

Paul Alan Levy

From: Mathew Higbee <mhigbee@higbeeassociates.com>
Sent: Tuesday, February 05, 2019 3:27 PM
To: Paul Alan Levy
Subject: Re: Response to your demand letter to HUFF

Hi Paul-

Let me speak with AFP first about my ability to accept service. I will let you know what I hear back.

-Mat

On Feb 5, 2019, at 9:29 AM, Paul Alan Levy <plevy@citizen.org> wrote:

Mr. Higbee:

Your last email told me that if my clients did not pay up as demanded or, at least, make a “reasonable” offer, you would move this matter to the litigation track. But then, when my response explained why HUFF is not willing to accede to your demands, having already dropped one of two clients you originally claimed to be representing, you again asked for a new, presumably lower offer, so long as it is “semi-reasonable.”

You have already received a last and final offer. If you will retract your threat of litigation, we will refrain from suing your remaining client for a declaratory judgment of non-infringement. That is more than semi-reasonable. It is very reasonable, I suggest, both because it will spare Agence France-Presse the burden of the litigation that you have threatened (in which it has no prospect of any financial recovery), and it will spare YOU having to tell Agence France-Presse that it has become a party to litigation as a result of its allowing you and your “claims resolution specialist” to send your reckless demand letter and email in its name, seeking to bully HUFF into paying you nearly \$2000, and warning that things were about to get “more stressful and expensive” despite the fact that you have no basis for suing for either damages or attorney fees.

That litigation should never have been threatened. You have a chance to fix that error.

I have now given you two chances to retract. That is more warning than Charles Carreon or Evan Stone got.

Paul Alan Levy
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Twitter: @paulalanlevy

Public Citizen Foundation participates in the Combined Federal Campaign with the CFC Code 11168

From: Mathew Higbee [<mailto:mhigbee@higbeeassociates.com>]

Sent: Monday, February 04, 2019 6:08 PM

To: Paul Alan Levy <plevy@citizen.org>

Subject: Re: Response to your demand letter to HUFF

Hi Paul-

If your client would like to make some semi-reasonable offer, I would be glad to present it to AFP.

Also, can you help be understand how you are acting as the attorney representing a California corporation?

-Mat

On Feb 4, 2019, at 2:42 PM, Paul Alan Levy <plevy@citizen.org> wrote:

Another chance for Agence France-Presse to avoid litigation

Paul Alan Levy

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From: Mathew Higbee [<mailto:mhigbee@higbeeassociates.com>]

Sent: Friday, February 01, 2019 6:15 PM

To: Paul Alan Levy <plevy@citizen.org>

Cc: [REDACTED]

Subject: Re: Response to your demand letter to HUFF

Hi Paul-

Thank you for your attention to this matter. I may have missed your previous response.

Nevertheless, allow me to quickly respond to your letter dated today, point by point.

1. Your reliance on the *Perfect 10* case would be persuasive if HUFF was a search engine reproducing thumbnails. However, those are not the facts of this case. This is a straight forward display of 100% of a copyrighted photo case. *Perfect 10* would not apply. I believe *Goldman v. Breitbart News Network* and the string of cases that have followed it is more applicable.

2. Agence France-Presse owns the rights to the photograph. *The New York Times* licensed the image from Getty. Getty is one of AFP's licensors. AFP's claim of ownership, which they will warrant in their release agreement, along with what you see on *The New York Times* and Getty's websites is more than ample proof of ownership.

3. See point 2. PicRights Ltd is not our client or an owner of the photo.

4. The advance registration requirement does not apply to images first published outside the US, which this image was. Even if it was not, AFP would have simply need to register the image with the USCO prior to litigating.

AFP is not retracting their claim for compensation for the unauthorized use of their intellectual property. If you would like to resolve this matter and keep this from possibly going to litigation, send me some reasonable offer. Maybe start with a number close to what you would pay for a filing fee and service of process in your threatened declaratory relief action. I would be glad to present it to AFP, along with a narrative about the benevolent work HUFF performs. However, absent an offer, I will have to move this claim to the litigation track.

Thank you very much.

-Mat
Mathew K. Higbee
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On Feb 1, 2019, at 2:07 PM, Paul Alan Levy <plevy@citizen.org> wrote:

Here is a response to your January 2 demand letter to Homeless United for Friendship and Freedom.

When I wrote to you last year, in response to your demand to Jean Aw, you ignored my response, and she was willing to let it go at that.

HUFF is not willing to let it go. Absent a clear response, we reserve the possibility of seeking declaratory relief without further notice.
<Levy Response to Higbee Demand Letter.pdf>

<Levy Response to Higbee Email.pdf>