

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<p>HERITAGE OF PRIDE, INC.,</p> <p><i>Plaintiff,</i></p> <p>v.</p> <p>MATINEE NYC, INC., <i>et al.,</i></p> <p><i>Defendants.</i></p>	<p>DOCKET NO.</p> <p>14-cv-4165 (CM)</p>
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**DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

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PRELIMINARY STATEMENT

Is “Pride” property? Is an entire community’s collective expression of political and cultural resolve a mere lever to direct revenue to a single organization, however well meaning?

This lawsuit brought by Heritage of Pride, Inc. (“Heritage”), and its pending motion for a preliminary injunction, insist that it is – at least, that the term “NYC Pride” is. Heritage insists that the term is a protectable trademark. But in fact, since the late 1960s and early 1970s, the gay and lesbian community has rallied behind the term “pride” to celebrate the modern concept of political, cultural and psychological pride in their sexuality and gender identities as embodied in the gay rights movement. And New York City is, for historical and cultural reasons, widely understood as one of, if not the, birthplaces and centers of gravity of the Gay Pride movement.

Plaintiff has, to its credit, had an important role in recent years organizing certain events celebrated during New York City’s “Pride Month.” But nothing in its submissions – especially when considered in light of the record as supplemented by defendants in opposition to plaintiff’s motion – justifies its arrogating to itself a monopoly on the term “NYC Pride.”

No less importantly for purposes of the pending motion, nothing in that record could possibly justify the issuance of a preliminary injunction sought by plaintiff. If Heritage has the right it claims – highly unlikely – and, even more unlikely, it has been damaged by some unlawful conduct or trademark misappropriation, it is entitled to the opportunity to prove its entitlement to redress for that harm. But as more fully explained below, not only is Heritage highly unlikely to succeed on the merits of any of its respective claims: It has failed to show that it faces any irreparable harm absent injunctive relief, and has failed to show that the balance of the hardships tips decisively in its favor. Indeed, to the contrary, because plaintiff seeks to enjoin protected speech in a public forum on matters of public concern, the balance of hardships

– as well as the public interest – tip decidedly in defendants’ favor. The motion for a preliminary injunction should be denied.

STATEMENT OF FACTS

Regarded by the gay community as a “national holiday” on a par with Independence Day, St. Patrick’s Day, or Cinco de Mayo, in New York “Pride” season is associated with the anniversary of the June, 1969 Stonewall Riots. Widely regarded as the founding moment of the gay pride – generally known generically as “Pride” – movement, the Stonewall Riots were a spontaneous outburst of rage by patrons and friends of a popular gay gathering place, the Stonewall Inn in New York, following a brutal and unjustified police “raid” of the Stonewall that typified decades of institutionalized police harassment of what is now commonly identified as the lesbian, gay, bisexual, transgender (LGBT) community.

The Stonewall Riots and the political and cultural changes that came in their wake were, to say the least, transformative, and New York City has consequently been tethered to the Pride concept due to its historic role as its birthplace. Thus in commemoration of the spirit of Pride that first bloomed in New York 35 years ago this month, the LGBT community has for decades focused and converged on New York City every June for what has come to be known as “New York City Pride,” a weeklong series of informally connected event that include a widely-attended parade, dance events, and other festivities.

Heritage admits that in its own trademark application it claimed a date of first use for “NYC Pride” of no earlier than May 1, 2011. Verified Complaint ¶ 18. It has nonetheless attempted to overwhelm the Court with spurious “proof” of extensive and long-term use – and concomitantly secondary meaning – by bootstrapping onto the use of that phrase onto a generation of New York City “pride” events organized by others. These events, in fact, are

associated by the general public with a communal phenomenon – not the “brand” of any particular promoter (non-profit or otherwise), as shown below.

Heritage alleges that two committees that were the prior organizers of New York City’s gay pride parade disbanded prior to 1984, following which, Heritage says, it took over “the responsibility of planning New York City’s annual gay pride March and Rally.” Verified Complaint ¶ 15. But Heritage does not and cannot allege, much less prove by admissible evidence, that the prior organizers claimed, asserted or even established trademark rights in the phrase “NYC Pride,” much less that such rights were ever assigned to Heritage. Indeed, Heritage’s claims that the alleged mark, “NYC Pride,” is widely understood as an indicator of a single source for its entertainment services cannot be sustained in light of the facts. A quick scan of advertisements in June in New York over the past three decades demonstrates that this assertion is ridiculous. Defendants draw the Court’s attention to the exhibits attached herein, which demonstrate use of terms ranging from “NYC Pride” to extremely similar variants, such as “Pride NYC,” “NY Pride,” and “Pride Weekend New York.”

Defendants note initially that permutations of these words have been used for decades to describe events in June in New York City. A rudimentary search of magazine archives reveals, for example, Exhibit E – an advertisement from June 26, 1989 in *Out Week Magazine*, a leading New York City publication for the gay community. This ad is for a celebration at Mars (a midtown bar) on “Gay Pride Sunday” to commemorate the twentieth anniversary of Stonewall. The cover of that same issue of *Out Weekly*, Exhibit F, shows a historic picture commemorating Stonewall and is labeled “COME OUT.” A June 26, 1991 article in *Out Weekly*, Exhibit J, is headlined “In June, Every Day is Pride Day.” These older examples establish the context – the generic quality of “Pride” – for the subsequent lashing of the Pride concept to the place where it

is being expressed and, indeed, where it can be said to have been born: New York City. Thus, for example, Exhibit G is an advertisement by Atlantis, a cruise company, to “sail the Caribbean from NYC” between June 22 and June 29 on what the firm calls the “New York Pride Cruise,” with the additional tag line, “Cruise into NY Pride.” This advertisement dates from 2003 and typifies the terms generic use of the words “New York” juxtaposed with “Pride” to associate the sale of services with Pride Month in New York in the minds of consumers.

Similarly, an event hosted by Gumbo NYC, an events company, is simply labeled as “NYC PRIDE” in enormous bold letters (Exhibit H). Exhibit I is a current print advertisement for the Posh Bar & Lounge in midtown Manhattan, which this year is hosting a party featuring dancers, drink specials, DJ’s, and various performers to celebrate Pride Month. Featured prominently in the advertisement is the phrase “Posh Is NYC Pride.” Surely it cannot be maintained that the Posh bar is not trying to align itself with Heritage’s events in the minds of readers – which is why such evidence is relevant, unlike proof third-party infringements. None of these uses is infringement at all but mere descriptions of events in New York City during Pride Month.

Other examples abound. In June 2012, Josh Wood Productions, a production and event company based on New York, held a day-long fete at Pier 83 that it described in marketing materials with bold letters reading “NYC PRIDE 2012.” This was a major event was sponsored by prominent companies such as Calvin Klein and Société Perrier (Exhibit J). Josh Wood Productions hosted a similar party in 2013 called the Horse Meat Disco (Exhibit K), which once again features “NYC PRIDE” in bold capital letters at the top of the advertisement. Also last year, LASREINAS held its sixth annual party, labeled as “NYC PRIDE 2013” at a large nightclub downtown (Exhibit L). In just two weeks, on June 27, 2014, Jared Needle and Eliad

Cohen will present a party entitled “Paper & Forever and the Sailor Man,” advertised with a large poster showing “NYC PRIDE 2014” (Exhibit M). These are New York City Pride events. They have nothing to do with plaintiff’s supposed NYC PRIDE trademark, its services or plaintiff itself other than – like the events promoted by defendants, they do not generate revenue for plaintiff.

Nor is there any reason they should. Indeed, the more of these advertisements one examines, the clearer it is that the phrase “NYC Pride” is entirely descriptive, similar to naming any other annual holiday. A June 10, 2011 concert was advertised with the tag line “Kick off NYC Pride with GO! And Real L World’ Real Live Lesbians” (Exhibit N). (GO! is a prominent popular musical band, and “The L World” is a popular television program on Showtime about lesbians). This event was advertised by using “NYC Pride” as a descriptive term for the series of festivals and celebrations that occur in the month of June. And like this “kick off” event for Pride Month, Junior Vasquez hosted a 2010 “NYC Pride Finale” – a concert and party to conclude the month on June 28, 2010. Again, the use of “NYC Pride” by these parties cannot possibly be said to describe the source of the event or its producer, but merely the month when they are happening – Pride Month – and the place where they are happening – New York City.

There are variants of “NYC PRIDE” too, which would be virtually indistinguishable to the average consumer. Ferosh Productions held a party last year called “Genesis: New York Pride 2013” (Exhibit O), slightly different from “NYC PRIDE.” Partyfinder.com, a company that essentially documents and describes parties in various cities, had an entry in 2007 describing the annual Festival in New York as being part of “GAY PRIDE NYC” including a paragraph referring to the Festival as part of “New York Pride” (Exhibit P). Similarly, Exhibit R is a 2005 advertisement for Alegria, an events company, that describes its June 26 party as occurring

during “NYC PRIDE WEEKEND.” Alegria has similar ads in 2007 and 2008, Exhibit Q, that described the weekend as “New York City Gay Pride Weekend.” Alegria’s 2013 advertisement shortened that descriptor again to “NYC PRIDE WEEKEND” (Exhibit R). Ru Paul, the prominent television personality and transsexual activist, hosted his annual Drag Race Show titled by outside media outlets as being for “NYC Pride 2013” (Exhibit S).

Similarities are not only textual, but visual. Exhibit T is a 2004 advertisement for Freedom Party NYC, an events company in New York, that hosts an annual fundraiser for HIV advocacy. They describe a DJ party taking place at Chelsea Piers as happening during “NY PRIDE WEEKEND” in block letters – again, essentially the same in words and graphics as the mark now claimed by the Plaintiff. Exhibit U shows an advertisement by codefendant Matinée, which plans events in New York. This advertisement from 2010 prominently features “NEW YORK PRIDE 2010” in connection with a celebration on Governor’s Island.

As redundant as these examples may appear, they are but a sliver of the total of similar ones compiled by defendant to demonstrate what everyone in the LGBT community, and millions of others exposed to Pride Month in New York City knows: A “Pride” event in New York City occurring on a given June weekend, describing itself as such by using the words “New York City” and “Pride,” is not meant to and indeed does not cause any association with Heritage, its particular services, or its particular events. To the contrary, the average person would merely associate “NYC Pride” with the month when such themed events are common on the calendar. The words are as descriptive as labeling a “Fourth of July Sale” or a “Black History Month Commemoration Conference”; it does nothing to indicate the *source* of services in the minds of potential consumers or attendees. Without that source designation, Heritage’s claim fails as a matter of trademark law.

LEGAL ARGUMENT

I. PLAINTIFF CANNOT MEET THE HIGH STANDARDS NECESSARY TO JUSTIFY THE GRANTING OF A PRELIMINARY INJUNCTION.

A party seeking a preliminary injunction must demonstrate “(1) irreparable harm in the absence of the injunction and (2) either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in the movant's favor.” *MyWebGrocer, LLC v. Hometown Info, Inc.*, 375 F. 3d 190, 192 (2d Cir. 2004) (internal quotations omitted). A preliminary injunction is “an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion,” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997), and “one of the most drastic tools in the arsenal of judicial remedies and should not be routinely granted.” *Malettier v. Dooney & Bourke, Inc.*, 340 F. Supp.2d 415, 428 (S.D.N.Y. 2004) (internal quotes omitted).

A showing of “irreparable harm” in the absence of injunctive relief is “the single most important prerequisite for the issuance of a preliminary injunction.” *Rodriguez v. DeBuono*, 175 F.3d 227, 234 (2d Cir. 1999) (citations omitted). For this reason, following the Second Circuit’s ruling in *Salinger v. Colting*, 607 F.3d 68 (2d Cir. 2010), courts in this District have routinely held that irreparable injury must be proved by a party seeking an injunction in a Lanham Act claim by the same equitable standards applicable to other civil claims. *See, e.g., U.S. Polo Ass'n, Inc. v. PRL USA Holdings, Inc.*, 800 F. Supp. 2d 515, 540 (S.D.N.Y. 2011), *aff'd*, 511 F. App'x 81 (2d Cir. 2013); *Vox Amplification Ltd. v. Meussdorffer*, CV 13-4922 ADS GRB, 2014 WL 558866 (E.D.N.Y. Feb. 11, 2014); *Audemars Piguet Holding S.A. v. Swiss Watch Int'l, Inc.*, 12 CIV. 5423 HB, 2014 WL 47465 (S.D.N.Y. Jan. 6, 2014). Moreover, a period of delay in seeking

injunctive relief militates against a finding of “the kind of irreparable harm required to support a preliminary injunction.” *Citibank, N.A. v. Citytrust*, 756 F.2d 273, 276 (2d Cir. 1985). “Lack of diligence, standing alone, may . . . preclude the granting of preliminary injunctive relief, because it goes primarily to the issue of irreparable harm rather than occasioned prejudice.” *Majorica, S.A. v. R.H. Macy & Co., Inc.*, 762 F.2d 7, 8 (2d Cir. 1985)

Heritage’s claim of irreparable harm is, at the very least, seriously undermined by the fact that it waited until shortly before the New York City’s annual gay pride-related events to seek relief, thereby creating a false sense of urgency despite having been in contact with defendants concerning their alleged infringement since the very beginning of April. *See*, Declaration of Judah V. Antonin, Esq., of today’s date, filed herewith. Moreover, Plaintiff’s principal Chris Frederick was advised by Matinee in March 2012 that Matinee had NYC Pride events since 2010. *See*, Declaration of Jacob Resnicow, of today’s date, filed herewith.

Under such circumstances, even a delay of merely a few months is sufficient to undercut the claim of irreparable harm. *See, e.g., Gonannies, Inc. v. Goupair.Com, Inc.*, 464 F. Supp. 2d 603, 609 (N.D. Tex. 2006) (“Although Plaintiffs first learned of the alleged infringing conduct on March 1, 2006, and filed this action on April 7, 2006, they nonetheless did not file the present motion seeking injunctive relief until September 15, 2006, and only after settlement negotiations had soured”; finding delay negated irreparable harm claim); *Packerware Corp. v. Corning Consumer Products Co.*, 895 F. Supp. 1438, 1452 (D. Kan. 1995) (where plaintiff waited to seek emergency relief until just before defendant’s product launch, even short delay negates irreparable harm claim).

Indeed, this Court faced and appropriately rejected a claim of irreparable harm based on alleged trademark infringement arising from a “manufactured emergency” in *Century Time Ltd.*

v. Interchron Ltd., 729 F. Supp. 366 (S.D.N.Y. 1990), the pertinent facts of which are so similar to this one that they are worth recounting on this point:

We simply cannot tolerate tactical maneuvering, in injunction matters, whereby parties sit back and wait for what they believe to be timing most injurious to the procedural fairness for their adversaries. . . .

On January 30, 1990, at 5:00 p.m., plaintiffs brought on an application for emergency relief, seeking the issuance of a temporary restraining order and a speedy scheduling of a preliminary injunction hearing. . . . Plaintiffs seek to have defendants temporarily enjoined from advertising, exhibiting and otherwise promoting and offering for sale and selling at the February 4–7, 1990 Jewelers of America Jewelry Show (“JA Show”), certain sapphire watches which it alleges imitate and copy Century's trade dress in its own Sapphire Collection.

We observe that plaintiffs, by their own admission, have known about the accused watches of the defendant since July of 1989, when they viewed them at a JA Show. . . .

Plaintiffs did not, however, bring their application for injunctive relief until four working days prior to the opening of the next JA Show, a show at which, we conclude, plaintiffs had to know the defendants would present their lines of watches, in light of the latters’ attendance at the past five JA Shows. Plaintiffs concede the importance of the JA Show—it is a place where contacts are made and deals are done. . . .

729 F. Supp. at 367-68. In view of these facts, the Court found the balance of the hardships between the parties (another preliminary injunction criterion) militated against granting a preliminary injunction in light of defendants’ preparation for and investment in attendance at the JA Show. The Court then went on to note that similar considerations – what it called “tactical maneuvering” meant to take advantage of a totally avoidable “emergency” – would also be sufficient, in and of themselves, to justify denial of a preliminary injunction on the basis a failure to show irreparable harm:

[P]laintiffs, because of their delay in acting to preserve and protect their asserted rights, are unlikely to be able to demonstrate the requisite irreparable harm. For example, in *Citibank N.A. v. Citytrust*, 756 F.2d 273, 276 (2d Cir.1985), the circuit court reversed a district judge's order granting a preliminary injunction, citing the lack of irreparable harm. The court held that “[s]ignificant delay in

applying for preliminary injunctive relief in a trademark case tends to neutralize any presumption that infringement alone will cause irreparable harm pending trial, and such delay alone may justify denial of a preliminary injunction for trademark infringement.” *Id.* In the *Citibank* case, the plaintiff had direct knowledge of the alleged infringement ten weeks prior to their seeking emergency relief. Here, the delay was more than two months, if we measure from the time the plaintiffs knew that the action was not going to be settled, and more than six months if we measure from the date they acquired direct knowledge of the alleged infringement.

Although we will not bar plaintiffs from seeking preliminary injunctive relief on another day in a manner that does not smack of the tactical maneuvering that we find here, we do caution the plaintiffs to carefully read *Citibank* and the other cases in this Circuit on delay cited in the defendants' brief prior to doing so.

Id. at 369. The Court’s admonition concerning “tactical maneuvering” certainly appears relevant here.¹ Even giving plaintiff every benefit of the doubt regarding the eve-of-Pride-events timing of its attempt to secure an *ex parte* temporary restraining order, however, a lack of proper prior planning on plaintiff’s part should not constitute an emergency for the law. See *Univ. of Notre Dame v. Sebelius*, 3:13-CV-01276-PPS, 2013 WL 6804773 (N.D. Ind. Dec. 20, 2013) *aff’d*, 743 F.3d 547 (7th Cir. 2014) (in seeking preliminary injunction University of Notre Dame had “created its own emergency . . . Had Notre Dame acted more expeditiously the harm that they now fear could have been avoided altogether”).

Here, too, plaintiff’s lack of diligence in prosecuting its claim plus its sudden claim of harm so urgent – despite no change in the facts – that it saw fit to seek a TRO seriously place its irreparable harm claim in doubt. Failing on that score alone, plaintiff is not, as a matter of law, entitled to a preliminary injunction.

¹ It hardly needs to be added that, besides creating an emergency by waiting until shortly before Pride Month events to take action, plaintiff’s legal maneuvering placed defendants at a severe disadvantage. Having accorded itself the better part of two months to prepare its papers seeking relief, by proceeding by way of order to show to cause under the guise of an application for a TRO plaintiff engineered a situation where defendants had given mere days to secure counsel and collate an opposition to plaintiff’s massive submission, prepared at its leisure, despite the denial of the TRO.

II. PLAINTIFF CANNOT DEMONSTRATE A LIKELIHOOD OF SUCCESS ON THE MERITS ON ITS TRADEMARK INFRINGEMENT CLAIMS.

Considering the likelihood of success component on a preliminary injunction motion in a trademark infringement case, the court in *Vox Amplification*, *supra* quoted the Second Circuit in *Gruner & Jahr USA. v. Meredith Corp.*, 991 F.2d 1072, 1074 (2d Cir.1993) “regarding the complexities of applying trademark infringement law”:

Review in this area of the law is similar to when those old-time radio comedians, Fibber McGee and Molly, opened their closet and out would pour a welter of miscellany from hub caps and baby carriages to broken umbrellas. The equivalent outpour in trademark law reveals complex statutory provisions, numerous factors that trial judges must consider and an appellate court review, definitions of the various kinds of marks, which overlap and shade into one another, and a jumble of adjectives describing the trademark review process.

“This observation,” the *Vox Amplification* court continued, “applies with particular force here, as these thorny legal principles tangle in web of historical artifacts . . .” 2014 WL 558866 at *6. Here, too, the Court must navigate its way through a jumble of historical artifacts placed before it by plaintiff to appreciate the fact these artifacts are, in fact, mainly irrelevant. While the history of the phrase in question is of historical significance to the LGBT community in general, it hardly proves a thing about plaintiff’s supposed trademark rights. In fact, to the contrary, it shows demonstrate the very opposite: That the phrase “NYC Pride” is not anyone’s trademark at all.

“Stripped to its essence—free from this assembled verbiage—the law makes clear that to succeed in a Lanham Act suit for trademark infringement, a plaintiff has two obstacles to overcome: the plaintiff must prove that its mark is entitled to protection and, even more important, that the defendant's use of its own mark will likely cause confusion with plaintiff's mark.” *Gruner Jahr USA Pub., a Div. of Gruner Jahr Printing & Pub. Co. v. Meredith Corp.*,

991 F.2d 1072, 1074 (2d Cir. 1993). Here plaintiff has not demonstrated that it likely to prove either.

Plaintiff's action is, notwithstanding the multiplicity of causes of action, one sounding in trademark infringement and unfair competition. It relies to no small extent on this Court's ruling in *New York City Triathlon, LLC v. NYC Triathlon Club, Inc.*, 704 F. Supp. 2d 305, 331 (S.D.N.Y. 2010), where this Court granted a preliminary injunction despite the evidence that, like the mark claimed here, NEW YORK CITY TRIATHLON mark was descriptive; despite the defendant's resistance of plaintiff's secondary meaning claim; and defendant's reliance, also relevant here, on the argument that, as here, third parties used the same phrase at the same time, militating against a finding of a likelihood of confusion. In fact, however, comparison of the facts in *New York City Triathlon* to those here readily demonstrate why the result here should be a denial of the injunction sought.

The first, and most fundamental, issue is that of likelihood of confusion, which is the *sine qua non* of trademark infringement. "In determining whether descriptive marks, like Plaintiff's, have acquired secondary meaning (and are therefore protectable), the Second Circuit has set forth a number of relevant considerations that must be analyzed: (1) advertising expenditures; (2) sales success; (3) unsolicited media coverage of the product; (4) attempts to plagiarize the mark; (5) the length and exclusivity of the mark's use; and (6) consumer studies linking the name to a source." *Id.* at 305. Applying these standards, in *New York City Triathlon*, the Court found as follows:

Until this year, when Defendant changed its name from the SBR Triathlon Club to the New York City Triathlon Club, **Plaintiff had been the exclusive user of the NYC TRIATHLON Marks during the triathlon's ten years of existence.** Plaintiff has also been extremely protective of the exclusivity and use of its marks, requiring all sponsors to seek its written approval before using them on any goods, services or literature they publish or distribute. Plaintiff has policed

unauthorized use of its marks (*see id.*), and has filed trademark applications for its NYC TRIATHLON Marks with the PTO (*id.* ¶ 43), which are currently pending.

704 F. Supp. 2d 305, 330 (emphasis added). The *New York City Triathlon* opinion could hardly have served up a better bullet-point list of facts that are **not** present in this case. As set forth in the Statement of Facts above and supported by the submissions made along with the filing of this memorandum of law, plaintiff here has **never** been the exclusive user of the “NYC Pride” phrase; it has **not** been extremely protective of nor policed use of the mark by others; and has only belatedly filed for and obtained registration for one of the handful of vaguely defined trademarks for which it seeks protection here. Furthermore, as shown in defendants’ submissions, there is a wealth of media and other third party uses of the phrase “NYC Pride” that obviously have nothing to do with plaintiff or its services.

All the foregoing not only undermines plaintiff’s intuitively incredible claim of trademark rights. It also raises the question of how, indeed, defendants could possibly be characterized as attempting to benefit from plaintiff’s fictional “goodwill” – i.e., as “passing off” their services as those of plaintiff. As Judge Leisure wrote in denying a preliminary injunction on a Lanham Act claim in *Karmikel Corp. v. May Dep’t Stores Co., Inc.*, 658 F. Supp. 1361, 1376 (S.D.N.Y. 1987), “plaintiff fails to suggest to the Court how defendants seek to benefit from any confusion between their products and that of plaintiff. From the record, the Court can only conclude that defendants did not intend to trade on any association with plaintiff’s mark. “

Unlike in *New York City Triathlon*, here the factual record shows that “NYC Pride” is a description of a communal event – not a proprietary one – whose name plaintiff claims as a trademark despite the fact that the event became known by that name before plaintiff’s own claimed date of first use. And unlike in *New York City Triathlon*, where the Court found that the single example of third-party use of the mark in dispute was “well-promoted or easily recognized

by consumers” – and thus had no effect on the existence of secondary meaning, *id.* at 332 – here the opposite is shown by the record to be the case: Consumers recognize, and the community as a whole promotes and celebrates, New York City Pride month and all its related events, entirely without reference to or consideration of plaintiff or any single source as the provider of those events. “Secondary meaning attaches when the name and the business have become synonymous in the mind of the public, submerging the primary meaning of the term in favor of its meaning as a word identifying that business.” *Pirone v. MacMillan, Inc.*, 894 F.2d 579, 583 (2d Cir.1990). Plaintiff has not proved that to be the case here. Indeed on the record before the Court as well as the facts not yet of record it is respectfully submitted that plaintiff could not do so.

Nor is it determinative, or in this case even meaningful, that plaintiff has obtained a registration for a stylized version of the weak trademark for which it asks the Court to grant it such broad rights. *See, e.g., Karmikel, supra*, 658 F. Supp. at 1368 (S.D.N.Y. 1987) (on preliminary injunction motion “defendants may prove any legal or equitable defense or defect which might have been asserted if such mark had not been registered”); *Timex Corp. v. AAI.FosterGrant, Inc.*, CIV. A. 300CV295CFD, 2000 WL 1576396 at n. 36 (D. Conn. Sept. 14, 2000) *aff’d*, 8 F. App’x 94 (2d Cir. 2001) (on motion for preliminary injunction, court must consider likelihood of confusion factors even if registered mark is incontestable). As this Court explained, the standard for a preliminary injunction is not relaxed merely because the claimed mark has been registered:

Plaintiff properly claims that under 15 U.S.C. § 1057(b) its Registration No. 665,835 of August 12, 1958 for its HERSHEY'S trademark in the ice cream field is prima facie evidence of the mark's validity. Another provision of the statute, 15 U.S.C. § 1119, declares that in any action involving a registered mark, the court may determine the right to registration.

In the instant case, [however,] this court finds that there are existing doubtful questions of law and fact relating to the registration and validity of plaintiff's trademark.

On applications for preliminary injunctions the court is not bound to decide doubtful and difficult questions of law or disputed questions of fact. . . . It has even been said that . . . should the court feel, from examination of the papers now before it on this motion, that plaintiff will ultimately prevail after trial of these issues, the fact that his right at this stage is clearly not beyond dispute is sufficient to deny the injunction *pendente lite*. Where the bill and answer in a suit present debatable questions, it is within the discretion of the court to refuse to grant a preliminary injunction on affidavits. If witnesses are not heard the trial court will left in the position of preferring one piece of paper to another.

Here the affidavits are clearly conflicting as to the factual background of statements contained in the trademark application filed by plaintiff. The equities of the bill and the countercharges of unclean hands are claimed and denied fully and explicitly under oath. This court is of the opinion that these conflicts can only be resolved by the taking of oral testimony with examination and cross-examination of witnesses. Furthermore, if the contents of the affidavits are to be accorded equal weight, as they must, then plaintiff has not made a sufficient substantial showing of its right to the drastic relief of a preliminary injunction because the validity of its trademark is in doubt.

A part of the statute involved here, 15 U.S.C. § 1114, also makes likelihood of confusion one of the bases of a cause of action under the statute. Plaintiff, in order to obtain its preliminary injunction, also must bear the burden of showing the likelihood of success of its claims of infringement and unfair competition on the trial on the merits. The Second Circuit has said, "The keystone in that portion of the law of unfair competition which relates to trademarks is the avoidance of confusion in the minds of the buying public." *Safeway Stores, Inc. v. Safeway Properties, Inc.*, 307 F.2d 495, 497 (2d Cir. 1962). Plaintiff, at this point, has not met its burden of showing the likelihood of confusion between its mark and that of the defendants.

Hershey Creamery Co. v. Hershey Chocolate Corp., 269 F. Supp. 45, 57-58 (S.D.N.Y. 1967)

(some citations and internal quotes omitted). The same analysis applies here, with one possible distinction: Considering defendants' irrefutable proofs regarding the history of the alleged trademarks here as well as plaintiff's own admissions regarding their dubious claim to ownership, this Court would have no difficulty deciding between "pieces of paper" as a basis for denying plaintiff's motion.

For the foregoing reasons, it is as a matter of law impossible for plaintiff to show the existence of secondary meaning in any of its claimed trademarks. Axiomatically, neither can it show a likelihood of confusion. Absent the same, plaintiff's motion should be denied.

CONCLUSION

For the foregoing reasons, defendants respectfully request that this Court deny plaintiff's motion for preliminary injunctive relief.

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Dated: June 13, 2014

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SOUTHERN DISTRICT OF NEW YORK**

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<p>HERITAGE OF PRIDE, INC.,</p> <p><i>Plaintiff,</i></p> <p>v.</p> <p>MATINEE NYC, INC., <i>et al.,</i></p> <p><i>Defendants.</i></p>	<p>DOCKET NO. 14-cv-4165 (CM)</p> <p>DECLARATION OF JUDAH V. ANTONIN, IN OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION</p>
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This declaration is respectfully submitted, under penalties of perjury, pursuant to 28 U.S.C. § 1746.

1. I am Judah V. Antonin, an attorney duly admitted to practice law in the State of New York. I am over the age of 18 and have personal knowledge of the facts set forth herein, which are known to me to be true and correct. I could and would testify competently about the matters set forth herein if called upon to do so.

2. I submit this Declaration on behalf of defendants in opposition to plaintiff's motion for a preliminary injunction.

3. A true and correct copy of correspondence from Kevin J. Farrelly, on behalf of Heritage of Pride, INC., (“HOP”) dated April 2, 2014 is attached hereto as Exhibit A.

4. A true and correct copy of my correspondence to Kevin J. Farrelly on behalf of Matinee NYC, INC., (“Matinee”) dated April 2, 2014 is attached hereto as Exhibit B.

5. A true and correct copy of correspondence from Kevin J. Farrelly, on behalf of HOP, dated April 29, 2014 is attached hereto as Exhibit C.

6. A true and correct copy of my correspondence to Kevin J. Farrelly, on behalf of Matinee dated May 2, 2014 is attached hereto as Exhibit D.


JUDAH V. ANTONIN

Dated: June 13, 2014



Law Offices of Kevin J. Farrelly

EXHIBIT A

270 Madison Avenue Suite 1500
New York, New York 10016
Telephone: (212) 684-8700
Facsimile: (212) 686-1706
Email: kjf@farrellylaw.com

April 2, 2014

VIA EMAIL: Jake@matineenyc.com

Mr. Jake Resnicow
Managing Partner
Matinee North America

Re: NYC Pride Trademark

Dear Mr. Resnicow:

It has been brought to my attention that your company has been using the mark "New York Pride" in association with the marketing or sale of your products and services. Please be advised that my client, Heritage of Pride, Inc. ("HOP"), currently has an application, serial number 76714596, pending before the United States Patent and Trademark Office (the "USPTO") to trademark the mark "NYC Pride." The application has been accepted without opposition by the USPTO and a registered trademark for "NYC Pride" should be issued very shortly. In addition, HOP has a common law trademark in "NYC Pride."

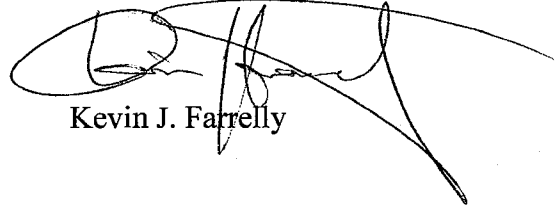
My client's federal registration of this trademark provides them with certain proprietary rights. They are entitled to restrict the use of the trademark or a confusingly similar mark (i.e. "New York Pride"), in association with confusingly similar products or services. HOP's trademark serves as an important and distinctive representation of its products and services as well as its goodwill.

Your unauthorized use of HOP's trademark amounts to an infringement of its trademark rights and, therefore, I request that you immediately cease and desist in any further use of "New York Pride" in association with the marketing, sale, distribution, or identification of your products or services. Your continued use of HOP's protected trademark may cause substantial harm to its business by facilitating the loss of its trademark's effectiveness.

Please provide to me, no later than five (5) days of the receipt of this letter, written assurances of your immediate actions taken to cease and desist the use of the trademark "NYC Pride," or any confusingly similar trademark.

If this matter cannot be amicably resolved, HOP will pursue all legal remedies as provided by state law and the U.S. Trademark Act, including reimbursement of its legal fees and expenses.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Kevin J. Farrelly", with a long horizontal flourish extending to the right.

Kevin J. Farrelly

cc: Mr. Chris Frederick

EXHIBIT B

JUDAH V ANTONIN, ESQ

Attorney

New York, New York

judeantonin@outlook.com

(310) 926-4670

VIA EMAIL

April 2, 2014

Kevin Farrelly, Esq.
270 Madison Avenue, Suite 1500
New York, New York 10016

Dear Mr. Farrelly:

My client, Mr. Resnicow is in receipt of your letter of April 2, 2014 regarding use of the term “NYC Pride” and what your letter deems to be a confusingly similar term, “New York Pride.”

While I can appreciate that you have an application pending before the United States Patent and Trademark Office (“USPTO”) and that you are confident you will be issued a registered trademark “shortly”, it is “shortly” (if that indeed ever occurs) and not **presently** that your rights to the mark including the right to claim possible infringement, in reference to USPTO protection would vest; allowing you **then and not now** to assert such rights as you attempted to do today.

The fact that US PTO accepted your trademark application without initial opposition does not grant you the immediate right to demand that my client or any entity for that matter cease and desist use of “NYC Pride” or other similar terms. Therefore we deem your request to cease and desist request as premature to say the

least. I ask that you refrain from making such requests until the USPTO grants you the right to assert rights attached to a registered trademark.

Indeed the widespread use of the term “NYC Pride” and “New York Pride” in conjunction with the many non Heritage of Pride events occurring throughout the City on the weekends suggest that your use of the terms would more likely be deemed “generic” by the USPTO.

A trademark is said to become *genericised* when it began as a distinctive product identifier but has changed in meaning to become generic. A trademark typically becomes "genericised" when the products or services with which it is associated have acquired substantial market dominance or mind share such that the primary meaning of the genericised trademark becomes the product or service itself **rather than an indication of source for the product or service.**

No one is under any reasonable belief that Heritage of Pride is the sole source of Pride events occurring in the City that weekend. It is patently false that your use over time established in the public minds that Heritage of Pride is the sole source of Pride events in New York. Therefore, my client is no way prepared to adhere to a “cease and desist” request under an assertion of a common law trademark right.

My client is prepared to revisit the matter if the USPTO grants registration as you anticipate they will. Until then, I respectfully request that you cease to assert rights that you do not, at present, possess.

Nothing contained herein is to be considered to be an admission or waiver of any legal rights and/or remedies at my client’s disposal; all of which are expressly reserved.

Sincerely yours,

Judah Antonin, Esq

EXHIBIT C

Dear Mr. Antonin:

So, on April 14, 2014, the USPTO granted the House of Pride (“HOP”) a registered trademark; giving them the highest level of legal protection.

As I said in my first correspondence to them, a grant of federal protection would trigger a reexamination of the issue and here is that reexamination.

Now that the HOP has a registered trademark, that covers the use of the term “NYC Pride” for commercial purposes, their use of the term to hold commercial, for profit events means they can restrict the use of that term from others who wish to use it for competing events. As you know, they have commercial events that are being held in direct competition to your events and it is there position that the use of the term “NYC Pride” or “New York Gay Pride” by Matinee would be infringe on their commercial rights.

Trademark law’s primary purpose is to prevent confusion as to the source of a good or service provided by the holder of the trademark. Prior to the grant of federal protection, there was no clearly defined source of the “service of Pride”. I argued that there were many entities that contributed to that service and HOP could not claim any particular distinction as the “official” pride.

Now they can and all those who wish to use the term or related terms have a duty to ensure that they are not causing confusion as to the source of services. As it stands now, the use of the gay pride terms by Matinee do not make that distinction. That is to be expected because Matinee created and published all advertisements prior to the grant of registered trademark.

Now that there is a grant, I must inform you that the HOP organization that intends to enforce their rights and that continued use of the terms in the present matter would

result in legal action against you.

Since the definition of infringement is the intent to cause consumer confusion, a disclaimer issued by Matinee that distinguishes your commercial activity from HOP's commercial activity in reference to the terms "NYC Pride" "New York Gay Pride" et al could be a demonstration of good faith and a concerted effort to avoid confusion. A disclaimer could come in the form of clear statement disavowing any intent to confuse anyone as to the source of the events and/or with a short statement of distinction on the advertisements (New York Pride* then a footnote referencing the asterisk stating no affiliation with HOP). The suggestion of a disclaimer is, in my judgment, the best if not only course of action that could be offered to prevent further escalation of the situation.

The only other course of action would be to stop use of the terms in any form.

The grant of this trademark is going to have deep implications in the future; particularly for those who wish to continue to have commercial operations associated with the largest gay pride celebration in the country if not the world. It is always my intent and my professional duty to ensure my client do what is in his best interest and to avoid any potential harm to his interests.

Best,

Kevin J Farrelly

May 2, 2014

Kevin J. Farrelly, Esq.

Dear Mr. Farrelly:

First, I want to yet again refine the issue at hand for my client.

It seems that your position is that the trademark issued to the House of Pride (“HOP”) is inviolate in and of itself. In your assessment of the decision in *Car-Freshner Corp. v. SC Johnson & Son, Inc.*, 70 F.3d 267 (2^d Cir. 1995) you note that court recognized that even if the mark is descriptive, it would be suggestive or fanciful if used in connection with the product or service covered by the mark. However it does not follow that any use of the mark so deemed would be a de facto violation of HOP’s trademark. The fact that a mark is fanciful when used in connection with the service that the mark covers is what defines a mark simply speaking. Not all use of fanciful and suggestive marks is a violation. Fair use is the issue in *Car-Freshner* and here in this matter and that presumes a valid mark (secondary meaning, fanciful suggestive etc.) Hence, the question isn’t the character of the mark but whether the use in question violates that mark’s purpose. The Court states in its decision in *Car-Freshner Corp.* that:

“...it should make no difference whether the plaintiff’s mark is to be classed on the descriptive tier of the trademark ladder (where protection is unavailable except on a showing of secondary meaning). What matters is whether the defendant is using the protected word or image

It is clear from this holding that a proffer of evidence in court that the term “New York Pride” has secondary meaning would have no bearing on the question of nominative fair use.

The question for my client is how the terms that comprise HOP’s trademark can be used in a manner that does not constitute infringement; e.g. constitutes a good faith attempt to avoid confusion as to the source of events. My client’s intent is not to suggest endorsement by or affiliation with HOP; especially in light of HOP’s commercial agreements with other event promoters. My client is prepared to amend the current use such that the use is primarily descriptive in nature; as mandated by the Court in *Car-Freshner*.

My client is willing to use a combination of terms to describe the nature of its events during this period that does not suggest that “NYC Pride” is its trademark. In so doing, my client will have to use the terms “gay” as the event is being held to celebrate gay culture and New York because that’s the location of the events. The term “Pride” will be used in a manner that is clearly distinguished from the commercial cooption of the term by HOP. “Pride” as used by Matinee USA will speak only to the inestimable value of the struggle that gay men and women endured to guarantee respect of their rights. That is its right as a company fully committed to the celebration of the gay and lesbian community.

However, while my client is prepared to amend its use, it has not escaped Matinee's notice that the very use of the terms you decry by Matinee is being perpetrated by many other entities. Such companies as Alegria, Offer NIssim New York and G Lounge are using the precise mark in a commercial manner with no pretense to nominative fair use.

Matinee cannot help but wonder why its use would be deemed particularly damaging to the value of HOP's mark. Matinee is in not the only entity holding events simultaneous to the events held by HOP. The advertisements of other parties make no distinction clarifying that they are not the "official" celebrations or even recognize that HOP has the right to deem its events official.

My client can only reasonably conclude that they are being singled out by HOP. The grounds on which you demand my client cease and desist are the same as the grounds that everyone else stands. If you can tolerate it in others, you can tolerate such use as conducted by Matinee. Therefore until my client has been assured by HOP that there is an equal and universal policing of the mark by HOP, my client will continue its present use of the mark.

You make reference to the remedy of injunctive relief. Any movant seeking injunctive relief must demonstrate that there is a danger of irreparable injury absent the injunction. I cannot see how Matinee's activities would represent irreparable harm absent an injunction against such activities, when those activities are in such wide use. You would have to show how Matinee is worse than anyone else such that they require an injunction or you would have to move for injunctive relief against every other entity.

Additionally the balance of equities would have to demonstrate that HOP's rights outweigh Matinee's rights regarding the use of these terms. You claim there is secondary meaning in the term "NYC Pride" but that term as used by HOP also lays claim to that's term primary meaning as a statement on the rights of a community that HOP cannot claim to represent in whole. To grant HOP a right to enjoin others from use of these terms would severely compromise the ability of any other entity to lay claim to terms they've earned the right to use.

Nothing herein is to be considered to be a waiver of any right or cause of action or an admission of any act constituting a cause of action; all rights being expressly reserved.

Sincerely,

Judah Antonin

On Behalf of Jacob Resnicow, Managing Partner, Matinee USA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Ronald D. Coleman (RC 3875)
Brian Farkas (BF 3418)
GOETZ FITZPATRICK LLP
One Penn Plaza—Suite 3100
New York, NY 10119
212-695-8100
rcoleman@goetzfitz.com
Attorneys for Defendants

<p>HERITAGE OF PRIDE, INC.,</p> <p><i>Plaintiff,</i></p> <p>v.</p> <p>MATINEE NYC, INC., <i>et al.</i>,</p> <p><i>Defendants.</i></p>	<p>DOCKET NO. 14-cv-4165 (CM)</p> <p>DECLARATION OF GRACE MEADOR IN OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION</p>
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This declaration is respectfully submitted, under penalties of perjury, pursuant to 28 U.S.C. § 1746.

1. I am Grace Meador, law clerk in the Law Office of Justin Sobodash. Mr. Sobodash previously represented defendants. I am over the age of 18 and have personal knowledge of the facts set forth herein, which are known to me to be true and correct. I could and would testify competently about the matters set forth herein if called upon to do so.

2. I submit this Declaration on behalf of defendants in opposition to plaintiff's motion for a preliminary injunction.

3. A true and correct copy of pages 21-22 of OutWeek Magazine Issue No. 1 dated June 26, 1989 is attached hereto as Exhibit E. I obtained it from the OutWeek Internet Archive website (<http://www.outweek.net/archive.html>) during a search on June 11, 2014.

4. A true and correct copy of page 1 of OutWeek Magazine Issue No. 1 dated June 26, 1989 is attached hereto as Exhibit F. I obtained it from the OutWeek Internet Archive website (<http://www.outweek.net/archive.html>) during a search on June 11, 2014.

5. A true and correct copy of page 22 of OutWeek Magazine Issue No. 104 dated June 26, 1991 is attached hereto as Exhibit G. I obtained it from the OutWeek Internet Archive website (<http://www.outweek.net/archive.html>) during a search on June 11, 2014.

6. A true and correct copy of page 57 of NoiZe Magazine (formerly Circuit Noize) Issue No. 36 dated Summer 2003 is attached hereto as Exhibit H. I obtained it from a PDF downloaded from the March 25, 2013 version of the NoiZeMag.com website visited through The Internet Archive (<http://web.archive.org/web/20130325131811/http://www.noizemag.com/issues.html>) during a search on June 10, 2014.

7. A true and correct copy of page 69 of NoiZe Magazine (formerly Circuit Noize) Issue No. 36 dated Summer 2003 is attached hereto as Exhibit I. I obtained it from a PDF downloaded from the March 25, 2013 version of the NoiZeMag.com website visited through The Internet Archive (<http://web.archive.org/web/20130325131811/http://www.noizemag.com/issues.html>) during a search on June 10, 2014.

8. A true and correct copy of pages 102-103 of NoiZe Magazine (formerly Circuit Noize) Issue No. 36 dated Summer 2003 is attached hereto as Exhibit J. I obtained it from a

PDF downloaded from the March 25, 2013 version of the NoiZeMag.com website visited through The Internet Archive (<http://web.archive.org/web/20130325131811/http://www.noizemag.com/issues.html>) during a search on June 10, 2014.

9. A true and correct copy of page 21 of NoiZe Magazine (formerly Circuit Noize) Issue No. 39 dated Spring 2004 is attached hereto as Exhibit K. I obtained it from a PDF downloaded from the March 25, 2013 version of the NoiZeMag.com website visited through The Internet Archive (<http://web.archive.org/web/20130325131811/http://www.noizemag.com/issues.html>) during a search on June 10, 2014.

10. A true and correct copy of pages 90-91 of NoiZe Magazine (formerly Circuit Noize) Issue No. 39 dated Spring 2004 is attached hereto as Exhibit L. I obtained it from a PDF downloaded from the March 25, 2013 version of the NoiZeMag.com website visited through The Internet Archive (<http://web.archive.org/web/20130325131811/http://www.noizemag.com/issues.html>) during a search on June 10, 2014.

11. A true and correct copy of page 21 of NoiZe Magazine (formerly Circuit Noize) Issue No. 40 dated Summer 2004 is attached hereto as Exhibit M. I obtained it from a PDF downloaded from the March 25, 2013 version of the NoiZeMag.com website visited through The Internet Archive (<http://web.archive.org/web/20130325131811/http://www.noizemag.com/issues.html>) during a search on June 10, 2014.

12. A true and correct copy of pages 84-85 of NoiZe Magazine (formerly Circuit Noize) Issue No. 40 dated Summer 2004 is attached hereto as Exhibit N. I obtained it from a PDF downloaded from the March 25, 2013 version of the NoiZeMag.com website visited through The Internet Archive (<http://web.archive.org/web/20130325131811/http://www.noizemag.com/issues.html>) during a search on June 10, 2014.

13. A true and correct copy of page 8 of NoiZe Magazine (formerly Circuit Noize) Issue No. 44 dated Summer 2005 is attached hereto as Exhibit O. I obtained it from a PDF downloaded from the March 25, 2013 version of the NoiZeMag.com website visited through The Internet Archive (<http://web.archive.org/web/20130325131811/http://www.noizemag.com/issues.html>) during a search on June 10, 2014.

14. A true and correct copy of page 86 of NoiZe Magazine (formerly Circuit Noize) Issue No. 44 dated Summer 2005 is attached hereto as Exhibit P. I obtained it from a PDF downloaded from the March 25, 2013 version of the NoiZeMag.com website visited through The Internet Archive (<http://web.archive.org/web/20130325131811/http://www.noizemag.com/issues.html>) during a search on June 10, 2014.

15. A true and correct copy of page 90 of NoiZe Magazine (formerly Circuit Noize) Issue No. 48 dated Summer 2006 is attached hereto as Exhibit Q. I obtained it from a PDF downloaded from the March 25, 2013 version of the NoiZeMag.com website visited through The Internet Archive

(<http://web.archive.org/web/20130325131811/http://www.noizemag.com/issues.html>) during a search on June 10, 2014.

16. A true and correct copy of page 7 of NoiZe Magazine (formerly Circuit Noize) Issue No. 52 dated Summer 2007 is attached hereto as Exhibit R. I obtained it from a PDF downloaded from the March 25, 2013 version of the NoiZeMag.com website visited through The Internet Archive
(<http://web.archive.org/web/20130325131811/http://www.noizemag.com/issues.html>) during a search on June 10, 2014.

17. A true and correct copy of page 88 of NoiZe Magazine (formerly Circuit Noize) Issue No. 52 dated Summer 2007 is attached hereto as Exhibit S. I obtained it from a PDF downloaded from the March 25, 2013 version of the NoiZeMag.com website visited through The Internet Archive
(<http://web.archive.org/web/20130325131811/http://www.noizemag.com/issues.html>) during a search on June 10, 2014.

18. A true and correct copy of page 73 of NoiZe Magazine (formerly Circuit Noize) Issue No. 56 dated Summer 2008 is attached hereto as Exhibit T. I obtained it from a PDF downloaded from the March 25, 2013 version of the NoiZeMag.com website visited through The Internet Archive
(<http://web.archive.org/web/20130325131811/http://www.noizemag.com/issues.html>) during a search on June 10, 2014.

19. A true and correct copy of page 5 of NoiZe Magazine (formerly Circuit Noize) Issue No. 56 dated Summer 2008 is attached hereto as Exhibit U. I obtained it from a PDF downloaded from the March 25, 2013 version of the NoiZeMag.com website visited through The

Internet

Archive

(<http://web.archive.org/web/20130325131811/http://www.noizemag.com/issues.html>) during a search on June 10, 2014.


Grace Meador

Dated: June 13, 2014

EXHIBIT

E

continued from page 28

GIF, namely 1972 or 1973, down to the outbreak of the AIDS epidemic. The organized movement became especially, and I know some of you won't agree, a movement by and for middle class, already privileged, white men I think what has happened as a result of the AIDS plague, and I think this is perhaps the only positive development during these terrible years, is that a different kind of gay person has now been brought into the movement.

If we are ever fortunate enough to see the day when the AIDS plague is behind us, I think we will also see the dawn of a new gay movement which in fact harkens back in significant ways to the original movement of the Gay Liberation Front. Because what we are seeing among the legions of the young who make up ACT UP is once again gay men and lesbian women acting in concert, welcoming and appreciating each others' differences, and also welcoming minority people. Beyond that change in personnel, what ACT UP has discovered in the process of struggle is the full extent of entrenched privilege which characterizes our society. They have seen it primarily in the way the hospitals are structured, in the way the FDA is structured, and by and for whom the federal government operates.

Because of these insights gathered during ACT UP's struggles, I think we may yet see the birth of a new gay movement which is once more radically oriented. That at least is my own personal hope, that GUP will once more return, if not in name than at least in principle. Therefore I would close with the additional hope that on this wonderful twentieth anniversary of Stonewall we attempt to rededicate ourselves to two principles.

First of all, to welcoming and appreciating diversity within the ranks of the organized movement, a diversity that once characterized that movement as its inception but which did not characterize it for a period of ten years. We need once more to welcome not only minorities, and for gay men and lesbian women to once more work together, but we need to appreciate and welcome into our ranks all minorities within our own extremely diverse communities, not excluding those heroic drug queens who

were on the streets for us 20 years ago. And secondly, once we have made significant room in our own ranks to represent the true diversity in our communities, I think it is then important to begin to reach out beyond our own movement in order to make links

and draw connections with other oppressed minorities within the country at large. Only that way, I believe, will we be able to reach the goal originally set for us by the GIF, namely the radical restructuring of our country as a whole. Thank you. ▼



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Your host Sai Acquista

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GALACTIC GAY PRIDE!
Chip Duckett presents
MARS NEEDS MEN
Sunday Parties For Men

Jan 2000 after gay men and women at Mars every Sunday. Doors open at 9:00 p.m. Gay Pride Sunday only (June 25) doors will open at 3:00 p.m. See the fireworks from our roof!

DANCING!
GO-GO BOYS! ENTERTAINERS!
FIVE FLOORS OF FUN — AND A ROOF!
AND ON GAY PRIDE SUNDAY, JUNE 25 WE'LL KEEP THE PARTY PUMPING INTO MONDAY, AS LONG AS YOU KEEP DANCING!

MARS
13th Street and the West Side Highway 691 6262
MARS IS LOCATED JUST A FEW BLOCKS NORTH OF CHRISTOPHER STREET AND THE PIER!

In honor of the twentieth anniversary of Stonewall, a portion of these proceeds will be donated to THE COMMUNITY HEALTH PROJECT, providing free or low cost AIDS counseling and treatment, and low-cost STD counseling and treatment.

EXHIBIT

F

Nov 1 June 26 1989

\$1.50

NEW YORK'S
LESBIAN
AND GAY
NEWS
MAGAZINE

OUT WEEK

COME OUT!!



STONE SWALL REVISITED

EXHIBIT

G



Cruise into NY Pride



Sail the Caribbean from NYC this Summer

You can have it all this summer with Atlantis' best all-gay cruise ever combined with the excitement of New York Gay Pride. Sailing the Caribbean on the spectacular 2,200 passenger Norwegian Dawn. Soak up the sun and kick your summer into high gear with top entertainment, amazing parties, fantastic activities, and the greatest boatload of cruise companions ever. Visiting Miami, Key West and two islands in the Bahamas before sailing into New York Harbor on Gay Pride Sunday!

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0316/031721-01

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New Carnival Pride from L.A.
October 19 - 26

Club Atlantis Vallarta Resort

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November 8 - 15



atlantisevents.com

EXHIBIT

H

NYC PRIDE
 2012



SUNDAY JUNE 24 2012
 11am - 5pm

DJ SCOTT JONES
 DJ WHITNEY DAY
 DJ DECLAN BENNETT

ABSOLUT VODKA RAGEOUS

THE UNCLE & AUNTIE
 & C O

DIRTY SUGAR PHOTOGRAPHY
 LYNSEY KASKOWSKI

GUMBO
 BOUTIQUE

ZICO

ESSENTIAL
 ARTS & CRAFTS

EXHIBIT I

SUNDAY
JUNE 29TH

POSH IS NYC

PRIDE

SEXY GO-GO BOYS
DJ DARREN 3PM-9PM
DJ JROC 9PM-4AM

HOLLY DAE **BOOTSIE LEFARIS** **SHEILA TACK**

NEVER A COVER • DRINK SPECIALS • SURPRISES
OPEN 3PM - 4AM | HAPPY HOUR 3PM-9PM

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EXHIBIT J

JOSH WOOD PRODUCTIONS PRESENTS

THE DAY PARTY

NYC PRIDE 2012 | SAT JUNE 23 3PM
11PM



MUSIC BY

GRAMMY NOMINATED REMIXER / PRODUCER / DJ

Dave Audé 

ANA PAULA 

AT

PIER 83

42 STREET
& WESTSIDE
HIGHWAY

Calvin Klein
underwear

SOCIÉTÉ
perrier

David Barton Gym

G-ville

Lords NEW YORK
AT NIGHT BY PRODUCTIONS

JOSH WOOD
PRODUCTIONS



PRODUCED BY
JOSH WOOD
JARED NEEDLE

TICKETS AT SHOWCLIX.COM/EVENT/THE DAY PARTY

EXHIBIT

K

//////// JOSH WOOD PRODUCTIONS PRESENTS \\\\\\\

HORSE MEAT DISCO

NYC PRIDE 2013 • FRI JUNE 28, 11 PM

HORSE MEAT DISCO

//////// (SEVERINO) \\\\\\\

+

OPENING SET

SEAN B

//// (SPANK DJ) \\\

/// HOSTED BY CASEY KENYON, OCCUPY THE DISCO
AND DANGEROUSLY ASIAN TAI CHI \\\



JOSH WOOD
PRODUCTIONS

cielo
CIELOCLUB.COM


CIELO

18 Little 12th Street

//////// \$30 Online Advance (on residentadvisor.net) • \$40 Door \\\\\\\

EXHIBIT

L

 LASREINAS PRESENTS

6th Annual

NYC PRIDE 2013

SUNDAY JUNE 23RD



Drink Specials 3pm- 6pm

BEER: \$6.00

Hennessy: \$10

Absolute: \$10

VIP Special Bottle Prices all night

Doors open 3pm

\$5 til 4pm/\$10 til 5pm

ROSEWOOD NIGHTCLUB

5 East 19th Street (& 5th Ave.)

[FACEBOOK.COM/LAREINAS2ENT](https://www.facebook.com/LAREINAS2ENT)

EXHIBIT

M

JARED NEEDLE & ELIAD COHEN PRESENT:



PAPA & FOREVER
THE SAILOR MAN
NYC PRIDE 2014

FRIDAY, JUNE 27 11PM - 6AM

SURI (PAPA RESIDENT SPAIN)

TOMER MAIZNER

(FOREVER TEL AVIV)

DAN SLATER (PAPA SYDNEY/BEYOND LONDON)



TICKETS: WWW.PAPAPARTYTICKETS.COM

311 W 57 ST (BETWEEN 8TH AND 9TH)



EXHIBIT

N

THIS ARTICLE WAS POSTED IN **THE SCENE**

Kick Off NYC Pride With GO! and Real L Word's Real Live Lesbians



Posted by Riese on June 10, 2011 at 6:00am PDT

Share this Post

9 Comments

Pride in New York City is so soon! And while it's easy to get depressed thinking about the Rodeo Discos of yore (you guys, Mason Dixon doesn't even exist anymore!), there is a bright sunshine on the horizon because our friends at GO! Magazine are throwing a kickass Pride Kickoff Party that you should go to. It's Pride! YAY!

What: GO! Magazine's Pride Kickoff Party

Where: District 35 Nightclub, 9 West 36th Street

When: Wednesday, June 15, 7 p.m.



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Real Person

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FEROSH PRESENTS

GENESIS

NEW YORK PRIDE 2013

TRACY YOUNG + TEDD PATTERSON

FRIDAY JUNE 28TH : IRVING PLAZA

BUY
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▶ Gay Pride 2006



NYC Pride 2006

EDGE is proud to be the #1 site for comprehensive coverage of Pride in our communities. The lineup for 2006 is just starting to come together - take a peek at this year's events. More on the way! [Go>](#)

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Thursday Jun 1

[The Gay Pride Collection: A Photographic Tribute](#)
at The LGBT Center, 208 W 13th Street

[NewFest 2006](#)

at New York City Locations

Saturday Jun 3

[Staten Island LGBT Pride Parade & Festival](#)

12:00pm at Ocean Breeze Fishing Pier / Midland Beach Picnic Area

[New Jersey Gay Men's Chorus "15 Years Young: An Anniversary Celebration"](#)

8:00pm at Middlesex County College Theater (Performing Arts Center)

[Gay Gotham Chorus Pride Concert "A Jubilant Song"](#)

8:30pm at Merkin Concert Hall

Sunday Jun 4

[15th Annual GLBTI Jersey Pride Celebration](#)

12:00pm at Atlantic Parks at 5th & Ocean Ave.

[Queens Pride](#)

12:00pm at Jackson Heights, Queens NY

Thursday Jun 8

[Youth Pride Chorus Concert](#)

7:00pm at The LGBT Center, 208 W 13th Street

Saturday Jun 10

[Brooklyn Pride](#)

11:00am at Prospect Park West @ 15th St, Brooklyn, NY

[BEAR MAXIMUM II Pride Dance](#)

8:00pm at The LGBT Center, 208 W. 13th Street

Sunday Jun 11

EXHIBIT

Q

RIC SENA PRESENTS

ALEGRIA

PRIDE 2008

IN THE MAIN BALLROOM

ROSABEL

DJS RALPH ROSARIO & ABEL

IN THE MARLIN ROOM

EDDIE ELIAS

IN THE BALCONY LOUNGE

DUDU MARQUEZ

(RIO DE JANEIRO)

PRODUCTION DESIGN BY RIC SENA
LIGHTS BY ROSS BERGER

WEBSTER HALL
125 EAST 11TH STREET, NYC
DOORS OPEN AT 11PM

ADVANCE TICKETS ARE \$90
TICKETS AVAILABLE AT OUR TICKET OUTLETS
UNIVERSAL CAFE, 140 EIGHTH AVE., NYC
WEAR AT OUT, 355 WEST 4TH ST, NYC
OR ONLINE AT

ALEGRIAEVENTS.COM

Saturday, June 28, 2008
New York City *Gay Pride Weekend*

RIC SENA PRESENTS



ALEGRIA PRIDE



SUNDAY, JUNE 29TH 2014

NYC PRIDE WEEKEND

MUSIC BY THE

ABEL RENATO CECIN (SOPRANO)

IN THE MARTIN ROOM MUSIC BY THE

DAN DARLINGTON & PETER NAPOLI

TICKETS: RENAISSANCE WHARF • 112 FIFTH AVE • PRODUCTIONS DESIGN BY RIC SENA
WEBSTER HALL • 125 EAST 111TH STREET • DOORS OPEN AT 11PM

ADVANCE TICKETS: AVE 500 (E) 7-16, 390 (S) 7-600, 300 (M) 7-
VIP TICKETS: AVE 500 (E) 7-16, 390 (S) 7-600, 300 (M) 7-

GENERAL ADMISSION AND VOUCHER IS AVAILABLE AT ALL TICKET CASSETTES
UNIVERSAL CREDIT: 100 FIFTH AVENUE, NYC

UNIVERSAL CREDIT: 70 NINTH AVENUE, NYC

OR ONLINE AT

ALEGRIAEVENTS.COM



EXHIBIT

R



ALEGRIA
PRIDE
2013

SUNDAY
JUNE 30TH
NYC PRIDE WEEKEND

EXHIBIT

S



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More drag queens, pop culture and nightlife than you can shake a wig at.



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RuPaul's Drag Race Show – NYC Pride 2013

July 18, 2013

Written by [Hollis Hollywood](#)

[Drag](#) [Live Performance](#) [Video](#)

LOGO TV, BRANSON VEGAS
A LARRY HODDGE PRESENT

RuPaul's DRAG RACE LOGO'S OFFICIAL PRIDE EVENT

HOSTED BY
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 **JWOWW**

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 DOMI BORE	 NICKY CHANTE	 MASHA LARON	 HOLLIS	 MICKIE BORECHELS	
 PAMELA DICK	 THE FIRE QUEEN	 SHANICE	 SYDNEY PAIGE		

TICKETS AVAILABLE AT [WWW.FVEVENTS.COM](#)

WORLD WONDER

LOGO TV

EXHIBIT

T

Online Advance Ticket Sales at
BOXOFFTICKETS.com or call **800-494-8497**

In Person at:

LOVERGIRL EVERY SAT NIGHT at

CLUB CACHE 221 West 46th St. (bet. 7th/8th Aves.)

MONIQUE of Exclusive Ent. 174 West St. Nicholas

(on corner of 119th Street at Elan's Salon)

Thurs & Fri 11am-6pm | Sat 9am - 1pm 646.342.1320

Ticket Representatives and Information

NYC Monique: 646.342.1320 | **Sofina:** 917.653.3052

Kate: 917.309.8124 | **Regina:** 917.913.1746

NJ Toya: 718.772.8032

BKLYN Debbie Brennan: 917.881.6259

BRONX Vera: 917.816.2084 | **Angelique:** 917.560.0588

Malcolm: 718.708.1414 **BALT Pooch:** 443.220.4671

onyx-entertainment.com | DC/MD Karen: 202.460.9792

Dionne: 202.422.0435 | **Mona:** 571.201.1502

India: 301.412.2767 | **blushdc.com**

VA Jetaun: 804.437.4460

Websites:

exclusiveallhairinc@myspace.com

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CHERI DENNIS



**LOVERGIRLNYC &
EXCLUSIVE ENT.
Present**

June 27-29



EXHIBIT

U

JOSH WOOD PRODUCTIONS
ROB FERNANDEZ
TOMMY MARINELLI
JAKE RESNOCOW
PRESENT



MATINÉE

**NEW YORK
PRIDE 2010**

**GOVERNOR'S ISLAND
SATURDAY JUNE 26
6PM-12AM**

MATINEENEWYORK.COM



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Brian Farkas (BF 3418)
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Attorneys for Defendants

<p>HERITAGE OF PRIDE, INC.,</p> <p><i>Plaintiff,</i></p> <p>v.</p> <p>MATINEE NYC, INC., <i>et al.</i>,</p> <p><i>Defendants.</i></p>	<p>DOCKET NO. 14-cv-4165 (CM)</p> <p>DECLARATION OF JACOB RESNICOW, IN OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION</p>
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This declaration is respectfully submitted, under penalties of perjury, pursuant to 28 U.S.C. § 1746.

1. I am Jacob Resnicow, the Chief Executive Officer of defendant Matinee NYC Inc. ("Matinee"). I am over the age of 18 and have personal knowledge of the facts set forth herein, which are known to me to be true and correct. I could and would testify competently about the matters set forth herein if called upon to do so.

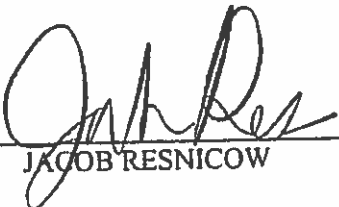
2. I submit this Declaration on behalf of defendants in opposition to plaintiff's motion for a preliminary injunction.

3. A true and correct copy of a print advertisement and flyer circulated by defendant Matinee prior to Matinee's 2010 New York Pride to promote Matinee's 2010 NYC Pride event is attached hereto as Exhibit AA.

4. A true and correct copy of a print advertisements and flyers circulated by defendant Matinee prior to Matinee's 2012 New York Pride to promote Matinee's 2012 NYC Pride event is attached hereto as Exhibit BB.

5. A true and correct copy of a print advertisement and flyer circulated by defendant Matinee prior to Matinee's 2013 New York Pride to promote Matinee's 2013 NYC Pride event is attached hereto as Exhibit CC.

6. On March, 2012 I sent plaintiff's principal Chris Frederick an email in which I confirmed to him that Matinee had competing NYC Pride events since 2010. A true and correct copy of an email chain evidencing this communication is attached as Exhibit DD.



JACOB RESNICOW

Dated: June 13, 2014



GET READY!

EXHIBIT BB



MATINÉE
NEW YORK PRIDE
THE WATERPARK FESTIVAL!
SATURDAY JUNE 23

MATINÉE

NEW YORK PRIDE 2012

THE WATERPARK FESTIVAL!
SATURDAY JUNE 23
3PM-12AM

MATINEENYC.COM

JAKE RESNICOW, PATRICK CROUCH, TOMMY MARINELLI & DANCE HERE NOW PRESENT

MATINÉE

NEW YORK PRIDE **SATURDAY, JUNE 29, 2013 4PM - 12AM**

LYDIA SANZ

MATINÉE SPAIN ALL-STAR

JONATHAN PETERS

SPECIAL VOCAL ANTHEM SET

HONEY DIJON + TOM PETERS

NYC

BERLIN

2ND STAGE - JUST ADDED!

CHIBEL - CARLOS LARRAQUE - DJ ROBOT - EDDIE RAEZ - JAMES ANTHONY
JUSTIN BAWSON - MIKEY FUENTES - OBRA PRIMITIVA - WHITNEY DAY

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WWW.MATINEEGROUP.COM

PUMPI GROUPS INC. (D) KE





mail.google.com



Matinee NYC <jake@matineenyc.com>

Re: Heritage of Pride + MATINEE

Chris Frederick <chrisf@nycpride.org>

Fri, Mar 16, 2012 at 2:20 PM

To: Jake Resnicow <jake@matineenyc.com>

We made roughly a \$30,000 net profit after expenses. That goes back into the general fund to improve on the events for this next year. We give roughly 10% of profit, not net profit, to other LGBT non profit organisations. The issue is many people don't think of OURSELVES as a community organization. Many people don't consider the level of empowerment and reach we provide organizations through our events. Many people don't think about their first time and that feeling they had when they realized they were part of a larger community. This is not just some party. This is not all fun and games. Just because we put some DJs on a stage doesn't mean there isn't a need for our continued mission, to provide a voice for millions, to exist.

On Fri, Mar 16, 2012 at 1:58 PM, Jake Resnicow <jake@matineenyc.com> wrote:
Chris,

You're not wrong. We had an event in 2010 on Saturday of Pride that drew thousands of people and drew tremendous press, which was BEFORE your Rooftop party ever existed. Did you not hear about it?

I would love to collaborate on an event with you. Can you send me some information on where the proceeds go, percentages of revenue that go back to the community, and what we would need to do to make that happen?

There have been parties in New York City for years, but I'm not sure why you haven't been able to collaborate, but we're open to it.

Best,
Jake

On Fri, Mar 16, 2012 at 1:39 PM, Chris Frederick <chrisf@nycpride.org> wrote:
Jake,

I was simply calling out the fact that your event along with MANY Pride events during the weekend essentially use what we produce as a way to profit without ANY SORT of compensation to the non-profit that created the weekend. It would be different if there was some sort of event where we actually co-produced, similar to what the Task Force does in Miami but that's not the case. Everyone was actually shocked that all of these events don't support Pride whatsoever.

Secondly, the Rooftop event is not new Jake. This event happened last year. You knew about it so don't act as though this is news to you. To my knowledge Matinee did not have a Pride event last year. Am I wrong? Also, surprisingly after expenses were included the Rooftop event actually made the organization MORE money than the Pier Dance.

I am not trying to create barriers and conflict between us but it needs to be acknowledged that there is an overall lack of financial support from all of these events which piggyback on NYC Pride.

Chris

On Fri, Mar 16, 2012 at 1:15 PM, Jake Resnicow <jake@matineenyc.com> wrote:
Dear Chris,

I don't appreciate your using a post on Facebook to throw shade at another event.

