

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS  
FIFTH DIVISION

THE SATANIC TEMPLE, INC.

PLAINTIFF

VS.

CASE NO. 04CV-20-2100

LAMAR ADVANTAGE GP COMPANY, LLC and  
LAMAR ADVANTAGE HOLDING COMPANY

DEFENDANTS

**LAMAR ADVANTAGE GP COMPANY, LLC AND**  
**LAMAR ADVANTAGE HOLDING COMPANY'S**  
**MOTION FOR JUDGMENT ON THE PLEADINGS**

Come now the Defendants, Lamar Advantage GP Company, LLC, and Lamar Advantage Holding Company and move under Ark. R. Civ. P. 12(c) for judgment on the pleadings in this matter. For such motion, Defendants state as follows:

1. The following facts are among those that can be taken as true by the Court for the purposes of this Motion for Judgment on the Pleadings.<sup>1</sup>

a. TST is an IRS-recognized atheistic religious organization whose membership is found in every state. Am. Com. ¶ 3.

b. Lamar (Indiana) and Lamar (Arkansas) are subsidiaries of Lamar Media Corporation, which is one of the largest outdoor advertising companies in the world. *Id.* at ¶ 4.

c. Arkansas and Indiana regulate how, when and whether a woman can terminate her pregnancy. *Id.* at ¶¶ 5–9.

d. TST unveiled a “religious abortion ritual” in August of 2020. *Id.* at ¶ 9.

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<sup>1</sup> Defendants reserve the right to challenge any or all of these facts, if necessary, at a later stage of the litigation.

e. TST holds the view that its membership can demand exemptions from statutory requirements governing abortion. *Id.* at ¶ 10.

f. TST engaged a marketing firm called SeedX to design and place billboards about TST's "abortion ritual." *Id.* ¶ 12.

g. Subsidiaries of Lamar Media Corporation have displayed designs for TST in the past. *Id.* ¶ 22, 25 and 26. These designs include:

Past Design 1



Past Design 2



*Id.* at ¶¶ 25 and 26. These designs are referred to as the Past Designs.

h. On September 2, 2020, Jacqueline Basulto, a SeedX representative, phoned Tom Hill, a Lamar (Indiana) representative, about a potential ad campaign. *Id.* at ¶ 20.

i. “During this phone call, Jacqueline notified Tom that the advertisements . . . would be pro-reproductive rights in nature and would pertain to the religious practices of TST.” *Id.* at ¶ 21.

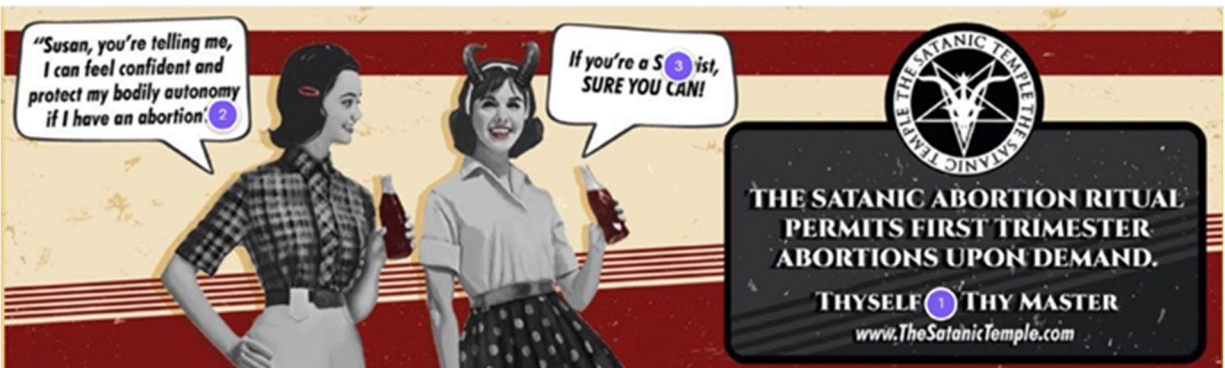
j. Mr. Hill “acknowledged the nature of the advertisement and said this would be ‘no problem.’” *Id.* at ¶ 23.

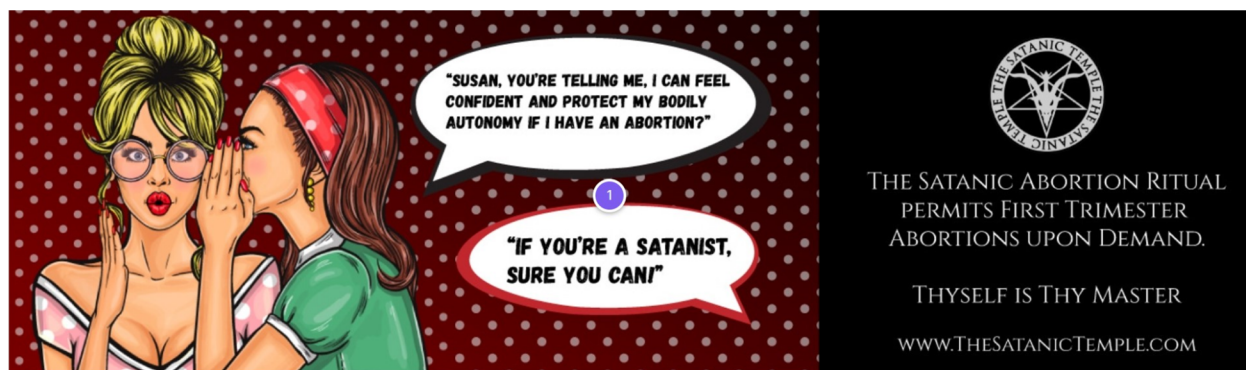
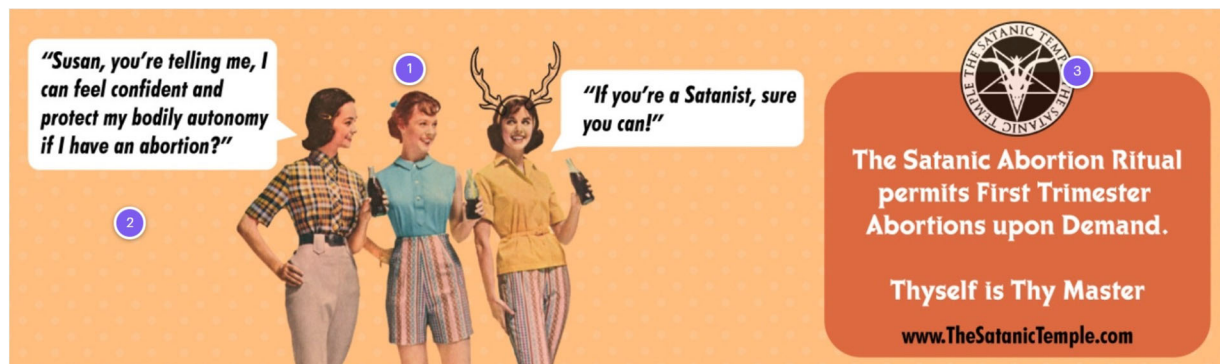
k. Later that day, Ms. Basulto emailed Tom Hill to specify the locations she wished to display the ads. *Id.* at ¶ 25.

l. Ms. Basulto also attached Past Designs 1 and 2, *supra*, “to show [Lamar] what creative looked like in the past.” *Id.*

m. On September 14, 2020, Jacqueline Basulto signed an advertising contract (the “Contract”) with Lamar (Indiana) on behalf of SeedX. Am. Com., Ex. 1.

n. Then, on September 15, 2020, SeedX sent the following five designs for approval:





Am. Com. ¶ 32; Answer ¶ 32, Ex. A.

o. On September 21, 2020, Defendants rejected these designs. Am. Com. ¶ 33.

p. Each of these designs contains the phrase “The Satanic Abortion Ritual Permits First-Trimester Abortions Upon Demand.” See supra.

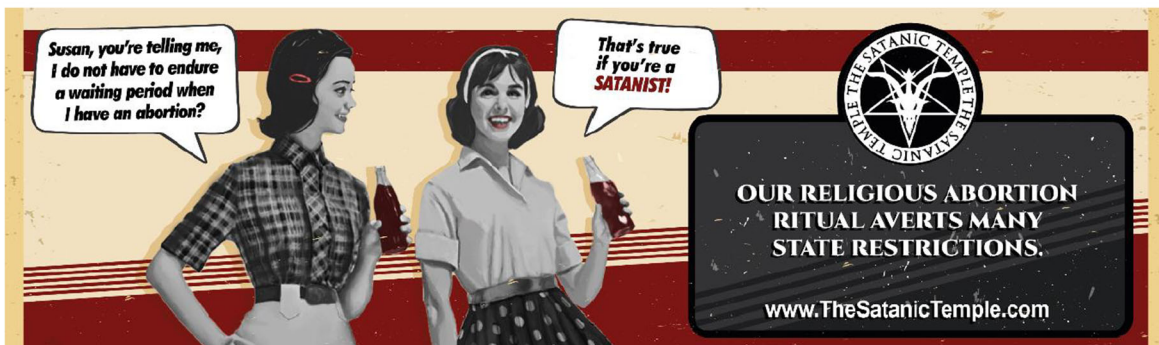


q. After Lamar rejected these “Abortions Upon Demand” designs, SeedX sent the following designs on September 21, 2020 which proclaimed that TST’s abortion ritual “averts many state restrictions”:

TST Design 1



TST Design 2



TST Design 3



Pregnancy complications are the sixth most common **cause of death** among women between the ages of 20 and 34.

**Abortions Save Lives!**



www.TheSatanicTemple.com

**Our Religious Abortion Ritual Averts  
Many State Restrictions**

*Id.* at ¶ 34.

r. Each of these four designs contains the phrase “Our Religious Abortion Ritual Averts Many State Restrictions.” *Id.*

s. Defendants again rejected these proposed ads under section 6 of the Contract between the parties and cancelled the Contract. *Id.* at ¶¶ 37, 47.

2. Ark. R. Civ. P. 12(c) requires entry of judgment on the pleadings “if the pleadings show on their face that there is no merit to the suit.” *Steinbuch v. Univ. of Ark.*, 2019 Ark. 356, at \*7, 589 S.W.3d 350, 356. When ruling on a motion for judgment on the pleadings, courts “view the facts alleged in the complaint as true and in the light most favorable to the party seeking relief.” *Id.* at \*8, 589 S.W.3d at 356.

### **Breach of Contract Claim**

3. TST’s allegations that the Contract required Defendants to display the Abortion Ritual Designs fail for at least two reasons. Am. Com. ¶¶ 72, 67.

4. First, Defendants had every right to reject the Abortion Ritual Designs and cancel the contract at any time.

5. Paragraph 6 of the Contract states,

“Lamar reserves the right to determine if copy and design are in good taste and within the moral standards of the individual communities in which it is to be

displayed. Lamar **reserves the right to reject or remove any copy** either before or after installation, including immediate termination of this contract.”

Com., Ex. 1 (emphasis added).

6. The Amended Complaint sets out conversations between SeedX and Defendants where Defendants told SeedX that the Abortion Ritual Designs were “offensive and misleading.” Am. Com. ¶ 39.

7. Second, Defendants could not have contracted to place the Abortion Ritual Designs because Defendants had not seen them prior to the contract being signed. Rather, SeedX had only provided Defendants with the Past Designs at the time of contracting. The Contract could not have required Lamar to display the Abortion Ritual Designs because Lamar had not seen them at the time of contracting.

8. TST does not point to any contractual language imposing a duty upon Defendants to explain their decisions or to provide criteria.

9. Paragraph 6 of the Contract is unambiguous and clear; Defendants had the right to reject designs or immediately cancel the Contract at its discretion.

10. Arkansas law does not recognize a contractual bad faith claim in the absence of a separate breach.

11. TST alleges that “Lamar cannot abuse its right to object to design elements,” and that Defendants’ rejection was done in “bad faith because Lamar refused to explain what, exactly was objectionable so the objection could be cured.” Am. Com. ¶¶ 38, 75.

12. TST does not allege that Defendants were under any duty to explain itself, and the Contract contains nothing suggesting that such a duty existed.

13. A breach of the implied covenant of good faith and fair dealing is nothing more than evidence of a possible breach of a contract between parties.

14. TST presents no facts to establish either dishonesty by or a benefit to Defendants.
15. Defendants deemed the Abortion Ritual Designs not within the moral standards of the individual communities in which they were to be displayed and said as much to SeedX. Am. Com. ¶ 39.
16. TST chose to contract with Defendants under the terms set forth in the Contract. Part of that Contract involved TST submitting to Defendants' subjective determination of whether advertising was within the moral standards of the communities in which they were to be displayed.
17. Paragraph 6 of the Contract is not unconscionable.
18. TST does not allege any facts to support that Defendants overcharged TST or that the Contract limited remedies in any way
19. TST does not allege any facts suggesting that paragraph 6 of the Contract is procedurally unconscionable.
20. The Contract's terms also were not "unreasonably favorable" to Defendants.
21. When Defendants terminated the Contract, they terminated their rights to receive payment.
22. The Amended Complaint does not establish unequal bargaining power or a failure to comprehend the terms of the Contract.
23. TST is an IRS-recognized atheistic religious organization with membership exceeding 100,000.
24. SeedX is a marketing firm.
25. TST does not allege that it failed to understand the Contract.



26. TST's Breach of Contract claim fails on the pleadings because paragraph 6 of the contract granted Lamar the right to reject designs that are not "in good taste and within the moral standards of the individual communities in which they are to be displayed."

27. Mere allegations of bad faith on Lamar's point cannot support a claim for breach of contract in Arkansas.

28. Paragraph 6 of the contract is not unconscionable procedurally or substantively.

### **Arkansas Civil Rights Act Claim**

29. TST's attempt to characterize Defendants' actions under the Contract as religious discrimination lacks factual support in the Amended Complaint.

30. The Abortion Ritual Designs were not in good taste or within the morals of the communities in Arkansas and Indiana where they were to be displayed.

31. The ACRA proscribes discrimination in property and contractual transactions "because of . . . religion." Ark. Code Ann. § 16-123-107(a).

32. Defendants rejected the designs because they were not "in good taste and within the moral standards of the individual communicates in which [they were] to be displayed."

33. The Complaint itself demonstrates that Lamar subsidiaries have run different ad copy for TST that contained both TST's religious iconography and its religious beliefs. Am. Com. ¶¶ 25 and 26.

34. The rejected Abortion Ritual Designs, however, have a much different message involving whether participation in an abortion ritual allows one to avert state law.

35. TST's position that its "abortion ritual" averts state law is unproven and, as yet, unsupported.

36. TST's Abortion Ritual Designs acknowledge the existence of valid state laws that regulate the timing and accessibility of abortion. Am. Com. ¶¶ 5, 10; Answer, Ex. A.

37. TST fails, however, to allege that its position with respect to its abortion ritual has been validated by a court in Arkansas, Indiana, or any other court in the country.

38. TST sought to advertise this position just one month after the abortion ritual was unveiled. *Compare* Am. Com. ¶ 9 (stating that TST unveiled its abortion ritual on August 5, 2020), *with* Am. Com. ¶ 20 (stating that Ms. Basulto contacted Lamar about TST's advertising campaign on September 2, 2020).

39. The Abortion Ritual Designs advocated avoiding/violating state laws regulating abortion with no legal justification. This is not within the morals of the communities in which they were to be displayed. No reasonable person could see the Abortion Ritual Designs and find that Defendants' rejection of the designs was "because of [] religion."

40. Other Lamar Media Corporation subsidiaries have previously displayed ads for TST that included TST's religious iconography and beliefs. "Past Design 1" appeared as follows:

Past Design 1



Am. Com. ¶ 25, Past Design 1.

41. A Lamar Media Corporation subsidiary also displayed "Past Design 2", which appeared as follows:

Past Design 2



*Id.*, Past Design 2.

42. By contrast, TST's "Abortion Ritual" designs that are the subject of this action included:

TST Design 1

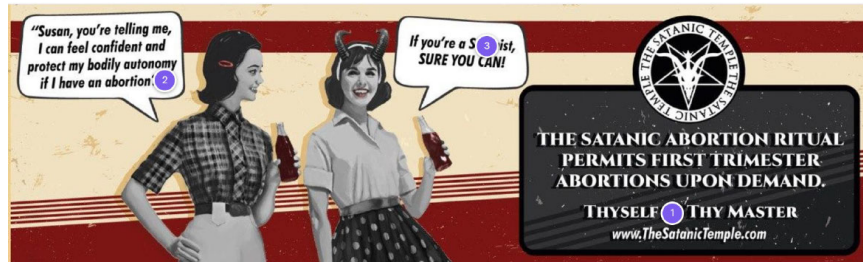


TST Design 3



*Id.* at ¶ 34, TST Designs 1 and 2.

43. The initial designs SeedX presented for approval included:



Am. Ans., Ex. A.

44. While both the Past Designs and the Abortion Ritual Designs included TST’s religious iconography and beliefs, only the latter advocate for the ability to avert state laws or to have a first trimester abortion on demand.

45. The face of TST’s Complaint demonstrates that Lamar subsidiaries have displayed ad copy that included both TST’s religious iconography and its religious beliefs. The distinguishing factor between the ads that Lamar subsidiaries have run and those rejected here is that the content of the latter advocates for averting state laws/restrictions while the former do not. This is not discrimination “because of ... religion” as required by the statute.

46. TST’s claim under the Arkansas Civil Rights Act should be dismissed because the facts alleged in the Complaint do not, even if true, support a finding that Defendants discriminated against TST “because of ... religion.”

47. TST’s claim for promissory estoppel fails because there was a written contract.

48. The parties agree that a contract existed. Am. Com. ¶ 70; Am. Ans. ¶ 70.

49. Promissory estoppel is not a valid claim when an actual contract exists.

WHEREFORE, Defendants, Lamar Advantage GP Company, LLC, and Lamar Advantage Holding Company pray that the Court grant its motion for judgment on the pleadings under Ark. R. Civ. P. 12(c), that the Amended Complaint be dismissed and that they be granted all other just and equitable relief to which they may be entitled.

Respectfully submitted,

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*Attorneys for Defendants*



**CERTIFICATE OF SERVICE**

I hereby certify that, on February 11, 2021, I electronically filed the foregoing with the Clerk of the Court using the AOC eFlex electronic filing system, which shall send notification of such filing to all counsel of record.

By: /s/ Michael N. Shannon  
Michael N. Shannon (92168)