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Kasowitz Benson Wins TRO for Source Interlink in Magazine Distribution Lawsuit

Posted by Andrew Longstreth

ANTITRUST

Print media may be dying, as we're constantly told, but at least it's generating litigation work for lawyers. As we reported last week, Kasowitz, Benson, Torres & Friedman filed a suit on behalf of the magazine publisher and distributor Source Interlink, which accuses its rivals of a conspiracy to run it out of business by, among other things, cutting off its supply of magazines. The magazine wholesaler controlled by billionaire Ron Burkle alleges that the defendants--which include Time Inc. and American Media--refused to do business with it after it attempted to impose a 7-cent-per-copy fee for retrieving unsold magazines at retailers. (It later dropped the charge.)

Last Wednesday, Marc Kasowitz faced off against the ten defendants in Manhattan federal district court and fared pretty well. The next day, Judge Paul Crotty signed an order granting Source Interlink's request for a temporary restraining order against eight of the defendants. His order requires major magazine publishers and distributors to supply Source with their titles, like People, Sports Illustrated, and Time, on the same terms before they cut Source off in February.

At the lively hearing, Kasowitz painted a bleak picture for Source Interlink's outlook if the TRO was not granted. "[If] things continue the way they are going, Source will not be able to make its payroll this Friday," he said, according to the transcript. "The result of that, your Honor, will be that the company will have no choice but to lay off thousands of employees."

Time Inc.'s lawyer, Rowan Wilson of Cravath, Swaine & Moore, argued that Source shouldn't get equitable relief because "this is a problem of Source's own making," referring to the plaintiff's attempted surcharge. The defense army also included American Media, represented by David Keyko of Pillsbury Winthrop; Bauer Publishing, represented by Stephen Rinehart of Troutman Sanders; Curtis Circulation, represented by Joseph Donley at Dechert; Kable Distribution Services, represented by I. Michael Bayda of McElroy, Deutsch, Mulvaney & Carpenter; Hudson News, represented by D. Jarrett Arp of Gibson, Dunn & Crutcher; the News Group, represented by John Culver III of K&L Gates; and Hachette Filipacchi Media, represented by Meir Feder of Jones Day.

Judge Crotty concluded that Source had met the test for a TRO. "They are certainly at a competitive disadvantage because they are unable to supply their retail customers with the products that have been denied to them," said Judge Crotty about Source. "[The] balance of hardships tips very much in the favor of the plaintiff, at least at this particular stage, and there are grounds for litigation."

Judge Crotty denied a TRO against magazine wholesalers Hudson News Distributors and The News Group. He also set a hearing for Source's motion for a preliminary injunction on February 23.

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Kasowitz Firm Corners Market in Magazine Distribution Cases

By Ben Hallman

Until it went out of business last month, Anderson News was one of four wholesale magazine distributors in the United States that provided single copies to newsstands and stores. On Monday the defunct company filed suit in Manhattan federal district court, accusing a dozen major magazine publishers and distributors of colluding to destroy Anderson's business after the distributor sided with retailers in a dispute over how to count single-copy sales.

This is Kasowitz, Benson, Torres & Friedman's second venture into magazine wholesale distribution cases. (An arcane niche, perhaps.) We recently told you about a lively hearing at which Marc Kasowitz, representing Source Interlink (another distributor), won a temporary restraining order in Manhattan federal district court directing eight of the defendants to supply Source with their titles--including People, Sports Illustrated, and Time--on the terms Source was seeking. Since the hearing, several of the publishers have settled with Source, agreeing to allow the company to distribute their magazines.

Wholesalers like Anderson and Source Interlink buy magazines at a discount from publishers, then mark them up and sell them to retailers. In exchange, wholesalers are responsible for retrieving and destroying unsold copies. Under a different system for distribution, retailers would

report sales and then dispose of unsold copies. Publishers have opposed the system; wholesalers Anderson and Source Interlink, which, until recently, controlled about 60 percent of the distribution market, sided with the retailers in the dispute. In response, according to the complaint in the Anderson case, the defendants conspired to eliminate the two wholesalers and obtain effective control over the two remaining distributors, News Group and Hudson.

Standing in the way of the publishers' alleged conspiracy, like Superman in front of a speeding locomotive, has been Kasowitz Benson. The firm helped save Source Interlink before it ran out of money, but Anderson has already divested many of its assets.

We don't know who will defend the publishers and distributors in this latest action, but an army of defense attorneys appeared at the Source Interlink hearing. They included: David Keyko of Pillsbury Winthrop for American Media; Stephen Rinehart of Troutman Sanders for Bauer Publishing; D. Jarrett Arp of Gibson, Dunn & Crutcher for Hudson News; and John Culver III of K&L Gates for the News Group.

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