

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF COUNTY OF NEW YORK

LANDMARK EDUCATION CORPORATION, :
Plaintiff, :

-against- :

HACHETTE FILIPACCHI MEDIAS GROUP, d/b/a :
ELLE MAGAZINE and ROSEMARY MAHONEY, :
Defendants. :

Index No. 115873/98
Plaintiff designates New York
County as the place of trial
The basis of the venue is
defendants' residence.

SUMMONS

Plaintiff resides c/o
Landmark Education Corporation
425 Fifth Avenue
New York, New York 10021

To Defendants Hachette Filipacchi Medias Group, d/b/a ELLE Magazine and
Rosemary Mahoney

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to
serve a copy of your answer, or, if the complaint is not served with this summons, to serve a
notice of appearance, on the Plaintiff's Attorneys within 20 days after the service of this
summons, exclusive of the day of service (or within 30 days after the service is complete if this
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
herein.

Dated: New York, New York
August 31, 1998

Morrison Cohen Singer & Weinstein, LLP
Attorneys for Plaintiff
750 Lexington Avenue
New York, New York 10022
(212) 735-8600

Defendant's Address:

Hachette Filipacchi Medias Group,
d/b/a ELLE Magazine
1633 Broadway
New York, New York 10019

Rosemary Mahoney
c/o Hachette Filipacchi Medias Group,
d/b/a ELLE Magazine
1633 Broadway
New York, New York 10019

NEW YORK
COUNTY CLERK'S OFFICE

#208203

AUG 31 1998

NOT COMPARED
WITH COVERED

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF COUNTY OF NEW YORK

-----X

LANDMARK EDUCATION CORPORATION, :

Plaintiff, :

-against- :

HACHETTE FILIPACCHI MEDIAS GROUP, d/b/a
ELLE MAGAZINE and ROSEMARY MAHONEY, :

Defendants. :

-----X

Index No.

VERIFIED COMPLAINT

Plaintiff, Landmark Education Corporation, by its attorneys, Morrison Cohen
Singer & Weinstein, for its complaint against the defendants, respectfully show the Court and
alleges as follows:

I.

NATURE OF THE ACTION

1. This is an action for damages caused by defendants' publication of false
and defamatory statements of and concerning plaintiff. Jurisdiction and venue are based upon
the residence of defendant Hachette Filipacchi Medias Group, d/b/a ELLE Magazine, doing
business in the State, County and City of New York, upon the commission of tortious acts in the
State, County and City of New York, which caused injury here, and upon the publication of the
challenged material by defendants in the State, County and City of New York.

II.

PARTIES

2. Plaintiff Landmark Education Corporation ("Landmark") is an employee-owned California corporation engaged in the business of making educational programs available to the general public, through its more than 40 offices worldwide. Landmark is authorized to do business in New York and maintains offices at 425 Fifth Avenue, New York, New York 10021.

3. Defendant, Hachette Filipacchi Medias Group ("HFM"), is, upon information and belief, a Delaware corporation engaged in the publishing business, authorized to do business in New York. Upon information and belief, HFM publishes and distributes a monthly magazine known as ELLE Magazine, a publication doing business in New York County which has offices located at 1633 Broadway, New York, N.Y. 10019

4. Defendant Rosemary Mahoney ("Mahoney") is, upon information and belief, a resident of the State of New York. Mahoney is a professional journalist and contributory writer to ELLE who, upon information and belief, researched and authored an article entitled "Do You Believe in Miracles," that was published in the September 1998 issue of ELLE magazine ("the Article").

5. The research and writing of the Article occurred in the State of New York and the Article was widely published and distributed in the State of New York as contained in the September, 1998, issue of ELLE Magazine.

III.

BACKGROUND

6. Landmark offers a four-part curriculum with the basic program being The Landmark Forum ("The Forum"). Landmark also offers advanced programs on various subjects including communication, time management and productivity.

7. The Forum is a program that takes place on three days and one evening in which participants are asked to examine the fundamental assumptions that shape their actions and may limit their freedom and effectiveness. Participants are given an opportunity to discover new possibilities for actions which may enhance their productivity, improve their relationships and achieve a greater degree of satisfaction.

8. Participants in The Forum are neither required nor requested to follow embrace, or worship any theology, dogma or doctrine. In addition, participants in The Forum and/or any of the other programs of Landmark are not taught any practices to repeat or rituals to follow nor are they subject to coercive influences.

9. Participants in The Forum are not required, requested or even permitted to donate all or a portion of their assets to Landmark or any other entity, group or individual. Participants in The Forum in New York pay \$375 as tuition to Landmark which covers the cost of the three day and one evening session.

10. Participants in The Forum are not obligated to attempt to "recruit" other individuals to participate in programs offered by Landmark.

11. Participants in The Forum are not required or requested to cut themselves off, or isolate themselves from their family and friends. People who participate in The Forum return to their homes in the same manner as if they took adult education courses at an urban college.

CAUSE OF ACTION

12. On or about August 6, 1998, defendants caused to be published and published in the September 1998 issue of ELLE Magazine an article entitled "Do You Believe in Miracles?" (the "Article").

13. The Article, which appears on pages 312 through 322 of the September 1998 issue of ELLE Magazine, contains numerous false statements. Specifically, defendants made the following false and defamatory statements of and concerning plaintiff in the Article:

"...they [the Forum] take away the base that makes a moral view possible for each individual and call it freedom."

...The Forum is a mass-marketing pyramid scheme...

...trafficking in subtly coercive thought reform and bent on ensnaring the weak of character in a slick web of palliative jargon.

..."Welcome to your 'Forum!' she [Beth Handel, Forum leader] barks, launching into an impeccably executed performance laden with...pithy quotations ranging from philosopher (and Nazi sympathizer) Martin Heidegger...."

..."What does the Forum promise? With notable condescension Handel answers, "You'll get what you want by the end of the day That's just how it works."

...an idea purloined from the theories of Heidegger.

Is she saving our lives or is she reaching into our handbags for our checkbooks?...Beth Handel knows how to hustle.

My \$375 has bought me a flimsy synthesis of world philosophies, littered with the sort of aphoristic suggestions abundant in high school yearbooks.

...paralleling aspects of...Fascism, and carnival hucksterism.

...in a kind of informal hypnotic process people can become submissive to voices of authority through a series of indirectly applied techniques of suggestion. Such hypnosis, practiced without formal trance induction, employs jokes, confusion, guilt, humiliation, group pressure, and sleep deprivation to assert its control. The stories leaders tell -- known as "killer shares" among experts who study such self-actualization groups -- are rehearsed but apparently spontaneous anecdotes calculated to deliver an emotional message.

Strategically placed suggestions are another form of subtly coercive influence. When Handel says at the start of our group experience of fear, "There might be some crying during this exercise," the suggestion is that we *should* cry.

...there is, experts agree, a denigration of critical thinking.

...in the end, the transformational key the Forum offers is nothing more than words, *My life has been transformed*. Say it enough times and it might come true.

A copy of the Article is annexed hereto as Exhibit "A" ;and made a part of this Complaint.

14. The Article, as a whole and, the use of the particular words set forth in paragraph 13 above, conveyed the following false and defamatory meanings of and concerning plaintiff:

- a. Landmark deprives participants of any moral viewpoint.
- b. Landmark is engaged in a mass-marketing pyramid scheme.

c. Landmark is engaged in criminal activity in its mass-marketing pyramid scheme.

d. Landmark is engaged in coercive thought reform.

e. Landmark targets the weak in character who it can more easily manipulate.

f. Landmark promulgates the ideas of Nazi sympathizers.

g. Landmark treats participants badly.

h. Landmark and its Forum leaders are more interested in getting money from participants than saving their lives.

i. Landmark's Forum leaders are engaged in hustling Forum's participants.

j. Landmark promulgates fascism and carnival hucksterism in its Forum sessions.

k. Landmark engages in informal hypnotic processes.

l. Landmark's Forum leaders use subtle coercive influence.

m. Landmark denigrates critical thinking.

n. Landmark engages in mind control and brain-washing.

15. The false and defamatory meanings and implications of and concerning plaintiff Landmark Education Corporation alleged in paragraphs 13 and 14 were also conveyed by the combination of individual statements contained in the Article, including the juxtaposition of words and statements to each other, which, in the aggregate, produced the false and defamatory inferences from which said meanings and implications were conveyed. Said false

and defamatory meanings of and concerning plaintiff were further conveyed by the false and defamatory portrayal of its Forum Leader, Beth Handel, as arbitrary, oppressive and malicious.

16. Defendants knew and intended that the particular statements set forth in paragraph 13 and in the Article as a whole (Exhibit "A") would convey each and every false and defamatory meaning and implication set forth in paragraph 14 of and concerning plaintiff. Such false and defamatory meanings were conveyed by the particular statements set forth in paragraph 13 and by the inferences drawn from the Article's statements in the aggregate.

17. Defendants' publication of the Article was made with actual malice in that the defendants knew that the aforesaid defamatory statements and meanings were false and/or published them or caused them to be published in reckless disregard of their truth or falsity and/or published them or caused them to be published without reasonable grounds for believing them to be true.

18. The aforesaid defamatory statements and meanings were published or caused to be published by defendants acting in a grossly irresponsible manner.

19. The aforesaid defamatory statements and meanings were published or caused to be published by defendants acting in a negligent manner.

20. The publication of the Article as described herein was accomplished by means which radically departed from responsible journalistic standards and practices.

21. The publication of the Article and the said defamatory statements, implications and meanings alleged herein, were motivated by ill-will and defendants' desire to harm the plaintiff and its ability to function.

22. By reason of the aforesaid acts of defendants, plaintiff has been held up to public disgrace, scorned and ridiculed, has been seriously injured in its business and will be further injured in its business in the future, has suffered grave and permanent impairment of its reputation and standing in the adult education community, and with the general public, and has otherwise been injured in its good name, fame and reputation.

WHEREFORE, plaintiff Landmark Education Corporation demands judgment against defendants as follows:

- (1) In an amount no less than \$5,000,000 in actual damages together with interest thereon;
- (2) In an amount no less than \$5,000,000 in punitive damages;
- (3) For the costs and disbursements in this action including reasonable allowances for counsel fees and other lawful expenses; and
- (4) For such other and further relief as the Court may find just and proper under the circumstances.

Dated: New York, New York
August 28, 1998

Yours, etc.

Morrison Cohen Singer & Weinstein, LLP
Attorneys for Plaintiff
750 Lexington Avenue
New York, New York 10022
(212) 735-8600

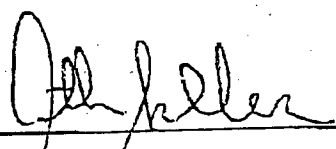
VERIFICATION

STATE OF CALIFORNIA)
) ss.:
COUNTY OF SAN FRANCISCO)

Arthur Schreiber, being duly sworn, deposes and says:

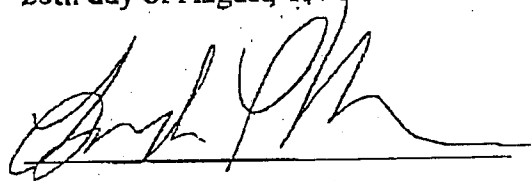
1. I am General Counsel to Landmark Education Corporation the Plaintiff herein.

2. I have read the foregoing Verified Complaint and know the contents thereof to be true except as those matters which are stated upon information and belief, and as to those matters, to the best of my information and belief, I believe they are true.

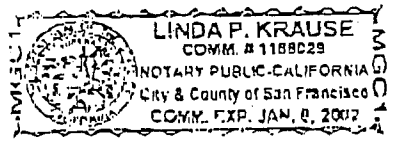


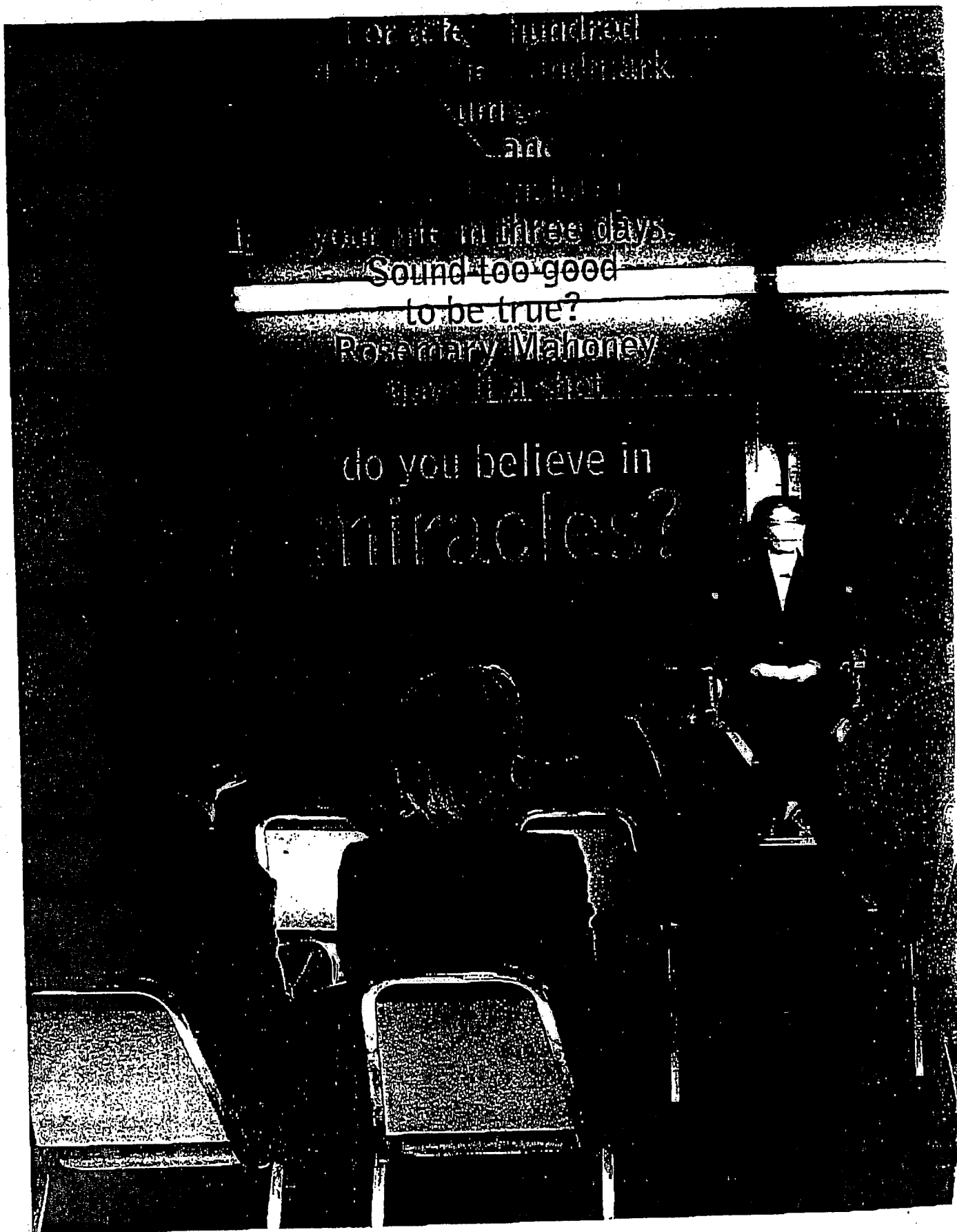
Arthur Schreiber

Sworn to before me this
28th day of August, 1998



Notary Public





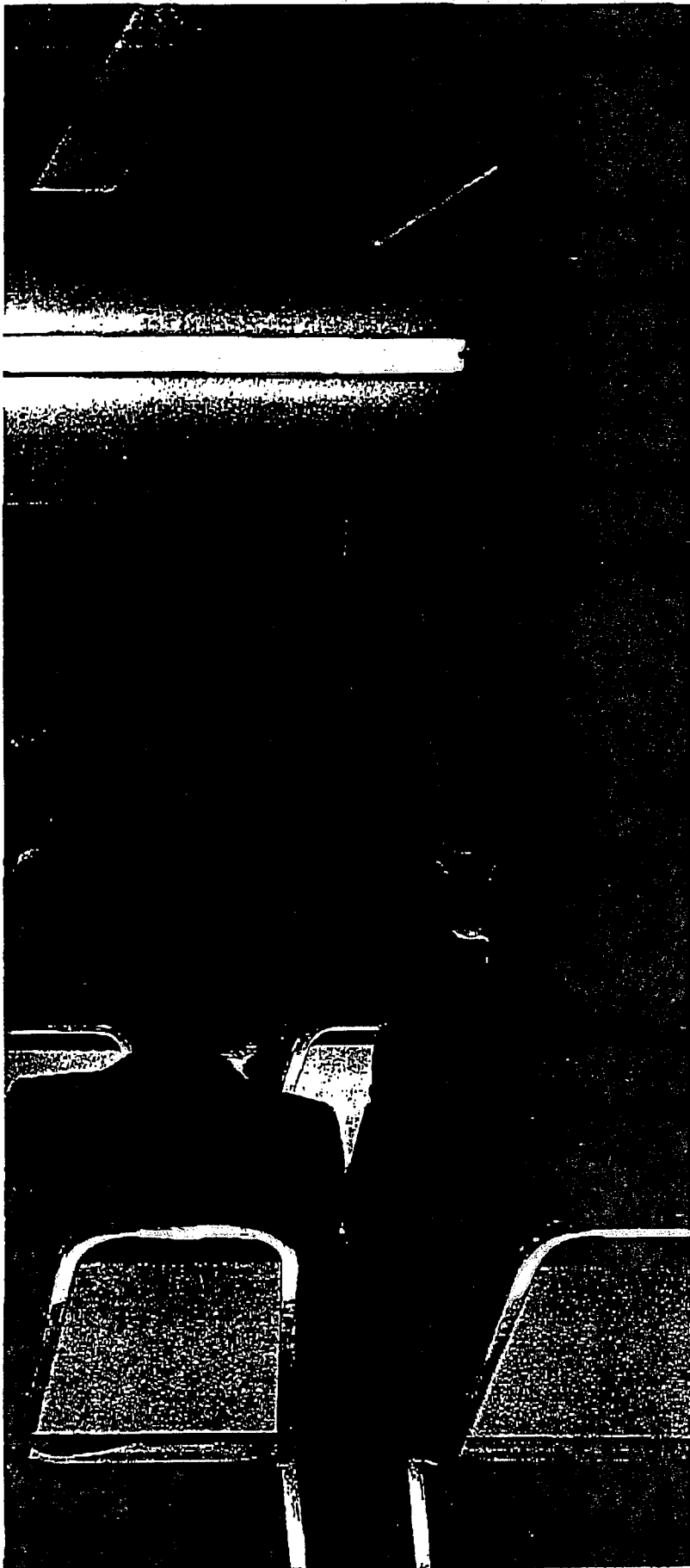
For over a hundred
 years, this landmark
 building
 has

your life in three days.

Sound too good
 to be true?

Rosemary Mahoney
 from LA shot

do you believe in
 miracles?



In talking about the Landmark Forum, people with experience of this self-improvement seminar describe its impact in wildly disparate ways. Janet Jenkins, a divinity student who completed the three-and-a-half-day weekend, calls it "a sort of religion with 'I' as God," while an enthusiastic young Forum volunteer tells me it's "a three-and-a-half-day intensive introduction to ideas and philosophies that will transform your life." James Williamson, an attorney at a high-powered law firm, says, "Either it's one of the most beneficial experiences I've ever had, or it's a complete con job." Kevin Garvey, a counselor who assists people coming out of cults or cultlike groups, says, "The Forum constitutes a brilliant anti-intellectual exercise . . . they take away the base that makes a moral view possible for each individual and call it freedom." Adam Kahn, who for two and a half years was deeply involved with Landmark and its advanced programs, expresses his present disillusionment by stating simply, "There's so much the Forum can't do."

Loosely classified as a large-group-awareness-training seminar and descended from the encounter-group movement of the '60s, the Landmark Forum is the introductory seminar to a series of self-actualization programs offered by the Landmark Education Corporation, an employee-owned company engaged in the booming business of "self-improvement." With last year's receipts of \$48 million, the corporation, which has around 300 paid employees (including forty-odd charismatic seminar leaders), boasts an army of some 7,000 volunteers worldwide. Volunteer hours invested in Landmark's programs and recruitment bespeak a level of customer satisfaction unheard of in most for-profit corporations. On the other hand, the sort of overzealous efforts Landmark's volunteers tend to display on the corporation's behalf are precisely what disturbs skeptics, many of whom feel that the Forum is a mass-marketing pyramid scheme, trafficking in subtly coercive thought reform and bent on ensnaring the weak of character in a slick web of palliative jargon. >

PHOTO ILLUSTRATION BY JOSEPH PUCHINO (HAIR AND MAKEUP BY FERNANDO NAVARRO FOR BRAULEY CURRY LUX). MOST NAMES AND IDENTIFYING DETAILS HAVE BEEN CHANGED.

culturewatch

The 180 Forum participants who, like me, have gathered in a bland conference room on New York's Fifth Avenue at nine on a Friday morning are here because the Forum has claimed that for \$375 it can "transform" our lives. The room, carpeted in gray and filled with rows of straight-backed chairs upholstered in a dowdy motel maroon, is oppressively unadorned. There's not much to look at but a tall director's chair on a dais and a pleated gray curtain pulled tight across the room's only windows. (From the street, the windows resemble the windows of a chicken coop, stubbornly streaked with brown and white stains.) Two blackboards stand on the dais, and at each corner of the rectangular arrangement of chairs are four microphones on stands. The only decorative touch is a vase of yellow tulips on a table.

The room is suffused with a mood of nervous anticipation. The woman to my left is swinging her foot and checking the phone number that's just appeared on the tiny screen of her electronic beeper. On my right, a bespectacled Asian man with a line of pens neatly clipped to his shirt pocket smiles eagerly at me and raises his hand in an anxious wave. Though we're sitting side by side, shoulders touching, I nod and wave back with an awkward little jerk of my hand.

Most of us have signed up for this course because we're dissatisfied with our lives; we're unfulfilled, isolated, or depressed; we're not successful enough, or we are successful but our success has left us hollow. Some of us are unhappy in our relationships or frustrated at not being able to unlock our potential. Others simply want to stop smoking, lose weight, get out of abusive relationships. Many are here at the request of friends, lovers, family members who claim to have experienced the "breakthrough" the Forum offers. We are all vulnerable, if only because we've paid our tuition and have as yet no clear idea of what we'll get beyond lofty abstractions like "In the Forum people come to grips with what it means to be human." The most we can safely predict is that for three consecutive days we will be required to sit here from nine A.M. to midnight, with two half-hour breaks and one ninety-minute dinner break. We will be asked to complete exercises, chiefly verbal, and homework assignments at night. We have all signed a confidentiality agreement as well as an agreement not to violate Landmark's copyright claims. We have answered formal questions about our mental-health history (including whether we've been hospitalized for psychiatric illness, are in psychotherapy, or have quit therapy against a therapist's wishes), and have, not without some wondering pause, signed away our right to a jury or court trial against the Landmark Education Corporation. Most of us are white, anywhere from twenty to forty years old, but there are Indians, blacks, and Hispanics as well. There are bankers here and lawyers, interior decorators and magazine edi-

tors. According to the Forum's glossy informational brochure, 31 percent of us have "some college education," 28 percent have a college degree, 20 percent a postgraduate degree, 40 percent are in technical or professional jobs.

At nine o'clock, an energetic young woman hops onto the dais in front of the room and introduces herself as our Forum leader. I recognize her from an introductory evening I happened to attend here exactly one year ago. She was Beth Hanover then, with a stylishly severe crewcut, a rosy gold necklace the thickness of a garter snake around her neck, and the snappy manner of an afternoon-talk-show host. Now she's Beth Handel, and her dark hair has grown into a glossy boy's regular, sleek as mink and tightened against her scalp. "I'm Beth Han . . ." she stumbles on her last name. "Handel." In her brown double-breasted pin-striped pantsuit, she resembles a handsome little Mafia man. Her voice, carried through a tiny microphone pinned to her lapel, is slightly abrasive, her manner casual but sharpened with a gangster's tough-guy edge. She's fit and tidy and brassy. "Welcome to your Forum!" she barks, launching into an impeccably executed performance laden with anecdotes, tautologies, Landmark slogans, pithy quotations ranging from philosopher (and Nazi sympathizer) Martin Heidegger to civil-rights torchbearer Martin Luther King, Jr.

Handel's barreling manner is lightened with the broadly screeching style of Joan Rivers. "How many people here want to lose ten pounds?" she asks. Many people raise their hands. "Okay. How many of you know how to lose ten pounds?" The same people raise their hands. "Oh, very good," she says with a sardonic squint, "a lot of good *that* knowledge is doing you." The room roars with laughter. Handel has a gift for telling stories, most of them about herself. A year ago I saw her bring the female members of her audience to tears with a cautionary tale of how, with her self-professed cranky selfishness, she nearly spoiled the sweet surprise her husband had planned for her on their wedding anniversary. He was only trying to love her; she was making herself unlovable. This morning, pacing, hands flying, she explains that while the Forum works "miracles" toward self-awareness, it will not keep us safe from the vagaries of life. "My husband left me!" she announces flatly. "Yes, even Forum leaders get divorced!" The Forum, she says, won't help you stop being human. "I am a jerk every day of my life. The only difference now is that within thirty seconds of being disgusting I can admit it and clean it up and move on."

Her seeming frankness, her self-referential anecdotes, inspire attention and trust. While Handel works, volunteers at the back of the room wearing pumpkin-orange name tags are busily checking our applications and surveying the room like exam proctors. In the opening hour Handel tells us a lot of what >



MAY-06-1999 THU 12:48 PM
FHA NO. 11 00
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 19

-----X
LANDMARK EDUCATION CORPORATION,
a California corporation,

Plaintiff,

-against-

Index No.: 115873/98

HACHETTE FILIPACCHI MEDIAS GROUP, d/b/a
ELLE MAGAZINE and ROSEMARY MAHONEY,

Defendants.
-----X

EDWARD H. LEHNER, J.:

The defendants Hachette Filipacchi Medias Group, d/b/a Elle Magazine ("Elle Magazine") and Rosemary Mahoney ("Mahoney") move for an order pursuant to CPLR 3211(a)7 dismissing the complaint for failure to state a cause of action.

The plaintiff Landmark Education Corporation ("Landmark") offers an educational program to the public. The program topics include communication, time management and productivity. The basic program is a seminar costing the sum of \$375 which takes place over three days. The stated goal of the program is to discover ways of enhancing productivity, improve relationships, and achieve greater satisfaction. The complaint alleges that an article about Landmark appearing in Elle Magazine, written by Mahoney, "conveyed ... defamatory meanings of and concerning plaintiff" including that 1) Landmark is engaged in a criminal mass marketing pyramid scheme aimed at the weak and easily manipulated, and employs hustlers as instructors;

2) Landmark uses coercive thought control, hypnotic processes and brain washing to denigrate critical thinking and common notions of morality; and 3) Landmark promulgates the ideas of Nazi sympathizers, fascists and carnival hucksters. Mahoney wrote the article after attending a forum conducted by Landmark's employee Beth Handel.

The following 13 specific alleged defamatory statements are set forth in the complaint: (1) "... they [the forum] take away the base that makes a moral view possible for each individual and call it freedom"; (2) The Forum is a mass-marketing pyramid scheme ...; (3) trafficking in subtly coercive thought reform and bent on ensnaring the weak of character in a slick web of palliative jargon; "Welcome to your 'Forum!' she [Beth Handel, Forum leader] barks, launching into an impeccably executed performance laden with...pithy quotations ranging from philosopher (and Nazi sympathizer) Martin Heidegger ..."; (5) "What does the Forum promise?" With notable condescension Handel answers, "You'll get what you want by the end of the day That's just how it works."; (6) an idea purloined from the theories of Heidegger.; (7) Is she saving our lives or is she reaching into our handbags for our checkbooks?... Beth Handel knows how to hustle.; (8) My \$375 has bought me a flimsy synthesis of world philosophies, littered with the sort of aphoristic suggestions abundant in high school year books; (9) paralleling aspects of... Fascism, and carnival hucksterism.;

(10) in a kind of informal hypnotic process people can become submissive to voices of authority through a series of indirectly applied techniques of suggestion. Such hypnosis, practiced without formal trance induction, employs jokes, confusion, guilt, humiliation, group pressure, and sleep deprivation to assert its control. The stories leaders tell- known as "killer shares" among experts who study such self-actualization groups- are rehearsed but apparently spontaneous anecdotes calculated to deliver an emotional message; (11) Strategically placed suggestions are another form of subtly coercive influence. When Handel says at the start of our group experience of fear, "There might be some crying during this exercise," the suggestion is that we should cry.; (12) there is, experts agree, a denigration of critical thinking.; (13) in the end, the transformational key the Forum offers is nothing more than words, *My life has been transformed*. Say it enough times and it might come true.

In support of their motion to dismiss, the defendants argue that the complaint fails to state a cause of action for product disparagement because: it fails to plead special damages; the complained of statements are not of and concerning the plaintiff; the statements are not defamatory; and they constitute protectible opinion. In opposition to the motion to dismiss, the plaintiff argues that the article is about Landmark, the statements are defamatory rather than product disparagement, and the statements are not opinion.

MAY-06-1999 THU 12:50 PM
Page No. 11

The standard to be applied on a motion to dismiss a defamation complaint for legal insufficiency is: "If, upon any reasonable view of the stated facts, plaintiff would be entitled to recovery for defamation, the complaint must be deemed to sufficiently state a cause of action." (*Silsdorf v Levine*, 59 NY2d 8, 12 [1983], cert. denied 464 US 831 [1983]). In order to prevail on a product disparagement claim, the plaintiff must prove both malice and special damages (*Ruder & Finn v Seaboard Surety Co.*, 52 NY2d 663, 670-671 [1981]). Actual malice is defined as making an alleged false statement with knowledge that it was false or with reckless disregard as to whether it was false or not (*New York Times Co. v Sullivan*, 376 US 254, 280 [1964]; *Thanasoulis v National Association for the Specialty Foods Trade, Inc.*, 226 AD2d 227, 228 [1st Dept 1996]).

As in any libel action, the court has the obligation to accord protection to a party's reputation without impairing our "cherished constitutional guarantee of free speech" [*Immuno, A.G. v Moor Jankowski*, 77 NY2d 235, 256 (1991)]. In this regard, our Court of Appeals has indicated the particular value of summary adjudication "where appropriate" in libel cases (*id.*).

For there to be recovery in libel, it must be established that the defamation was "of and concerning the plaintiff" (*Gross v Cantor*, 270 NY 93, 96 [1936]). The plaintiff need not be named in the publication but, if it is not, the plaintiff must sustain

the burden of pleading and proving that the defamatory statement referred to it. The reference to the plaintiff may be indirect and may be shown by extrinsic facts. Where the plaintiff relies on extrinsic facts to prove such reference, the plaintiff must show that it is reasonable to conclude that the publication refers to it and the extrinsic facts upon which that conclusion is based were known to those who read the publication (*Geisler v Petrocelli*, 616 F2d 636 [2d Cir 1980]). Here plaintiff has sufficiently pled facts to satisfy this requirement.

Whether particular words are defamatory presents a legal question to be resolved by the court in the first instance (*Weiner v Doubleday & Co.* 74 NY2d 586, 592 [1989], cert denied 495 US 930 [1990]; *Millus v Newsday, Inc.*, 89 NY2d 840, 842 [1996]). The words must be construed in the context of the entire publication as a whole, tested against the understanding of the average reader, and if not reasonably susceptible of a defamatory meaning, they are not actionable and cannot be made so by a strained or artificial construction (*Carney v Memorial Hospital and Nursing Home of Greene County*, 64 NY2d 770 [1985]; *Steinhilber v Alphonse*, 68 NY2d 283 [1986]).

A statement is not actionable if it is an expression of pure opinion, no matter how vituperative or unreasonable it may be. Four factors are considered in making this assessment: (1) whether the specific language employed is either precise or vague

and ambiguous, (2) whether the statement may be objectively characterized as either true or false, (3) the context in which the statement appears and (4) the broader social setting surrounding the communication, including a custom or convention which might serve to indicate that it is an expression of opinion and not fact (Steinhilber v Alphonse, [supra]; Brian v Richardson, 87 NY2d 46, 51 [1995]).

The plaintiff has not pled special damages in the complaint. This failure mandates dismissal of the complaint to the extent the complaint can be read to plead product disparagement. A reading of the complaint leads to the inescapable conclusion that it is in fact for disparagement of plaintiff's product, to wit; the subject course. Additionally, the complaint must be dismissed for failure to adequately plead actual malice. The complaint makes a conclusory allegation of such malice, but no facts are pled indicating that the defendants entertained any serious doubts as to the veracity of their article (see, Freeman v Johnston, 84 NY2d 52, [1994], cert. denied 513 US 1016 [1994]).

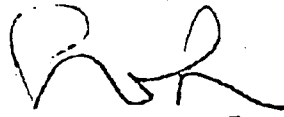
Finally, the court finds that the statements are not reasonably susceptible of a defamatory meaning, and are constitutionally protected expressions of opinion. Pure opinion is a statement accompanied by a recitation of the facts upon which it is based or does not imply that it is based upon undisclosed facts (Steinhilber v Alphonse, supra, 68 NY2d at 289). Here, contrary to the plaintiff's assertion, the expressions of

opinion were sufficiently supported by a recitation of the underlying facts. Nor are any of the alleged defamatory words referring to a "pyramid scheme" reasonably susceptible to a connotation of criminality. See, 600 West 115th Street Corp. v Von Gutfeld, 80 NY2d 130 (1992); Coffee v Arnold, 104 AD2d 352 (2d Dept 1984).

Accordingly, the clerk shall enter judgment dismissing the complaint.

Dated: April 28, 1999

Enter:



J.S.C.