

POCIEJ, DUBOIS i WSPÓLNICY

Kancelaria Adwokacka
Spółka Jawna

Wspólnicy:
adw. Aleksander Pocij
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r.pr. Elżbieta Kosińska-Kozak
Partnerzy:
adw. Beata Czechowicz
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adw. Monika Król- Gajewska
r.pr. Urszula Matwiejczuk
Konsultanci:
adw. Krystyna Pocij-Gościńska

Warsaw, November 17th, 2008

**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 Barbara Kardynia – Bednarska and legal advisor Aleksander Pocij „Pocij, Dubois i Wspólnicy. Kancelaria Adwokacka” sp. j. ul. Świętokrzyska 18, 00 - 052 Warszawa

Defendant: Mirosław Chojecki, residing at ul. Częstochowska 20 m. 10, 02-344 Warszawa, address for service: ul. Wilcza 12C, 00-532 Warszawa

File reference number Sygn. akt IV C 322/08

Pleading of the Complainant’s Attorney Modification of Complaint

Acting on the behalf of the Complainant as the Complainant’s attorney we hereby represent that we sustain all motions to admit evidence as well as the statements of the Complainant stated in this dispute, that we contradict any and all contentions of the Defendant, apart from those clearly acknowledged by the Complainant, and we **modify the Complaint** of April 30th, 2007. Furthermore we **move** that the Court:

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

1. order Defendant Mirosław Chojecki to publish at the Defendant's own expense, within seven days from the day when the judgment becomes final and binding, on the first page of the culture section Kultura of the Polityka weekly magazine and in the on-line edition of the Polityka weekly magazine at www.polityka.pl in the culture section Kultura, as well as on the main page of the website of the film festival organized by the Defendant, www.jewishmotifs.org, declarations in the size of at least 17 cm x 12 cm in the Polityka weekly magazine and 1339 pixels x 945 pixels on the websites mentioned hereinabove, in a red frame, of the following content in Polish:

„W dniu 6.11.2004 r. w numerze 45/2004 tygodnika „Polityka” w Dziale „Kultura” na stronie 68 ukazał się artykuł autorstwa Doroty Szwarzman Pt. „Szmonces na dachu”. W artykule tym podalem nieprawdziwe informacje sugerujące, jakoby Pan Daniel Strehlau skopiował ode mnie pomysł na formułę oraz sposób organizacji festiwalu filmowego prezentującego filmy żydowskie w Warszawie, organizowanego przeze mnie pod nazwą: „Warszawski Międzynarodowy Festiwal Filmowy „Żydowskie Motywy” / Warsaw Jewish Film Festival”, podczas, gdy w rzeczywistości autorem idei, pomysłu na formułę oraz sposobu organizacji festiwalu filmowego prezentującego filmy żydowskie w Warszawie jest Pan Daniel Strehlau, który jako pierwszy zorganizował festiwal filmowy prezentujący filmy żydowskie pod nazwą: „Warszawski Festiwal Filmów o Tematyce Żydowskiej / Warsaw Jewish Film Festival”, przez co naruszyłem dobra osobiste wyżej wymienionego w postaci dobrego imienia, czci i godności.

W związku z tym, wyrażam głębokie ubolewanie, że wprowadziłem czytelników w błąd i przepraszam Pana Daniela Strehlaua za podanie wskazanych powyżej nieprawdziwych informacji.

Mirosław Chojecki”

as well as in English on the websites: www.polityka.pl and www.jewishmotifs.org, in accordance with the certified translation of the declaration attached hereto:

“On the 6th of November 2004 in number 45/2004 of magazine “Polityka” column “Kultura” on page 68 an article written by Dorota Szwarzman titled “Szmonces na dachu” appeared. In this article I have presented false information, suggesting that Mr Daniel Strehlau copied my idea of formula and the way of organizing a film festival presenting Jewish films in Warsaw, organized by me under the name of „Warszawski Międzynarodowy Festiwal Filmowy „Żydowskie Motywy” / Warsaw Jewish Film

Festiwal”, while, in fact the author of idea, formula and a way of organization of film festival presenting Jewish movies in Warsaw is Mr. Daniel Strehlau, who was the first to organize a film festival presenting Jewish movies in Warsaw under the name of: “Warszawski Festiwal Filmów o Tematyce Żydowskiej / Warsaw Jewish Film Festival” and wherethrough I violated personal rights of abovementioned, namely his good name, honour and dignity.

Therefore, I express my deep regret having misled the readers and I apologize Mr. Daniel Strehlau for presenting false information described above.

Mirosław Chojecki”

whereby the declarations specified hereinabove ought to remain published on the websites for the period of three months.

2. adjudge from the Defendant to the benefit of Fundacja Kultury Żydowskiej w Polsce — Foundation for the Development of Jewish Culture in Poland the payment of 30000 PLN (say: thirty thousand PLN) as payment for a specified public purpose, to the Foundation’s bank account, number: **32 1160 2202 0000 0000 6804 3497**;
3. authorize the Complainant to execute the actions described in point 1 hereinabove at the Defendant’s expense in the case that the Defendant does not execute the said actions within fourteen days from the day when the judgment becomes legal and binding;
4. order the Defendant to refrain from taking unlawful actions of unfair competition (or alternatively to refrain from taking unlawful actions against an author whose moral rights have been violated through an act of another person) by prohibiting the Defendant from organizing a Jewish film festival in Warsaw,
or alternatively,
order the Defendant to refrain from taking unlawful actions of unfair competition as well as unlawful actions against an author whose moral rights have been violated through an act of another person, by prohibiting the Defendant from organizing a film festival bearing the name „Warszawski Międzynarodowy Festiwal Filmowy Żydowskie Motywy / Warsaw Jewish Film Festival” or a similar one, referring to the name of the film festival organized by the Complainant, bearing the name: “Warszawski Festiwal Filmów o Tematyce Żydowskiej / Warsaw Jewish Film Festival”;
5. order the Defendant to redress the damage caused by the violation of the rules of fair

competition (or alternatively taking unlawful actions against an author whose moral rights have been violated through an act of another person) by publishing at the Defendant's own expense within seven days from the day when the judgment becomes legal and binding, on the second pages of the daily papers Rzeczpospolita and Gazeta Wyborcza in 12 points black Arial font, as well as on the main page of the website www.jewishmotifs.org in 10 points black Arial font, the declaration of the following content in Polish:

„Działając w imieniu własnym, jako organizator festiwalu filmowego pod nazwą „Warszawski Międzynarodowy Festiwal Filmowy Żydowskie Motywy / Warsaw Jewish Film Festival” przepraszam Pana Daniela Strehlausa pomysłodawcę i organizatora festiwalu filmowego pod nazwą „Warszawski Festiwal Filmów o Tematyce Żydowskiej / Warsaw Jewish Film Festival” za to, że organizując festiwal filmowy pod nazwą „Warszawski Międzynarodowy Festiwal Filmowy Żydowskie Motywy / Warsaw Jewish Film Festival” dopuściłem się bezprawnego naśladownictwa nazwy i formuły festiwalu filmowego pod nazwą „Warszawski Festiwal Filmów o Tematyce Żydowskiej / Warsaw Jewish Film Festival”. Wyrażam głębokie ubolewanie z powodu naruszenia zasad uczciwej konkurencji i zobowiązuję się do powstrzymania się w przyszłości od działań bezprawnych i godzących w wizerunek festiwalu filmowego pod nazwą „Warszawski Festiwal Filmów o Tematyce Żydowskiej / Warsaw Jewish Film Festival”.

Jednocześnie informuję, że organizowany przeze mnie festiwal filmowy „Warszawski Międzynarodowy Festiwal Filmowy Żydowskie Motywy / Warsaw Jewish Film Festival” nie ma żadnego związku z festiwalem filmowym organizowanym przez Pana Daniela Strehlausa pod nazwą „Warszawski Festiwal Filmów o Tematyce Żydowskiej / Warsaw Jewish Film Festival”

Mirosław Chojecki”

as well as in English on the website www.jewishmotifs.org, in accordance with the certified translation of the declaration attached hereto:

“As an organiser of a films festival under the name of „Warszawski Międzynarodowy Festiwal Filmowy Żydowskie Motywy / Warsaw Jewish Film Festival” I hereby apologize Mr Daniel Strehlau, the originator and organiser of a films festival under the name of „Warszawski Festiwal Filmów o Tematyce Żydowskiej / Warsaw Jewish Film Festival”, for having unlawfully imitated the name and

formula of “Warszawski Festiwal Filmów o Tematyce Żydowskiej / Warsaw Jewish Film Festival” while organising a festival under the name of „Warszawski Międzynarodowy Festiwal Filmowy Żydowskie Motywy / Warsaw Jewish Film Festival”. I express my deep regret for having violated the rules of fair competition and I undertake to refrain from taking unlawful actions in future that might be detrimental to the interests of the films festival under the name of “Warszawski Festiwal Filmów o Tematyce Żydowskiej / Warsaw Jewish Film Festival”.

I also inform that a films festival organised by me under the name of „Warszawski Międzynarodowy Festiwal Filmowy Żydowskie Motywy / Warsaw Jewish Film Festival” is not in any way connected to the films festival organised by Mr Daniel Strehlau under the name of “Warszawski Festiwal Filmów o Tematyce Żydowskiej / Warsaw Jewish Film Festival”.

Miroslaw Chojecki”.

6. authorize the Complainant to perform at the expense of the Defendant to execute the actions described in point 5 hereinabove in the case that the Defendant does not execute the said actions within fourteen days from the day when the judgment becomes legal and binding;
7. adjudge from the Defendant to the benefit of the Complainant the equivalent of the costs of the proceedings including the costs of court representation, as provided for by the law.

Substantiation

The Complainant — Daniel Strehlau — is the originator, initiator and organizer of a film festival taking place in Warsaw and handling the subject of Jews — Warsaw Jewish Film Festival.

In May 2003 the Complainant formed the idea of organizing an international Jewish film festival in Warsaw. The Complainant undertook the first actual actions pertaining to the realization of the said idea in July 2003. The initial stage consisted in creating the organizational structure of the festival: selecting jury members, establishing contact with foreign filmmakers, creating a website, determining the competition rules. The festival’s website was created in July 2003; next the Complainant sent a newsletter containing information about the organization of the festival to eight thousand e-mail addresses. At the same time the Complainant undertook action to find appropriate sponsors and patrons for the festival. On July 8th, 2003, the Complainant requested from the Minister of Culture a subsidy to the festival (another written request

was sent to the Minister of Culture on August 8th, 2003). Another institution whose support was requested by the Complainant was the Ministry of Foreign Affairs, who in a communication of October 22nd, 2003, agreed that the Minister of Foreign Affairs — at that time Włodzimierz Cimoszewicz — should become member of the festival's Honorary Committee. Subsequently, the Complainant gained the first sponsor — the Traffic Club company. The effect of the actions described hereinabove was not only raising funds, but also gaining support for the project from such natural and legal persons as: Prof. Władysław Bartoszewski, Wisława Szymborska (Nobel winner), Agnieszka Holland, Irvin Kershner, Irwin Tenenbaum, ZDF television, New York Jewish Film Festival, San Francisco Jewish Film Festival, MIRAMAX company, Hollywood Reporter. Furthermore, the festival's organizer — the Complainant — received submissions for the competition from filmmakers as well as declarations of participation from numerous guests.

Konstanty Gebert, having learned from the Complainant about the Complainant's intention to organize an international Jewish film festival in Warsaw, informed the Defendant of the fact as early as in July 2003. On August 4th, 2003, the Defendant sent an e-mail to the Complainant, in which he suggested a meeting. During the meeting, which took place on August 14th, 2003, the Complainant shared with the Defendant information pertaining to the organization of the festival. No actions leading to a realization of a joined project were undertaken after the meeting.

In November 2003 the first edition of the Warszawski Festiwal Filmów o Tematyce Żydowskiej — Warsaw Jewish Film Festiwal took place, organized according to the original idea of the Complainant. The National Foundation of JEWISH CULTURE in New York entered the festival into its festival list. After the first edition of the Complainant's festival, on December 20th, 2003, the Defendant began to send announcements to numerous persons and institutions, informing them of his intention to organize his own Jewish film festival of the same formula and a name identical to that of the Complainant's festival. Among others, this announcement was sent to the Complainant as well as Ms. Valerie Lapin Ganley, a film director of "Shalom Ireland" and participant of the Complainant's festival, who — outraged at this situation — wrote a letter to the Complainant and the Defendant, asking whether it was the same festival, and declaring that in the event that it was not, she did not see the point in organizing two identical festivals and did not wish her film to be screened for the second time during the Defendant's festival.

In April 2004 the Defendant organized a festival of a structure very similar to that of the Warsaw Jewish Film Festival, under a similar name: Warszawski Międzynarodowy Festiwal Filmowy Żydowskie Motywy, whose English name is identical to that of the festival organized by the Complainant. Furthermore, the Defendant used the said name in his promotional leaflets and information materials concerning the festival

he organized.

The co-existence of two festivals addressing identical issues, of identical structure and similar names (in particular names that are identical in their English translations) in the same city misled numerous filmmakers and spectators. Thus, inter alia, on May 13th, 2005, in reply to his invitation to participate in the festival edition organized in 2005, the Complainant received an e-mail from Ms. Emese Nemeth (representative of a company granting licenses) stating that due to default in payment of 1600 USD for the screening of the films “The Verdict”, “Network”, “Equus” and “The Offence” during the Warszawski Festiwal Filmów o Tematyce Żydowskiej festival, which had taken place in April 2004, it was not possible for Woody Allen to act as patron of the upcoming edition of the Complainant’s festival. The outstanding amount mentioned hereinabove pertained to the Warszawski Międzynarodowy Festiwal Filmowy Żydowskie Motywy festival, organized by the Defendant, and not to the festival organized by the Complainant. Moreover, film director Anja Saromonowitz indicated on her website that she was prize-winner of the 2005 edition of the Warszawski Festiwal Filmów o Tematyce Żydowskiej festival, although in reality she was prize-winner of the festival organized by the Defendant. Another example of misinformation was the erroneous submission of his film by filmmaker Stuart Urban to the Defendant’s festival, while de facto the submission was supposed to be directed to the festival organized by the Complainant (e-mail of January 5th, 2007). The similar names of the two festivals have misled not only filmmakers and audience, but also for instance courier service, who instead of delivering the mail to the Complainant, sent it to the address of the organizer of the Defendant’s festival.

I.

Violation of personal interests of the Complainant

The Polityka weekly magazine of November 6th, 2004, issue 45 (2477) published an article by Dorota Szwarzman entitled [“Szmonces na dachu”](#), concerning the organization of events in Poland related to Jewish culture. In the said article the author described the problem of the competition between the organizer of the Warszawski Festiwal Filmów o Tematyce Żydowskiej festival, that is the Complainant, and the organizer of the Warszawski Międzynarodowy Festiwal Filmowy Żydowskie Motywy festival — the Defendant. The author indicated (**citing the statement of the Defendant**) that “someone recommended to M. Chojecki Mr. Daniel Strehlau for co-operation” during the organization of the Warszawski Międzynarodowy Festiwal Filmowy Żydowskie Motywy festival and that after a meeting with the

Complainant the Defendant learned that the Complainant was organizing his own Jewish film festival. In the following part of the article Dorota Szwarzman wrote that in the promotional leaflet of the second edition of the Warszawski Festiwal Filmów o Tematyce Żydowskiej festival the Complainant “cockily” indicated that his festival was an original idea, registered in the Patent Office, which was supposed to guarantee the uniqueness and untypical character of the event.

The author of the article quoted statements made by the Defendant.

This part of the article implies that two film festivals, organized by the Complainant and the Defendant respectively, compete with each other; however allegedly it was the Defendant who had formed the original idea to organize a festival of this kind, while the Complainant had copied the said idea and now dared “cockily” indicate in his promotional leaflets that the festival organized by the Complainant was his the original idea and creation.

In his statement made for the press, the Defendant mentions the Complainant, using the Complainant’s full name, as well as indicates the festival organized by the Complainant, thus leaving no doubt as to the identity of the person referred to.

The information offered to the press by the Defendant was untrue, as the originator and first organizer of an international Jewish film festival in Warsaw had been the Complainant. It was the Defendant who had copied the Complainant’s idea and used the same formula for the festival. Moreover, the Defendant had named his festival almost identically.

Similarly untrue are the Defendant’s statements that the Complainant commenced to organize his film festival only after the meeting with the Defendant, during which the Defendant had presented his ideas concerning the organization of a Jewish film festival in Warsaw. It is the Complainant who is the author and originator of the film festival, the organization of which is based on an original formula designed by the Complainant, which has unfortunately been copied by the Defendant in the organization of the Defendant’s festival. Evidence in support of this statement can be found in the files of the case.

On the publication of the above mentioned article numerous sponsors of the Warszawski Festiwal Filmów o Tematyce Żydowskiej festival, organized by the Complainant, withdrew, indicating that they did not wish to co-operate with the Complainant, as the Complainant copied another persons’ ideas. The Complainant was met with obstruction in the artistic and film-making circles not only in Poland, but also

abroad.

The organization of a festival based on another person's ideas violates both copyright as well as the rules of fair competition. The libel included in the disputed article, according to which by organizing his festival in a dishonest manner the Complainant borrowed (simply "stole") the Defendant's ideas concerning the organization of the festival, proves in the opinion of an ordinary reader that the Complainant is a dishonest person who copies another person's ideas. This is precisely the manner in which the majority of the readers — and among them the filmmaking circles, being most sensitive to the matters of reliability, honesty and professional loyalty — understood the Defendant's statements cited in the disputed article.

Public libelous accusation against a second party of unlawful, dishonest and morally reprehensible conduct certainly poses a case of violation of personal interests, namely good name, honor and dignity. The violation in the form of the Defendant's statements, particularly as they were published in press, certainly means violation of the Complainant's personal interests specified hereinabove.

The Defendant's actions were unlawful. The unlawfulness of the Defendant's actions lies in the fact that the Defendant offered **false information** for publication. It is not true that the Defendant was the originator of the organization of a Jewish film festival and that the Complainant used the Defendant's ideas in the organization of the Complainant's festival. The sole confirmation of the unlawfulness of the Defendant's actions suffices to grant the complaint for protection of personal interests and order the Defendant to publish a declaration in the specified form and of the specified content, whose aim is to redress the damage in the form of violation of the Complainant's personal interests. It is not necessary to confirm the Defendant's fault. **"Article 24 k.c. (civil code) contains the assumption that a party violating another party's personal interests acts unlawfully, thus the obligation to prove circumstances excluding the unlawfulness lies with that party."** — as stated in the judgment of the Supreme Court of September 12th, 2007, No I CSK 211/2007, as published by the Rzeczpospolita daily paper, issue 2007/214, page C3. Thus the Defendant is obliged to prove the truth of the statement that the Complainant copied the Defendant's ideas — which in the light of the facts does not appear very probable. It was namely the Complainant who first organized his festival and made the festival's website, while the Defendant not only imitated the Complainant's festival, but also gave his festival a name similar to that of the Complainant's festival.

The Defendant's conduct concerning his statements indicated in the article cited hereinabove was blameworthy, which substantiates the claim for the payment of a specified sum of money to a specified public purpose. "It ought to be assumed that proving the unlawfulness of the violation (the endangering) of

a personal interest does not suffice to adjudge the payment of pecuniary compensation or the payment to a specified public purpose, but that establishment of a blameworthy action (at least an unintentional fault in the lightest form) is necessary to be proved.” — as stated in: Dmowski Stanisław, Rudnicki Stanisław, 2006, *Komentarz do kodeksu cywilnego. Księga pierwsza, Część ogólna*, (7th edition.), Warszawa: Wydawnictwo Prawnicze LexisNexis, page 500.

The Defendant intentionally and consciously offered false information for press publication. Moreover, the Defendant acted out of morally corrupt motives, as he strived only to falsely accuse the Complainant of copying the Defendant’s idea for the organization of the festival and to humiliate him in front of the public opinion and the very narrow filmmaking circles, which is particularly sensitive to any instances of copying and “stealing” another person’s ideas. The Complainant feels deeply hurt and wronged by the press article mentioned hereinabove, because it is the Complainant, not the Defendant, who was the originator and creator of the Warsaw film festival. The said article causes damage not only to the Complainant’s person, but also to the festival organized by the Complainant. The Complainant explicitly denies having borrowed the concept for the organization of his festival from the ideas presented to him by the Defendant.

It ought to be emphasized that the article mentioned hereinabove contains intentionally false and incomplete information, implying that in the Defendant’s view the co-existence of the two festivals — that of the Complainant and that of the Defendant — does not cause any conflict of interests. Still, the Defendant allowed one statement of unambiguously pejorative character concerning the Complainant to reach the public opinion and the filmmaking circles, namely that not the Complainant is the creator of his own original festival, but that the Defendant is, who however is so noble as to not find the fact disturbing. The complete disregard for the Complainant’s position results in the fact that the reader of the article has no possibility of assessing the information and forming their own opinion thereon.

The violation of the personal interests of the Complainant, namely his good name, his honor and dignity, was unlawful. The aim of the Defendant’s statements contained in the disputed article was to discredit the Complainant before the public opinion and above all in the filmmaking circles, as well as to damage the prestige and renown of the Jewish film festival organized by the Complainant, for the sake of enhancing the importance of the Defendant’s festival — in which the Defendant also succeeded — which the evidence adduced in the matter indicates.

The content of the Defendant’s statements cited in the disputed article unambiguously suggests that the Complainant had “stolen” the Defendant’s idea for the organization of the festival and organized his

festival on the basis of not his own ideas. In order to create this image of the Complainant the Defendant purposefully used oblique statements and concealment. He intentionally omitted the information as to when he had met the Complainant in order to discuss the organization of the festival, since it would have been obvious that the Complainant's actions concerning the organization of the festival had been considerably advanced still before the meeting with the Defendant. Being perfectly conscious of the fact that he was offering false information to the public, the Defendant used manipulation in order to ruin the credibility and the image of the Complainant, as well as undoubtedly the renown of his festival. Such conduct is not merely unpleasant to any person, not only violates the personal interests of the Complainant, but is also morally reprehensible. The libel harms not only the Complainant, but also his original film festival and his other projects, above all those connected with filmmaking.

Intentional fault may be assigned to the Defendant with perfect certainty. When stating in the press article that in the organization of his festival the Complainant had used the Defendant's ideas, the Defendant was fully aware that those statements were false. During his meeting with the Defendant on August 14th, 2003, the Complainant informed the Defendant that he had commenced the organization of the festival based on the Complainant's original idea, which he described to the Defendant. No justification exists for the Defendant's conduct. The freedom of speech is not an absolute right, not one that has no limits. Every person is obliged to respect values such as personal interests of another person. The freedom of speech does not imply latitude in using it.

Polityka is a popular weekly magazine, which has been present on the market for more than fifty years and has a circle of regular readers. It is an opinion-forming magazine, especially when it comes to the cultural section, in which the disputed article appeared. Furthermore, the article was also published on the Internet, on the website of the Polityka magazine www.polityka.pl, thus becoming generally available not only in Poland, but also to the international filmmaking circles, in which the Complainant is widely recognized. Moreover, the article has remained published on the above mentioned website until now, that is for the period of several months. This is why the Complainant demands apology in the said magazine, on the first page of the cultural section, where the article containing the Defendant's statements was published, in the cultural section on the magazine's website www.polityka.pl, as well as on the website of the film festival organized by the Defendant, www.jewishmotifs.org, for the period of three months. The complaint for the payment of 30000 PLN to a specified public purpose is substantiated by the degree of the Defendant's ill will, who intentionally offered manipulated, false and unreliable information for the press in order to discredit the Complainant's image and the renown of his festival. The assumed manner of protection of personal interests is adequate to the character and scale of the violation and its effects, it accounts for the

entirety of the circumstances accompanying the violation, and offers satisfaction to the injured party, while at the same time it does not charge the Defendant in an excessive manner.

II.

Violation of the rules of fair competition, alternatively the copyright of the Complainant

The activity of the Defendant in the form of the organization of a Jewish film festival, particularly considering the English translation of the name of the festival: **Warsaw Jewish Film Festival**, and with the use of the Complainant's original formula for the organization of such a festival, has been classified as an act of unfair competition as specified in Article 3 item 1, Article 10 item 1 of the Unfair Competition Act of April 16th, 1993 (uniform text Dz.U. 2003 No. 153 item 1503 with subsequent amendments).

For the audience of a festival its informative designation is the festival's name. The designation of the Defendant's festival is: "Warszawski Międzynarodowy Festiwal Filmowy Żydowskie Motywy / Warsaw Jewish Film Festival", and the designation of the Complainant's festival is: "Warszawski Festiwal Filmów o Tematyce Żydowskiej / Warsaw Jewish Film Festival". The use of such a designation of a film festival by the Defendant may mislead and, as has been proved in the case, has misled the audience, sponsors and filmmakers, as well as film stars, as to the origin and key attributes of the individual product or service in the form of the film festival. The audience — particularly its English-speaking part — have been misled that the Defendant's festival and the Complainant's festival are one and the same festival. The aim of an individual, unique designation of the origin of a product or service (and a film festival certainly is one) is to inform the clients and purchasers of a particular service as to the key attributes of the said service. Key attributes are such attributes which may influence the decision of some of the clients, even if it should be a small part of them. The significance of misleading the audience as to the identity of the two festivals lies with the fact that the information about the Defendant's festival has influenced and may influence the decisions of clients (audience), sponsors and filmmakers as to the choice of one of the festivals.

It is essential that in the consideration of whether a party committed an act of unfair competition it suffices to confirm the mere possibility or risk of misleading the clients. It is not necessary to determine whether the clients have indeed been misled, although in this matter this may certainly be confirmed on the basis of the evidence adduced.

According to the judgment of the Supreme Court — Civil Chamber, of March 23rd, 2005, I CK 621/2004, LexPolonica No. 376033, Rzeczpospolita issue 2005/74 page C4:

“The use of even one element of an enterprise’s name may lead to an act of unfair competition, since it may be a sufficient prerequisite for misleading the clients. This premise will be satisfied when it is proved that the client, due to identical or similar designations, links the enterprises and believes or has the basis for the conclusion that the enterprises remain in a legal relation.”

Brochures and advertising posters offered to or spread for the clients in connection with the services rendered contain the “designation” of the service, which is the film festival organized by the Defendant. In this case also the advertising campaign and the promotion of the Defendant’s festival, using the misleading designation of the festival’s key attributes (particularly its name) and its origin, is closely connected with the designation of the service. — as stated in Janusz Szwaja, 2006, *Commentary on Unfair Competition Act*, (2nd edition.) Warszawa: Wydawnictwo C.H. Beck, page 368.

The act of unfair competition committed by the Defendant also consists of imitating the Complainant’s festival (the Complainant’s original film festival), which misleads the clients as to the identity of the product or service, defined as an act of unfair competition in Article 10 of the Unfair Competition Act. The evidence in the matter adduced by the Complainant clearly indicate that the clients — the festival’s audience (including the festival’s guests), the sponsors and filmmakers have been misled as to the identity of the Complainant’s festival with that of the Defendant’s. Firstly, as has been proved hereinabove, the Defendant’s act consisting in imitating the Complainant’s festival (particularly in relation to the use of a very similar name, which is identical in its English translation) has misled the festival’s factual and potential audience as well as the sponsors and the guests of the festivals, and secondly, the organization of a festival by the Defendant on the basis of a ready product in the form of the Complainant’s festival may also be classified as using another person’s work and undoubtedly using the renown that the Complainant’s festival had won, in the form of copying a ready service. According to the judgment of the Supreme Court of August 11th, 2004, reference number sygn. II CK 487/03, source: LEX No. 176100: “The aim of the prohibition of unfair competition is to eliminate **any and all actions which could in any way mislead as to the identity of an entrepreneur or their product**, or mislead **through the use of false designations** (...).”

The Defendant’s activity is a delict in the sense of the Unfair Competition Act (general clause included in Article 3 point 1 of the Unfair Competition Act), defined as distributing false and misleading information

as to, including but not limited to, the identity of the originator of the organization of the festival, since in these circumstances threat to or violation of the Complainant's and the festival audience's interests are possible. — as stated in the judgment of the Court of Appeal in Katowice, reference number sygn. I ACa 1338/05, source: LEX No. 189369. Article 3 item 1 of the Unfair Competition Act protects the Complainant in the moment when the Defendant unlawfully, without the Complainant's consent, uses the designation of the Complainant's festival, as follows from the article by I. Wiszniewska entitled "Protection of differentiating designations", published in PPH 1997/3/14: "When a designation of an enterprise is used by another enterprise to designate its products and services, the basis for the judgment is not Article 5, but Article 3 of the Unfair Competition Act."

The legal basis for the Complainant's claims for damages for unfair competition, in particular the claim for making a declaration in a specified form and of specified content, as well as the claim for prohibiting the Defendant from organizing a Jewish film festival in Warsaw of a similar formula, under a name identical or similar to that of the Complainant's festival, is **Article 18 of the Unfair Competition Act**.

It is necessary to raise the issue that no such situation as the one being the subject matter of this dispute has yet occurred either abroad or in Poland. The artistic and filmmaking circles find it namely obvious that it is impossible for two festivals of an identical formula and under a similar name to co-exist in one city. There exist no two feature film festivals in Cannes, no two Polish film festivals in Gdynia, no two Russian film festivals in one city.

Above all it needs to be taken into account that the film festivals organized by the Defendant and the Complainant are international festivals, which screen mostly foreign films. This situation misleads the foreigners who submit their films for the competition, since the English names of the festivals are identical.

Additionally, the film festival organized by the Complainant, based on an original organizational project, and copied by the Defendant (evidence in the files of the case) ought to be considered as the Complainant's work — the object of copyright according to the definition included in Article 1 item 1 of the Law on Copyrights and Rights Related of February 4th, 1994 (uniform text Dz.U. 06.90.631 with subsequent amendments): "any manifestation of creative activity of individual character, established in any form, regardless of its value, purpose and manner of expression". The protection arising from the Law on Copyrights pertains not only to finalized works, but also to plans, outlines, drawings, models and projects of the said works. The formula for the organization of the festival presented by the Complainant to the

Defendant during the meeting on August 14th, 2003, and in their electronic correspondence, as materialized in the form of the organization of the festival in November 2003, was copied by the Defendant in the form of organizing his festival in April 2004. Therefore any and all claims of the Complainant, and in particular the claim to prohibit the Defendant from organizing a film festival under a name similar to the name of the Complainant's festival and the claim for making an appropriate declaration, **are substantiated also on the basis of Article 78 item 1 of the Law on Copyright and Rights Related.**

In the light of the above we sustain the claims as have been made so far in this matter and submit as in the petition hereof.

In his Complaint the Complainant claimed the prohibition of the Defendant from organizing a film festival under the name "Warszawski Międzynarodowy Festiwal Filmowy Żydowskie Motywy / Warsaw Jewish Film Festival". Therefore the Complainant's position presented herein does not constitute any change, but merely a modification of the Complaint. Simultaneously, the Complainant attaches the evidence of the payment of the additional complaint fee in the amount of 600 PLN on account of the claim for damages for unfair competition, which payment the Complainant had not been ordered to make before.

Appendices:

- 1) evidence of the payment of the additional complaint fee in the amount of ...
- 2) certified translation of the content of the declaration described in point 1 hereof,
- 3) certified translation of the content of the declaration described in point 5 hereof,
- 4) a copy hereof and of the appendices hereto.

.....

Advocate

.....

Legal advisor

Warsaw, September 24th, 2008

IV Civil Division 4C
Case 322/08
Warsaw

Complainant: Daniel Strehlau, residing in Warsaw at ul.
Sobieskiego 16 m. 37, 02 957 Warszawa

Defendant: Mirosław Chojecki, residing in Warsaw, address of
permanent residence: Mazowieckie WARSZAWA –
OCHOTA
WARSZAWA ul. Częstochowska 20 m. 10
02-344

Pleading of the Complainant and Motions to Admit Evidence

Motions to admit evidence.

I hereby move that the Court admit evidence in the matter, in the form of the following documents:

1. E-mail letter of August 4th, 2003 as evidence for the fact that the Defendant knew that the Complainant was organizing his Festival in 2003. The e-mail is addressed to the Complainant; the Defendant declares his awareness of the Complainant's festival and suggests a meeting (evidence no. 1).
2. Letter of September 22nd, 2008 as evidence for the Defendant's declaration of his intent to organize his own festival handling the subject of Jews, which declaration was made to Ms. Krystyna Shmeruk at the end of May and the beginning of June (evidence no. 2).
3. Article entitled "SZMONCES NA DACHU" ("Schmonces on the Roof"), published in the Polityka weekly magazine Issue 45 (2477, November 6th, 2004), as evidence for the fact of misleading the public opinion as to the

honesty and precedence in organizing his Festival by the Complainant (evidence no. 3).

4. Certificate issued by the office of the Ministry of Culture, confirming the date of submitting a request to the Minister of Culture on July 8th, 2003 together with the first page of the request, containing the description of the already developed structure of the Complainant's festival for the year 2003 (evidence no. 4), as well as the receipt of a second submission of the request by the Complainant to the Ministry of Culture of August 8th, 2003 (evidence no. 5).
5. I hereby move that the Court admit evidence in the form of examination of the witness Mr. Konstanty Gebert, residing at ul. Gałczyńskiego 3 m. 2, 00-362 Warszawa, as evidence for the fact that at the end of July 2003 the Complainant informed Konstanty Gebert in an e-mail letter about the advanced stage of the organization of the Complainant's festival, in which e-mail the Complainant presented the state of his preparations and the entire idea of the Festival, which had been created at the end of July 2003. The letter also contains Konstanty Gebert's reply and the information that Konstanty Gebert forwarded the Complainant's message to the Defendant, Mirosław Chojecki, with the aim of informing the Defendant that such an initiative was already being carried out by the Complainant — printout of the Complainant's e-mail exchange with Konstanty Gebert (evidence no. 6).
6. Letter received by the Complainant on August 7th, 2003 from a potential sponsor of the festival edition in 2003, who invites the Complainant to a meeting concerning the details of the sponsorship by the TRAFFIC CLUB company of the first edition of the Complainant's festival in 2003 (evidence no. 7). The sponsor's letter was the reaction to offers that had been sent by the Complainant.
7. Evidence for the existence of a website of the Complainant's festival, set up at the end of July 2003, which website was also visited by the Defendant, who thus learned about the structure of the Complainant's festival —competition, idea, prizes, categories etc. (of which fact the Defendant informed the Complainant during their meeting on August 14th, 2003). The evidence for the

existence of the website and the fact of sending a newsletter with the name of the Complainant's Festival is in the form of replies to the Complainant's newsletter which was sent on the night of July 30th, 2003 to eight thousand e-mail addresses, among them addresses of prestigious institutions and persons in several dozen countries. The newsletter informed about the upcoming 2003 edition of the festival and additionally contained a link to the already existing website of the festival. I hereby attach a reply from an American journalist, Mr. Philip Kutner, from the American magazine DER BAY, of August 1st, 2003 (evidence no. 8 A together with certified translation) and a letter of August 5th, 2003 from the cultural attaché in the German Embassy in Poland, Mr. Erwin Starnitzki, addressed to the chairman of the Central Council of Jews in Germany, in which he informs about the Festival and its website (evidence no. 8 B together with certified translation).

8. Evidence for the fact of having sponsors for the first edition of the Festival — VAT invoice signed by the Traffic Club (evidence no. 8c) and the contract of donation from the Ryszard Krauze Foundation (evidence no. 8d). The Defendant's statement made during the hearing on September 11th, 2008 implied that the Complainant had organized his festival without financial support, and not using financial means gained from sponsors and through barter agreements between the Festival and certain institutions.
9. Evidence for the fact of misleading the public opinion as to the use of a name similar to the name of the Complainant's festival, in the form of the following evidence:
 - a. e-mail sent by the Defendant on December 20th, 2003 (evidence no. 9a), that is already after the Complainant's Festival took place. The Defendant insolently congratulated the Complainant on the first, 2003 edition of his festival, in an e-mail sent to the Complainant in November 2003 (evidence no. 9b).
 - b. during a press conference in spring 2004, directly before the first, 2004 edition of the Defendant's festival (evidence no. 9c, folder pages and the Festival's card) — that is the Defendant used the name of the Complainant's festival consciously and deliberately, being aware of the existence of such a Festival.

- c.** evidence for the fact that in using the name of his Festival the Defendant misled a company granting licenses — in connection with dedicating the festival to Woody Allen, the Defendant addressed the company granting licenses and received a reply as in the evidence no. 9 d — certified translation.
 - d.** evidence for the fact of misleading filmmakers around the world, who intended to submit their films to the Complainant's festival and eventually submitted them to the Defendant's festival — the example of film director Stuart Urban (winner of the Grand Prix Italia 2007) evidence no. 9 e — letter of the film director of 2007, certified translation.
 - e.** evidence for using the name and the reaction of a participant of the first, 2003 edition of the Complainant's Festival, who replied in a letter to the Defendant's appeal informing about his festival, which was to take place six months after the Complainant's festival. The participant asked the Defendant (the letter's addressee — the Defendant — clearly indicated in the letter) if Mr. Chojecki worked in co-operation with the Complainant and if this was one and the same festival, as well as what was the point in screening the same films one more time half a year later (evidence no. 9 f — certified translation).
 - f.** on her website, a prize winner of the Defendant's festival informs about her film awarded during the Defendant's festival, using the name of the Complainant's festival (evidence no. 9g).
evidence for the fact of misleading as to the name of the festival the institution Mayer's Poster in the person of Mr. Donald S. Mayer, who co-operated with the Complainant during the organization of the first edition of his festival, lending his collection of posters, and who was astonished upon receiving the Defendant's newsletter (evidence no. 9 h).
 - g.** evidence for the fact of misleading as to the name of the festival in the form of publishing information on the European Union's website informing about festivals organized in Poland, including the festival's name similar to the name of the Complainant's festival (evidence no. 9i).
10. Evidence for the fact that the Defendant informed during the hearing on September 11th, 2008 that *Media Kontakt Mirosława Chojeckiego* had not been

the organizer of the Defendant's festival, which is false, as follows from the evidence described hereinbelow:

- a. Newsletter of the Defendant's Festival sent on (evidence no. 9 a)
 - b. Catalogue of the first, 2004 edition of the Defendant's Festival, including a list of the festival's organizers on the last page — the said organizers differ from those listed by the Defendant before the Court (evidence no. 10).
11. Evidence for the unwritten principles of the hermetic show business and film business circles, where sponsors do not need to explain their withdrawal or use of ostracism toward a public person — an organizer of events, who was put under the slightest suspicion of dishonesty or became the subject of rumor that disqualify him as a not credible person, and at the same time disqualify his public undertakings. Evidence no. 11 is the press article entitled "OJCIEC CHRZESTNY BYŁBY DUMNY Z TAKIEGO SYNA" ("The Godfather would have been proud of such a son"), published by the Dziennik daily paper of July 12th, 2007 about the person of Lew Rywin, a famous film producer, who after a scandal did not return to filmmaking, since no one wanted to cooperate with him — he was met with public ostracism.
12. Evidence no. 12 in the form of the catalogue of the Complainant's festival in 2003, exemplifying his advertising in the media and presenting the sponsors (logos in the catalogue), who withdrew from co-operation after the publication in the Polityka weekly magazine, and the Complainant was met with ostracism.
13. Evidence no. 13 for the fact of the media reporting the first, 2003 edition of the Complainant's Festival — evidence in the form of an article published by the Gazeta Wyborcza daily paper of November 10-11th, 2003.
14. a. Evidence no. 14 a in the form of the statement of the Jury Chairman of the first, 2003 edition of the Festival, Mr. Henryk Kluba, concerning the Festival's success and its uniqueness — despite the fact that the Defendant organized his festival, closely watching the already existent one. The late Professor Kluba, president of the Film School in Łódź, discussed the Festival's success in a TV program on the TVP channel (patron of the 2003 edition of the

Complainant's Festival), produced by Ewa Szprynger under the title "Żydzi Warszawy" ("Warsaw Jews"):

"... The Festival filled with portraits, events, its manner of narration, of communication, this space which cannot remain empty. It needs to link those times when it all took place with our times, which are surprisingly better prepared for reflection, for the reception of this great subject of the Holocaust. We cannot treat this Festival as a monothematic one, since the Holocaust is an international cause, I am not even sure if not a supra-European one, and not only Jews were its participants, although they constitute its greatest victim, the greatest offering of blood in what happened, but the whole world was involved in it, and above all Europe. I feel grateful to Mr. Strehlau that he had the courage to organize this festival; and as a professional I cannot avoid also this side of the assessment: that from the technical point of view and when it comes to style, various manners of narration, the keys of such richness, such diversity, from wonderful pure lyricism through sharp, realistic reportage, that the palette of those means of expression elevates this festival even higher..."

A copy of the TVP program "Żydzi Warszawy" — material including Mr. Henryk Kluba's statement — is available on the Festival's website www.wjff.pl in the section 2003 GALLERY VIDEO in the DiVIX format as well as for presentation before the Court in the form of a presentation from a DVD on a laptop or directly from the Internet during the hearing, upon the Court's permission.

b. Evidence no. 14 b for the fact of the international renown of the festival, in the form of a press article published in Jerusalem Post.

15. Evidence for the fact of misleading the public opinion in that the Defendant deliberately introduced permanent similarity between the festivals — evidence no. 15 a: NEWSLETTER of January 5th, 2007 including information about the subject matter of the films screened during the Festival, received by one of the fourteen thousand subscribers to the Complainant's newsletter — Ms. Magdalena Makarczuk (residing at ul. Powstania Styczniowego 14 m. 12, 16-070 Choroszcz), and evidence no. 15 b — an article published on the Internet portal STOPKLATKA concerning the Complainant's Festival in 2008.

16. Evidence for the fact of the media's boycott of the Complainant's Festival following the Defendant's statement published in the Polityka weekly magazine. The translation of the article published in the Gazeta Wyborcza

daily paper on May 5-6th, 2007 — evidence no. 16a, and evidence no. 16 b — the film program of the Complainant's Festival from 2006 as evidence for the screening of films which were described six months later by a Gazeta Wyborcza journalist as screened during the Defendant's festival, without any information about their premieres during the Complainant's Festival six months earlier — among them the film WEST BANK STORY , awarded Grand Prix of the Complainant's Festival in 2006, and awarded OSCAR 2007 three months later.

17. Evidence for the fact of misleading the public opinion as to the alleged premiere of the film MEDUZOT during the Defendant's festival in 2008 (evidence no. 15b — an article published on the Internet portal Stopklatka), while the Complainant's Festival screened the said film in its competition as early as in 2007 (evidence no. 17 — Program 2007 including the film MEDUZOT).
18. Evidence for the fact of misleading the public opinion as to the precedence in the organization of the Defendant's Festival and his activity — evidence no. 18 — certified translation — in the form of a screen capture of the main page of the Defendant's Festival's website, where the inscription “copyright 2002 — 2007 Stowarzyszenia Żydowskie Motywy” can be seen, while the association was founded only in 2005.
19. Evidence for the fact that the Defendant created a certain atmosphere by means of an article published in the Polityka weekly magazine, which caused that it was suggested to the COMPLAINANT that he should join the DEFENDANT'S Festival, despite the latter's lack of success and good connections — evidence no. 19 — correspondence with Agnieszka Holland, who eventually declared that one could not give up their own child.
20. Evidence for the fact of misleading the public opinion as to the precedence in the organization of the festival, whose effect it may have been that the first, 2004 edition of the Defendant's Festival gained financial support from the Ministry of Culture in the amount of 200000 PLN, while the second, 2004 edition of the Complainant's Festival received financial support in the amount

of merely 30000 PLN — after the success of the first edition in 2003. Evidence no. 20 — table of subsidies received in 2004.

21. Evidence no. 21b (certified translation) for the consequences of the Defendant's activity — negative PR, including but not limited to the article published by the Polityka weekly magazine — which was the Complainant's need to explain himself as to his honesty and intention, for instance toward the previously interested sponsors of the Ted Taube Foundation from the United States (evidence no. 21c), who eventually refused their cooperation, although they had been awaiting the offer sent by the Complainant — evidence no. 21 a (certified translation).
22. Evidence for the reactions to the Defendant's behavior, expressed by the representatives of the institutions of the European Union in the person of Mr. Marc Villain, who sent a letter expressing his outrage at Mr. Chojecki's scandalous conduct, as well as his full support for the Complainant's festival — evidence no. 22 — certified translation.
23. Evidence no. 23 for the fact that the Complainant contacted the Defendant, requesting him to not organize a similar Festival and to not use an identical name — the letter was sent per fax to the Gazeta Wyborcza daily paper on December 20th, 2003 as well as on March 28th, 2004 by certified letter to Mr. Mirosław Chojecki, ul. Wilcza 12 c, 00-532 Warszawa — evidence no. 24.
24. Evidence no. 25 for the fact that the Complainant requested the Defendant to agree to a settlement.
25. Evidence no. 26 for the fact that the Complainant committed himself to the planned production of the feature film "Niedosyt", which took place in the period from March to August 2004, and which production rendered it impossible for the Complainant to take direct steps in order to legally prevent the Defendant from organizing a copy of the Complainant's festival or from using the name of the Complainant's festival. The film production had been planned earlier; it involved film stars such as Jan Wiczorkowski, Joanna Pierzak, Magdalena Róźdzka, and Marek Frąckowiak. The Complainant

returned from the United States in September, and in October he was invited to a conference of Jewish film festivals' directors from all around the world. At the same time, during the Complainant's absence, the mendacious article was published in the Polityka weekly magazine. The intensive preparations for the next edition of the Complainant's festival and the simultaneous absence of the Complainant in Poland rendered any direct reaction to the Defendant's dishonest actions impossible.

26. Examples of descriptions of the first edition of the Complainant's Festival, published by various media in 2003, while during the following year hardly any mentions appeared as a consequence of the article published in the Polityka weekly magazine.

- a) Wprost
- b) Gazeta Wyborcza
- c) Midrasz
- d) Activist
- e) What's up
- f) Wprost
- g) Po godzinach
- h) TVP
- i) TVN
- j) Canal +
- k) Polsat
- l) Radio Tok FM
- ł) Radio PR1, PR2, PR3, PR4
- m) Radio BIS
- n) others.

Yours faithfully

Daniel Strehlau