

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE	:	
PREVENTION OF CRUELTY TO	:	
ANIMALS, <u>et al.</u> ,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Case No. 1:03-CV-02006 (EGS/JMF)
	:	
FELD ENTERTAINMENT, INC.,	:	
	:	
	:	
Defendant.	:	
_____	:	

EXHIBIT 6

TO

DEFENDANT’S RESPONSE IN OPPOSITION TO
MOTION FOR CLARIFICATION OF COURT’S ORDER
CONCERNING THE CLOSE OF FACT DISCOVERY

Meyer Glitzenstein & Crystal
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January 29, 2008

BY ELECTRONIC MAIL AND HAND DELIVERY

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

Re: January 23, 2008 Subpoena to Meyer Glitzenstein & Crystal

Dear Mr. Gasper:

We have received the subpoena you issued to Meyer Glitzenstein & Crystal (MGC) on January 23, 2008, demanding that five business days later MGC make available for your physical inspection our computers and various documents. Pursuant to Fed. R. Civ. P. 45(c)(2)(B), I am writing to object to the subpoena for several reasons. First and foremost, the subpoena imposes an undue burden on MGC, in significant part because it demands that the law firm respond to an invasive subpoena, for materials you already have largely obtained from other parties, on the last day of discovery in APSCA v. Ringling Brothers, No. 03-2006. While that is undoubtedly your purpose in seeking such information from plaintiffs' law firm at this time, MGC need not respond to the subpoena in light of this "undue burden." Linder v. Calero-Portocarrero, 183 F.R.D. 314, 316 (D.D.C. 1998).

Indeed, especially because complete and accurate copies of most of the sought-after materials have already been provided to you by other parties or entities, see id. at 320 (rejecting enforcement of subpoena that sought "cumulative or duplicative" materials of that which had already been produced), your subpoena to the law firm representing the plaintiffs in ASPCA appears designed simply to harass MGC as it endeavors to complete its discovery obligations on behalf of plaintiffs within the time period mandated by the Court. This is precisely the kind of "relentless" effort to "sidetrack" plaintiffs' pursuit of this litigation for which Judge Sullivan has



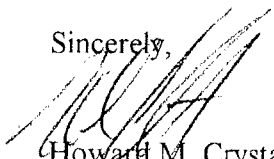
previously found it necessary to admonish Feld Entertainment, Inc. (FEI) in ASPCA. DE 176 at 6, 8.¹

In addition, especially with regard to the few items covered by the subpoena that you have not previously obtained, such materials have, at best, marginal relevance to any issue in this case while they are extremely burdensome to produce. For example, "Federal Express Packing Slips" and "receipts reflecting wire transfers" (items 4 and 5) reflect merely a mode of transmission of funding you have already been apprised of through extensive documentation. At the same time, searching for and producing such materials will take considerable time and effort.

Under these circumstances, MGC could legitimately refuse to comply with this eleventh hour, burdensome subpoena in its entirety. Nonetheless, although the prospect of avoiding further litigation would appear minimal, see DE 176 at 8 ("Through its numerous discovery-related motions, defendant has shown that its efforts to obtain information to impugn plaintiff Tom Rider and learn every detail of the media and litigation strategies of its opponents are relentless"), in an effort to avoid further unnecessary litigation MGC will nonetheless endeavor to provide a substantive response to each of the items you request as soon as it is physically able to do so. Accordingly, by Friday, February 8, 2008, MGC will provide you with a further response to the subpoena advising you as to what materials the Firm will make available and for what materials, if any, it is claiming a specific privilege. Given the nature of the materials you have requested and the other obligations imposed on MGC by the litigation, this is the earliest possible date by which we can search for the materials you have requested and provide a more specific response.

Please feel free to contact me should you have any further questions at this time.

Sincerely,



Howard M. Crystal
Managing Partner

¹ Indeed, as with much of the other discovery FEI is now pursuing, the subpoena directed at plaintiffs' counsel relates to FEI's RICO case, even though Judge Sullivan has ordered that all discovery be stayed in that case, precisely because it would be "unduly burdensome to plaintiffs." DE 176 at 6.

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February 8, 2008

BY HAND DELIVERY

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

Re: January 23, 2008 Subpoena to Meyer Glitzenstein & Crystal

Dear Mr. Gasper:

I am writing to follow-up on my January 29, 2008 letter and advise you of the documents we are providing in response to your subpoena on behalf of Feld Entertainment, Inc. (FEI) to Meyer Glitzenstein & Crystal (MGC). As you know, MGC has objected to (and continues to object to) the subpoena in its entirety on the grounds that it is clearly designed to simply harass MGC while it is pursuing plaintiffs' claims in ASPCA v. Ringling Brothers, No. 03-2006. In addition, the subpoena primarily seeks materials that have already been made available to you by plaintiffs or other parties and, as to the few remaining materials, the subpoena demands the production of documents that have no discernible relevance to any of the issues in the case, especially in light of what has already been produced to you.

Nonetheless, while MGC could reasonably refuse to comply with the subpoena – which, once again, was served only five business days before the discovery cutoff date – in an effort to avoid burdening the Court with still another of FEI's purported "discovery disputes" concerning documents relating to Tom Rider's activities, MGC has searched for responsive documents and hereby responds to each of the items in the subpoena as follows:



1. All original copies of any and all IRS Forms 1099 issued to Tom Rider by WAP or MGC

We are uncertain of what an “original copy” of these forms means since the originals must be (and have been) filed with the Internal Revenue Service. In any event, you have already received in response to prior discovery requests true and accurate copies of all Form 1099s issued to Tom Rider by the Wildlife Advocacy Project (WAP) and/or MGC. Judge Sullivan has also already made clear that discovery in this case need not and should not entail the “duplicative” production of “what has already been produced.” DE 178 at 3. Nonetheless, as a courtesy, we are providing you with another set of true and accurate copies of all Form 1099s for Tom Rider that are in MGC’s possession. The Firm has no other 1099s relating to Tom Rider.

2. All original copies of any and all letters from WAP to Tom Rider

You have already received true and accurate copies of all letters in MGC’s possession from WAP to Tom Rider, and hence, once again, you are demanding the production of duplicative materials that could be withheld on that basis under Judge Sullivan’s rulings.

In any event, we are uncertain what you mean by “original copies” – since a “copy” is, by definition, not an “original” – but assuming you mean the actual letters sent to Mr. Rider bearing original signatures, to avoid another unnecessary discovery dispute, we are enclosing true and accurate copies of all such letters in MGC’s possession. Please note, however, that several of these letters bear on the back of them Mr. Rider’s notes regarding media strategy for his public education campaign. We are not producing these notes, pursuant to Judge Sullivan’s rulings that such materials are irrelevant. In addition, they are privileged First Amendment materials.

While we believe this should be more than sufficient, if you have some valid basis for needing to physically inspect these documents, we are also willing to arrange for a mutually convenient time for such an inspection to occur. However, if, as we assume, your request for a physical inspection is designed merely for harassment purposes – *i.e.*, tying up our office time and personnel while we are attempting to prosecute plaintiffs’ claims against FEI – we will object to such a physical inspection on that basis, as well as your violation of the letter and spirit of Judge Sullivan’s discovery rulings by seeking repeated access to the same materials.

3. The electronic copies (together with any and all existing metadata) of any and all letters from WAP to Tom Rider. Such copies should be produced for inspection on any and all computer(s) and other electronic media on which they have been stored, kept, and/or otherwise saved

Once again, this request simply seeks duplicative versions of materials that have already been produced to you. In any event, we will not make any of our computers available for your inspection. To do so would be extraordinarily burdensome and disruptive of our office operations and would impair our ability to effectively pursue plaintiffs’ claims.

Moreover, given FEI's long and proven track record of spying on its perceived adversaries, infiltrating their operations, and engaging in other such improper behavior, it is reasonable for us to assume that FEI's real purpose in seeking access to our computers is to engage in just such conduct in this case (especially since you have articulated no legitimate reason for gaining such access).

4. All Federal Express Packing Slips reflecting shipments to or from Tom Rider

As previously articulated, we believe that such materials are irrelevant to any of the claims or defenses in this case. Nonetheless, to avoid another discovery dispute, we are providing you with copies of all Federal Express Packing Slips in our possession that fall within your request. For two reasons, we are redacting street addresses and phone numbers from these documents, while including the cities and states to which they have been sent.

First, you have advised the Court that your principal reason for seeking these documents is to ascertain whether Tom Rider really travels around the country while he pursues his public education campaign. See Transcript of January 8, 2008 Status Hearing, at 15 ("Is it true that Mr. Rider is a man who lives in a van and travels the United States arguing the welfare of the Asian elephants, or is he somebody who basically spends his time in one place? The Federal Express envelopes would show that."). Accordingly, the street addresses are irrelevant to your stated justification for obtaining the documents, which reflect that Mr. Rider has in fact traveled to at least 47 different cities in at least 24 states while he has conducted his public education campaign on behalf of Asian elephants.¹

Second, given FEI's well-documented tactics in dealing with its perceived adversaries, we believe that providing FEI with street addresses in the cities to which Mr. Rider travels would potentially expose Mr. Rider to harassment, surveillance, and possibly worse. At minimum, FEI could use such information to disrupt Mr. Rider's public education campaign. Accordingly, since the information is entirely irrelevant to your stated purpose in obtaining the Federal Express

¹ The documents reflect that Mr. Rider has in recent years traveled to at least the following: Acton, California; Albuquerque, New Mexico; Atlanta, Georgia; Bell, California; Braintree, Massachusetts; Charleston, South Carolina; Charlotte, North Carolina; Chicago, Illinois; Colville, Ohio; El Monte, California; Eustis, Florida; Denver, Colorado; El Paso, Texas; Gilroy, California; Greenville, South Carolina; Gulfport, Mississippi; Hollywood, California; Homasassa Springs, Florida; Inglis, Florida; Lancaster, California; Las Vegas, Nevada; Lecanto, Florida; Little Rock, Arkansas; Malibu, California; Mobile, Alabama; Moline, Illinois; Norcross, Georgia; Ocala, Florida; Olympia, Washington; Omaha, Nebraska; Oxnard, California; Parkersburg, West Virginia; Petersburg, Virginia; Phoenix, Arizona; Raymond, New Hampshire; Redwood City, California; San Marcos, California; Sioux City, Iowa; Springfield, Oregon; Tallahassee, Florida; Tampa, Florida; Valdosta, Georgia; Venice, California; Ventura, California; Washington, Illinois; Worcester, Massachusetts; and York, Pennsylvania.

labels, but would needlessly place Mr. Rider at considerable risk, we are redacting this information.

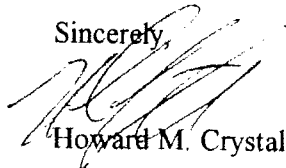
5. All receipts reflecting wire transfers of money provided to or for Tom Rider by WAP or MGC

MGC has located one such document. A complete and accurate copy of the document in our possession is being provided to you.

* * *

Since we are providing you with all of the documents that could conceivably bear on the arguments for which you have claimed you need these materials, the enclosed production fulfills any obligations MGC has to comply with the January 23, 2008 subpoena. If there are any remaining issues - such as a legitimate need to inspect original documents - please let us know. Pursuant to Federal Rule 37, we assume you will raise any outstanding issues with MGC before you file any motion with the Court.

Sincerely,



Howard M. Crystal

FULBRIGHT & JAWORSKI L.L.P.

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February 12, 2008

VIA ELECTRONIC AND FIRST CLASS MAIL

Howard Crystal
Meyer Glitzenstein & Crystal
1601 Connecticut Ave., N.W.
Suite 700
Washington, D.C. 20009

Re: ASPCA v. Feld Entertainment, Inc., Civil Action No. 1:03-cv-2006

Dear Mr. Crystal:

Pursuant to Fed. R. Civ. P. 45(c)(2)(B), please be advised that FEI intends to file a motion to compel Meyer Glitzenstein & Crystal's ("MGC's") compliance with the subpoena issued on January 23, 2008. Your needlessly inflammatory letter dated February 8, 2008, in which you baselessly accuse FEI of "harass[ing]" or "surveill[ing]" Tom Rider, "and possibly worse," clearly demonstrates that MGC has no intention of complying with the subpoena or conferring about the issues in good-faith. Nonetheless, as far as we can tell, there is no public education campaign to "disrupt" even if your ridiculous allegations were true, which they are not. In any event, as you are aware, the Court issued an Order earlier today relieving the parties of our meet and confer obligations and FEI will be moving to compel on or before February 15, 2008.

Sincerely,



George A. Gasper

Meyer Glitzenstein & Crystal

1601 Connecticut Avenue, N.W.

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February 14, 2008

BY ELECTRONIC AND U.S. MAIL

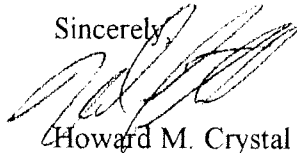
George A. Gasper
Fulbright & Jaworski, L.L.P.
801 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Re: January 23, 2008 Subpoena to Meyer Glitzenstein & Crystal

Dear Mr. Gasper:

I am writing to briefly respond to your February 12, 2008 letter asserting that Meyer Glitzenstein & Crystal (MGC) "has no intention of complying with the subpoena or conferring about the issues in good-faith." As explained in my February 8, 2008 letter, MGC has in fact provided you with the documents responsive to the subpoena, and thus we are confused by your assertion that MGC has not complied. We have not provided you with (a) access to MGC computers; (b) the street addresses or phone numbers on the Federal Express labels; or (c) the originals of any physical document (true and accurate copies of which we did provide to you). With respect to (c), although you have still not articulated any reason for physically inspecting the originals, in the interests of avoiding still another unnecessary discovery dispute, we are willing to make the originals you requested available for your physical inspection. Please contact me if you wish to arrange for a time to conduct that inspection. If you do not do so, you should refrain from representing to the Court that MGC refused to accommodate your request for a physical inspection of original documents. Moreover, if your motion to compel will address any other issues, we would appreciate the opportunity to hear your concerns before you burden the Court with another motion to compel against a non-party to this litigation.

Sincerely,



Howard M. Crystal



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February 14, 2008

VIA ELECTRONIC MAIL

Howard Crystal
Meyer Glitzenstein & Crystal
1601 Connecticut Ave., N.W.
Suite 700
Washington, D.C. 20009

Re: ASPCA v. Feld Entertainment, Inc., Civil Action No. 1:03-cv-2006

Dear Mr. Crystal:

Pursuant to your letter dated today, I will plan to inspect the original letters to Rider and the original 1099's at 10:00 a.m. or 2:00 p.m. on Thursday, February 21st or Friday, February 22nd. Please let me know by Tuesday, February 19, 2008, which day and time will be sufficient for MGC. In the meantime, as I previously indicated, we intend to file a motion to compel that will address the two issues raised in your letter dated today, as well as MGC's failure to comply with Instruction No. 10 as it pertains to wire transfer receipts no longer in MGC's possession.

Sincerely,


George A. Gasper