

V I R G I N I A :

IN THE GENERAL DISTRICT COURT OF ARLINGTON COUNTY
CIVIL DIVISION

RAM AVRAHAMI,

Plaintiff,

v.

Civil Action No. 95-7479

U.S. NEWS & WORLD REPORT, INC.,

Defendant.

MOTION FOR CONTINUANCE

COMES NOW the Defendant U.S. News and World Report, Inc., ("U.S. News"), by counsel, and moves this court for a continuance of this action until the next available date for hearing after November 30, 1995 on the grounds set forth below:

1. This action was commenced by filing of Plaintiff's Motion for Judgement on or about July 21, 1995. The two count motion for judgement presents a novel issue of law: whether the renting of a mailing list contains only plaintiff's name and address violates Va. Code # 8.01-40.

2. A return date was set for August 21, 1995.

3. Both parties appeared at the return date and a trial was thereafter set for November 27, 1995.

4. Plaintiff Avrahami subsequently began to prosecute this action through the media, issuing press releases and discussing this action and his claims in print, on radio, television and the Internet.

5. U.S. News retained its counsel of record, David G. Fiske and Michael J. Wendorf, during mid-October. A notice of appearance and motion to stay were filed on October 25, and October 24, 1995

respectively.

6. Due to the nature of the action, U.S. News also filed a motion for declaratory relief in the Circuit Court of Arlington County. That action was filed at law and properly seeks a declaration from the Circuit Court on the applicability of Va. Code # 8.01-40 to the facts of this action.

7. All parties desire an expeditious hearing on the applicability of Va. Code # 8.01-40 and have prepared diligently. However, both Mr. Fiske and Mr. Wendorf, U.S. News' counsel of record, have a jury trial scheduled to begin on the same date as this action in the U.S. District Court for the Eastern District of Virginia, Alexandria Division, Good Humor Corporation v. Berliner Specialty Distributors, Inc., Civil Action Number 95-686.

8. Plaintiff's counsel was informed of this unavoidable conflict and agreed to a continuance if this action could be rescheduled during the week of December 6, 1995.

9. Counsel for both parties telephoned the Court to seek a mutually acceptable date for the week of December 6, 1995 but were informed there were no dates available for this action to be heard until January or February, 1996.

10. Plaintiff's counsel refused to consider any continuance beyond the week of December 6, 1995, necessitating this motion.

11. A continuance will further the ends of justice and allow U.S. News to be represented by its counsel of choice. It is well-established that, where counsel on whom a party materially relies is unavoidably absent, he is entitled to a continuance. See, e.g., *Smith v. Com.*, 155 Va. 1111 (1931). In any event, this action should be stayed pending resolution of the declaratory judgement action filed in the Circuit Court.

Dated: November 21, 1995

Respectfully submitted,
U.S. NEWS AND WORLD REPORT, INC.
By Counsel

SHAW, PITTMAN, POTTS & TROWBRIDGE

By: /s/

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