

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE :
PREVENTION OF CRUELTY TO :
ANIMALS, et al., :

Plaintiffs, :

v. :

Case No. 03-2006 (EGS/JMF)

RINGLING BROS. AND BARNUM & :
BAILEY CIRCUS, et al., :

Defendants. :

EXHIBIT 36

TO

REPLY IN SUPPORT OF FEI'S MOTION TO COMPEL
DISCOVERY FROM PLAINTIFF TOM RIDER AND
FOR SANCTIONS, INCLUDING DISMISSAL

LAW OFFICES
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1666 CONNECTICUT AVENUE, N.W., FIFTH FLOOR
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ELLIOTT C. LICHTMAN
MICHAEL B. TRISTER
GAIL E. ROSS
B. HOLLY SCHADLER

KAREN A. POST
LILAH S. ROSENBLUM^Δ
ALLEN H. MATTISON^Δ
^Δ ADMITTED IN MARYLAND ONLY

LAURENCE E. GOLD
Of Counsel

April 24, 2007

By Hand Delivery

George A. Gasper
Fulbright & Jaworski, L.L.P.
801 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Re: *ASPCA et al. v. Ringling Bros. and Barnum & Bailey Circus*, No. 03-2006

Dear Mr. Gasper:

This is in response to your April 16, 2007 letter. Before responding to the specific issues you have raised, I must object to your characterization of the Wildlife Advocacy Project (“WAP”) as “stalling” and failing to comply with a “straightforward subpoena.” In reality, WAP has now made strenuous, good-faith efforts to comply with two highly invasive subpoenas demanding the financial and other sensitive details concerning the operations of a small non-profit organization. With regard to the latest subpoena, WAP could have reasonably objected to any production based on the grounds set forth in my February 15, 2007 letter. Instead, in order to avoid burdening the Court with unnecessary litigation, we have provided any records that might conceivably bear on the issues in the lawsuit, subject to only the most minimal redactions to safeguard the identities of WAP contributors and supporters.

WAP’s legitimate First Amendment interest in protecting such information is now even more apparent in light of FEI’s proposed “RICO” counterclaim against the organization. Indeed, your April 16 letter makes abundantly clear that most, if not all, of the information now being sought relates to your proposed punitive counterclaim against the organization, rather than to any of the existing issues in the case. Nonetheless, WAP will continue to address all issues by providing any non-privileged information that could possibly be construed as following within the subpoena and bearing on the issues presently in the litigation. Along these lines, without waiving any basis for objection should you file another motion to compel, we respond to your specific issues as follows:

1. We reasonably construed your February 20 letter – and specifically your statement (at 2) that “FEI is more than willing to limit this subpoena in a manner that is consistent with what it has done in the past” – as restricting the subject matter of the subpoena in its entirety to any

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topics that are actually relevant to this litigation, i.e., as relating to Tom Rider, defendants, the elephants at Ringling Bros. circus, this litigation, or WAP's public education campaign concerning elephants in circuses. Accordingly, we are surprised by your suggestion that the subpoena – and particularly request No. 6 – has not been so limited but, rather, that you are continuing to seek information that does not relate to any of these topics and, instead, concerns other, unrelated WAP projects and activities. In any case, such other WAP projects and activities are obviously irrelevant to this dispute, and we will not produce documents regarding them.

2. Tom Rider does not communicate with WAP by e-mail. As you have previously been informed, Leslie Mink assists WAP with bookkeeping activities. She also occasionally disseminates articles and other media events concerning Mr. Rider. While we do not agree that documents reflecting this activity are properly subject to the subpoena, in another effort to avoid an unnecessary discovery dispute, we have searched for and are producing such materials. We also realized that an additional WAP fundraising letter that was sent by e-mail contains one reference to Mr. Rider's work, the pertinent portion of which we are producing (we are deleting the identities of two individuals on First Amendment association grounds -- neither of these individuals works for WAP or Meyer Glitzenstein & Crystal or has any other connection to this lawsuit; the remaining portions of the letter involve other actual or potential WAP projects and activities, and hence are non-responsive). WAP has located no other e-mails that are even arguably responsive to the subpoena.

3. Other than the materials specifically marked as deleted, we have produced all documents "as they are kept in the usual course of business" conducted by WAP. Fed. R. Civ. P. 45(d)(1)(A).

4. As would seem evident from a document captioned "Programmatic Grant Proposal," the non-responsive portions involve other potential projects or activities of WAP (some of which the organization is now pursuing) that have nothing whatsoever to do with this case.

5. WAP has produced all receipts that it has received from Tom Rider or that it has paid on Tom Rider's behalf. We are enclosing a few additional documents concerning a hotel reservation that was made for Mr. Rider in connection with his public education campaign.

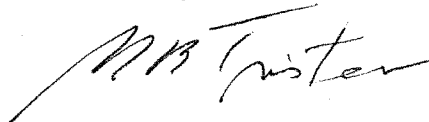
6. WAP obtained those two documents after the response was provided to the first subpoena. We have not withheld any documents in response to the first subpoena that were not previously disclosed to FEI.

7. Our justification for withholding the identities of individual contributors has previously been detailed in prior correspondence with you, as well as in our opposition to your pending motion to compel. As noted above, if anything, WAP now has an even more compelling basis for withholding such information because of our grave concern that you will seek to join

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such individuals to your baseless "RICO" counterclaim, or to otherwise seek to deter such individuals from supporting WAP's work on behalf of the Ringling Bros.' elephants. With regard to the duplicative financial documents (i.e., monthly profit and loss statements, monthly bank statements, and cell phone billing records), we have previously described such materials to you and FEI's prior counsel in detail, and have also explained to the Court why it would be burdensome to produce such materials, while providing nothing of substance beyond what has been provided to FEI. As for the cell phone bills, we have not previously construed the subpoena as seeking every phone number ever called by Tom Rider – and particularly reflecting calls "to the media," as you specifically request (at 3) – but if the subpoena encompasses such information, it is being withheld as both irrelevant and a violation of WAP's First Amendment rights of speech and association. It will be impossible for Mr. Rider effectively to pursue the public education campaign which he is pursuing with WAP if individuals he contacts in confidence – including representatives of the media and potential donors to the public education campaign – know that their phone numbers will be made available to FEI.

Sincerely,

A handwritten signature in black ink, appearing to read "M B Trister". The signature is written in a cursive, somewhat stylized font.

Michael B. Trister



Reservation Confirmed
 Confirmation Number: 73298569

Thank you. Your room reservation has been confirmed. Your business is vitally important to us, and we are dedicated to making you our repeat customer. Please save this page and confirmation number for your records. If you need to change or cancel your reservation, please call 1-800-800-8000.

Reservation Details

PLEASE DO NOT RESPOND TO THIS EMAIL

Room Description	Arrival Date	Departure Date	# Rooms	Room Occupancy (Adults / 12 & under)
NS 1D	10OCT06	14Oct06	1	1/0/0



[Map It](#)
[Hotel Details](#)



MTL WAS Washington Downtown D
 501 New York Ave. N.E. 1-95 Exit 19B on
 Rt 50
 Washington, DC 20002-7019
 202-543-7400

GUARANTEE METHOD:
 CC

CANCELLATION POLICY:
 4 PM

GUEST INFORMATION

First Name: Tom
 Last Name: Rider
 Address: 1601 CONNECTICUT AV NW , WASHINGTON,DC,20009,US
 Home Telephone: 2025885206
 Email: LESLIEMINK@MEYERGLITZ.COM

TOTAL ROOM RATE: \$ 323.96 America, Us Dollar (Taxes are not included)

BEST AVAILABLE RATE ; QUALITY AND COMFORT YOU CAN RELY ON

THANK YOU FOR CHOOSING SUPER 8

Other charges may apply for local amenities like safe warranties and telephone access. Please check with the property for further details.

PLEASE DO NOT RESPOND TO THIS EMAIL

If you need to change or cancel your reservation, please call 1-800-800-8000.

Confirmation Number: 73298569

Comments: (Extra persons may incur additional charges at time of check in. Please contact the property directly for any additional charges).
RESENT-ADD CC

As a valued customer, we would like to continue to let you know of special offers and deals that we believe would be of interest to you. Email has fast become the preferred channel for consumers to receive new information on particular subjects of interest. Instead of spending time and effort searching for the best hotel rates or travel tips, we will bring this valuable information directly to your inbox.

We will be sending you a follow-up-email to welcome you, and provide you with the opportunity to opt out of receiving future emails. An opt-out link will always be included in each email that we send to you, so you can change your mind at any future time.

If you do not want to receive occasional email updates please visit our [Privacy Center](#).



See you along the way®

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[Map It](#)
[Hotel Details](#)



MTL WAS Washington Downtown D
501 New York Ave. N.E. I-95 Exit 19B on
Rt 50
Washington, DC 20002-7019
202-543-7400

GUARANTEE METHOD:
4P

CANCELLATION POLICY:
4 PM

GUEST INFORMATION

First Name: Tom
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We will be sending you a follow-up-email to welcome you, and provide you with the opportunity to opt out of receiving future emails. An opt-out link will always be included in each email that we send to you, so you can change your mind at any future time.

If you do not want to receive occasional email updates please visit our [Privacy Center](#).

Leslie Mink

From: room.reservations@cendant.com
Sent: Monday, September 11, 2006 3:45 PM
To: Leslie Mink
Subject: Your Hotel Reservation Confirmation

**Cancellation Details**

Your reservation has been canceled.

Guest Name	Tom Rider
Address	1601 CONNECTICUT AVENUE, NW, # , WASHINGTON,DC,20009,US
Cancellation Number	89866391
Reservation Office	1-800-DAYS-INN (800-329-7466)
Property	INN WAS Connecticut Ave
Property Address	4400 Connecticut Ave 4 Miles South Of I-495 Ex 33, Washington, DC 20008,
Property Phone Number	202-244-5600
Arrival Date	26SEP06

Thank you for making your reservation with Days Inn.
Save this page and your cancellation number for your records.

For future reservation needs, please call 1-800-DAYS-INN (800-329-7466).