

**Matter of Machon Chana Women's Inst., Inc. v
National Comm. for Furtherance of Jewish Educ.**

2016 NY Slip Op 31333(U)

July 13, 2016

Supreme Court, Kings County

Docket Number: 513767/15

Judge: Lawrence S. Knipel

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part Comm-4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 13th day of July, 2016.

P R E S E N T:

HON. LAWRENCE KNIPEL,
Justice.
-----X

IN THE MATTER OF THE APPLICATION OF

MACHON CHANA WOMEN'S INSTITUTE, INC.,
Petitioner,

- against -

Index No. 513767/15

NATIONAL COMMITTEE FOR FURTHERANCE OF JEWISH EDUCATION, D/B/A MACHON CHANA WOMEN'S INSTITUTE, MACHON CHANA JEWISH WOMEN'S INSTITUTE, AND MACHON CHANA WOMEN'S YESHIVA; AND SHLOMA MAJESKI,

Respondents,

For an Injunction Pursuant to Section 135 of the New York General Business Law.

-----X

The following e-filed papers read herein:

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	1, 3-28
Opposing Affidavits (Affirmations) _____	33-42, 44-45
Reply Affidavits (Affirmations) _____	_____
Memoranda of Law _____	2 43
Letters to the Court _____	46 47 48

Upon the foregoing papers, in this special proceeding by petitioner Machon Chana Women's Institute, Inc. (Machon Chana Women's Institute) against respondents National Committee for Furtherance of Jewish Education d/b/a Machon Chana Women's Institute, Machon Chana Jewish Women's Institute, and Machon Chana Women's Yeshiva (NCFJE), and Rabbi Shloma Majeski (Rabbi Majeski), Machon Chana Women's Institute seeks, in its notice of petition (under motion sequence number one), a permanent injunction, pursuant to General Business Law § 135, preventing NCFJE and Rabbi Majeski from using its name or any variation of its name likely to deceive the public.

Facts and Procedural Background

NCFJE is an organization that was founded in 1940 for the principal purpose of providing Jewish public school students with a free Jewish education, and, since that time, its mission has expanded to include an array of programs to all sectors of the Jewish community. Machon Chana Women's Institute, as reflected by its stationary from the 1970s, originally began its operations in 1972 as an unincorporated entity at the urging of late Labavitcher Rebbe Menachem M. Schneerson (Rebbe Schneerson) for the purpose of conducting Jewish outreach and adult education classes to girls of post high school age. At that time, Machon Chana Women's Institute did not own any real property, and it used a building at 756 Eastern Parkway in Brooklyn.

On June 8, 1973, Cong. Machon Chana became incorporated as a religious corporation, organized under article 10 of the Religious Corporations Law, by a certificate

of incorporation filed with the Kings County Clerk's Office. Both Cong. Machon Chana and Machon Chana Women's Institute were given the name Chana so as to be named after Rebbetzin Chana Schneerson, the mother of Rebbe Schneerson. They also were both given the name Machon, which is the Hebrew word for institution. The purposes of Cong. Machon Chana, as set forth on its certificate of incorporation, were to own and maintain real property for its benefit and purposes, and to hold and conduct classes in religious subjects. By a deed dated February 1, 1974, Cong. Machon Chana purchased real property located at 1367 President Street in Brooklyn (the 1367 President Street property), and it retains title to this property.

After the 1367 President Street property was purchased, it was used as a dormitory for Jewish women while they engaged in Torah study at Machon Chana Women's Institute. Financial support came from outside charitable organizations, including NCFJE, which was headed by the late Rabbi Jacob J. Hecht, who was a close confidant of Rebbe Schneerson. According to NCFJE, for many years, Machon Chana Women's Institute was run as a division of NCFJE. Sara Labkowski (Labkowski) ran Machon Chana Women's Institute in conjunction with Rabbi Jacob J. Hecht, who provided financial support to the school.

In an employment contract dated September 22, 1980, signed by Rabbi Jacob J. Hecht and Labkowski, on behalf of Machon Chana Women's Institute, Rabbi Majeski was hired by Machon Chana Women's Institute as its principal. The employment contract required Rabbi Majeski to submit a weekly report to Labkowski with a copy to Rabbi Jacob J. Hecht.

Rabbi Jacob J. Hecht unexpectedly died in 1990 at age 66, and, in his obituary in the New York Times, he was referred to as the dean of the school. After Rabbi Jacob J. Hecht's death, his sons, i.e., Rabbi Shea Hecht, Rabbi Sholem Ber Hecht, and Rabbi Shimon Hecht (the Hechts), took on Rabbi Jacob J. Hecht's responsibilities in the running of the school, and they continued to support Machon Chana Women's Institute and the 1367 President Street property. After several years of supporting Machon Chana Women's Institute and the 1367 President Street property, Rabbi Shea Hecht, Rabbi Sholem Ber Hecht, and Rabbi Shimon Hecht, in 1995, allegedly withdrew their financial support after a "rift" developed between them and Labkowski. According to Rabbi Majeski, the rift concerned financial issues and disagreements over control of the day-to-day operations of the school.

On February 22, 1996, Machon Chana Women's Institute filed a certificate of incorporation with the Kings County Clerk's Office under Not-For-Profit Corporation Law § 402. The purpose of Machon Chana Women's Institute, as listed on its certificate of incorporation, was "to educate and empower Jewish women who are seeking to explore their Jewish heritage." Machon Chana Women's Institute was incorporated as a "Type B Corporation" as defined in Not-For-Profit Corporation Law § 201 as it existed in 1996. Machon Chana Women's Institute's certificate of incorporation further set forth that it had the power to solicit grants and contributions.

According to Rabbi Shimon Hecht and Rabbi Majeski, Machon Chana Women's Institute was formed by Labkowski as a separate "breakaway entity" from NCFJE. They

assert that Labkowski publicized the fact that she was breaking away and forming a school that would no longer be affiliated with the Hechts or NCFJE.

In a letter on Machon Chana Women's Institute's stationary, dated January 8, 1997, Labkowski informed members of the Crown Heights Community and Machon Chana Women's Institute's alumni that a "rift" had developed between the "Yissacher/Zevulun" parties of Cong. Machon Chana, referring to her and the others who ran the school, and NCFJE, as the school's financial supporters. This letter stated that, at that time, there was "no formal relationship" between the Yeshiva and NCFJE. It further stated that the Yeshiva would still continue under the direction of Rabbi Majeski at 376 Crown Street and out of the dormitory at the 1367 President Street property. This letter requested that all pledges of support be addressed to its administrative office at the 1367 President Street property. In an informational pamphlet that was published by Machon Chana Women's Institute, it was stated that "[Machon Chana Women's Institute] was incorporated in 1996, independent of [NCFJE], who had served as its fiduciary arm from 1973-1995."

In a letter sent to Machon Chana Women's Institute's alumni, dated February 9, 1997, Labkowski asked for donations to help Machon Chana Women's Institute continue to grow and thrive. Labkowski, in this letter, stated that she was enclosing another letter "to clarify some confusion" over the move by Machon Chana Women's Institute to Crown Street, the 1367 President Street property, and "the termination of [Machon Chana Women's Institute's] relationship with NCFJE." In this second letter, Labkowski explained to Machon Chana

Women's Institute's alumni that there had been a partnership with Rabbi Jacob J. Hecht, and that, after his passing, she had entered into a trial arrangement with his sons and NCFJE to see if they could continue to keep up the financial end of the institution. She stated that NCFJE did not open the doors of Machon Chana Women's Institute, and that a Vaad agreed to assume the financial role, and a new corporation was then formed as of February 1996 and a new bank account set up. She further stated that the new corporation was valid and that the Vaad had the right to raise funds. She set forth that as of July 1, 1996, Rabbi Sholom Ber Hecht had asked Machon Chana Women's Institute to leave the school and residence buildings at 823-7 Eastern Parkway, and that she moved the Yeshiva to a different location. She stated that "this move has led to an effective separation," under which the Yeshiva continues to run at its temporary address at 376 Crown Street, under Rabbi Majeski and his staff, and the students would continue to be housed at the dormitory at the 1367 President Street property.

After 1997 up until August 2014, Machon Chana Women's Institute ran its school, which operated out of 556 Crown Street, and provided religious education and instruction to Jewish women, and it used the 1367 President Street property for the purpose of providing housing to its students. According to Labkowski, from late 2013 through the summer of 2014, she, acting as Machon Chana Women's Institute's director, repeatedly asked Rabbi Majeski to comply with Machon Chana Women's Institute's bookkeeping requirements, but he refused to allow Machon Chana Women's Institute's bookkeepers to have access to the

records for the account in which he collected donations on behalf of Machon Chana Women's Institute. In an e-mail dated August 8, 2014, Labkowski informed Rabbi Majeski that "the school and the dormitory are now closing and will . . . reopen only when the necessary changes needed to build a viable and united mossad [Hebrew for "institute"] are implemented," and to "[p]lease let [her] know by Sunday night if you are ready to meet on Monday to work on them." She states that Rabbi Majeski never responded to her e-mail and ignored all of her attempts to resolve the matter.

Rabbi Majeski asserts that Labkowski fired him and also fired other members of Machon Chana Women's Institute's faculty, and locked the students out of the dormitory. According to Rabbi Majeski, in August 2014, he and other faculty members were told by Labkowski that they were being discharged from the school and would need to be "rehired" under new terms and conditions. Rabbi Majeski states that he was then contacted by Rabbi Shea Hecht and Rabbi Sholem Ber Hecht, who told him that they had learned that the school had been closed and that they were willing to take responsibility for the school if he was willing to work with them. The faculty, staff, and students then allegedly agreed to work with the Hechts under the auspices of NCFJE.

Labkowski states that on August 14, 2014, she changed the locks on Machon Chana Women's Institute's building and that, over the following several weeks, Machon Chana Women's Institute hired new staff for the school for the fall 2014 semester. She asserts that the fall 2014 students, however, were intercepted by NCFJE, which directed them to their

newly created school (NCFJE and Rabbi Majeski's school), located at 825 Eastern Parkway, which was staffed with some of the employees of Machon Chana Women's Institute that had joined Rabbi Majeski.

By an August 25, 2014 e-mail, with the subject "Machon Chana Update," Rabbi Majeski, as the principal, Gita Gansburg, as the dorm mother, Yehudis Cohen, as the assistant principal, and Shira Abramson, as the registrar, who were all former employees of Machon Chana Women's Institute, informed some or all of the students enrolled at Machon Chana Women's Institute for the fall 2014 semester and/or their families as follows:

"Due to a number of challenges that have come up in these past few weeks regarding the location of the Machon Chana dorm and the location of Machon Chana classes, there might be a change from previous years. Please stay tuned to hear from us. We will be in touch with you in the next few days as to the location of the dorm and the classes."

Labkowski states that this new school, created in August 2014, of which Rabbi Majeski is the principal, is a division of NCFJE, and that NCFJE and Rabbi Majeski have assumed, adopted, and used Machon Chana Women's Institute as the name of the school on signs at the school, in advertising the school to students, and in soliciting donations. She has submitted evidence that NCFJE has used the name Machon Chana Women's Institute on emblems, signs, flyers, fund-raising materials, websites, and social media. She has annexed a picture of the emblem for NCFJE and Rabbi Majeski's school, which uses the name, Machon Chana Women's Institute, and associates it with NCFJE's website and refers to it as "[a] division of [NCFJE]."

Labkowski has further submitted evidence that community news outlets, namely, www.collive.com and www.chabadinfo.com, have used this emblem in reporting on NCFJE and Rabbi Majeski's school, and that the Facebook page for NCFJE and Rabbi Majeski's school contains numerous photos of the emblem using the Machon Chana Women's Institute name. On September 2, 2015, NCFJE's Facebook account posted a photo of the front entrance of NCFJE and Rabbi Majeski's school, which, under the address, has a sign on the door stating NCFJE Annex and another sign on the door states "welcome to Machon Chana Women's Institute." Until November 3, 2015, the "Donate" button on NCFJE and Rabbi Majeski's school's website led to a web page containing a flyer, which at the top, had an emblem which stated "Machon Chana Women's Institute." The flyer set forth the school's location at 825 Eastern Parkway, and Machon Chana Donation Options. The web page directed donations by check to be addressed to "Machon Chana." On November 3, 2015, the Donate page on NCFJE and Rabbi Majeski's school's website was updated to state its name as Machon Chan Women's Yeshiva. In both the pre-November 3, 2015 and the present version of the Donate page, the Pay Pal Donate Now button links to a Pay Pal donation page under the heading "Machon Chana Women's Inst Teacher's Fund."

Labkowski states that Machon Chana Women's Institute, which is sometimes colloquially abbreviated as Machon Chana, is known throughout the Chabad-Lubavitch religious community and throughout the greater Jewish community around the world as a respected educational institution. She asserts that NCFJE and Rabbi Majeski are deceiving

the public by using the name Machon Chana Women's Institute for their school. Labkowski states that NCFJE and Rabbi Majeski have also assumed, adopted, and used names closely resembling Machon Chana Women's Institute in connection with their school, which include Machon Chana Jewish Women's Institute, Machon Chana Women's Yeshiva, and Machon Chana.

A www.collive.com article, entitled "Machon Chana Students Graduate," dated June 18, 2015, stated that "[s]tudents of Machon Chana women's institute graduated this week . . . at the Machon Chana dormitory on President Street." That article included a photo of the diploma of one graduating student, and this diploma stated that it was from the "Machon Chana Jewish Women's Institute," and it was signed by Rabbi Majeski and a representative of NCFJE.

NCFJE and Rabbi Majeski have also used the name "Machon Chana Women's Yeshiva." The website for NCFJE and Rabbi Majeski's school is www.machonchanayeshiva.com, and the Facebook page for NCFJE and Rabbi Majeski's school is "Machon Chana Women's Yeshiva." Both the website and the Facebook page contain various iterations of NCFJE and Rabbi Majeski's school's emblem with the name "Machon Chana Women's Yeshiva." In addition, the application for admission to NCFJE and Rabbi Majeski's school identifies it as "Machon Chana Women's Yeshiva." NCFJE and Rabbi Majeski have also used the name "Machon Chana" to refer to their school. Throughout NCFJE and Rabbi Majeski's school's website, their school is referred to as

“Machon Chana.” The e-mail address for the school provided at NCFJE and Rabbi Majeski’s school’s website is machonchanainfo@gmail.com., and every page of this website indicates it is “[u]nder the auspices of [NCFJE].”

In addition, the “Our Staff” page for “Machon Chana Women’s Yeshiva,” on NCFJE and Rabbi Majeski’s school’s website states that “Rabbi Majeski has been the principal of Machon Chana for 34 years,” which includes the years that Rabbi Majeski worked at Machon Chana Women’s Institute for Labkowski. NCFJE and Rabbi Majeski’s school’s website also includes a testimonial page displaying six testimonials from former students of Machon Chana Women’s Institute who attended at various times between 2004 and 2014, and additional testimonials from Machon Chana Women’s Institute students are located throughout NCFJE and Rabbi Majeski’s school’s website. All identifiable testimonials on this website are from former students of Machon Chana Women’s Institute and not students of NCFJE and Rabbi Majeski’s school which they created in August 2014. The testimonials on this website, however, refer only to “Machon Chana” and make no distinction between the school attended by former students and the new school started by NCFJE and Rabbi Majeski in August 2014.

Community news outlets, including www.collive.com and www.chabadinfo.com, have explicitly referred to NCFJE and Rabbi Majeski’s school as “Machon Chana Women’s Institute” since its inception. A www.collive.com article, titled “Funds Matched for Machon Chana” and dated May 5, 2015, stated that “[f]or 24 hours, donations to Machon Chana

Women's Institute in Crown Heights will be matched three times by generous donors.” That article included a “Donate here” link that led to NCFJE and Rabbi Majeski’s school’s page on www.charidy.com. A www.chabadinfo.com article, entitled “Machon Chana Hosts Melave Malka” and dated September 17, 2015, stated that “Machon Chana Women’s Institute” was holding an event at 825 Eastern Parkway, which is the address for NCFJE and Rabbi Majeski’s school.

Community news organizations, including www.collive.com and www.chabadinfo.com, have reported on NCFJE and Rabbi Majeski’s school as if it were affiliated with or a continuation of Machon Chana Women’s Institute. A www.collive.com article, entitled “School Moves Forward and Back” and dated August 23, 2015, reported that NCFJE and Rabbi Majeski’s school “is moving forward into the new year by moving its classes back into the original building purchased for the school on Eastern Parkway.” That article also stated that “Rabbi Shloma Majeski, principal of Machon Chana for over three decades, announced the move, which comes following a year of Machon Chana once again being a division of [NCFJE].”

Labkowski claims that NCFJE and Rabbi Majeski have also misappropriated terms used by Machon Chana Women’s Institute to describe its course offerings, including its 10-day intensive “Yeshivacation” program, which it has put on every winter for the last 30 years. NCFJE and Rabbi Majeski’s school’s webpage describes its “Yeshivacation” programs, and their school’s website advertises its “Winter Yeshivacation” program and describes it as “a

10-day intensive study experience.” Their school’s website also provides a testimonial from a student who “attended Winter Yeshivacation,” with this testimonial being from a student who attended Machon Chana Women’s Institute’s Yeshivacation, and not NCFJE and Rabbi Majeski’s school’s Yeshivacation.

On November 10, 2015, Machon Chana Women’s Institute filed its instant petition, and, on November 12, 2015, it filed an amended notice of petition. NCFJE and Rabbi Majeski filed their answer on December 31, 2015.

Discussion

Special statutory protection is afforded to the names of charitable corporations pursuant to General Business Law § 135, which provides as follows:

“No person, society or corporation shall, with intent to acquire or obtain for personal or business purposes a benefit or advantage, assume, adopt or use the name of a benevolent, humane or charitable organization incorporated under the laws of this state, or a name so nearly resembling it as to be calculated to deceive the public with respect to any such corporation. A violation of this section shall be a misdemeanor. Whenever there shall be an actual or threatened violation of this section, an application may be made to a court or justice having jurisdiction to issue an injunction, upon notice to the defendant of not less than five days, for an injunction to enjoin and restrain said actual or threatened violation; and if it shall appear to the satisfaction of the court or justice that the defendant is in fact using the name of a benevolent, humane or charitable organization, incorporated as aforesaid, or a name so nearly resembling it as to be circulated to deceive the public, an injunction may be issued by said court or justice, enjoining and restraining such actual or threatened violation, without requiring proof that any person has in fact been misled or deceived thereby.”

“New York courts have drawn a parallel between summary proceedings under General Business Law § 135 and a motion for summary judgment” (*Matter of Explorers Club Inc. v Diageo plc*, 45 Misc 3d 434, 444 [Sup Ct, NY County 2014]; see also *Matter of Industrial Plants Corp. v Industrial Liquidating Co.*, 286 App Div 568, 571-572 [1st Dept 1955]; *Anti-Defamation League of B'nai B'rith v Arab Anti-Defamation League*, 72 Misc 2d 847, 861 [Sup Ct, NY County 1972]). As with a summary judgment motion, where the basic factual allegations of a violation of General Business Law § 135 are controverted so that there are issues of fact requiring a trial for resolution, a summary order under this section cannot be granted (see *Matter of Industrial Plants Corp.*, 286 App Div at 572; *Matter of Explorers Club, Inc.*, 45 Misc 3d at 444). Where, however, the petitioner, through affidavits and other evidentiary proof, makes a prima facie showing of its entitlement to judgment as a matter of law, and no bona fide triable issue of fact exists, the petitioner is entitled to prevail without the necessity of a trial and a permanent injunction must be granted (see *Matter of Industrial Plants Corp.*, 286 App Div at 571-572; *Matter of Explorers Club Inc.*, 45 Misc 3d at 444).

In order to make this prima facie showing of its entitlement to judgment as a matter of law, the petitioner must demonstrate that it has satisfied the three elements of General Business Law § 135, to wit: (1) that it is a benevolent, humane or charitable organization; (2) that the respondents have used its name or a name so “nearly resembling” its name as to be calculated to deceive the public; and (3) that the respondents acted with the “intent to

acquire or obtain for personal or business purposes a benefit or advantage” (General Business Law § 135; *see also Matter of Explorers Club, Inc.*, 45 Misc 3d at 444).

Here, as noted above, Machon Chana Women’s Institute was incorporated in 1996 as a Type B corporation as defined in Not-for-Profit Corporation Law § 201 as it existed at that time.¹ Not-for-Profit Corporation Law § 201 (c) provides that “[a] type B . . . not-for-profit corporation formed prior to July [1, 2014] shall be deemed a charitable corporation for all purposes under . . . chapter [35 of the Consolidated Laws].” In addition, NCFJE and Rabbi Majeski, in paragraph 5 of their answer, expressly admit that Machon Chana Women’s Institute is a New York not-for-profit charitable organization. Thus, Machon Chana Women’s Institute has established that it is a charitable organization, thereby satisfying the first element of General Business Law § 135.

As to the second element of General Business Law § 135, i.e., that the respondents have used the petitioner’s name or a name so “nearly resembling” its name as to be calculated to deceive the public, Machon Chana Women’s Institute, as detailed in the petition, Labkowski’s affidavit, and the exhibits submitted by Machon Chana Women’s Institute (as discussed above), has provided substantial evidence of NCFJE and Rabbi Majeski’s extensive and continuous use of Machon Chana Women’s Institute’s name and variations of its name, including Machon Chana Jewish Women’s Institute, Machon Chana Women’s

¹Prior to its amendment by 2013 New York Laws Chapter 549, Not-For-Profit Corporation Law § 201 set forth that there were four types of not-for-profit corporations, i.e., Types A, B, C and D. Not-For-Profit Corporation Law § 201(a) and § 201(b), as amended, replace them with two types, namely, charitable and non-charitable corporations.

Yeshiva, and Machon Chana, as the name of their school. They have shown that these names were used on signs at the school, in advertising the school to students, and in soliciting donations, and that they were specifically used on emblems, signs, flyers, fund-raising materials, websites, and social media. NCFJE and Rabbi Majeski do not dispute that they have used and continue to use Machon Chana Women's Institute's name and these variations of it.

NCFJE, however, claims to have used the name Machon Chana in connection with Cong. Machon Chana. While Labkowski disputes the connection between the trustees of Cong. Machon Chana and NCFJE,² it is undisputed that NCFJE has not operated a school under the name Machon Chana Women's Institute³ and Rabbi Majeski, although he worked for Machon Chana Women's Institute, had no ownership rights to use this name for a different school. NCFJE and Rabbi Majeski's newly created school and Machon Chana Women's Institute are both religious schools for Jewish women. The name Machon Chana Women's Institute is not generic or descriptive, and it has been used uninterrupted and exclusively by Machon Chana Women's Institute, an entity directed by Labkowski, in

²This dispute is the subject of a related action involving Cong. Machon Chana, which is discussed below.

³Although Jacob J. Hecht was involved in the operation of Machon Chana Women's Institute prior to his death in 1990, and his sons, thereafter, provided financial support to it, it is undisputed that NCFJE has not been involved with Machon Chana Women's Institute since its incorporation in 1996.

connection with its school since, at least, February 22, 1996,⁴ over 20 years ago, and it has retained a distinct identity (*see Matter of Explorers Club, Inc.*, 45 Misc 3d at 448). Therefore, NCFJE and Rabbi Majeski's use of this name or names closely resembling this name in connection with their school would confuse and deceive the public.

In addition, as discussed above, NCFJE and Rabbi Majeski's school's website blatantly states that Rabbi Majeski has been the principal of the school for 34 years including the years that he worked at Machon Chana Women's Institute for Labkowski, making it appear as if NCFJE and Rabbi Majeski's school is the same school which was run by Labkowski. Furthermore, the testimonials on this website are not from former students of NCFJE and Rabbi Majeski's newly created school, but are from former students of Machon Chana Women's Institute who attended at various times between 2004 and 2014, following the incorporation of Machon Chana Women's Institute. Thus, the court finds that NCFJE and Rabbi Majeski's adoption of the name of Machon Chana Women's Institute was "for the purpose of leading the public to believe that it was connected or affiliated" with it (*see Matter of Explorers Club, Inc.*, 45 Misc 3d at 448; *Matter of Lincoln Ctr for Performing Arts v Lincoln Ctr. Classics, Record Socy.*, 25 Misc 2d 686, 687, 688 [Sup Ct, NY County 1960]; *Trustees of Columbia Univ. v Axenfeld*, 136 Misc 831 [Sup Ct, NY County 1930]). Consequently, NCFJE and Rabbi Majeski's adoption of the identical name or nearly identical

⁴While Labkowski asserts that Machon Chana Women's Institute has been operated by her for over 40 years, NCFJE claims that it was involved with the school, through Rabbi Jacob J. Hecht and his sons, until Labkowski separated from it in 1996. It is undisputed that in 1996 and thereafter, Machon Chana Women's Institute was not involved with NCFJE.

names as Machon Chana Women's Institute leads to the inescapable conclusion that there is a connection between their school and Machon Chana Women's Institute, and that NCFJE and Rabbi Majeski have used this "name or a name so nearly resembling [Machon Chana Women's Institute] as to be calculated to deceive the public" (General Business Law § 135). Therefore, the second element of General Business Law § 135 has been satisfied.

NCFJE and Rabbi Majeski, citing the cases of *Association of Contr. Plumbers of City of N.Y. v Contracting Plumbers Assn. of Brooklyn & Queens, Inc.* (302 NY 495, 498 [1951]) and *Matter of Charles F. Ryan & Son v Lancaster Homes* (19 AD2d 14, 16 [4th Dept 1963]), erroneously state that Penal Law § 964, which is discussed in those cases, is the predecessor statute to General Business Law § 135. Relying upon these cases, they erroneously argue that the heightened standard of former Penal Law § 964 (now General Business Law § 133) is applicable and contend that Machon Chana Women's Institute must prove that they acted with an intent to deceive the public or acted in bad faith, and that Machon Chana Women's Institute has not shown this.

While Machon Chana Women's Institute contends that its submissions necessarily indicate the existence of such an intent to deceive the public and bad faith by NCFJE and Rabbi Majeski, Penal Law § 964 (as observed by Machon Chana Women's Institute) was actually re-codified as General Business Law § 133 and not as General Business Law § 135 (see *Westchester County Realty Bd. v Landman*, 24 NY2d 750, 753 n [1969]; *Matter of Specialty Box & Packaging Co. v Howe Specialty Co.*, 59 AD2d 961, 962 [3d Dept 1977]).

Instead, Penal Law § 948 was the predecessor of General Business Law § 135 (*see Matter of Explorers Club*, 45 Misc 3d at 444 n 3). General Business Law § 133, which makes it unlawful to use the name of any corporation, includes a requirement of intent to deceive the public or bad faith, which is not a requirement included in General Business Law § 135 (*see Society of War of 1812 v Society of War of 1812*, 46 App Div 568, 573 [1st Dept 1900]; *Matter of Explorers Club*, 45 Misc 3d at 447-448; *David B. Findlay, Inc. v Findlay*, 47 Misc 2d 649, 655 [Sup Ct, NY County 1965], *affd* 23 AD2d 846 [1st Dept 1965], *affd* 18 NY2d 12 [1966], *cert denied* 385 US 930 [1966]). Thus, Machon Chana Women's Institute was not required to make this showing of an intent to deceive the public and bad faith.

As to the third element of General Business Law § 135, i.e., that the respondents acted with the "intent to acquire or obtain for personal or business purposes a benefit or advantage," this intent is evident from NCFJE and Rabbi Majeski's deliberate choice to call their newly created school Machon Chana Women's Institute and variations thereof and to use those names for advertising and fund raising purposes. Machon Chana Women's Institute has shown that NCFJE and Rabbi Majeski have been capitalizing on the goodwill and history of Machon Chana Women's Institute, which undisputedly is not under their legal control or ownership, and that they have diverted students from Machon Chana Women's Institute to their school and have solicited charitable donations for their school, using Machon Chana Women's Institute's name or variations of it. Machon Chana Women's Institute has, therefore, satisfied the third element of General Business Law § 135.

Thus, Machon Chana Women's Institute has made a prima facie showing of its entitlement to judgment as a matter of law by demonstrating that it has satisfied the three elements of General Business Law § 135. This shifted the burden to NCFJE and Rabbi Majeski to raise a genuine triable issue of fact in order to defeat the granting of the petition.

NCFJE and Rabbi Majeski, in their answer, raise as a first objection in point of law, that there is presently pending in this court a prior action, entitled *Cong. Machon Chana, a Religious Corporation v Machon Chana Women's Institute, Inc.* (Sup Ct, Kings County, index No. 503045/15) (the Congregation action), in which Machon Chana Women's Institute is a defendant, along with Labkowski.⁵ They contend that in the Congregation action, the court has made factual findings which preclude this proceeding. They allege, as a third affirmative defense, that the rulings in the Congregation action collaterally estop Machon Chana Women's Institute from maintaining this proceeding.

The Congregation action was filed on March 17, 2015 by the plaintiff therein who claims to be Cong. Machon Chana, a religious corporation, and asserts that its board of trustees actually consists of Rabbi Shoma L. Abramowitz, Rabbi Shea Hecht, Charlie Kupferman, Dr. Steve Rubel, Milton E. Kramer, Rabbi Shimon Hecht, Rabbi Levka Kaplan, Rebbetzin Baila Hecht, and Alex Berkowitz (the Congregation plaintiffs), as opposed to Rabbi Zalman Labkowski, Riva Teleshevsky (who filled the vacancy of Rabbi Nathan

⁵Although NCFJE and Rabbi Majeski assert that Machon Chana Women's Institute did not mention the Congregation action and the Trademark action (discussed below) in its petition, it did list these actions in its Request for Judicial Intervention and discussed the Trademark action in its initial Memorandum of Law.

Gurary after his death in 2005), and Beth Bronstein, and seeks a declaratory judgment and a permanent injunction against Machon Chana Women's Institute and Labkowski. The Congregation plaintiffs, in the Congregation action, brought an order to show cause, which was supported by the affirmation of Rabbi Shimon Hecht and exhibits, seeking a preliminary injunction enjoining and restraining Machon Chana Women's Institute and Labkowski from acting on behalf of Cong. Machon Chana, holding Labkowski out as an officer and/or member of the board of trustees of Cong. Machon Chana, continuing to prosecute an eviction proceeding in the name of Cong. Machon Chana, and interfering with the right of Cong. Machon Chana to use the 1367 President Street property. Machon Chana Women's Institute and Labkowski, in response, cross-moved in the Congregation action to, among other things, enjoin the Congregation plaintiffs from holding themselves out as and/or acting as directors/trustees, officers, or members of Cong. Machon Chana, claiming the right to use the 1367 President street property, and dismiss the complaint. A decision and order, dated August 21, 2015, was rendered by the court, which granted the Congregation plaintiffs' motion only insofar as it sought a preliminary injunction restraining the prosecution of the eviction proceeding and otherwise denied the relief sought by them, and denied the cross motion.

“The doctrine of collateral estoppel, a narrower species of res judicata, precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the

tribunals or causes of action are the same” (*Ryan v New York Tel. Co.*, 62 NY2d 494, 500 [1984]; *see also Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 349 [1999]). “[C]ollateral estoppel allows ‘the determination of an issue of fact or law raised in a subsequent action by reference to a previous judgment on a different cause of action in which the same issue was necessarily raised and decided’” (*Ryan*, 62 NY2d at 500, quoting *Gramatan Home Invs. Corp. v Lopez*, 46 NY2d 481, 485 [1979]). “What is controlling is the identity of the issue which has necessarily been decided in the prior action or proceeding” (*Ryan*, 62 NY2d at 500).

Here, there was no issue decided against Machon Chana Women’s Institute or Labkowski in the court’s August 21, 2015 decision and order in the Congregation action which is controlling or would bar the instant petition. The Congregation action is in no way dispositive of the instant proceeding, nor does the August 21, 2015 decision and order rendered in that action preclude the injunctive relief sought in the present proceeding. The Congregation action concerned a dispute as to who are the rightful trustees of Cong. Machon Chana and the control of Cong. Machon Chana, which is a separate and distinct entity from Machon Chana Women’s Institute. It did not concern control over the use of Machon Chana Women’s Institute’s name, which the Congregation plaintiffs referred to as Labkowski’s separate breakaway entity. In fact, the Congregation plaintiffs contended that at Labkowski’s insistence, NCFJE had no formal relationship at all with Machon Chana Women’s Institute other than continuing to make the 1367 President Street property available to the women

students who were receiving Jewish religious instruction and education. They also contended that the fact that Machon Chana Women's Institute was required to obtain a separate tax identification number constituted evidence of a split between Machon Chana Women's Institute and Cong. Machon Chana.

Contrary to the contentions of NCFJE and Rabbi Majeski, the court, in its August 21, 2015 decision and order in the Congregation action, made no factual finding which precludes the relief sought in this action. The court found the existence of an active controversy in the Congregation action related to control of Cong. Machon Chana, and did not address or make any finding as to the control and ownership of Machon Chana Women's Institute's name. While the Congregation plaintiffs had submitted some documents showing that the names Cong. Machon Chana, Machon Chana and the Machon Chana Women's Institute had, at times, been used interchangeably, all of these documents were dated prior to Machon Chana Women's Institute's incorporation on February 22, 1996. The court did not rule that there was an issue of fact regarding the use of the name Machon Chana Women's Institute. Rather, it ruled that the Congregation plaintiffs had raised a question of fact as to whether there were members of the board of trustees of Cong. Machon Chana other than Rabbi Gurary, Rabbi Labkowski, Bronstein, and Teleshevsky. Thus, the doctrine of collateral estoppel does not bar the instant petition.

NCFJE and Rabbi Majeski additionally assert that Machon Chana Women's Institute and Labkowski, in paragraph 46 of their answer in the Congregation action, admitted that

there is an ongoing controversy concerning the use and ownership of the Machon Chana name. Contrary to this assertion, however, Machon Chana Women's Institute and Labkowski's answer actually stated that there is a controversy as to the use and ownership of the Congregation's name, as opposed to the name of the school, Machon Chana Women's Institute. As previously noted, there was no dispute as to the fact that Machon Chana Women's Institute was Labkowski's separate entity which had no formal relationship with NCFJE. Thus, NCFJE and Rabbi Majeski's first objection in point of law lacks merit and does not preclude the granting of the petition.

NCFJE and Rabbi Majeski's second objection in point of law alleges that there is presently pending in the court a plenary action, filed by Machon Chana Women's Institute and Cong. Machon Chana on November 9, 2015, against NCFJE and 10 other defendants, including Rabbi Shea Hecht, Rabbi Shimon Hecht, and Rabbi Majeski, entitled *Machon Chana Women's Institute, Inc. and Cong. Machon Chana, a Religious Corporation v Shea Hecht et al. and the National Committee for Furtherance of Jewish Education* (Sup Ct, Kings County, index No. 513701/15) (the Trademark action). In the Trademark action, Machon Chana Women's asserts 17 causes of action, including claims for trademark infringement and unfair competition, injury to business reputation and trademark dilution, common-law trademark infringement, unlawful use of a name pursuant to General Business Law § 397, false advertising, misappropriation of trade secrets, common-law unfair competition, tortious interference with business relations, and seeks damages and injunctive relief.

NCFJE and Rabbi Majeski assert that the claims in the Trademark action arise out of the same facts and circumstances as those set forth in the petition. They contend that the existence of the Trademark action demonstrates that the issues between the parties are complex and incapable of summary resolution by means of a petition filed pursuant to General Business Law § 135. They further contend, in their fourth affirmative defense, that by virtue of Machon Chana Women's Institute's filing of the Trademark action, Machon Chana Women's Institute has shown that it has an adequate remedy of law since it can be afforded relief in that action. They claim that the granting of the petition in this proceeding would effectively deny them the opportunity to defend the claims in the Trademark action. They argue that Machon Chana Women's Institute has brought this proceeding in a bad faith manner and in an attempt to use General Business Law § 135 not as a shield, but as a sword, in order to obtain an advantage in this other pending litigation.

This argument must be rejected. "The legislature intended General Business Law § 135 to provide a 'new and summary proceeding not heretofore available by which an aggrieved party in a proper case, could obtain speedy and drastic relief without the delays incident to a plenary action'" (*Matter of Explorers Club Inc.*, 45 Misc 3d at 438, quoting *Association of Contr. Plumbers of City of N.Y. v Contracting Plumbers Assn. of Brooklyn & Queens, Inc.*, 302 NY 495, 498 [1951]). "The injunctive relief available in a General Business Law § 135 special proceeding is separate and 'not to be confused' with the relief

available in a plenary action” (*Matter of Explorers Club Inc.*, 45 Misc 3d at 438; *see also Matter of Industrial Plants Corp.*, 286 App Div at 572).

Although the parties in this proceeding are also parties in the Trademark action and there are overlapping facts, this proceeding may be brought simultaneously with the Trademark action since “the questions of law [in this proceeding and the Trademark action] are separate and distinct” (*Matter of Explorers Club Inc.*, 45 Misc 3d at 438). “A special proceeding under General Business Law § 135 is available only to benevolent, humane or charitable organizations, and intended to be speedy and efficient, does not require a trial and is decided on affidavits alone (in the absence of triable issues), and may streamline the issues, rather than raise the specter of inconsistent rulings” (*Id.* at 439). Thus, by bringing the Trademark action, Machon Chana Women’s Institute did not waive its right to assert its separate claim for relief pursuant to General Business Law § 135 and the existence of that action does not preclude the relief sought by Machon Chana Women’s Institute in its petition (*see Id.* at 437). Consequently, NCFJE and Rabbi Majeski’s second objection in point of law and their fourth affirmative defense are lacking in merit.

NCFJE and Rabbi Majeski’s third objection in point of law alleges that Machon Chana Women’s Institute took no action for over a year from the start of their use of Machon Chana Women’s Institute’s name in August 2014 since they did not file this proceeding to complain about this use until November 2015. They assert, in their first affirmative defense, that Machon Chana Women’s Institute is barred by the doctrine of laches from enforcing its

right to the exclusive use of its name. They further assert, in their second affirmative defense and in this third objection in point of law, that the fact that Machon Chana Women's Institute has waited almost 15 months to enforce its alleged right to its name shows that there is no need for the emergent relief sought by it in its petition and that this matter should, instead, be resolved in the Trademark action, in which a full record can be developed.

This argument is rejected. "The mere lapse of time, without a showing of prejudice, will not sustain a defense of laches" (*Saratoga County Chamber of Commerce v Pataki*, 100 NY2d 801, 816 [2003], *cert denied* 540 US 1017 [2003]; *see also Matter of Linker*, 23 AD3d 186, 189 [1st Dept 2005]; *Matter of Explorers Club Inc.*, 45 Misc 3d at 439). NCFJE and Rabbi Majeski have not shown any prejudice caused by any delay by Machon Chana Women's Institute in asserting its rights, and any such delay does not constitute a waiver of its rights or preclude it from seeking the relief sought in its petition. NCFJE and Rabbi Majeski were not prejudiced by any alleged delay. Indeed, in *Matter of Explorers Club Inc.* (45 Misc 3d at 437), where the Supreme Court, New York County, granted the permanent injunction sought, there was a 16-month delay in the commencement of petitioner's General Business Law § 135 proceeding. Furthermore, during this time period, NCFJE and Rabbi Majeski were well aware that Machon Chana Women's Institute was a Not-For-Profit Corporation formed by Labkowski and that there was a dispute between Labkowski and them. In addition, as detailed above, the evidence submitted by Machon Chana Women's

Institute in its petition to demonstrate the extent of the use of its name include Facebook postings that took place in the fall of 2015.

Rabbi Shimon Hecht further contends, in his affirmation, that NCFJE has been using the name Cong. Machon Chana and Machon Chana Women's Institute continuously for over 40 years with no objection by Labkowski or Machon Chana Women's Institute until the filing of this proceeding in November 2015. This argument is rejected. NCFJE has not operated a school under the name Machon Chana Women's Institute until August 2014, and Machon Chana Women's Institute, in response, timely commenced this action. As to the use of the name Cong. Machon Chana, that is the subject of the Congregation action, in which the Congregation plaintiffs (which includes Rabbi Shimon Hecht and Rabbi Shea Hecht) and Labkowski are each arguing that they are its rightful trustees entitled to use that name. Thus, the court finds that NCFJE and Rabbi Majeski's third objection in point of law and first and second affirmative defenses are devoid of merit.

NCFJE and Rabbi Majeski's fourth objection in point of law alleges that Machon Chana is a name that was used with the permission of Rebbe Schneerson. Rabbi Shimon Hecht, in his affirmation, asserts that in or about 1982, Rebbe Schneerson withdrew his permission to use the name Machon Chana, and directed that the school, instead, be known as Machon Yahhadus. He states that the reason for this was that at that time, Labkowski had held a fund raiser in contravention of a 1975 Beth Din ruling which stated that Labkowski needed permission from the financial administration if she wanted "to find support" and that

she had also held this fund raiser in association with certain persons with whom Rebbe Schneerson did not wish to have associated with his mother's good name and memory. He claims that it took more than two years of effort by his father, Rabbi Jacob J. Hecht, to obtain Rebbe Schneerson's permission to resume the use of the Machon Chana name for Machon Chana Women's Institute, and that on October 2, 1984, this permission was given to his father and NCFJE, the organization which he headed. As proof of this, NCFJE has annexed a copy of a letter written in Hebrew by Rabbi Jacob J. Hecht to Rebbe Schneerson asking "if it's possible" to resume use of the Machon Chana name again. This letter reflects that the word "if" was crossed out and a semi-circle was placed around the words "it's possible." According to Rabbi Shimon Hecht, this was done by Rebbe Schneerson in order to indicate his consent.

This letter, however, does not contain any reference to NCFJE. In any event, any temporary discontinued usage of the name Machon Chana Women's Institute between 1982 and 1984 is entirely irrelevant because Machon Chana Women's Institute was incorporated as a legal entity in 1996, 12 years later, and has been legally authorized to use and has been using that name since that time. While NCFJE claims that the right to use the name Machon Chana Women's Institute was only restored after the intervention of Rabbi Jacob J. Hecht on behalf of Cong. Machon Chana, the use of the name by Machon Chana Women's Institute as a separate entity from NCFJE since 1996 was based upon its legal entitlement to use this name pursuant to its certificate of incorporation and such legal right existed irrespective of

any role Rabbi Jacob J. Hecht, as an individual, may have played in the school prior to his death in 1990 (which was before Machon Chana Women's Institute's incorporation in 1996). As such, Machon Chana Women's Institute is entitled to the protection of General Business Law § 135 and NCFJE and Rabbi Majeski's fourth objection in point of law is wholly lacking in merit.

NCFJE and Rabbi Majeski's fifth objection in point of law alleges that Labkowski, by her own actions in changing the locks on the school building and ceasing to do business as a full time school in August 2014, made it clear that Machon Chana Women's Institute was no longer operating a full time education institution as of that time, and, therefore, it was impossible for them to wrongfully divert students and donations from Machon Chana Women's Institute because Machon Chana Women's Institute was not providing the services that students and donors were expecting. They claim that Labkowski closed Machon Chana Women's Institute in August 2014, and has not operated a full time fully functioning school since that time. They assert that they cannot be in competition with a school which has not operated since August 2014. They argue that Labkowski abandoned her faculty and students in August 2014, and that they are using the name Machon Chana Women's Institute in order to ensure that the community continues to receive the benefit of a fully functioning women's educational facility and to provide religious education and instruction to Jewish women so as to fulfill the mission of Rebbe Schneerson.

This argument is unavailing. Machon Chana Women's Institute asserts that it did not abandon its faculty and students, but, rather, Rabbi Majeski and the other faculty members were disloyal employees, who did not attempt to work out the dispute between them, and, instead, simply left Machon Chana Women's Institute to work for NCFJE's new school, using the name Machon Chana Women's Institute, without any attempt to distinguish it from the school she had operated, and specifically attempted to represent it as the same school. Labkowski states that she hired new staff for the school and awaited the arrival of students on the first day of the fall 2014 semester before learning that they were misdirected and usurped by NCFJE and Rabbi Majeski. Machon Chana Women's Institute asserts that, contrary to NCFJE's assertion, it continues to operate. In any event, NCFJE and Rabbi Majeski have not explained why their newly created competing school requires their use of Machon Chana Women's Institute's name and names so nearly resembling it as to necessarily be calculated to deceive the public into believing that it is a continuation of Machon Chana Women's Institute at a different location. While NCFJE and Rabbi Majeski are free to operate a school to serve the laudable purpose of fulfilling the community's needs and the mission of Rebbe Schneerson, they may not do so by misappropriating the name and goodwill of Machon Chana Women's Institute.

Thus, inasmuch as Machon Chana Women's Institute has satisfied the three elements of General Business Law § 135 and has made an uncontroverted showing of entitlement to

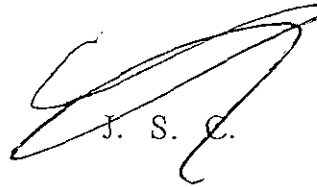
judgment as a matter of law, and there is an absence of any material issues of fact, its petition must be granted.

Conclusion

Accordingly, Machon Chana Women's Institute's petition for a permanent injunction, pursuant to General Business Law § 135, restraining and enjoining NCFJE and Rabbi Majeski from using the name Machon Chana Women's Institute or any variation of its name that is likely to deceive the public, is granted.

This constitutes the decision, order, and judgment of the court.

E N T E R,



J. S. C.

HON. LAWRENCE KNIPEL