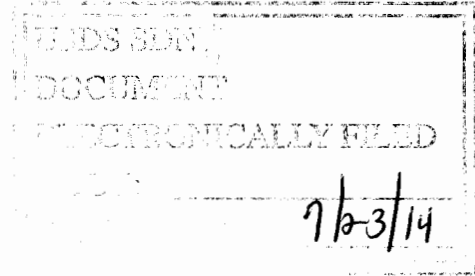


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



\_\_\_\_\_ x

HERITAGE OF PRIDE, INC.,

Plaintiff,

-against-

14 Civ. 4165 (CM)

MATINEE NYC INC., et al.,

Defendants.

\_\_\_\_\_ x

**MEMORANDUM ORDER DENYING PLAINTIFF'S MOTION FOR CONTEMPT**

McMahon, J.:

As Friday's scheduling conference has been cancelled, I need to address in writing the pending motion by Plaintiff to hold Defendants in contempt of court.

The motion is denied.

A finding of contempt can only be made when the moving party establishes by clear and convincing evidence that the alleged contemnor violated the court's ruling. Among other things, the movant must establish that the purported contemnor has not diligently attempted to comply with the order in a reasonable matter. *Paramedics Electromedicina Comercial, Ltda., v. GE Med. Sys. Info. Technologies, Inc.*, 369 F. 3d 645, 655 (2d Cir. 2004). Furthermore, perfect compliance is not required; substantial compliance will defeat a motion for contempt of court. *Chao v. Gotham Registry, Inc.*, 514 F. 3d 280, 293 (2d Cir. 2008).

I have read the motion papers carefully. The movant has failed to establish that Defendants did not do everything in their power to ensure substantial compliance with the order—including respond promptly to requests from plaintiff whenever the almost inevitable instances of Matinee's offending logo, which had been widely disseminated prior to the issuance of the injunction, turned up in various locations on the internet. Frankly, if anyone has behaved badly here, it is Plaintiff, which seems to have engaged in "gotcha" tactics that were designed to set up a contempt application—which happens to be a style of litigation that this Court finds offensive. Plaintiff is being unreasonable; Defendants had and have no ability to wave a magic wand to make every copy of their logo disappear. The type of internet advertising in which defendants were engaged in the weeks leading up to Pride Week would perforce render compliance with the Court's preliminary injunction a challenge.

Furthermore, the issue of contempt was prematurely raised. The Court gave Defendants until June 27, 2014, to achieve substantial compliance with the injunction that issued on June 19 and to report back on their efforts. If Plaintiffs do not understand that I did this precisely because I recognized the impossibility of instant compliance, they are naïve. Plaintiffs jumped the gun by accusing the Defendants of contempt (and by letter rather than by the motion that so serious an accusation requires) on June 26—before any compliance report was due. Having received Defendants’ timely-submitted report, and reading it together with the papers filed in response to the motion, I am satisfied that Defendants did their level best to comply with the court’s injunction between June 19 and June 27. I have no intention of punishing them for what seems to me trivial instances of non-compliance.

The hostility level between these two organizations has (sadly) escalated since the preliminary injunction hearing, which is both unfortunate and unnecessary. The temperature must and will come down. The next Pride Week is eleven months away; there is no longer any urgency to this matter. If the parties cannot resolve their differences amicably, we will certainly have tried and determined the issues raised by the complaint before the next round of advertising begins. So.....chill. Stop the sideshows and focus on the main event.

The Clerk of the Court is directed to remove the motion at Docket #54 from the Court’s list of active motions.

Dated: July 23, 2014



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U.S.D.J.

BY ECF TO ALL COUNSEL