

EXHIBIT 2

David Yerushalmi

From: David Yerushalmi [dyerushalmi@americanfreedomlawcenter.org]
Sent: Wednesday, November 27, 2013 1:08 PM
To: 'Christian E. Hildebrandt'
Cc: 'Gordon, Avery'; 'rmuise@americanfreedomlawcenter.org'; 'emersino@thomasmore.org'
Subject: Meet and Confer

Chris: Rob and I will need a meet and confer by no later than Monday COB on the following issue.

During the hearing on the X-MSJs, you made a false representation to the court that we assume was simply an innocent error committed in a moment of over-zealous exuberance. We would like you to join with us in filing a correction. Specifically, beginning at page 19 of the transcript of the hearing, we find the following question and answer colloquy between you and the court--paying special attention to the highlighted portions:

Page 19:

12 THE COURT: Do you think that at the time of
13 the testimony at the preliminary injunction hearing that
14 SMART had the definition of "political" that apparently
15 they have at this time?
16 MR. HILDEBRANDT: Your Honor, there was no
17 written definition of "political" in place at the time
18 of the preliminary motion, the preliminary injunction
19 motion such that is the same as was disclosed in the
20 testimony in this case.
21 THE COURT: So I want to just understand this,
22 and maybe it doesn't really have anything to do with
23 your motion, but it is important to me to understand it.
24 MR. HILDEBRANDT: I understand.
25 THE COURT: For my own benefit.

Page 20

1 At the time of the preliminary injunction,
2 there wasn't any written definition of "political"; is
3 that right?
4 MR. HILDEBRANDT: Your Honor, at the time of
5 the preliminary injunction, there was no separate
6 written definition of "political".
7 THE COURT: You put "separate" before it.
8 Was there any written definition of "political" at that
9 time?
10 MR. HILDEBRANDT: Well, in the guidelines,
11 "political" is expressed there, but there is no separate
12 definition beyond the use of that word "political" --
13 THE COURT: And you would agree that the
14 witness that appeared did not give any particular --
15 point to any particular thing that informed her about
16 what was political?
17 MR. HILDEBRANDT: I would agree that the
18 witness that was provided as the 30(b) witness did not,
19 but she was not part of the decision-making process at
20 the time. She was not an individual who was a
21 decision-maker at the time. She had a direct supervisor
22 in the Marketing Department who was unavailable at the
23 time. And that person was the decision-maker in the
24 Marketing Department, in the General Counsel's
25 Department and in the General Manager's office.

1 There were decisions, there were different
2 decision-makers, but Beth Gibbons has never been a
3 decision-maker at any time relevant to this ad.
4 She was presented as the 30(b)(6) witness
5 and provided testimony --
6 THE COURT: When she gave her deposition,
7 would she have been considered a decision-maker at that
8 time?
9 MR. HILDEBRANDT: When she gave her
10 deposition post-Sixth Circuit decision in the discovery
11 of this case?
12 THE COURT: Well, that is when she gave it.
13 MR. HILDEBRANDT: All right, that's fine.
14 Yes, at that time she was --
15 THE COURT: Excuse me, Counsel, I want to be
16 really clear so I understand this.
17 She testified as a 30(b)(6) witness, but she
18 was not a decision-maker at that time; that is your
19 position, right?
20 MR. HILDEBRANDT: Well, that is correct, yes.

Chris, the Chubb and Gibbons testimony as a whole makes clear that Beth Gibbons was in fact a decision-maker as part of the decision-making chain of command. Indeed, you know very well that she had the authority to simply accept an ad that she determined did not violate any of SMART's policies. Or, if she had some concerns or questions, she sent it along the decision chain, including Dryden and legal. But, Gibbons was very clear that she participated as a decision maker during the relevant time period. Thus,

Beth Gibbons (Pages 15:19 to 16:15):

Q And I'll represent to you that this is the latest deposition notice, which identified this location for the deposition.

In the defendants' initial disclosures to plaintiffs, they indicated, they identified you as a potential witness with personal knowledge, and they indicated that you have personal knowledge of SMART's policies and the application thereof; is that a correct statement?

A Yes.

Q And the policy that will be at issue in this case is the advertising guidelines; you understand that?

A Yes.

Q And do you have personal knowledge of SMART's application of the advertising guidelines?

A Yes.

Q In fact, in your position as marketing program manager, you were required at times to apply those guidelines to various advertising; is that correct?

A Yes.

Q And do you still have that responsibility today in the position that you're holding now?

Moreover, Gibbons testified that she was part of what Chubb described as the collaborative decision-making process:

Beth Gibbons (Pages 52:14 to 54:2):

Q Anthony Chubb, on behalf of SMART, testified that at times there is collaboration between marketing,

legal, and the general manager to make a final determination as to whether an advertisement is accepted or rejected; is that your understanding of how the process works at times?

A Yes.

Q And was there a collaboration on the leaving Islam advertisement?

A Yes.

Q Did you participate in that collaboration?

A Yes.

Chris, while this issue is not in our view an ultimate dispositive issue, it is materially important and it was clearly important to the court. Thus, your representation to the court was and remains a material misrepresentation. Again, we accept presumptively that your misstatement was unintentional and without *scienter*. But, this error must be brought to the court's attention. We will do so Monday after COB, either in a joint statement with you or unilaterally.

We look forward to hearing from you very soon.

David Yerushalmi*

American Freedom Law CenterSM

Washington, D.C., Michigan, New York, California & Arizona

**Licensed in D.C., N.Y., Cal., Ariz.*

T: 855.835.2352 (toll free)

T: 646.262.0500 (direct)

F: 801.760.3901

E: dverushalmi@americanfreedomlawcenter.org

W: www.americanfreedomlawcenter.org

=====
This electronic message transmission may contain ATTORNEY PRIVILEGED AND CONFIDENTIAL information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please erase all copies of the message and its attachments and notify sender immediately. Thank You.
=====