

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JUN 01 2011

JAMES W. McCORMACK, CLERK
By: _____ DEP CLERK

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS**

UNITED COALITION OF REASON INC.,
a Delaware corporation,

PLAINTIFF

v.

No. 4-11-CV-0450 Jmm

**CENTRAL ARKANSAS TRANSIT
AUTHORITY**, an Arkansas public corporation,
and **ON THE MOVE ADVERTISING, INC.**,
an Arkansas corporation

DEFENDANTS

MOTION FOR PRELIMINARY INJUNCTION

United Coalition of Reason Inc. (the "Plaintiff"), for its Motion for a Preliminary Injunction against Central Arkansas Transit Authority ("CATA") and On the Move Advertising, Inc. ("OTMA," and, together with CATA, the "Defendants"), alleges as follows:

1. This Court has jurisdiction over this matter for the reasons set forth in the Complaint filed herein. Each and every allegation of that Complaint is incorporated herein pursuant to Fed. R. Civ. P. 10(c).

2. CATA is a governmental agency which has discriminated against the Plaintiff on the basis of the viewpoint of the message in the proposed advertisement that the Plaintiff sought to run CATA's buses.

3. The Plaintiff, in good faith, entered into negotiations with the Defendants to lease advertising space on CATA's buses. The Plaintiff's advertisement would contain the text: "Are you good without without God? Millions are," followed by the website address for the Plaintiff's local affiliate group.

4. The Plaintiff, through its agent, Shaun Barbeau, of Media Brokers International, Inc., reached a preliminary understanding with Defendant OTMA, an agent of Defendant CATA.

5. On Monday, February 28, 2011, Barbeau forwarded the proposed advertisement copy to Lydia Robertson of OTMA. (Exhibit 1, FOIA request response, p. 46)

6. Robertson forwarded the proposed advertisement copy to CATA's Executive Director, Betty Wineland.

7. Defendant CATA, through its Executive Director, Betty Wineland, found the message of Plaintiff distasteful, responding to the suggestion in Plaintiff's advertisement with the comment "I need Him now more than ever. Good Grief. I think we need to throw religion into the advertising policy--as a negative. Stall while CATA reviews." (*Id.* at 45)

8. On Tuesday, March 1, 2011, Wineland advised that "the transit authority will accept the artwork, but there are caveats." She then stated that she would impose additional requirements because of the content of the message. The additional requirements were allegedly to be required because the Plaintiff's message had inspired "some repercussions and vandalism in other markets."

9. Although Wineland advised that the transit authority would "accept the artwork," in fact CATA never intended to accept the advertisement, but rather hoped that its additional conditions would cause the Plaintiff to abandon its efforts to contract to run the advertisement on CATA's buses.

10. The requirement of a deposit was out of the ordinary. CATA had never required an advertiser to place a deposit before. OTMA represented to the Plaintiff that it was legally responsible for any damage to the bus and graphics. (*Id.* at 52).

11. Although the requirement of a deposit was unreasonable and unorthodox, and indeed unconstitutional, the Plaintiff indicated its agreement to deposit \$10,000 in order to go forward with running the advertisement (*Id.* at 53).

12. That proposal was unacceptable to CATA.

13. Evidence in subsequent emails between CATA and OTMA indicates that CATA hoped to avoid running the advertisements at all. The demand for a deposit was a ruse.

14. On March 9, 2011, CATA and OTMA declined the Plaintiff's offer in a communication with Shaun Barbeau, the Plaintiff's agent. (*Id.* at 61).

15. That afternoon, the Plaintiff's attorney contacted OTMA regarding the refusal by telephone and email (*Id.* at 59; 60).

16. On Thursday, March 10, 2011, Lydia Robertson prepared an email which was purportedly to be "strictly from On the Move" but which, in fact, she asked Betty Wineland and CATA's counsel to review.

17. That email was forwarded to Betty Wineland and her counsel. The subject line read "RE: Coalition-let On the Move take heat!" In her email to Betty Wineland, she stated: "Below is the note I would like to send. It is strictly from On the Move and in previous emails, I've written every word with an eye toward the very position they have taken. I am extremely conscious regarding the First Amendment and covering everyone while I do it. Please know I serve on a gubernatorial appointment to a State Agency, I am a Class A licensed private investigator and am not a stranger to court action. I am NOT an attorney, but I have never liked being bullied." (*Id.* at 53)

18. The email continued: "Why not let me take the heat for awhile? Leave CATA out of it; CATA can say On the Move responded on our own. See what Carolyn thinks about the brief note below. Probably since he has contacted us, I don't need Shaun's permission to share the emails - that IS a question for Carolyn."

19. That email demonstrates that OTMA entered into a conspiracy with CATA to deprive the Plaintiff of access to advertising on CATA's buses. The deposit requirement was not made in good faith, but was a pretext for refusing to deal with the Plaintiff.

20. The threat of vandalism is substantially overblown. The Plaintiff has run advertising programs like this one in thirty-six markets (two of the markets twice). There have been four instances of vandalism and only one to the property of the vendor. The advertisements ran in Fayetteville, Arkansas, without incident. The Central Arkansas Freethinkers have displayed an informational booth on the Arkansas State Capitol grounds next to a crèche erected by a local Christian association. That informational booth has not been subjected to vandalism. In 2008 the Central Arkansas Freethinkers used a "Beware of Dogma" billboard in North Little Rock to celebrate the holiday season. The billboard was not damaged.

21. OTMA and CATA proposed a variety of unreasonable conditions designed to prevent the Plaintiff from placing its order with CATA.

22. After much negotiation, the Plaintiff has been unable to secure a reasonable offer from OTMA and CATA. The reason that OTMA and CATA have refused the Plaintiff's business is that they are uncomfortable with the Plaintiff's message.

23. Discrimination against the Plaintiff on the basis of its message is an unconstitutional infringement on the First Amendment rights of the Plaintiff.

24. OTMA has taken the position that it is a private business, not subject to the First Amendment, when in fact it is an agent for a public entity. A number of communications from OTMA and its attorney were designed to mislead the Plaintiff as to the nature of OTMA's relationship with CATA.

25. The denial of First Amendment rights, even for a short time, constitutes an irreparable injury for purposes of issuing a preliminary injunction.

26. For the reasons set forth in the Complaint, a preliminary injunction is necessary to prevent irreparable harm to the Plaintiff.

27. An injunction requiring CATA (and its agent OTMA) to contract with the Plaintiff for the lease advertising space on CATA's buses on the same terms that other advertisers are permitted to do so is necessary to protect the Plaintiff's constitutional rights and to prevent immediate, irreparable harm to the Plaintiff.

28. The following exhibits are attached hereto in support of the motion

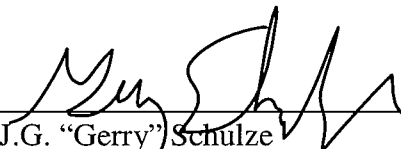
- A. Freedom of Information production of April 20, 2011;
- B. Jason Stuart's email of March 23, 2011;
- C. Bill Burgess's letter to CATA of May 9, 2011;
- D. Supplemental Freedom of Information Production of May 12, 2011;
- E. Letter of Carolyn Witherspoon of May 12, 2011;
- F. Affidavit of Fred Edwards;
- G. Electronic mail from Jason Stuart to Bill Burgess of April 6, 2011;
- H. Electronic mail from Jason Stuart to Bill Burgess and Gerry Schulze of April 18, 2011;
- I. Bill Burgess's electronic mail to Jason Stuart of May 13, 2001;
- J. Jason Stuart's email to Bill Burgess on May 16, 2011; and
- K. Jason Stuart's letter and proposal of May 16, 2011.

29. Plaintiff submits an accompanying brief pursuant to Rule 7.2(e) of the United States District Court Rules for the Eastern and Western Districts of Arkansas.

WHEREFORE, the Plaintiff requests a hearing at the Court's earliest convenience, and upon a hearing the Plaintiff requests a preliminary injunction directing the Defendants CATA and OTMA to provide advertising space to the Plaintiff on the same terms that it provides such space to other advertisers, without discrimination on the basis of the viewpoint of the Plaintiff's advertisements.

Dated this 15th day of June, 2011.

Respectfully Submitted



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