

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	
	:	
ARTHUR USHERSON,	:	
	:	
Plaintiff,	:	19-CV-6368 (JMF)
	:	
-v-	:	<u>ORDER</u>
	:	
BANDSHELL ARTIST MANAGEMENT,	:	
	:	
Defendant.	:	
	:	
-----	X	

JESSE M. FURMAN, United States District Judge:

On June 26, 2020, the Court issued a fifty-four-page Opinion and Order — familiarity with which is assumed — imposing a range of monetary and non-monetary sanctions on Plaintiff’s counsel Richard Liebowitz and his firm, the Liebowitz Law Firm, PLLC. *See Usherson v. Bandshell Artist Mgmt.*, No. 19-CV-6368 (JMF), 2020 WL 3483661 (S.D.N.Y. June 26, 2020) (ECF No. 68). To the extent relevant here, the Opinion and Order required Mr. Liebowitz and his firm (1) no later than July 27, 2020, to serve a copy of the Opinion and Order “on every one of the firm’s current clients “and for Mr. Liebowitz to file a declaration attesting to such service on ECF; (2) no later than July 27, 2020, to file a copy of the Opinion and Order “on the docket of any currently pending case that was brought by Mr. Liebowitz or his firm” and for Mr. Liebowitz to file a declaration attesting to the same on ECF; and (3) to file a copy of the Opinion and Order on the docket in “any action that is filed within one year of the date of th[e] Opinion and Order.” *Id.* at *22 (emphasis omitted).

On July 27, 2020, following the denial by this Court of Mr. Liebowitz’s request for stay of the Opinion and Order pending appeal, *see Usherson v. Bandshell Artist Mgmt.*, No. 19-CV-6368 (JMF), 2020 WL 4228754 (S.D.N.Y. July 22, 2020) (ECF No. 81), as well as the Second

Circuit’s denial of his request for an immediate stay, *see Usherson v. Bandshell Artist Mgmt.*, No. 20-2304, ECF No. 24 (2d Cir. July 27, 2020),¹ Mr. Liebowitz filed a declaration attesting that he had (1) “served by email a copy of the Order on every one of LLF’s clients identified” in “an LLF internal email list — which [he] ha[d] reviewed for accuracy and to the best of [his] knowledge believe[d] to be complete”; and (2) “file[d] a copy of the Court’s Order on the docket of all currently pending cases brought by [him] or LLF.” ECF No. 82 ¶¶ 2-3. Mr. Liebowitz further attested that he identified “all currently pending cases brought by [him] or LLF” by “search[ing] on Pacer, in every federal judicial district around the country, for [his] name as counsel of record”; by “rel[ying] on [his] firm’s internal records” for the “small number of cases filed by my firm in which I am not counsel of record”; and then “double-check[ing] these filings against [his] firm’s internal case management system.” *Id.* ¶ 3.

Notwithstanding these representations, on September 21 and 29, 2020, Mr. Liebowitz filed declarations with the Court identifying cases brought by him or his firm in which he had “neglected to file the Order,” and only belatedly complied with its requirements. ECF No. 83 ¶ 3; *see* ECF No. 84. The Court has also received two letters and an email, attached here as Exhibits A through C, concerning compliance with the Court’s Opinion and Order.²

In light of these developments, **no later than October 15, 2020**, Mr. Liebowitz shall file a sworn declaration that:

¹ The Second Circuit subsequently also denied Mr. Liebowitz’s request for stay pending appeal. *See Usherson v. Bandshell Artist Mgmt.*, No. 20-2304, ECF No. 47 (2d Cir. Aug. 21, 2020).

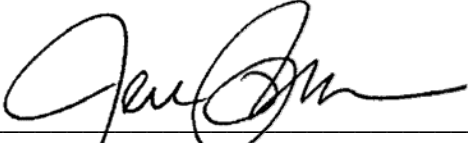
² The Court received a voicemail from an individual who expressed similar concerns about Mr. Liebowitz’s compliance, or lack thereof, with the Court’s Opinion and Order, based on communications with third persons. The caller expressed a desire not to be involved any further. Given that, and given that the caller’s information was only second-hand, the Court declines to place any weight on the caller’s information.

- (1) explains how, notwithstanding the process described in his declaration of July 27, 2020, he overlooked the cases that he or his firm concededly brought described in his declarations of September 21, and 29, 2020, and describes what steps, if any, he has taken (and when), or what steps he will take, to identify any other such cases;
- (2) describes with particularity how the “LLF internal email list” Mr. Liebowitz used to identify the clients to whom he provided the Opinion and Order was compiled, who is responsible for maintaining it, and how (and how often) it is updated; explains whether it is possible that there are any clients of Mr. Liebowitz or his firm that would not be on that list; and, if so, describes what steps, if any, he has taken (and when), or what steps he will take, to identify any such clients;
- (3) responds to the letter addressed to the Court from Mr. Hudson dated July 28, 2020, by:
 - a. identifying whether there are any cases in which he or his firm is acting as counsel, in any way (i.e., directly or indirectly), but has not entered a formal notice of appearance and in which he has not, as of the date of this Order, either filed the Opinion and Order or shared the Opinion and Order with the client;
 - b. if so, showing cause why that should not be treated as a violation of the Opinion and Order; and
 - c. either way, showing cause why the Opinion and Order should not be modified to require its filing in *any* case where Mr. Liebowitz or his firm is involved as counsel, whether or not he or his firm has entered a formal notice of appearance.

Defense counsel may (but is not required to) respond to Mr. Liebowitz’s declaration by **October 21, 2020**. (If defense counsel has any information that speaks to the issues referenced above and, more broadly, to Mr. Liebowitz’s compliance with the Opinion and Order, he is encouraged to share that information with the Court.) No reply may be filed absent leave of Court.

SO ORDERED.

Dated: October 2, 2020
New York, New York



JESSE M. FURMAN
United States District Judge

EXHIBIT A



HULL BARRETT

A T T O R N E Y S

AUGUSTA AIKEN EVANS

DAVID E. HUDSON

-LICENSED IN GEORGIA

DHUDSON@HULLBARRETT.COM

July 28, 2020

Hon. Jesse M. Furman
United States District Court Judge
United States Courthouse
40 Foley Square
New York, NY 10007

**RE: *Usherson v. Bandshell Artist Management*
Civil Action No. 19-06368
Richard Liebowitz**

Dear Judge Furman:

By way of introduction I am counsel for the Defendant in the case of *Bill Wisser v. Morris Communications Company*, Civil Action File No. CV118-150, Southern District of Georgia. This is a case alleging copyright infringement first filed by Mr. Liebowitz on behalf of Wisser in the Southern District of New York. Case No. 1:18-CV-150-JFH-BKE. Subsequently it was transferred to the Southern District of Georgia on jurisdictional grounds. Although Mr. Liebowitz has not appeared in the case *pro hac vice*, he has participated in it through settlement discussions and signing interrogatory answers. For formal appearances in the case, he has used other attorneys to represent the Plaintiff.

Once I became aware of your sanction order, 2020 U.S. Dist. LEXIS 112368 (June 26, 2020), I inquired of Mr. Liebowitz whether he would file that order in the *Wisser* case and inform Mr. Wisser of the order. His reply to me was that he is not counsel of record in the Georgia case.

Be that as it may, the *Wisser* case is one that was "brought" by Mr. Liebowitz and there is no reason to think that he does not still represent Mr. Wisser and have a financial interest in the case. He has not filed a copy of the Court's order in the *Wisser* case here in Georgia, and I have no reason to know whether or not he served his client with the order.

WWW.HULLBARRETT.COM

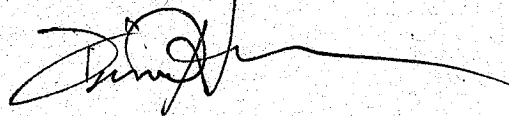
HULL BARRETT, P.C., 801 BROAD STREET, 7TH FLOOR, AUGUSTA, GEORGIA 30901

TELEPHONE: (706) 722-4481 FAX: (706) 722-9779

MAILING ADDRESS: POST OFFICE BOX 1564, AUGUSTA, GEORGIA 30903-1564

Hon. Jesse M. Furman
July 28, 2020
Page 2

Respectfully,



David E. Hudson
Attorney for Morris Visitor Publications

DEH/nhb

cc: R. L. Liebowitz, Esq. (via email)
Dorsey Carson, Esq. (via email)

EXHIBIT B

July 29, 2020



**CRITCHFIELD
CRITCHFIELD
& JOHNSTON
ATTORNEYS**

ANDREW P. LYCANS
lycans@ccj.com

225 N. MARKET STREET
P.O. BOX 599
WOOSTER, OHIO 44691
T: 330.264.4444
F: 330.263.9278

4996 FOOTE ROAD
MEDINA, OHIO 44256
T: 330.723.6404
F: 330.721.7644

138 E. JACKSON STREET
MILLERSBURG, OHIO 44654
T: 330.674.3055
F: 330.674.4469

10 S. GAY STREET
P.O. BOX 469
MT. VERNON, OHIO 43050
T: 740.397.4040
F: 740.397.6775

60 W. SECOND STREET
P.O. BOX 127
ASHLAND, OHIO 44805
T: 419.289.6888
F: 419.281.2461

CRITCHFIELD, CRITCHFIELD &
JOHNSTON, LTD.

WWW.CCJ.COM

The Honorable Jesse M. Furman
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

RE: *Arthur Usherson v. Bandshell Artist Management*
U.S. District Court, Southern District of New York
Case No.: 1:19-CV-6368

Dear Judge Furman,

I am defending The Triple H Magazine, Inc. in a copyright infringement lawsuit filed by Attorney Richard Liebowitz. The lawsuit is pending in the United States District Court for the Northern District of Ohio and is styled *George Matula v. The Triple H Magazine, Inc.*, Case No. 5:20-cv-00876.

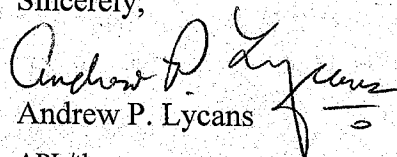
Pursuant to the Opinion and Order issued in the above referenced case on June 26, 2020, Attorney James Freeman of the Liebowitz Law Firm, PLLC filed a Notice of Order in the Northern District of Ohio case on July 28, 2020. I have enclosed a copy of that Notice (omitting the attached Opinion and Order) for your reference.

In reviewing the Opinion and Order, I noted that Mr. Liebowitz and his firm were ordered to file a copy of this Opinion and Order on the docket of any currently pending case that was brought by Mr. Liebowitz or his firm and that Mr. Liebowitz was to file a declaration attesting to his compliance with the order within 30 days.

I feel it is my obligation to point out that the Notice was filed 32 days after the Opinion and Order was issued. I am bringing this to the Court's attention, in part, because I reviewed the docket in Case No. 1:19-CV-6368, which includes a Declaration of Richard Liebowitz filed July 27, 2020, in which Attorney Liebowitz states that he had "filed" the Court's Order in his pending cases as directed.

I do realize that the Notice filed in my case is dated July 27, 2020. However, it had not been filed at the time the Declaration was filed in the case pending before this Court.

Sincerely,


Andrew P. Lycans

APL/tlm
Enclosure

NOTICE OF ORDER

On June 26, 2020, in another action, the Honorable Jesse M. Furman of the United States District Court for the Southern District of New York entered an Opinion and Order directing that Richard Liebowitz and Liebowitz Law Firm, PLLC file a copy of that Opinion and Order in all currently pending cases. A copy of Judge Furman's order is attached hereto.

Mr. Liebowitz and LLF strongly contest Judge Furman's factual findings and legal conclusions, and have appealed the Opinion and Order to the United States Court of Appeals for the Second Circuit.

Dated: July 27, 2020
Valley Stream, New York

Respectfully Submitted,

LIEBOWITZ LAW FIRM, PLLC

/s/Jameshfreeman/
James Freeman
11 Sunrise Plaza, Ste. 305
Valley Stream, NY 11580
JF@LiebowitzLawFirm.com
(516) 233-1660

EXHIBIT C

From: [Ricardo Guise](#)
To: [Furman NYSD Chambers](#)
Subject: Lukaszewicz v. WSN Inc.
Date: Wednesday, September 9, 2020 12:21:30 PM

Your Honor:

I hope you and your family are well.

Allow me to bring your attention to the email below one of my co-workers received from Richard Liebowitz, and her response.

We found his claim and general approach so fantastical that we decided to do some research on him, and found your judgement from June 26.

It seems Mr. Liebowitz has not learned his lesson and apparently continues to harass companies with spurious claims. The fact that he is doing so at this particular time when most publishers are attempting to keep their companies afloat is particularly galling.

Can something be done to stop these internet trolls?

Thank you in advance,

Ricardo Guise
President & Publisher
World Screen
rguise@worldscreen.com
Phone: (212) 924-7620
<http://www.worldscreen.com>

Begin forwarded message:

From: Mansha Daswani <mdaswani@worldscreen.com>
Subject: Re: Lukaszewicz v. WSN Inc.
Date: September 4, 2020 at 12:41:26 PM EDT
To: rl@liebowitzlawfirm.com

Dear Mr. Liebowitz

We are in receipt of your email notifying WSN INC that we are "in default" on a legal complaint. This summons (nor any other notification) was never received at the registered address of WSN INC. Was it sent by certified mail? Also, please be aware we have not been at our physical office since March due to COVID-19.

We therefore find it surprising that you have immediately threatened legal action without any prior communication about this alleged copyright infringement on the website [worldscreen.com](http://www.worldscreen.com) over an image owned by Adam Lukaszewicz.

If any copyright infringement did take place, it was entirely innocent and unwilling. As a good-faith gesture, the potentially infringing image has been removed from the website, and any other location on our server.

As a next step, we ask that you provide the following information:

— Proof that you have the right to represent Mr. Lukaszewicz in this action. (We read with interest the recent ruling against you detailing "repeated violations of court orders and outright dishonesty."

https://www.scribd.com/embeds/469163224/content?start_page=1&view_mode=scroll&access_key=key-WDP5cFoOJQpQmOKXgf72)

As such, please submit documentation that Mr. Lukaszewicz continues to retain you as his legal representation, even following this June 2020 ruling.

— Proof that from the time the photo was taken in 2016 until the time it was registered with the copyright office in 2020, Mr. Lukaszewicz never made this image available on Pixabay or any other free photo library. We are content owners ourselves and are not in the business of taking images off the open internet to use in our publishing platforms. All of our artwork is sourced from the companies we cover or platforms such as Pixabay and Shutterstock. With the wealth of visually similar images available on Pixabay, it is inconceivable that we would have taken an image from a travel blog. We are a 35-year-old media organization and have nothing but the utmost respect for copyright holders.

— Clarification on how there is a case of infringement when the usage—which is clearly in diminimis as it appears solely as a thumbnail deep inside the [WorldScreen.com](#) archive and indeed appears nowhere else on our site or on the Google image cache—predates the copyright registration by two years.

Thank you again for notifying us of this alleged infringement. We respect and appreciate the fair and reasonable application of copyright law and hope to close this matter prior to both parties investing more time and resources—especially at a time when independently owned companies like ours are suffering irretrievable losses due to the COVID-19 pandemic.

Best,
Mansha Daswani



Mansha Daswani | Editor & Associate Publisher | (212) 4630340 |
@worldscreen | [WorldScreen.com](#)

Begin forwarded message:

From: Richard Liebowitz

<rl@liebowitzlawfirm.com>

Subject: Fwd: Lukaszewicz v. WSN Inc.

Date: September 4, 2020 at 12:26:37 AM EDT

To: sweaver@worldscreen.com

Dear Sir or Madam,

Did you receive the below legal complaint? You are currently in default. Please call me at 516-233-1660 to discuss. Thank you.

Best,

Richard Liebowitz
Liebowitz Law Firm, PLLC
516-233-1660
www.LiebowitzLawFirm.com

----- Forwarded message -----

From: Richard Liebowitz

<RL@liebowitzlawfirm.com>

Date: Wed, May 27, 2020 at 3:42 PM

Subject: Lukaszewicz v. WSN Inc.

To: Jeffrey Teitel <jteitel@lawyerservicebureau.com>

Hi Jeff,

Please serve attached via the SOS. Thank you.

Best,

Richard Liebowitz
Liebowitz Law Firm, PLLC
516-233-1660
www.LiebowitzLawFirm.com

<WSN- Summons Stamped.pdf>

<Lukaszewicz v. WSN- Complaint Stamped.pdf>

<Exhibit B- WSN Stamped.pdf>

<Exhibit A- WSN Stamped.pdf>

<WSN- CC.pdf>

