

POCIEJ, DUBOIS i WSPÓLNICY

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Wspólnicy:
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r.pr. Elżbieta Kosińska-Kozak
Partnerzy:
adw. Beata Czechowicz
adw. Zofia Gajewska
adw. Barbara Kardynia
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r.pr. Urszula Matwiejczuk
adw. Michał Kołodziejczyk
Konsultanci:
adw. Krystyna Pocij-Gościńska

Warsaw, 1st February 2010

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 Zofia Gajewska, substituting for 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 argue and move that the Court accept the statements presented hereinbelow as added to the stand taken by the Complainant during the hearing on 1st October 2009.

The Complainant filed the report on the polygraphic examination of the Complainant from 25th May 2009 with the court not only in order to prove who had first had the idea to organise a Jewish film festival in Warsaw. What more, the examination is supposed to prove that the Defendants made use of a complete concept, construction, of the programme of the film festival, as well as even that the Defendants made a dishonest observation of the experience of the Complainant, who had organised such a festival before.

What makes a festival is its structure and programme, not merely its name, which the Defendant changed after this litigation began. Even if a work / festival differs from another in terms of structure, but bears the same or a confusingly similar name, this fact causes damage, as well. In the present dispute, however, both these circumstances arise, since both the name and the structure of the Jewish film festivals organised by the Complainant and by the Defendant are similar.

When it comes to the structures of the festivals, those are indicated in detail in the chart filed by the Complainant during the hearing on 1st October 2009. The structures of film festivals can be and are different; it is not the playing of films in a theatre and the timing of switching off the lights in the theatre before the show that decide about the distinctness of a festival, nor do they constitute the structure of the festival. Crucial are other elements, as for instance categories, competition, exhibitions, retrospectives etc. – these elements may be absent from a festival, which may take a different form, as for example the KOLNOA Festival organised by the Complainant, which is not divided into categories, there are also no awards except for the audience award. The structure of the KOLNOA Festival and that of the WJFF Festival, both of them being organised by the Complainant, are completely different. In the KOLNOA Festival there is no jury, the event is not dedicated to any artist, there are no retrospectives of selected artists, there is no division into competition categories, since there is no competition as such; thus the structures differ. Therefore it is possible to organise a different, new festival, which would not be similar to that organised by the Complainant. Theoretically, someone could represent that they had first had the idea to organise the KOLNOA Festival, that they even had witnesses to confirm this representation and that they were going to organise such a festival, but in the end they would organise a completely different festival: characterised by a competition, division into competition categories (documentaries, feature films etc.), retrospectives of selected artists, a visit by an invited artist, exhibitions, an international jury to appraise the films, a festival catalogue instead of a usual brochure or flyer. In this hypothetical situation the effect would be that the two festivals would be completely different, have differing structures and differing names.

There is no need to organise in one city two festivals which are characterised by such a highly specific subject matter, whose major feature and strength is precisely the said uniqueness. Organisation of two film festivals on one subject matter in one city renders them both less unique and interesting for the audience.

Additionally we attach and move the Court to include in the evidence a print screen of two consecutive electronic weekly magazines distributed by the Jewish Community in Warsaw and addressing chiefly this community. This audience is the so called target group for the festival of the Complainant. It is its members who constitute the majority of persons interested in the Jewish subject matter and it is them who are supposed to constitute the greater part of the audience – the Complainant is convinced that the distribution of such coincident information (since it is not possible to send very different information about the two festivals in question, which are similar) as well as informing in an informal way that the Complainant “stole” the festival concept shall result in the festival of the Complainant losing a good part of its audience stemming from this target group.

Similarly, due to the organisation of two thematic film festivals in one city, the Complainant cannot count on financial support for his project from the Department of Culture of the Warsaw City Office – evidence from the examination of witness Marcin Jasiński, moved for in the pleading of 7th October 2009.

Evidence 1: print screen of electronic weekly magazines

Evidence 2: communication from the Warsaw City Office of 1st December 2009

Furthermore, since the suspicion is grounded that the correspondence which the Defendant submitted as evidence during the course of the present matter might not be authentic, particularly the correspondence between the Defendant and Mr. Wajda, that is: **the letter of the Defendant to Andrzej Wajda as well as the letter from Andrzej Wajda to the Defendant, the Complainant demands under Art. 129 of the Polish Code of Civil Proceedings that the Defendant submit the originals of the said correspondence.** The demand is additionally grounded since witness Andrzej Wajda is to be examined during the subsequent hearing, thus the witness could be shown his correspondence with the Defendant in order for the witness to confirm its authenticity.

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

Appendices:

evidence as hereinabove

three copies of the Pleading for the Defendant 1, 2 and 3.

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Zofia Gajewska

Advocate