

March 12, 2019

The Honorable Alison J. Nathan
United States District Judge
United States District Court
Southern District of New York
40 Foley Square, Room 2102
New York, NY 10007

Re: *Roy Den Hollander v. PressReader, Inc.*, Case No. 19-CV-02130

Dear Judge Nathan:

We represent Defendant PressReader, Inc. ("Pressreader") in the above-referenced action. Pressreader removed this action to this Court from state court last Thursday, March 7, 2019. We submit this letter motion to respectfully request an extension of Pressreader's time to respond to Plaintiff's pleading, the First Amended Complaint, from March 14, 2019 to April 15, 2019. This is Pressreader's first request for an extension of time and Plaintiff Roy Den Hollander, who is representing himself in this action, would not consent to the adjournment, as I describe in more detail below.

Pressreader operates an Internet-based platform that, as Plaintiff alleges, "allows people to read, share, and talk about stories from over 7,000 top-quality publications." Plaintiff brought this action in the Civil Court of the City of New York, County of New York, on or about October 15, 2018. He alleged a single state law "right of publicity claim" against Pressreader based on its alleged re-publication of an article from an Australian newspaper that mentions and discusses Plaintiff and his political views: "Self-described 'anti-feminist lawyer' Roy Den Hollander once likened the position of men in society to black people in 1950's America 'sitting in the back of the bus.'" Plaintiff alleges that this newspaper article "exploited the public figure notoriety of Plaintiff's name," entitling him to damages.

Pressreader moved to dismiss the right of publicity claim in the state court because, under controlling black letter law, (i) one can bring such claims only for the *commercial* misappropriation of a person's name for "advertising" or "trade," and (ii) the law does not extend to restricting newsworthy publications like the article in question. If it did so extend, it would violate the First Amendment. Instead of responding to Pressreader's motion, Plaintiff served a First Amended Complaint on February 15, 2019, restating his right of publicity claim and adding a second count under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* The civil RICO claim is also based on the content of the same Australian newspaper article, and one other such article. Plaintiff contends that Pressreader and the articles' author are a RICO "Enterprise" that violated the statute by publishing newspaper articles.

Pressreader timely removed this action to this Court on March 7, 2019, making the response to the pending pleading due March 14, 2019 under Fed. R. Civ. P. 81(c)(2). Pressreader served Plaintiff today, March 12, 2019, with a motion for sanctions pursuant to Fed. R. Civ. P. 11 based on the frivolous nature of his claims, citing as well Plaintiff's pattern of bringing meritless cases for improper reasons.

Pressreader respectfully requests an adjournment of its time to respond to the First Amended Complaint until April 15, 2019. This additional time will allow Rule 11's 21-day "safe harbor" period to expire and, should Plaintiff not withdraw this action during that period, provides Pressreader with an additional 12 days to prepare a motion to dismiss.

Pressreader sought Mr. Hollander's consent to this adjournment in an email sent at 9:30 a.m. I followed up with a telephone call at 2 p.m. and spoke to Mr. Hollander. He acknowledged receiving our papers and our request that he consent to the adjournment, but stated that he had not yet made a decision about our request. I advised that Your Honor's rules require us to request an adjournment no later than 48 hours prior to the deadline at issue and, for that reason, we would be sending a letter request to the Court today. He stated again that he had not yet decided. I informed him that I would have to tell the Court that he had not yet decided, and he said "fine."

Respectfully, the requested adjournment is appropriate and does not prejudice the Plaintiff. The Civil Court of the City of New York entered an order giving Pressreader until April 19, 2019 to respond to the Amended Complaint. (See Notice of Removal, Ex. D, DK. 4-1). With an adjournment to April 15, 2019, Mr. Hollander will be getting Pressreader's motion to dismiss -- if needed -- earlier than he would have received it had the case not been removed. And should Mr. Hollander not withdraw the action, the motion to dismiss can be fully briefed well in advance of the Initial Pretrial Conference, which the Court has scheduled for July 12, 2019 (Dk. 5). Given that the adjournment will also help the Court, and Pressreader, to avoid needless work if the case is withdrawn, Pressreader respectfully requests that it be granted. (As to the timing of Pressreader's request for consent to Mr. Hollander, we acted as promptly as we could; we did not learn that the action had been assigned to Your Honor until Friday afternoon and managed to serve Mr. Hollander with our motion within less than two business days to ensure that this request could be timely made.)

Mr. Hollander has not yet registered as an ECF filer in the case, so we are serving him with a copy of this letter today by email, a mode of service he already has agreed to.

We appreciate the Court's attention to this matter.

Respectfully,



Gary Meyerhoff

cc: Roy Den Hollander, Esq.