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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A16-1209**

Trivedi, LLC, et al.,  
Appellants,

vs.

Dennis Lang,  
Respondent.

**Filed May 1, 2017  
Affirmed in part, reversed in part, and remanded  
Rodenberg, Judge**

Ramsey County District Court  
File No. 62-CV-14-4330

Nathan J. Knoernschild, Chestnut Cambronne PA, Minneapolis, Minnesota (for appellants)

Mark R. Anfinson, Minneapolis, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Rodenberg, Judge; and  
Toussaint, Judge.\*

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**RODENBERG**, Judge

Appellants Mahendra Trivedi (Trivedi), Trivedi Foundation, and Trivedi Companies<sup>1</sup> appeal from a grant of summary judgment dismissing with prejudice their claims against respondent Dennis Lang. Appellants argue that the district court improperly applied the actual-malice standard in dismissing their defamation claims. Alternatively, appellants argue that they raised genuine issues of material fact regarding whether respondent made defamatory statements with actual malice. We affirm in part, reverse in part, and remand.<sup>2</sup>

### FACTS

Trivedi claims to have the power to “promote health and well-being” through “energy transmissions” that “have the potential to transform living organisms and non-living materials.” Trivedi calls this process the “Trivedi Effect.” Appellants have monetized these claimed abilities by selling products and admission to seminars related to the Trivedi Effect. Appellants have created a commission-based network of promoters for their products, including radio-show hosts, authors, and alternative-medicine experts. Appellants also promote their businesses through a website containing hundreds of video

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<sup>1</sup> We refer to Trivedi LLC, Trivedi Master Wellness LLC, and Trivedi Products LLC collectively as “Trivedi Companies.”

<sup>2</sup> This is the second appeal involving these parties. In an earlier appeal, we affirmed the district court’s order vacating a foreign judgment obtained by appellants against respondent. *Trivedi LLC v. Lang*, No. A13-2087, 2014 WL 2807981, at \*1 (Minn. App. June 23, 2014). The district court in that earlier case determined that a default judgment obtained by appellants in Arizona was not entitled to full faith and credit because the Arizona court lacked personal jurisdiction over respondent. *Id.* at \*2.

and written testimonials. Appellants claim that, through these efforts, the Trivedi Effect has “benefited many people.” By all accounts, appellants have made millions of dollars from these concerted efforts.

Respondent identifies claims by Trivedi that he has performed 70,000 miracles around the world, and has as many as 200,000 patrons. Appellants claim to have sought validation of the Trivedi Effect through the scientific process and claim some degree of validation by over 4,000 scientific studies at major research institutions throughout the world. They claim that the Trivedi Effect has been mentioned in more than a dozen leading international, peer-reviewed scientific journals. The senior general manager at the Trivedi Science Research Laboratory claims that the Trivedi Effect has been validated by 170 peer-reviewed research publications.

Respondent learned of Trivedi’s extraordinary claims and began researching those claims with an eye toward writing an article about appellants. During his research, respondent found an internet blog or message board called PurQi.com. He claims that PurQi.com was created by one of appellants’ former employees as a forum for discussing alternative medicine and that the forum developed into an online meeting place for persons interested in and concerned about appellants’ operations. Respondent posted his contact information on PurQi.com and was contacted by multiple people claiming to be familiar with appellants, their businesses, and their claims concerning the Trivedi Effect. After communicating with these people, respondent began making posts critical of appellants on PurQi.com.

Appellants learned of respondent's writings critical of them and sued respondent for defamation, civil conspiracy, and tortious interference with contract and business expectancy. All of appellants' claims are based on 50 allegedly defamatory statements identified in their original complaint. For purposes of this appeal, we consider these general categories of statements identified by the district court:<sup>3</sup> (1) statements that Trivedi is a "sham," the Trivedi Effect has no scientific basis, and appellants are marketing this "sham" for financial gain; (2) claims that appellants engaged in unlawful business practices; and (3) claims that Trivedi is guilty of sexual improprieties.<sup>4</sup> Respondent moved for summary judgment, arguing that Trivedi is a limited-purpose public figure, that respondent is a journalist, and that appellants had failed to identify a genuine issue of material fact regarding whether respondent's statements on PurQi.com were made with actual malice. The district court granted summary judgment dismissing appellants' defamation claims. In a very thorough memorandum appended to its order granting summary judgment, the district court dismissed appellants' civil conspiracy and tortious interference claims because they were based solely on the defamation claims.

This appeal followed.

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<sup>3</sup> Appellants characterized the statements as falling into six categories, three of which were "general accusations of misbehavior and/or causing harm," "miscellaneous statements not in any other specific category," and "statements that Lang did not make." For purposes of this appeal, these three categories of identified statements are of no separate analytical significance.

<sup>4</sup> Appellants' complaint details a variety of statements allegedly published by respondent concerning Trivedi's improper sexual behavior. It is unnecessary to our analysis that we detail all of the allegedly defamatory statements. Appellants allege that respondent accused Trivedi of "rape," sexual coercion and harassment of employees, "sexual assault," and "molestation."

## DECISION

Appellants agree on appeal that their claims against respondent for civil conspiracy and tortious interference with contract and business expectancy depend entirely on proof of actionable defamation by respondent. We therefore limit our analysis to the viability of appellants' defamation claims.

### I.

#### **Constitutional Dimensions of Defamation**

Defamation is communication of a false statement to someone other than the plaintiff that tends to harm the plaintiff's reputation and lower the plaintiff in the estimation of the community, where the recipient of the statement reasonably understood the statement to refer to the plaintiff. *McKee v. Laurion*, 825 N.W.2d 725, 729-30 (Minn. 2013). Under Minnesota common law, a defamation plaintiff need only show that publication of the statement was intentional; intent to defame is not an element. *Jadwin v. Minneapolis Star & Tribune Co.*, 367 N.W.2d 476, 481 (Minn. 1985). Certain false statements are per se defamatory, meaning that damages may be presumed and are recoverable without proof of actual harm to reputation. *Longbehn v. Schoenrock*, 727 N.W.2d 153, 158, 160 (Minn. App. 2007). Statements alleging unchastity or that one is a sex offender are per se defamatory. *Id.* at 158-59.

In the landmark case of *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710 (1964), the United States Supreme Court held that the protection of a person's reputational interest under defamation law must yield to First Amendment rights when a defamation defendant's statements concern a public official; such suits require proof of

“actual malice.” 376 U.S. at 273-75, 279-280, 84 S. Ct. at 722-23, 726; *see Britton v. Koep*, 470 N.W.2d. 518, 520 (Minn. 1991) (discussing the rule created by *New York Times*). The United States Supreme Court later extended this First Amendment protection to statements concerning “public figures.” *Curtis Publ’g Co. v. Butts*, 388 U.S. 130, 155, 87 S. Ct. 1975, 1991 (1967). In *Gertz v. Robert Welch, Inc.*, the Supreme Court further extended constitutional protection to statements concerning persons who “thrust themselves to the forefront of particular public controversies” and “invite attention and comment.” 418 U.S. 323, 345, 94 S. Ct. 2997, 3009 (1974). This protection for statements concerning “limited-purpose public figures” is justified in part because such persons are thought to have “greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements [than] private individuals.” *Chafoulias v. Peterson*, 668 N.W.2d 642, 649 (Minn. 2003) (citing *Gertz*, 418 U.S. at 344, 94 S. Ct. at 3009).

Minnesota courts have adopted these standards and have required that, in order to prevail, public officials, public figures, and limited-purpose public figures prove that claimed defamatory statements were made with actual malice. *Id.* at 648-49.

## II.

### **Limited-Purpose Public-Figure Determination**

The district court determined that Trivedi is a limited-purpose public figure with respect to all of respondent’s statements. Appellants disagree with the district court’s limited-purpose public-figure determination, and argue that the district court erred in applying the actual-malice standard.

We review a district court's grant of summary judgment de novo. *Mattson Ridge, LLC v. Clear Rock Title, LLP*, 824 N.W.2d 622, 627 (Minn. 2012). "We base our review on the undisputed facts and construe any disputed evidence in favor of the nonmoving party." *Scheffler v. City of Anoka*, \_\_\_ N.W.2d \_\_\_, \_\_\_, 2017 WL 474401, at \*4 (Minn. App. Feb. 6, 2017). We review de novo the legal question of whether a party is a limited-purpose public figure. *Chafoulias*, 668 N.W.2d at 649-50. Respondent has the burden of persuasion to show that Trivedi is a limited-purpose public figure. *Jadwin*, 367 N.W.2d at 481. Here, the undisputed facts in the record resolve the issue of Trivedi's limited-purpose public-figure status. *See Chafoulias*, 668 N.W.2d at 654 (concluding that there was no genuine issue of material fact concerning plaintiff's status as a limited-purpose public figure).

A defamation plaintiff is regarded as a limited-purpose public figure when (1) a public controversy exists, (2) the plaintiff played a meaningful role in the controversy, and (3) the allegedly defamatory statement related to the controversy. *Id.*, (citing *Gertz*, 418 U.S. at 352, 94 S. Ct. at 3013). A limited-purpose public-figure plaintiff must also prove that the allegedly defamatory statement was made with actual malice. *Id.* at 648-49.

**A. A public controversy exists concerning the Trivedi Effect and appellants' claims and business activities regarding and promoting the Trivedi Effect.**

The district court concluded that all of respondent's statements concerned a "public controversy," relying on two separate lines of reasoning. First, the district court reasoned that a public controversy existed because of the widespread nature of appellants' claims, including both the number of people appellants claim have been benefitted from the Trivedi

Effect and appellants' claims that the Trivedi Effect has been given credibility by widely-disseminated scientific journals and studies. Second, the district court reasoned that appellants' exceptional claims that Trivedi is "Jesus-like or Einstein-like are, by their nature, controversial claims likely to be challenged or refuted;" it therefore concluded that the mere making of such exceptional-ability claims creates a public controversy.

Concerning the district court's first line of reasoning, the widespread nature of appellants' claims, appellants argue that they are not well-known, their website receives minimal Internet traffic, and they have to explain their work to potential clients and business partners. Appellants argue that respondent failed to show a public controversy because he did not show widespread media attention devoted to appellants and their claims. Concerning the district court's second line of reasoning, appellants argue that no binding authority supports the district court's reasoning that some of their claims may create a public controversy by their very nature.

"A public controversy requires two elements: (1) there must be some real dispute that is being publicly debated; and (2) it must be reasonably foreseeable that the dispute could have substantial ramifications for persons beyond the immediate participants." *Id.* at 652. Even if a controversy generates public interest, courts will not consider it a public controversy when it involves only "private individuals enmeshed in personal lives or work which had momentarily caught the attention of the press and public, largely as illustrative of some perceived social ill." *Jadwin*, 367 N.W.2d at 485 (distilling the holdings in *Hutchinson v. Proxmire*, 443 U.S. 111, 135, 99 S. Ct. 2675, 2688 (1979)).

Both parties invite us to go beyond existing case law and create new legal tests for determining when a public controversy exists in cases of Internet publication. Appellants ask us to require proof of widespread print or broadcast media attention in order to find that a dispute or question is being publicly debated. Respondent asks us to endorse the district court's reasoning that some statements can create a public controversy by their very nature.

The limited-purpose public-figure test provided by the Minnesota Supreme Court in *Chafoulias* is well-established, and it is not our role to modify it. See *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) (“[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court.”), *review denied* (Minn. Dec. 18, 1987). Under existing caselaw, a public controversy exists when a person or thing is being publicly debated; there is no strict requirement of widespread reporting in the legacy public media of television and newspapers, although such reporting may be good evidence of the existence of a public controversy. See *Chafoulias*, 668 N.W.2d at 646-47 (noting that the controversy was reported by local television stations and newspapers). Neither is it our proper role to create a new category of “automatic public controversy” where a person makes supernatural claims. See *Time, Inc. v. Firestone*, 424 U.S. 448, 454, 96 S. Ct. 958, 965 (1976) (rejecting the theory that a statement can automatically become a public controversy for defamation purposes by drawing general or public interest). We

apply existing law to the appealed-from summary judgment.<sup>5</sup> We apply the established standards for determining whether a public controversy exists.

**1. A publicly debated dispute exists concerning some, but not all of respondent's statements.**

**i. A public controversy exists surrounding the Trivedi Effect and appellants' business practices.**

We first consider whether respondent's statements concern a real dispute that was publicly debated. *Chafoulias*, 668 N.W.2d at 652. The record establishes widespread discussion of Trivedi's claims of extraordinary powers both online and more broadly in the scientific community. Appellants themselves submitted affidavits proclaiming the attention their products have received in the scientific community, being the subject of more than 4,000 scientific studies at major research institutions throughout the world, with results published in more than 170 peer-reviewed research publications, including over a dozen publications in "leading international, peer-reviewed scientific journals." Appellants also claim to have performed 70,000 miracles around the world and have as many as 200,000 patrons.<sup>6</sup> Appellants claim to have a website showing hundreds of testimonials from people who have benefitted from their work. Appellants have a network of media personalities who promote their products. Product promotion is insufficient in

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<sup>5</sup> We recognize that measuring the likes of "public controversy," "media defendant," and "limited-purpose public figure" by legal standards developed before the widespread availability of the Internet is in some respects anachronistic. But this appeal can be resolved by reference to existing law.

<sup>6</sup> At oral argument, appellants sought to walk back these claims as mere "puffery." Whether appellants really meant what they said is not the issue. The question is whether there was a public controversy. Appellants made these claims and made them widely. Others, including respondent, were debating the claims.

itself to warrant a finding of a public controversy. *See Jadwin*, 367 N.W.2d at 478-79, 485 (holding that a plaintiff was not a public figure, despite that he sent out 13,000 prospectuses, placed ads in newspapers, and issued press releases to over 30 Minnesota newspapers and magazines). But the record here establishes much more than product promotion. If appellants' claims of thousands of scientific studies regarding the Trivedi Effect are true, then a whirlwind of public debate is already established. And, true or not, the resulting Internet discussion of the accuracy of those claims amounts to a real dispute that is being publicly debated. Either is sufficient as a matter of law to establish a publicly discussed controversy. Respondent's complained-of statements concerning the Trivedi Effect and appellants' business practices concerning and promoting the Trivedi Effect were part of that public debate.

**ii. The public controversy does not extend to Trivedi's sexual conduct.**

Having concluded that respondent's statements concerning the Trivedi Effect, questioning it, and questioning appellants' sale and promotion of products and services, constitute a publicly debated controversy, we next consider whether that public debate extended to Trivedi's alleged sexual improprieties.

We conclude that respondent's statements concerning that subject are unlike the Trivedi-Effect claims. The alleged scientific studies discussed above are not contained in the record on appeal.<sup>7</sup> But we presume that, if the studies and publications exist, they

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<sup>7</sup> Trivedi's affidavit of March 3, 2015, identified three publications in which the "beneficial effects of the Trivedi Companies' services and products" have been demonstrated. The

concern Trivedi's claimed miraculous powers, and not his sexual behavior. Respondent notes that the PurQi.com website contained discussion of Trivedi's sexual conduct. But there is no evidence of record that appellants generated or encouraged public debate concerning Trivedi's sexual propensities. Respondent has produced no information concerning how widely the PurQi.com website is used, or whether it is widely accessed by individuals outside of the small group of appellants' former employees. Nor does the record reveal any active efforts by appellants to engage in public promotion or discussion of Trivedi's sexual conduct.

Although the record reveals some evidence of a claim of Trivedi's celibacy, appellants' essential claims concerning Trivedi and the Trivedi Effect seem not to be based on moral superiority or essential goodness. To the contrary, Trivedi claims to possess awesome power to transmit energy to others, and advertises throughout the world his willingness to transmit some of his awesome power in exchange for money. The public controversy concerns whether the Trivedi Effect has any basis in fact, and the marketing and business practices of appellants in promoting and monetizing the Trivedi Effect. That former employees questioned the legal and ethical propriety of Trivedi's sexual conduct is insufficient to make that subject one of public debate. It cannot be that every Internet discussion or dispute amounts to a public controversy. Respondent has not demonstrated that his statements concerning Trivedi's sexual propensities and conduct amount to a

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studies or articles themselves are not included in the record. We have not, for that reason, consulted the studies purportedly describing these "beneficial effects."

publicly debated dispute.<sup>8</sup> Therefore, respondent's statements concerning sexual matters are not part of the public controversy.

**2. Respondent's statements concerning the "sham" nature of the Trivedi Effect and appellants' business practices were subjects on which there were reasonably foreseeable ramifications beyond the immediate participants.**

We next consider whether it is reasonably foreseeable that the public debate concerning the Trivedi Effect and appellants' business practices could have ramifications beyond the immediate participants. *Chafoulias*, 668 N.W.2d at 652.

If appellants' claims are true, the Trivedi Effect will undoubtedly spread and revolutionize the agriculture and health-sciences industries. If appellants' claims are untrue and appellants are collecting millions of dollars based on false claims, public debate will undoubtedly increase. The debate regarding appellants' claims, practices, and products clearly has reasonably foreseeable ramifications beyond the immediate participants.

Even if respondent's statements concerning Trivedi's alleged sexual misconduct with former employees or clients were to be considered part of a public dialogue, those statements do not have similarly broad ramifications. While respondent's accusations of Trivedi's sexual misconduct are serious and troubling, there is no public controversy extending to them. *See Jadwin*, 367 N.W.2d at 485-86 (holding that an individual's solicitation of media attention to his business enterprises did not make him a public figure);

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<sup>8</sup> The record reveals no criminal charges or civil claims arising from Trivedi's claimed sexual misconduct. Trivedi's March 3, 2015 affidavit denies the existence of any "criminal charges for sexual abuse . . . against me." No evidence to the contrary exists in the record.

*see also Time, Inc.*, 424 U.S. at 454, 96 S. Ct. at 965 (holding that the divorce of a famous socialite was not the type of public controversy contemplated by *Gertz*). And whatever controversy exists concerning these matters affects primarily those persons immediately involved in the conduct.

**B. Appellants placed themselves in the public controversy.**

The district court found that “there is no doubt that [appellants] intentionally and deliberately placed themselves into the epicenter of public debate by affirmatively making the claims to a global audience and seeking out thousands of scientific studies to support those contentions.” Appellants argue that, even if there is a public controversy, it was one created by respondent, and he is not entitled to claim protection under the actual-malice standard.

“[D]efamation defendants cannot create their own defense by pointing to the attention they have themselves visited upon a plaintiff as evidence that the plaintiff is a public figure.” *Chafoulias*, 668 N.W.2d at 653 (quotation omitted). But defamation plaintiffs likewise cannot avoid limited-purpose public-figure status by claiming not to have wanted the attention. *Id.* A plaintiff is a limited-purpose public figure if he voluntarily injects himself into a controversy, but not if he is drawn into the controversy. *Id.* In reviewing this factor, courts consider whether participation in the controversy was voluntary, whether the person had “access to channels of effective communication to counteract false statements,” and the prominence of the role the person played in the public controversy. *Id.*

The record demonstrates beyond question that appellants injected themselves into the controversy concerning the Trivedi Effect and their promotion of it long before respondent became involved. Respondent did not create that public controversy. Appellants' claims concerning the Trivedi Effect were voluntary and widespread. Appellants have actively participated in this controversy by creating a foundation to support scientific research that tests the efficacy of Trivedi's energy transmissions, paying radio-show hosts and authors to promote their products, and creating a website with hundreds of purported testimonials regarding their products.<sup>9</sup> Appellants are voluntary and prominent participants in this public controversy.

**C. There is a relationship between some of respondent's statements and the identified public controversy.**

Our final inquiry considers whether there is a relationship between the public controversy and the statements made by respondent. *Id.* at 651.

As discussed above, the public controversy is more limited than that identified by the district court. Trivedi's claims of extraordinary powers and widespread publicity about appellants' products are part of a public controversy. Respondent's statements regarding Trivedi's powers, and the products and business practices of all of appellants, are closely related to that public controversy. Respondent's statements that appellants are "shams" and that their claims are untrue (and similar words critiquing the validity of the Trivedi Effect) are clearly related to the controversy concerning appellants' products. Trivedi is a

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<sup>9</sup> The March 3, 2015 affidavit of the "CEO of Trivedi Global, Inc." identifies numerous "affiliates" and "consultants" who were paid large sums of money—and who, in turn, generated substantial profits for appellants—relating to promotion of the Trivedi Effect.

public figure for the limited purpose of those statements. Respondent's statements that appellants have engaged in unlawful business practices, including questionable financial transactions, visa misuse, questionable employment and bank transactions, IRS violations, green-card violations, and violations of not-for-profit legal status, are all closely related to the products that appellants sell and the claims they make. These statements are closely related to the promotion of the Trivedi Effect. Therefore, the district court properly subjected appellants' defamation claims against respondent for statements in these two categories to the actual-malice standard applicable to statements made about limited-purpose public figures.

Respondent's statements concerning Trivedi's alleged sexual misconduct and improprieties are not related to the controversy surrounding Trivedi's claims of miraculous abilities and appellants' products. Accusations of sexual assault and other sexual improprieties are materially different than accusations that appellants are charlatans. These statements concern matters beyond those in which appellants have willingly participated in a public forum. Trivedi is not a public figure for the purposes of those statements concerning his sexual conduct, and appellants' legal claims regarding this category of statements are properly reviewed under common-law defamation standards.

### **III.**

#### **Respondent is a "Media Defendant"**

As an alternative basis for dismissing the claims of the corporate appellants, the district court found that respondent is a journalist and is therefore entitled to the protection of the actual-malice standard with respect to his statements about the Trivedi Companies.

Appellants argue that respondent is simply a person posting statements on an online forum and is not a “media defendant” entitled to the heightened actual-malice standard.

Corporate plaintiffs suing media defendants for defamation must show actual malice when the media defendant demonstrates that the allegedly defamatory statements concern matters of legitimate public interest. *Jadwin*, 367 N.W.2d at 487-88. This rule was created to “encourage the media to probe the business world to the depth which is necessary to permit the kind of business reporting vital to an informed public.” *Id.* at 488.

Respondent’s statements about the claims and business practices of Trivedi Companies and Trivedi Foundation are of the sort protected by *Jadwin*. Respondent identifies himself as a free-lance journalist who has published seven articles. Appellants have submitted no evidence to the contrary. Accordingly, the record contains no factual dispute. *See In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007) (“When the material facts are not in dispute, we review the lower court’s application of the law de novo.”). Respondent researched appellants’ claims and operations. He corresponded with appellants’ past employees and with others who have studied and are interested in appellants’ work. While respondent published his statements online, rather than in a traditional media format, we are satisfied that online journalism is equivalent to print journalism and that online journalists are entitled to no less First Amendment protection than other media defendants.<sup>10</sup> Respondent’s posts on PurQi.com regarding appellants’

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<sup>10</sup> In fact, the prominence and influence of purely online media outlets such as Breitbart News, Drudge Report, Daily Kos, and The Huffington Post demonstrate the current importance and influence of online media. No authority is advanced supporting the notion that First Amendment protection only applies when ink and paper are involved.

products, business practices, and illegal activities are of legitimate concern to the public. The district court properly applied the actual-malice standard to the claims of Trivedi Companies and Trivedi Foundation.

#### IV.

##### **Questions of Material Fact Remain Concerning Some of Respondent’s Statements**

The district court applied the actual-malice standard to all of appellants’ claims and determined that appellants failed to identify a genuine issue of material fact concerning actual malice. It therefore dismissed all of appellants’ claims. Appellants argue that, even if we find that the district court correctly applied the actual-malice standard to some or all of the statements, the record reveals genuine issues of material fact concerning whether respondent acted with actual malice.

Appellate courts generally “review a district court’s grant of summary judgment de novo to determine (1) whether there are any genuine issues of material fact, and (2) whether the district court correctly applied the law.” *Rochester City Lines, Co. v. City of Rochester*, 868 N.W.2d 655, 661 (Minn. 2015). When deciding the first question, we “view the evidence in the light most favorable to the party against whom summary judgment was granted.” *McKee*, 825 N.W.2d at 729.

In defamation cases involving limited-purpose public figures, the question on a motion for summary judgment is whether the evidence of record could reasonably support a factual finding of actual malice by clear and convincing evidence. *Foley v. WCCO Television, Inc.*, 449 N.W.2d 497, 503 (Minn. App. 1989), *review denied* (Minn. Feb. 9, 1990). “‘Actual malice’ is a term of art; it means that the defendant acted with knowledge

that the publication was false or with reckless disregard of whether it was false or not.” *Chafoulias*, 668 N.W.2d at 654 (quotation omitted). A statement “may have been made with actual malice if it is fabricated by the defendant, is the product of his imagination, . . . is based wholly on an unverified anonymous telephone call or if the publisher’s allegations are so inherently improbable that only a reckless man would have put them in circulation.” *Id.* It can also exist if “the defendants in fact entertained serious doubts as to the truth of the publication.” *Jadwin*, 367 N.W.2d at 488 (quotation omitted). “[I]f the plaintiff presents evidence that the utterer knew the falsity of his statements when published, such bad faith in publishing is relevant evidence of malice” *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 922 (Minn. 2009).

As discussed, respondent’s claimed defamatory statements fall into three categories: (1) statements claiming appellants are “shams,” (2) statements claiming appellants are involved in illegal or unethical business practices, and (3) statements claiming that Trivedi engaged in improper sexual behavior. We have determined that the actual-malice standard applies to the first two categories, but that the third category must be analyzed under common-law defamation standards. Finally, because respondent is a media defendant, we analyze respondent’s statements regarding Trivedi Companies and Trivedi Foundation under the actual-malice standard.

**A. No genuine issue of material fact exists concerning respondent’s statements claiming that appellants are “shams.”**

Appellants argue that respondent’s statements that appellants are “shams,” and similar statements, were made with actual malice. During his deposition, respondent stated

“I don’t know. . . . [I]t’s possible that Mr. Trivedi believes that he has this ability.” Appellants argue that a person cannot be a “sham” who believes what is said, and therefore these claims were made with actual malice, or at least there is a fact question concerning respondent’s actual malice. Respondent argues that appellants either know that Trivedi does not have the powers he claims, or at least know that their claims of these powers having been scientifically validated are not accurate.

Calling a thing a “sham” indicates that the thing is not what it purports to be. *See The American Heritage Dictionary of the English Language* 1599 (4th ed. 2000) (defining “sham” as “[s]omething false or empty that is purported to be genuine”). The record lacks clear and convincing evidence that respondent claimed the Trivedi Effect to be a sham when he thought it to be genuine, or when he thought that appellants’ claims concerning it were accurate. If the record reveals anything concerning respondent’s mental state regarding his claims, it is that he does *not* believe that the Trivedi Effect is what it purports to be. Under the actual-malice standard, appellants must show that respondent thought their abilities or products to be genuine and disseminated statements to the contrary. Appellants have not identified a genuine issue of material fact concerning actual malice. The district court did not err in granting respondent’s motion for summary judgment concerning these statements.

**B. No genuine issue of material fact exists concerning respondent’s statements regarding illegal business activities.**

Appellants concede that respondent has a source for all of his claims regarding the statements that appellants were engaged in illegal or unethical business activities.

Appellants argue only that respondent did not properly verify the accuracy of all of those claims, and that respondent had personal doubts about the veracity of one source. Specifically, appellants posit that respondent's source for these claims included a convicted felon who stole from a previous employer, and that respondent did not believe the source, citing emails in which respondent told this source that he lacked proof and that he needed more evidence of the claims.

Appellants are correct that "recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports." *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 688, 109 S. Ct. 2678, 2696 (1989) (quotation omitted). Here, the record establishes that respondent relied on more than this one source to support his claims concerning appellants' business activities. Respondent identifies multiple sources supporting his illegal-business-activity claims, including documents he received through a Freedom of Information Act request, statements from a past chief executive officer of the Trivedi Companies, and a New York attorney. Respondent also relied on documentary evidence, including a visa application. Viewing the evidence in the light most favorable to appellants, respondent's doubt of one informant's reliability is insufficient to create a material fact issue concerning actual malice. The district court did not err in granting summary judgment concerning these statements.

**C. Material fact issues remain concerning respondent's statements regarding sexual misconduct.**

In their complaint, appellants alleged that respondent's statements on PurQi.com accusing Trivedi of sexual misconduct with former employees and followers are defamatory. As discussed above, Trivedi is not a public figure for the purpose of accusations of sexual assault. Therefore, actual malice need not be proved regarding this category of defamation claims.

To establish a common-law defamation claim in Minnesota, a plaintiff must show that (1) the defendant communicated the defamatory statement to "someone other than the plaintiff," (2) "the statement is false," (3) "the statement tends to harm the plaintiff's reputation," and (4) "the recipient of the false statement reasonably understands it to refer to a specific individual." *McKee*, 825 N.W.2d at 729-30 (quotations omitted).

As noted, claims that a person is a criminal or unchaste, and especially that a person is a sex offender, if false, are defamatory per se. *Longbehn*, 727 N.W.2d at 158-59. The actual-malice standard does not apply to this class of respondent's claims, and the statements, if false, are defamatory per se. The genuine issue of material fact remains: whether Trivedi engaged in the improper sexual behavior alleged by respondent. If true, the statements are not defamatory.

Whether appellants will be able to prove their defamation claim regarding these statements remains to be seen. For present purposes, appellants have produced sufficient evidence to defeat respondent's summary-judgment motion. We therefore reverse that part

of the district court's summary adjudication pertaining to allegations of Trivedi's improper sexual behavior, and remand those claims to the district court for further proceedings.

**D. No genuine issue of material fact exists concerning statements about Trivedi Companies made by respondent as a media defendant.**

Because respondent is a media defendant, Trivedi Companies and Trivedi Foundation must also for that reason demonstrate that respondent acted with actual malice to prevail on a defamation claim. *Jadwin*, 367 N.W.2d at 487. For the reasons discussed above in Parts IV.A. and IV.B., Trivedi Companies and Trivedi Foundation have not presented evidence that respondent acted with actual malice when he claimed that they are "shams" and that they engage in illegal business practices. The district court properly granted summary judgment concerning the claims of Trivedi Companies and Trivedi Foundation.

**V.**

**Conclusion**

The district court properly applied the actual-malice standard to respondent's statements regarding appellants' claims of Trivedi's extraordinary powers, the efficacy of their products, and allegedly illegal activities related to appellants' businesses. It also properly applied the actual-malice standard to the claims of Trivedi Companies and Trivedi Foundation. The record reveals no genuine issue of material fact regarding actual malice on respondent's part in making those statements. Concerning those statements by respondent accusing Trivedi of sexual misconduct, however, appellant Trivedi is not a limited-purpose public figure, and he need not prove actual malice as an element of his

defamation claims arising from this category of statements. We therefore reverse the district court's dismissal of Trivedi's defamation claims (as an individual) regarding those statements and remand to district court for further proceedings consistent with this opinion.

**Affirmed in part, reversed in part, and remanded.**