

Attorney for Backpage calls raid, charges against owners a stunt

Richard Ruelas , *The Republic* | azcentral.com

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An attorney for an online classified ad portal said Friday a raid at the website's Texas headquarters and charges that its owners were acting as pimps amounted to an election-year stunt that the company would fight.

Authorities arrested the CEO of Backpage.com on Thursday and issued arrest warrants for the two Phoenix men who own controlling shares of the business, alleging that the company was enabling prostitution, sometimes involving minors, through ads placed on the website.

The warrant for the arrest of Michael Lacey and Jim Larkin, who built a nationwide media empire after starting the Phoenix weekly newspaper *New Times*, says the men were running a virtual house of prostitution through the ads posted on Backpage.



(Photo: AP)

This photo released by the Texas Office of the Attorney General shows Backpage.com CEO Carl Ferrer. State agents have raided the Dallas headquarters of adult classified ad portal Backpage and arrested Ferrer.

Liz McDougall, an attorney for the website, called the action taken against the company “an election-year stunt, not a good faith action by law enforcement.”

In an e-mailed statement, she said the company took steps to keep illegal activity off its website and removed troublesome ads when contacted by law enforcement.

McDougall said the legal actions taken Thursday by California and Texas authorities are pre-empted by federal law that immunizes website owners from content produced by others.

“Backpage.com will take all steps necessary to end this frivolous prosecution and will pursue its full remedies under federal law against the state actors who chose to ignore the law, as it has done successfully in other cases,” the statement read.

McDougall’s statement did not specifically mention the warrant for the arrest of Lacey and Larkin, and she did not reply to a follow-up e-mail requesting comment.

Attempts to reach Lacey and Larkin on Friday were not successful.

Charges: Website worked as 'an online brothel'

Agents in Texas raided the Dallas offices of Backpage on Thursday and also arrested Chief Executive Officer Carl Ferrer in the Houston airport as he returned from a trip to Amsterdam.

Ferrer was charged with 10 counts associated with felony pimping, five of which allegedly involved minors.

Lacey and Larkin were each charged with one count of conspiring to commit acts of pimping. The charge carries a maximum prison sentence of eight years.

The criminal complaint was signed by Kamala Harris, the California attorney general. She is running as a Democrat for a U.S. Senate seat, the first open Senate seat in California in decades.

According to the declaration in support of the warrant for the men's arrest, it was not simply that Backpage.com provided a forum that facilitated prostitution. It was that Lacey and Larkin had ample evidence from law enforcement that Backpage was being used to sell sex, including with minors, and did nothing about it, the declaration reads.

"Backpage's escort services section essentially operates as an online brothel," reads the declaration, filed Thursday by the California Department of Justice.

According to the document, representatives from law enforcement as well as the National Center for Missing and Exploited Children told Lacey, Larkin and Ferrer that the website was being used for prostitution and that some of that activity involved children.

According to the declaration, representatives from Backpage admitted in public statements that the site was being used for prostitution activity, but that steps were taken to mitigate that activity.

"The obvious nature of the 'escort' ads on Backpage makes it plain to any individual doing any form of screening that Backpage's 'escort' ads are for prostitution," the declaration said.

Freedom of speech considerations

A First Amendment expert said Friday that as reprehensible as the ads may be, it is not clear if government can criminally charge those who operate a website that provides a forum for them.

Peter Scheer, executive director of the First Amendment Coalition, said action taken against the operators of Backpage could have a chilling effect against other sites that might be tangentially used in criminal activity.

"No one is going to stand up, least of all me, and defend classified advertising that is used for sex trafficking of underage victims," Scheer said. "But, is the fact that some people use a web service for that purpose, is that enough?"

Scheer said authorities would have to draw a distinction between the actions of Lacey and Larkin

and the CEOs of other sites like Facebook and Twitter that might be used to facilitate criminal activity.

“It can’t be that they’re worse than the others, or they are bad people,” he said. “It has to be a legal principle.”

Site started as a newspaper back page

Backpage derived its name from the literal back page of classified advertising in the *New Times*, an alternative weekly started in Phoenix in 1970. Lacey was among the Arizona State University students that founded the paper. Larkin joined shortly afterward.

Lacey and Larkin became sole owners in 1977 and built a chain of alternative weeklies across the nation, culminating in the 2005 purchase of the venerable *Village Voice* in New York City.

Backpage became a website in 2004. It allows users to post all manner of classified ads, but it came to be dominated by ads of a sexual nature, including those advertising escort services.

In 2012, Lacey and Larkin sold the newspapers and made Backpage its own company. It did so, in part, because it was difficult to run the news operations while fighting the legal troubles of Backpage.



(Photo: Mark Henle/The Republic)

Alisa Wilhelm of Tucson (from left), Henrietta Speedie of Scottsdale and Jeanine Decker of Phoenix protest Backpage.com in front of the New Times' office in 2012.

The website had become the target of legal action and protests in several states because users had illicitly posted ads to market prostitution.

This coincided with the rise of sex trafficking as a political cause. Activists have successfully reframed the issue of prostitution, once seen as a nuisance by police, as sex trafficking, a crime

that targets children. Even adult sex workers, activists say, are likely survivors of sexual abuse as children.

Cindy McCain, the wife of senior U.S. Sen. John McCain, R-Ariz., co-chairs the Governor's Task Force on Human Trafficking. She said Friday while she was pleased to see the action against Backpage, she was sorry that it had to come to arrests and threats of arrests.

She said politicians, law enforcement and other agencies encouraged Backpage to remove the ads for escorts, showing them the harm it was causing to women and girls.

“What we were trying to do was in some way make them realize it was not only legally but also morally wrong to sell children,” she said. “They wouldn’t hear of it.”

In September 2013, McDougall, the Backpage attorney, testified before the trafficking task force. According to minutes of the meeting, McDougall told the panel, packed with lawmakers and law-enforcement officials, that the company wanted to work to minimize the amount of prostitution done through its website, but as a practical matter it could only go so far.

McDougall said, according to the minutes, that the company did a service by drawing such traffic to its site, giving law enforcement a spot to identify perpetrators. This was preferable, she said, to Backpage shutting down such ads completely and leaving the traffic to move overseas, away from U.S. jurisdiction.

McDougall, according to the minutes, described a filtering system that was supposed to catch key phrases that might indicate an ad for prostitution, particularly those involving minors.

As she spoke, Andrew Pacheco, then the chief of the criminal division of the Arizona Attorney General’s Office, called up the Backpage website on his mobile device.

Pacheco, in an interview Friday, said he read ads to McDougall and described the pictures.

“It was pictures of a young woman, scantily clad,” he said. “The verbiage said something about needing a daddy.” Pacheco said that ad, and others, contained words that law-enforcement officers associate with prostitution.

According to the minutes, Pacheco asked if that was the type of ad that should be screened out. McDougall, according to the minutes, said there were gray areas.

Pacheco said that meeting should have provided Backpage with ample notice that law enforcement believed the website was being used to conduct illegal activity.

“But here we are in 2016, and it appears as though there are some of the same issues,” Pacheco said.

Investigators interviewed 'escorts' from ads

The escort section of Backpage continued to operate on Friday. Before reaching the ads, users must click on a disclaimer that asks them to agree to report any “suspected exploitation of minors and/or human trafficking to the appropriate authorities.”

It also asks users to acknowledge they are about to see nudity and adult language.

The California legal documents in the case against Backpage argue that Lacey and Larkin made large profits from the website's escort ads and took steps to maximize those profits.

Backpage made the overwhelming majority of its money from ads for female escorts, according to the declaration. Lacey and Larkin each received a \$10 million bonus in 2014, according to the declaration supporting the warrant for their arrest.

The website generated between \$1.5 million and \$2.5 million each month between January 2013 and May 2015, the declaration reads.

Lacey and Larkin received regular reports about the goings-on at Backpage, according to the declaration.

The investigation involved sting operations in which an agent would request the services of an escort through Backpage. The appointments, called "dates" in the paperwork, would take place in a hotel room.

"Once in the hotel room, and within a few minutes of arriving, each 'escort' began negotiating sex acts for money with the undercover agent," the declaration reads.

The agent would not arrest the woman, but interview her about her involvement with Backpage. Each woman interviewed, identified by initials in the paperwork, said she took money made through prostitution and used it to buy ads on Backpage.

A 15-year-old girl interviewed by an agent said Backpage was a website that profits from prostitution. "I mean really, coming from someone my age, there is too much access," she was quoted in the document as saying, "like, it's too easy for people to get on it and post an ad."

The declaration says that it is against California law to derive any income from the earnings of a prostitute.

It also cites a legal case 1988 that said "deriving support with knowledge that the other person is a prostitute is all that is required for violating the section in this manner. No specific intent is required."

Republic reporter Michael Kiefer contributed to this article.