

**VAL MANDEL, P.C.**

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September 4, 2008

VIA ECF AND REGULAR MAIL

Honorable Charles P. Sifton  
United States District Court  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: **Vadim Mikhlyn, Inga Mikhlyn and ABC All Consulting, Inc. v. Ana Bove, Polina Dolginov, et al.**  
**Docket No.: 08 CIV. 3367**

Dear Judge Sifton:

This firm represents plaintiffs in the above referenced matter. We are writing in response to defendants' request for an extension of time to respond to our pending motion for a preliminary injunction.

There are just a few things the Court needs to know.

First, from the outset of my discussions with Mr. Berger's associate, Tuvia Rotberg, Esq., we made it clear that we would be willing to push their response date, and the return date, back a few days (from September 10<sup>th</sup> to the 13<sup>th</sup>) without any strings attached whatsoever. As the Court can see from the annexed e-mail chain, it was only when Mr. Rotberg sought a longer extension for defendants' opposition date and the return date that we imposed a condition, which we will explain.

Unlike defendants, we will not, under the guise of addressing a scheduling matter, offer our version of the ultimate merits of this dispute. One thing is for certain though – defendants have effectively put our clients out of business and have been engaging in an increasingly successful campaign to vilify our clients in the eyes of customers. There is direct, growing evidence of this, beyond what we have already submitted to the Court.

In light of defendants' vilification campaign, we conditioned consent to the larger extension upon defendants' consent to the disclosure, to customers, of

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the pendency of this lawsuit and our request for an injunction. Our clients' good will is disappearing as a result of defendants' personal attacks and if this application was to be put off for nearly two weeks, we just wanted customers to know that we refute what defendants are saying on web sites and have filed a lawsuit to vindicate our rights.

Furthermore, as the Court will learn from our motion papers, defendants' attorneys have been involved with this dispute since at least June 27, 2008 - long before our own firm became involved - and the allegations they put forth in their letter were, in fact, made in arbitration petitions they filed in the National Arbitration Forum. Neither counsel nor defendants have been blindsided by this action and, if defendants really need urgent relief, the Court is entitled to wonder why they did not file their own lawsuit and seek an injunction months ago.

If this was an ordinary motion, there would be no issue. We routinely consent to extensions without conditions. But this is a preliminary injunction motion involving truly urgent circumstances.

Respectfully submitted,



Eric Wertheim

EW/da  
Encl.

cc: Tuvia Rotberg, Esq. (via fax)

**Daniel**


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**From:** Tuvia Rotberg [trotberg@llbl.com]  
**Sent:** Thursday, September 04, 2008 12:49 PM  
**To:** Eric Wertheim  
**Cc:** Daniel  
**Subject:** RE: extension

Hi Eric,

I now notice that you will be out until 3:00 so I will only send the letter at 3:15 today if I do not hear anything from you. I am also sending a slightly revised draft of the letter.

Tuvia

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**From:** Eric Wertheim [mailto:ew@valmandelpc.net]  
**Sent:** Thursday, September 04, 2008 8:50 AM  
**To:** Tuvia Rotberg  
**Subject:** Re: extension

Tuvia:

I will be out until about 3 p.m. today. We can talk then.

Eric

----- Original Message -----

**From:** [Tuvia Rotberg](mailto:Tuvia Rotberg)  
**To:** [Eric Wertheim](mailto:Eric Wertheim)  
**Sent:** Wednesday, September 03, 2008 4:43 PM  
**Subject:** RE: extension

Eric:

I left a voice mail with you. Per my email to you below, there is nothing to consent to since we cannot prevent you from saying what you want to say (within appropriate guidelines) - just as you cannot prevent us from doing the same.

Please advise whether you are willing to give us the extension.

Tuvia

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**From:** Eric Wertheim [mailto:ew@valmandelpc.net]  
**Sent:** Wednesday, September 03, 2008 3:33 PM  
**To:** Tuvia Rotberg  
**Subject:** Re: extension

If we get papers in hand no later than 5 p.m. on the 15th, we will serve opposition/reply on the 19th by 5 p.m., and agree to a return date of the 22nd, if you consent to the disclosure to customers as outlined in my last email.

EW

| ----- Original Message -----

9/4/2008

**From:** Tuvia Rotberg  
**To:** Eric Wertheim  
**Cc:** Inna Fayenson ; Daniel  
**Sent:** Wednesday, September 03, 2008 12:09 PM  
**Subject:** RE: extension

To the extent that the lawsuit is public information we cannot prevent you from accurately reporting it. However, we strongly caution that you withhold any comments about the case until you receive our papers and evidence in reply lest you run the risk of defamation.

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**From:** Eric Wertheim [mailto:ew@valmandelpc.net]  
**Sent:** Wednesday, September 03, 2008 11:33 AM  
**To:** Tuvia Rotberg  
**Cc:** Inna Fayenson; Daniel  
**Subject:** Re: extension

We may be amenable to pushing this that far out, but in light of the increasing damage to our clients from the characterization of them as wrongdoers etc, I am going to insist that we be allowed to disclose the pendency and procedural posture of our lawsuit to customers.

----- Original Message -----

**From:** Tuvia Rotberg  
**To:** ew@valmandelpc.net  
**Sent:** Wednesday, September 03, 2008 10:57 AM  
**Subject:** extension

Hi Eric,

After discussing with my boss, he asked for the papers to be due Monday (Sep. 15) instead of Friday, with the return date preferably on the 22nd.

Please advise.

Tuvia Rotberg  
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