

POCIEJ, DUBOIS i WSPÓLNICY

Kancelaria Adwokacka
Spółka Jawna

Wspólnicy:
adw. Aleksander Pocij
adw. Jacek Dubois
r.pr. Elżbieta Kosińska-Kozak
Partnerzy:
adw. Beata Czechowicz
adw. Zofia Gajewska
adw. Barbara Kardynia
adw. Monika Król - Gajewska
r.pr. Urszula Matwiejczuk
adw. Michał Kołodziejczyk
Konsultanci:
adw. Krystyna Pocij-Gościmska

Warsaw, October 7th, 2009

To
District Court in Warsaw
IV Civil Division
Al. Solidarności 127
00-898 Warszawa

Complainant: Daniel Strehlau, residing at ul. Sobieskiego 16 m. 37, 02-957 Warszawa, represented by advocate Aleksander Pocij and legal advisor Elżbieta Kosińska-Kozak from "Pocij, Dubois i Wspólnicy" Advocate's Office, ul. Świętokrzyska 18, 00-052 Warszawa

Defendant 1: Mirosław Chojecki, residing at ul. Częstochowska 20 m. 10, 02-344 Warszawa, address for service: ul. Wilcza 12C, 00-532 Warszawa, represented by advocate Grzegorz Rybicki, ul. Chałubińskiego 8 pok. 55

Defendant 2: Media Kontakt Sp. z o.o. with the registered office at ul. Wilcza 12C, 00-532 Warszawa

Defendant 3: Jewish Motifs Association with the registered office at ul. Wilcza 12C, 00-532 Warszawa

File Reference No. Sygn. akt IV C 322/08

Pleading of the Advocate of the Complainant

Acting on the behalf of the Complainant (the power of attorney and the power of substitution are included in the case files), I hereby declare that I sustain the whole of the complaint, all motions and representations of the Complainant stated in this dispute, that I contradict any and all contentions of the Defendant, apart from those clearly acknowledged by the Complainant, as well as that I further

ul. Świętokrzyska 18, 00-052 Warszawa
tel: 829 90 25, fax: 829 92 02

www.pd-kancelaria.pl e-mail: biuro@pd-kancelaria.pl
Numer KRS 86160

argue and move.

The materials gathered in this matter unambiguously prove that the Warsaw Jewish Film Festival, organized by the Complainant for the first time in November 2003, based on the Complainant's original festival formula, was parasitically copied by the Defendants in this matter, who organized a "rival" Jewish film festival. The formula of the organization of the festival was created and developed entirely by the Complainant. The details concerning the formula of the festival are included in the comparison chart presenting the similar characteristics of the structures of both festivals, which chart was submitted by the Complainant during the hearing on October 1st, 2009. The film festival organized by the Complainant and the "rival" festival organized by the Defendants are confusingly similar.

The festivals share in particular the following characteristics:

- they are both cyclic, monothematic, annual festivals;
- the form of the festivals is a competition of feature, documentary, animated, full-length and short films;
- the festivals are accompanied by additional events: workshops, exhibitions of photographs, paintings and posters, lectures;
- thematic film shows in other places in Warsaw or even other cities as part of the festivals;
- the names of the festivals were initially identical (in their English versions), currently the name of the festival organized by the Defendants takes a slightly altered form (possibly changed for the purpose of this dispute);
- similar name of the Internet domain;
- identical missions of the festivals, identical ideas and even introductions;
- identical awarding structure: division into special and audience awards, the pecuniary character of the prizes, the Grand Prix awards divided into the golden, the silver and the bronze-black awards;
- the awarding system: international jury including a president;
- film shows in time blocks;
- the practice of honoring an outstanding artist during the festival;
- reviews of films by the honored artist;
- thematic blocks as elements of the program of the festival: the Holocaust, emigration, March '68, anti-Semitism, Palestine, the Israeli-Palestinian conflict, comedies;
- presentation of the statistics of the festival;
- Honorary Patronage Committee.

The original formula of the film festival created by the Complainant and copied by the Defendants does not resemble in this great number of elements (as presented above) the formula of any Jewish

film festival organized around the world or any Warsaw film festivals of ethnic character, which were described by the Complainant in the second comparison chart, submitted during the hearing on October 1st, 2009. The chart includes descriptions of 38 world Jewish film festivals, 24 important festivals on a non-Jewish subject, as well as 13 film festivals, including festivals on ethnic subjects, which are organized in Warsaw. None of the described festivals is similar to the festival of the Complainant to the extent displayed by the festival organized by the Defendants.

The Complainant represents that his original formula of an international Jewish film festival in Warsaw is an original work within the meaning of Article 1 Paragraph 4 of the Copyright Law. Therefore, according to Article 1 Paragraph 4 of the Copyright Law, the Complainant as the author of the work is subject to protection. The comparison chart submitted by the Complainant during the hearing on October 1st, 2009, presenting world Jewish film festivals, world non-Jewish film festivals of particular importance as well as Warsaw film festivals, including festivals on ethnic subjects, accompanied by printouts of websites of those festivals, aims at proving that the formula for the organization of the festival of the Complainant is an original work of the Complainant, a manifestation and result of creative commitment. The formula of the festival of the Complainant, in comparison to other Jewish, world and Warsaw film festivals, including festivals on ethnic subjects, stands out as a remarkable, unique event and exists as a subjectively new product of intellect (opinion presented in the judgment of the Court of Appeals in Poznań City of November 7th, 2007, File Reference No. Sygn. I Aca 800/07). Moreover, the judgment of the Supreme Court of February 27th, 2009, File Reference No. Sygn. V CSK 337/08, includes the following statement: *“In the estimation of the grade of individuality of a particular product of intellect, the type of the work ought to be taken into account. Other features are crucial in the case of a literary work (for instance the poetic language, the choice of stylistic means and versification), and other features in the case of a work of reference nature, such as Terms of Reference. The estimation of a particular reference work may be supported by the concept of the so called statistical singularity, which means examining if an identical or very similar work has ever been created before, as well as if the creation of an identical work by another person in the future is statistically probable. The negative answer to this question substantiates the thesis that the work has individual features.”* The comparison of the formulas of film festivals around the world (described in the chart) proves that “accidentally” organizing a film festival based on the same formula by another person is statistically improbable. No other film festival in the world is based on a formula as close to the formula of the festival organized by the Complainant as the festival organized by the Defendants. The actions taken by the Defendants are a parasitical reproduction of the formula of the film festival of the Complainant, both contravening Article 3 of the Act on protection against unfair competition as well as infringing the rights of the Complainant as the author of his work. According to the judgment of the Supreme Court of February 27th, 2009, quoted hereinabove, the parasitical action consists in the fact that the participant of the same market uses the finished effect of the work of his business competitor.

The Complainant is exposed to the negative effects of the unfair competition by the Defendants, consisting in organizing a Jewish film festival in Warsaw, based on a “borrowed” formula. The Department of Culture of the Warsaw City Office rejects the requests for financial support and assuming patronage over the festival submitted by the Complainant, explaining that there is no need to organize two Jewish film festivals in Warsaw. Sponsors and other institutions respond similarly. Only this year did the Department of Culture of the Warsaw City Office reject the request for granting financial support to the festival of the Complainant three times. The Complainant was able to organize the first edition of his festival according to the rules of the free market, since he did not meet with public defamation (theft of the idea for the festival), wherefore the sponsors were greatly interested in supporting the festival of the Complainant, as proved by the evidence gathered in this matter.

In the matter of the requests for granting financial support to the Jewish film festivals submitted by the Complainant and by Mr. Chojecki on behalf of the Defendants at the Department of Culture of the Warsaw City Office, the reasons for the Warsaw City Office to choose one of the festivals and rejecting the other, as well as the criteria and the manner of choosing the cultural events to be supported by the Warsaw City Office, **I hereby move that the Court examine witness, Head of the Department of Culture of the Warsaw City Office, address for service: ul. Smolna 10a, 00-375 Warszawa.**

In the light of the above, I sustain all the representations made so far.

Appendices:

three copies of the Pleading

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Zofia Gajewska

Advocate