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TiK ToK: Time is up on Kesha lawsuit

BY [ANASTASIA NOLL](#)/ ON MARCH 8, 2020



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In 2014, Kesha filed a lawsuit against her producer Lukasz Gottwald attempting to void her contracts and accusing him of sexual assault and emotional abuse.^[1] After this lawsuit was filed, Gottwald then countersued her for defamation and breach of contract arguing she falsely accused him of rape in an attempt to get out of her contract.^[2] Gottwald specifically alleges that Kesha falsely accused him of raping her and Katy Perry in text messages sent to Lady Gaga. On February 9th, New York Supreme Court Judge Jennifer G. Schechter made a ruling on this case that had been 4 years in the making. The judge ruled that Kesha's text message was a publication and therefor defamed Lukasz Gottwald: "publication of a false

statement to even one person, here Lady Gaga, is sufficient to impose liability.”^[3] The question in this case was one celebrities and private citizens alike have sought an answer to: “Are people liable for what they claim in their texts?”^[4]

In order to understand how the court came to its decision, its important to appreciate how technology has played a role in expanding defamation cases: “The internet in particular ‘has become a minefield of defamation...providing individuals with the unlimited ability to post defamatory content.”^[5] The ubiquity of individuals posting unverified stories and rumors online without fear of repercussion is one of many reasons for the increase in defamatory content.^[6] This case, though, is the first of its kind to be centered around a single text to a single person, thus creating a wider net for what can be considered defamatory.^[7]

Each of us is acutely aware of the harsh and shadowy world that social media can be. Social media is swamped with false accusations, rumors, and cyberbullying. But text messaging is inherently different. Text messages are meant to be private person to person communication. The court in the Gottwald case remedies this notion with equating a text message with being a publication which is a necessary element of defamation.^[8]

Furthermore, in a defamation suit there must be an indication of whether the individual is a private or public figure in order to determine the level of scrutiny.^[9] The First Amendment attached itself to defamation cases in *New York Times Co. v. Sullivan* by establishing the requirement of “actual malice” for potentially false speech against public figures.^[10] Actual malice is “knowledge or reckless disregard for their falsity.”^[11] In cases in which the individual is deemed a private citizen, the only thing that needs to be proven is whether the statement is false.^[12] This case would likely not have resulted in liability if Luke Gottwald was considered a public figure due to the heightened level of scrutiny needed for defamation against public figures.

Luke Gottwald is a famous music producer.^[13] “In the last five years, he’s scored an impressive 18 No. 1 hits, making him ones of the pop’s most bankable producers.”^[14] The label of public figure is associated with an individual who has “assumed roles of especial prominence in the affairs of society.”^[15] In *Gottwald v. Sebert*, the court references *Gertz v. Robert Welch*: “those classified as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved.”^[16] Lukasz Gottwald became a household name for the “MeToo” movement and to not consider him a public figure at the forefront of a public controversy is seriously misguided.^[17] He was one of the first individuals in the music industry to face public ridicule for sexual abuse allegations and helped spurred the MeToo movement three years later.^[18]

For the past several years you rarely saw Kesha’s name without Luke Gottwald’s trailing behind it. To assert that Luke Gottwald is not a public figure suggests that only an incredibly limited group of people will be considered public figures going forward, thus allowing for a

lower level of scrutiny to be applied to a much broader group of cases. The court has opened the floodgates to defamation cases that are sure to win under the private citizen level of scrutiny.

The cases surrounding individuals who are public figures and defamed through text messages are on the rise and a decision in one of these cases will show us how the court reacts to public figures, not just private citizens.^[19] Until then, whether you are a private or public citizen, be wary of your texts.

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^[1] Maura Johnston, *Kesha and Dr. Luke: Everything You Need to Know to Understand the Case*, Rolling Stone (Feb. 22, 2016), <https://www.rollingstone.com/music/music-news/kesha-and-dr-luke-everything-you-need-to-know-to-understand-the-case-106731/>.

^[2] Althea Legaspi, *Dr. Luke Wins Ruling in Continuing Kesha Defamation Dispute*, Rolling Stone (Feb. 6, 2020), <https://www.rollingstone.com/music/music-news/dr-luke-scores-big-win-kesha-defamation-dispute-949226/>.

^[3] *Gottwald v. Sebert*, 2020 NY Slip Op. 30347(U) (Sup. Ct.) (“A false accusation of rape, a serious crime, is defamation per se”).

^[4] Zak Jason, *Can a Single Text Really be Defamatory*, WIRED (Feb. 25, 2020), <https://www.wired.com/story/kesha-dr-luke-defamation-tech/>.

^[5] *Id.*

^[6] *Id.*

^[7] *Id.*

^[8] *List v. Driehaus*, 779 F.3d 628 (6th Cir. 2015).

^[9] *N.Y. Times v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710 (1964).

^[10] *Id.*

^[11] *Id.*

^[12] *Id.*

[13] *Dr. Luke: The Man Behind Pop's Biggest Hits*, NPR (Sept. 20, 2010), <https://www.npr.org/templates/story/story.php?storyId=129956645>.

[14] *Id.*

[15] *Gertz v. Robert Welch*, 418 U.S. 323, 345 (1974).

[16] *Gottwald v. Sebert*, 2020 NY Slip Op. 30347(U) (Sup. Ct.) citing *Id.*

[17] Jennifer Peltz, *Judge: Kesha made a false claim about producer Dr. Luke*, AP (Feb. 7, 2020), <https://apnews.com/28af16b0614c3db18b50eaf16cbf3bc9>.

[18] Daniel Arkin, *After Ryan Adams allegations, will music industry finally face a #MeToo reckoning?*, ABC News (Feb. 16, 2019), <https://www.nbcnews.com/pop-culture/music/after-ryan-adams-allegations-will-music-industry-finally-face-metoo-n972241>.

[19] Corrine Ramey, *Jeff Bezos Pushes for Immediate Dismissal of Michael Sanchez's Defamation Suit*, Wall Street Journal (Feb. 4, 2020), <https://www.wsj.com/articles/jeff-bezos-pushes-for-immediate-dismissal-of-michael-sanchezs-defamation-suit-11580846516>; Emily Smith, *Johnny Depp Threatens to 'burn' and 'drown' ex-wife Amber Heard*, Page Six (Feb. 26, 2020), <https://pagesix.com/2020/02/26/court-hears-johnny-depps-texts-threatening-to-burn-ex-wife-amber-heard/>.