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November 5, 2008

VIA ECF

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 the plaintiffs in this action.

We are writing in an effort to avoid (a) another lengthy and expensive round of preliminary injunction motions and (b) a motion seeking an order of contempt against defendants. We respectfully request that the Court schedule a conference to try and resolve the serious problems discussed below.

THE EBAY ATTACK

On October 15, 2008, Your Honor entered a Memorandum Opinion and Order (the "Order") granting, in part, plaintiffs' motion for a preliminary injunction and denying, in its entirety, defendants' cross-motion for a preliminary injunction and other relief. Unhappy with the Court's ruling that they "failed to demonstrate irreparable harm and a likelihood of success on the merits of any of their claims," defendants have again resorted to the kind of destructive, extra-judicial self-help that led to the injunction against them.

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In addition to the various ABC business web sites, plaintiffs operate an EBay store called abc-machine-embroidery. Mr. Mikhlyn has been the registered account holder of the EBay store since February 2007. As with the ABC web sites, defendant Dolginov was the original registrant of the EBay store but assigned the registration to Mr. Mikhlyn. We have the written record of Ms. Dolginov assigning the registration to Mr. Mikhlyn in 2007 (the record is in the process of translation) as well as written confirmation from EBay that the assignment followed proper EBay procedures.

Nonetheless, sometime in the last few days, defendant Dolginov apparently filed some kind of complaint directly with EBay, which has prompted EBay to "lock" the store. That action immediately caused the loss of approximately 80% of plaintiffs' sales as well as unquantifiable damage in the form of lost customers and good will. If the status quo is not returned, plaintiffs will surely be out of business long before this case is resolved by this Court.

The imbalance of hardships created by defendants' latest tactics is total. The EBay store has been frozen, not handed over to defendants - thus defendants' actions cause only harm to plaintiffs without a corresponding benefit to them. There is also a significant element of bad faith in defendants' "heads I win tails you lose" approach to this dispute. Having placed this dispute under the jurisdiction of the Court, they should not be permitted to neutralize the Court's rulings by their aggressive extra-judicial tactics.

CONTEMPT OF THE ORDER

The Order enjoined defendants from: a) alleging that plaintiffs' sales of designs from ABC Sites are unlawful and b) claiming exclusive ownership of and right to use the "ABC" and "Anna Bove" family of trademarks.

Defendants' initial reaction to the Court's Order was to ignore it. Defendants continued to assert the following, among other things, on their web sites:

1. "ATTENTION: At this moment the only other company that has a license for selling designs that were created by Anna Bove is The Sewphisticated Stitcher, Inc. Other companies interested to distribute our products - please contact Anna Bove Company, LLC." Located at: <http://www.annaboveembroidery.com/aboutus1.html>; and

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2. "Anna Bove Embroidery, AnnaBoveEmbroidery.com, ABC Embroidery Designs and ABC Cross Stitch Patterns, among others, are service marks owned by Anna Bove Company, LLC. These marks may be used, with certain restrictions, by Anna Bove Company, LLC. and eligible companies participating in Anna Bove Company, LLC. programs under a license agreement. Members and companies interested in licensing a logo or other copyright-protected material for its use should contact Anna Bove Company, LLC. Any use of these marks by others must be with the express permission of Anna Bove Company, LLC. It is Anna Bove Company, LLC. policy to take action against all unauthorized use of its marks." Located at: <http://www.annaboveembroidery.com/cotr.html>.

After demanding that they comply with the Order, defendants made purported concessions in a letter annexed hereto. We believe these purported concessions still leave defendants in violation of the Order and thus amount to contempt of Court. In fact, as of today, defendants' ABC site still claims that "all artwork and designs are owned by Anna Bove Company, LLC., and are copyright protected." That is just the flip side of alleging that plaintiffs' sales of designs from ABC Sites are unlawful, which the Court has prohibited.

Respectfully submitted,


Val Mandel

VM/st
Encl.

cc: Peter L. Berger, Esq. (via fax; w/encl.)

*The request for a conference is denied without prejudice to the filing of a motion seeking contempt if appropriate.
So Ordered*

s/Hon. Charles P. Sifton

11/5/08

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November 4, 2008

BY EMAIL

Daniel Akselrod, Esq.
Val Mandel P.C.
80 Wall Street, Suite 1115
New York, New York 10005

Re: Index No. CV 08 3367
Vadim Mikhlyn, et al. v. Ana Bove, et al.
Our file No. 1851.004

Dear Mr. Akselrod,

It is our position that the language you want removed from our client's website does not violate the Judge's order. The statements neither allege that your clients' sale of designs is unlawful nor does it claim exclusive right to the family of "ABC" or "Anna Bove" marks. The Mikhlyns currently maintain several websites having different variations of the ABC and Anna Bove marks. The complained of language does not claim exclusive ownership of the marks being used by the Mikhlyns nor to any other marks in the *family* of ABC or Anna Bove marks. Our client claims exclusive rights to certain members of the family – those that are exclusively used by our client.

The above notwithstanding, and in order to clarify their claim, our client has agreed to amend the language as follows:

Item 3: "At this moment The Sewphisticated Stitcher, Inc. is licensed by Anna Bove to sell designs that were created by Anna Bove. Other companies interested..."

In item 4, the word "among others" will be removed in order to clarify that our clients are asserting exclusive rights to only those marks listed in the paragraph.

Please advise

Very truly yours,
LEVISOHN BERGER LLP



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