now, people think the B&B has cockroaches and don't want to stay there. The cockroaches (“Jewish spies”) were superimposed onto the film through special effects.

\* The people of Glod, Romania-They're not happy either. They had to play Kazakhs in the humiliating beginning of this silly movie, but were only paid a few dollars each. They, too, feel taken advantage of by multi-millionaire scammer Sacha Baron Cohen.

\* Civil War antique shop owners-“Borat” deliberately smashes \$400 worth of their wares, and doesn't pay them back for about half of it. These are clearly not rich people. There's hardly a run on Civil War antiques.

22. According to the article, “Now that defendants have unjustly and wrongfully benefitted from the backs of these good people, what will Sacha Baron Cohen do to restore the lives of those he ruined? What will he do to get Ms. Arthur her job back? Or Jim Sell and Joe Behar their lost business and reputations back? Absolutely nothing. He's rich, and the joke's on them and you. “How Borat Screws America” would have been a far more apropos title for this movie.”

23. COHEN acted in a manner that raises serious social and legal implications for his actions towards Mr. Sell and others.

24. COHEN and LEWIS were predators using the kindhearted nature and goodwill of an American, JIM SELL, believing he was helping others who do not understand the American culture.

25. COHEN and LEWIS through their agents and production companies were used as a pretext and cover to obtain the services and trust of SELL and made the following but not limited false or misleading representations:

A. TODD LEWIS contacted SELL and inquired about his services that would be needed for a client of LEWIS, from Kazakhstan, who was coming to purchase a vehicle.

B. That the person coming from Kazakhstan was rich and had his own TV station in Kazakhstan who wanted to purchase a vehicle

C. That the person wanted to make a documentary on the purchasing of the vehicle to be shown in Kazakhstan.

D. That during the film process COHEN LEWIS and their agents created the false impression that COHEN did not understand the American culture and car buying process.

E. That SELL was a bigot, racist or discriminated or had hatred towards an ethnic group

F. COHEN provided a pin from his country to SELL. Luckily, SELL placed the pin in his pocket not knowing what it was at the time believing it was a kind gesture when in fact it was discovered only later and after COHEN and LEWIS had left that the pin contained the letters KKK ... was intended for SELL to wear in order to further humiliate, embarrass and falsely portray SELL as a racist or bigot and for commercial **exploitation**.

G. COHEN represented to SELL that he will wire money from Kazakhstan the next day to purchase the vehicle.

H. At the conclusion of their time and filming, LEWIS created a contrived rushed atmosphere with his alleged client, and represented that he wanted SELL to sign a receipt so he can be reimbursed the \$150 paid to him from his client's TV station company in Kazakhstan. The paper was folded or torn only showing an area to sign and asked SELL to sign his name as a “receipt” with no language visible indicating it was not a receipt

I. SELL was not presented this receipt in advance or informed it would be necessary but was “sprung” upon him to further the deception by defendants and under the pretext for a reimbursement. To this day SELL was not provided a copy. SELL attempted to call the contact number provided by TODD LEWIS on his business card for OAP to request a copy of the receipt but it has never been provided to him nor does the phone number work.

J. That COHEN purchased a dilapidated ice cream truck from SELL

26. Upon information and belief, unlike the other victims of the Defendants in making their movie “Borat”, SELL never signed a release to his knowledge. Sell was never informed of defendants true purpose nor provided a release to sign for his voluntary participation or compensated like other actors participating in the movie.

27. After several hours of discussing various cars with the understanding and belief to purchase a vehicle and filming Defendant, no car was purchased that day but it was represented that COHEN was wiring money to purchase the vehicle selected.

28. The defendants COHEN, LEWIS and their agents began preparing to leave Criswell Chevrolet with the representation and belief that a vehicle was to be purchased and for the stated purposes that were relied upon by SELL to provide services and for defendants to gain access to the services and premises which were false.

29. However, after a long three hours of assisting COHEN, LEWIS of the alleged production company in a rushed manner represented to SELL that he needed to get his signature on a “receipt” so LEWIS can get reimbursed by the TV Station owner, COHEN, for the \$150 payment provided to SELL earlier in the day.

30. Mr. Sell signed the alleged receipt, which was a folded or a torn piece of paper, provided by LEWIS and held by LEWIS in a manner that did not allow for an inspection but to this day was never given a copy despite requesting it and assurances made by LEWIS that SELL would receive it.

31. Once the BORAT movie came out in 2006, SELL was bombarded by phone calls and ridiculed and harassed for interviews for his role in the movie. SELL became the butt of all jokes and would receive unpleasant calls many ridiculing him for his falsely portrayed role in BORAT.

32. As a result of Defendants' conduct, SELL was falsely portrayed in a negative light, defamed, embarrassed and lost revenue from car sales at his job.

33. COHEN and LEWIS and the remaining defendants, through their independent and joint acts towards SELL did defame and/or falsely portray SELL and did so in a false light to intentional expose him to contempt and ridicule from the public through movie BORAT, that included but not limited to:

1. That SELL was in favor of and providing information about “killing gypsies” with a motor vehicle;
2. That SELL was a bigot, racist or otherwise discriminated against certain groups including Gypsies.
3. That SELL condoned killing including “gypsies” and provided information on how to do so with the vehicle being sought for purchase by COHEN.
4. That SELL sold COHEN a vehicle from CRISWELL Chevrolet;
5. That COHEN bought a dilapidated ice cream truck from SELL and Criswell Chevrolet;

34. As a result SELL and his family were ridiculed and exposed to contempt and ridicule that continued through the years by subsequent years by releases of BORAT on the television market from 2007 through 2013 by defendants USA NETWORK and COMEDY CENTRAL, DVD sales and YOUTUBE.

35. Since the release of BORAT, COHEN and/or defendants, through various media outlets including COMEDY CEBNTRAL, USA NETWORK and YOUTUBE have made profits in the millions of dollars to publish and broadcast the BORAT movie throughout the US market including Maryland that continues through the present day defaming and falsely portraying SELL.

36. The DVD is released with new scenes that differ from the film, including Borat being questioned by police at a traffic stop, visiting an animal shelter to get a bear to protect him from Jews, getting a massage at a hotel, and visiting an American doctor. There is also a montage of scenes cut from the film, including Borat taking a job at Krystal and taking part in an American Civil War reenactment. The deleted scenes menu also includes an intentionally tedious supermarket sequence with an unusually patient supermarket owner (Borat repeatedly asks about each product in the cheese section of the store and the owner responds the same way: "That's cheese"), an actual local TV news report about Borat's rodeo singing, and a final "happy ending" scene about Borat appearing in a Kazakh show entitled "Sexydrownwatch", a Baywatch clone that also starred Azamat, Luenell and Alexandra Paul.

37. Upon information and belief, a scene in which Borat was apparently imprisoned was also filmed but was removed under the threat of legal action by prison officials when they learned the "documentary" was a satire.

38. Upon information and belief, the Borat movie released in DVD includes other footage or deleted scenes not in the original movie that calls into question and the need to obtain, delete and police the film footage lasting several hours taken of SELL from Defendants which if left unbridled would allow the broadcasting or DVDs in the US or overseas and in different markets to continue or aggravate the false portrayal of SELL.

39. According to sources, since its release, Borat has grossed over 330 million dollars worldwide since its release with revenue from the broadcasting of BORAT through internet, television stations or homes across the US that includes DVD sales accounting for approximately 80 million dollars if not more.

40. DVD sales include new versions with scenes and material not included in the original movie that may include additional scenes of footage of Mr. Sell and are released in various forms throughout the world with no ability to police the content that may include additional scenes of SELL.

41. Due to the extensive footage taken of SELL by COHEN, LEWIS and their agents, it is all too likely that the defendants will publish and disseminate the film footage taken of Sell at some point in different media including DVD versions that have or can be released in the future or that may include a sequel to the original BORAT film that will cause further embarrassment or ridicule to SELL's family by continuing or exaggerating the false portrayal of SELL and now that SELL has passed away provides Defendants with an economic incentive to add insult to his name and death with no recourse unless enjoined.

42. Upon information and belief, The European Center for Antiziganism Research, filed a complaint with German prosecutors based on Borat's references to Gypsies in his film. The complaint accuses him of defamation and inciting violence against an ethnic group. As a consequence, it is believed that FOX declared that it would remove all parts referring to Roma people from trailers shown on German television as well as on the film's website.

43. Much of the BORAT movie features unscripted vignettes of Borat aka COHEN interviewing and interacting with Americans, who believe he is a foreigner with little or no understanding of American customs.

44. Despite the false characterizations and representations, COHEN won the 2007 Golden Globe Award for Best Actor: Musical or Comedy, as Borat, while the film was nominated for Best Motion Picture in the same category

**MALICE**

44. Plaintiff incorporates by reference all preceding Paragraphs of this Complaint as if set forth in full. Defendants individually and in concert for their own self or joint interests have intentionally, knowingly or with recklessness published false statements and portrayed Plaintiff in a false light by agreement, joint or individual interest and/or benefit to harm SELL as stated herein.

**COUNT I**

**(Defamation- Libel/Slander)**

46. Plaintiff realleges paragraphs 1 through 44 of this Complaint as set forth in full.

47. Defendants and their agents made false and defamatory statements by publication through the movie BORAT and its continued broadcasts on television stations across the US and Maryland.

48. Defendants knowingly made and/or published the aforementioned false and defamatory statements about Plaintiff. Defendant then republished the false and defamatory statements through other media outlets and television stations that continues to this day

49. As a result of the false and defamatory statements published by Defendants, the character and reputation of Plaintiff were harmed, his standing and reputation in the community were impaired, economic harm, and he suffered mental anguish and personal humiliation.

**COUNT II**

**(Invasion of Privacy- False Light)**

50. Plaintiff realleges paragraphs 1 through 49 of this Complaint as set forth in full.

51. Plaintiff was placed in a false light before the public by Defendant's actions. The false light Plaintiff was placed in would be highly offensive to a reasonable person. Defendants acted with knowledge that the information they published was false or in reckless disregard for whether the information was true or false.

**COUNT III**

***(Unjust Enrichment- Fraudulent Scheme)***

52. Plaintiff reallege paragraphs 1 through 51 of this Complaint as set forth in full.

53. As a result of the unlawful conduct described above, Defendants have been, and will continue to be unjustly enriched by using the likeness of SELL and others wrongfully duped into and unknowingly participating in the BORAT movie for Defendants benefit and profiting through the fraudulent scheme and false portrayal of SELL.

54. Defendants have been unjustly enriched by retaining the substantial revenue and profits resulting from the BORAT movie to the detriment and harm of SELL.



55. Defendants have benefited from their unlawful acts and it would be inequitable for Defendants, jointly and independently, to be permitted to retain all of the ill-gotten gains or revenue resulting from the BORAT movie and its continued broadcasts that include the duped involvement of SELL.

56. Plaintiff is entitled to a fair share or reasonable amount of each Defendant's ill gotten gains resulting from its unlawful, unjust and inequitable conduct as stated herein.

#### *COUNT IV*

##### **(Deceptive Trade Practice)**

57. Plaintiff realleges paragraphs 1 through 56 of the Complaint as if set forth in full.

58. That the Defendants conduct is governed by the Consumer Protection Act, [§ 13-101, et. seq. of the Annotated Code of Maryland, Commercial Law Article](#).

59. That the Defendants made false, falsely disparaging, or misleading oral or written statements and other misrepresentations to SELL and of SELL to the public that continues to this day.

60. That Defendants failed to state a material fact that failure of which deceived or tended to deceive the Plaintiff and the public.

61. That the Defendants engaged in deception, fraud, false pretense, false premise, misrepresentation and concealments, oppression and omission of material facts in connection with SELL and his participation in the BORAT movie.

62. That the actions and omissions of the Defendants constitute unfair and deceptive trade practices and violate the Consumer Protection Act, [§13-101, et. seq. of the Annotated Code of Maryland, Commercial Law Article](#).

63. That Plaintiff is entitled to compensation and reasonable attorney's fees pursuant to [Annotated Code of Maryland, Commercial Law Article §13-408\(b\)](#).

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that the Court declare and enter an order and judgment against Defendants, jointly and severally, upon each count of the Complaint as follows:

1. Judgment against Defendants, jointly and severally, on all counts, for:

a. Compensatory damages, to be determined at trial but no less than ONE MILLION DOLLARS; and

b. that Defendants are to be disgorged of the profits wrongfully obtained or unjustly retained under the circumstances.

c. Punitive and/or Treble damages.

2. enjoining defendants from disseminating or publishing the likeness of ALBERT JAMES SELL; Removal of the scenes that refer to, reference, relate to or include ALBERT JAMES SELL from all future releases of the Borat Movie in any form and particularly those images that depict him falsely and negatively and are unlawful pursuant to Maryland Consumer Protection Laws.

3. Disgorgement of profits from Defendants



4. Award attorneys' fees and costs; and
5. Grant such other and further relief as the Court may deem just and equitable.

***DEMAND FOR JURY***

Plaintiff demands trial by jury on all issues.

Dated: October 25, 2013

TSIMPEDES LAW FIRM

BY: <<signature>>

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**MD RULE 1-313 CERTIFICATION**

In accordance with [Rule 1-313](#), I hereby certify that I am licensed to practice law in the state of Maryland.

<<signature>>

Athan T. Tsimpedes

Footnotes

- 1 Upon information and belief, Defendant COHEN is the sole owner of the Four by Two Production Company that was involved with the filming, production, distribution or sales of the BORAT movie including the fraudulent involvement of MR. Sell.
- 2 Upon information and belief Comedy Central paid 4.5 Million Dollars to broadcast BORAT and did through 2012. <http://www.the-numbers.com/movies/2006/BORAT.php>

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