

Fighting radio shock jocks

Transgender singer Tina Benez sues radio station K-Rock over on-air tirade

BY TOM MCGEVERAN

Transgender singer Tina Benez is suing New York radio station WXXR — known to listeners as K-Rock — saying “homophobic and defamatory” remarks a disc jockey known as DJ Cane made while playing her compact disc, *Love Me Or Die*, on-air violated New York City’s human rights law.

The suit, filed June 26 in State Supreme Court in Manhattan, names Infinity Broadcasting and Sagittarius Broadcasting, companies that distribute Cane’s show; CBS Corporation, owners of the radio station; WXXR- 92.3 FM, the broadcaster of the show in New York; and Cane himself, who is named in the suit only by his radio persona’s moniker.

Tom Shanahan, the lawyer for Benez, says he has until Aug. 18 to file papers in response to the opposing attorneys’ motion to dismiss the case.

According to court documents, lawyers for K-Rock argue the disc jockey’s speech is protected under the First Amendment; they also argue that while the station is not exempt from following the human rights law, the measure does not apply to statements made on-air by a DJ.

The city law bars discrimination based on, among other categories, gender and sexual orientation in employment, housing, and public accommodations. Shanahan says while the law contains no explicit protections for transgender people, he has previously successfully argued that transgender people are included in the law’s protections based on gender and sexual orientation.

“I have argued that it’s a combination of the two that protects transgender people,” Shanahan says.

It was using this tactic that Shanahan

owner of an escort service, Simone Peterson, who had filed suit against Bell Atlantic in March claiming the company violated the city’s human rights law when it refused to print an advertisement for “Platinum Class She-Male Escorts” in the *Yellow Pages*.

Both sides agree Cane criticized Benez and her music using epithets, and smashed the CD to pieces during his program.

On the show, broadcast April 11, Cane joked about changing the format of the station to “Gay-Rock.”

“This is K-Rock, not Gay-Rock,” Cane said.

Later, according to a tape provided by the station, Cane referred to Benez as “Big Pussy with lipstick,” referring to a character on the cable television show, *The Sopranos*.

“That’s what this thing looks like,” he continued, referring to Benez. “Big Pussy with a wiener.”

Benez says she heard about the show from friends and decided to do something about it.

“You can’t just take it on the chin,” she says. “You have to stand up, because this isn’t just a nasty comment. This was scary.”

Anthony M. Bongiorno, an attorney for K-Rock, says the company won’t comment on the pending case.

But lawyers for K-Rock argue in court papers that Benez cannot sue under the human rights law, because a radio station is not a public accommodation.

In papers filed July 14, K-Rock lawyers argued that since there is no relationship between Cane and listeners, such as a landlord-tenant, employer-employee, or merchant-customer relationship, Cane cannot “discriminate” against them.

ings can have a discriminatory effect.

“This repeated verbal gay bashing that takes place over the radio by these hate jocks has a real effect on people’s lives, and this is about to some extent holding those people accountable,” Shanahan says.

Reflecting on the stabbing death of Amanda Milan, a transgender New Yorker, Benez says Cane’s show contributes to an anti-gay and anti-transgender climate.

“This town has gotten more and more violent, and it has to do with the messages that are getting sent out,” she says.

But lawyers for K-Rock are arguing specifically that shock jocks’ rants are protected under the First Amendment to the Constitution.

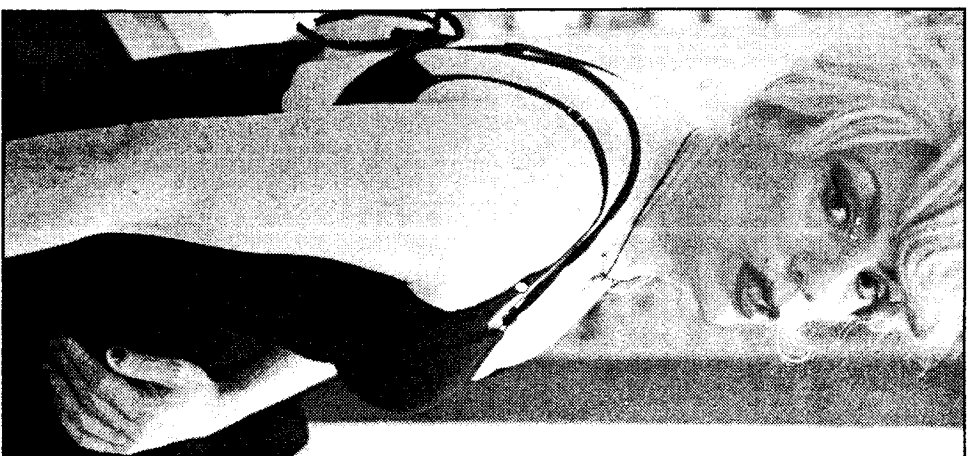
“The freedom of expression guaranteed by the First Amendment and ... the New York Constitution protects speech that may be irreverent, distasteful or politically incorrect,” K-Rock’s lawyers wrote in their preliminary statement to the court.

The lawyers further argue that radio personalities like Cane express themselves in irreverent, distasteful, or politically incorrect speech as an integral part of their performances, and that the First Amendment should protect such speech.

Beatrice Dohrn, legal director of Lambda Legal Defense and Education Fund, says her group sympathizes with Benez but does not support lawsuits against shock jocks who insult gays.

“We have, for way longer than many others, been the ones silenced, the ones whose views or wishes to speak in public or on the airwaves have been silenced by our opponents,” she says.

Cathy Renna, director of regional media and community relations for the national gay media watchdog group, Gay



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Defamation, agrees.

“But, that said, we also feel very strongly about shining a spotlight on that kind of language whether it is Dr. Laura or one of these shock jocks or anyone else,” she says.

Shanahan says it’s not enough.

“This is not pure speech, this is not political speech, and this speech should not be afforded the highest protections under the First Amendment,” Shanahan says. “They are appealing to the lowest common denominator, appealing to homophobia for profit, and they continue

By Jake Price