

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2007

(Argued: July 16, 2008)

Decided: July 24, 2008)

Docket No. 07-0477-cv

THE AMERICAN NATIONAL THEATRE AND ACADEMY,

Plaintiff-Appellant,

– v. –

THE AMERICAN NATIONAL THEATRE INC.,

Defendant-Appellee.

Before: CALABRESI and B.D. PARKER, *Circuit Judges*, and GOLDBERG, *Judge**

Appellant asserts that the District Court erred in concluding that 36 U.S.C. § 21904 does not prevent Appellee from using the name “The American National Theatre.” The judgment of the District Court is AFFIRMED.

ERIC J. SHIMANOFF, Cowan, Liebowitz & Latman, P.C.,
New York, N.Y., *for Plaintiff-Appellant.*

* The Honorable Richard W. Goldberg, United States Court of International Trade, sitting by designation.

1 CLAUDIA RAY (Matthew Dineen, Melanie Bradley,
2 Alexander Fong & Kendall Burr, *on the brief*), O’Melveny
3 & Myers LLP, New York, N.Y., *for Defendant-Appellee*.
4
5
6
7

8 PER CURIAM:

9 The American National Theater & Academy (“ANTA”) is a non-profit organization,
10 incorporated by an act of Congress in 1935. Pub. L. No. 74-199, 49 Stat. 457 (1935) (codified as
11 amended at 36 U.S.C. § 21901 *et seq.*). Section 5 of this Act granted ANTA “the sole and
12 exclusive right to have and to use in carrying out its purposes the name ‘The American National
13 Theater and Academy.’” As currently codified, ANTA’s grant provides: “The corporation and its
14 State and local branches and subdivisions have the exclusive right to use the name ‘The
15 American National Theater and Academy.’” 36 U.S.C. § 21904.

16 In June 2003, The American National Theatre Inc. (“ANT”) organized as a New York
17 non-profit corporation. ANT operates using the names “The American National Theatre” and
18 “ANT,” and operates a website at the domain name www.americannationaltheatre.org. ANT is
19 unrelated to ANTA and has not obtained ANTA’s permission to use the name “The American
20 National Theatre.” When ANTA learned of ANT’s existence, ANTA demanded that ANT cease
21 using the name “The American National Theatre.” This litigation followed.

22 ANTA’s sought, *inter alia*, to enjoin ANT from using the name “The American National
23 Theatre,” on the basis that such use violates ANTA’s exclusive right pursuant to 36 U.S.C. §
24 21904. ANTA moved for summary judgment on this claim. The District Court denied the
25 motion, finding that 36 U.S.C. § 21904 precluded success on the merits as a matter of law. The
26 District Court concluded that § 21904 granted ANTA exclusive use only of the precise name

1 appearing in the statute, “nothing more, and nothing less.” *Am. Nat’l Theatre & Acad. v. Am.*
2 *Nat’l Theatre, Inc.*, 472 F. Supp. 2d 487, 490 (S.D.N.Y. 2006). ANT thereafter moved for
3 summary judgment, which the District Court granted, incorporating by reference its prior opinion
4 and order denying ANTA’s original motion for summary judgment.

5 On this appeal, ANTA renews its claim that ANT’s use of the name “The American
6 National Theatre” is barred by the exclusive use provision at 36 U.S.C. § 21904. We AFFIRM
7 the judgment of the District Court for the reasons stated in its opinion.