

Showing Animals Respect & Kindness v. Professional Rodeo Cowboys Association

N.D. Ill. Case No. 1:08-cv-03314

SETTLEMENT AGREEMENT AND MUTUAL RELEASES

THIS AGREEMENT is made this 4th day of February, 2009, by and between Showing Animals Respect & Kindness (“SHARK”), a nonprofit corporation organized under the laws of the State of Illinois with its principal place of business in Geneva, Illinois, and Professional Rodeo Cowboys Association (“PRCA”), a nonprofit corporation organized under the laws of the State of Colorado with its principal place of business in Colorado Springs, Colorado (collectively, the “Parties”).

WHEREAS, Plaintiff SHARK commenced the above-captioned litigation against the PRCA by filing a Complaint on June 9, 2008 (the “Action”) alleging violations of 17 U.S.C. § 512(f) and for tortious interference with contract;

WHEREAS, on October 3, 2008, the PRCA filed its Answer and Affirmative Defenses to the Complaint denying the validity of SHARK’s claims; and

WHEREAS, the Parties wish amicably to resolve their differences, to resolve the disputes between them concerning the facts alleged in the Complaint, and to release, discharge, compromise, settle and resolve all claims or causes of action they may have against the other with regard to such facts or with regard to their conduct of the prosecution or defense of the Action;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **Compensation:** Within five (5) business days following the execution of this Agreement, PRCA agrees to pay SHARK the amount of Twenty-Five Thousand Dollars (\$25,000) by check made payable to the Electronic Frontier Foundation, as attorneys for SHARK.

2. *Future Conduct.*

- a. With the goal of preventing disputes of the type underlying the Action from arising in the future, the PRCA and SHARK will employ the following procedure:
 - i. SHARK will designate an Internet video contact for the PRCA, which contact may be changed from time to time upon notice in writing to the PRCA in accord with section 9 hereof.
 - ii. If the PRCA forms a good faith belief that any future SHARK video violates the PRCA's rights, the PRCA will notify SHARK's Internet video contact.
 - iii. Once notified, SHARK will have five (5) business days to correct the problem by taking down the video.
 - iv. If SHARK believes in good faith that the video does not violate the PRCA's rights, and therefore chooses not to take the video down, the PRCA may take further action with respect to the SHARK video, including, but not limited to, going to court to enforce its rights and using the processes set forth in section 512 of the Digital Millennium Copyright Act ("DMCA notice and takedown process") subject to the following conditions:
 1. If the PRCA's intellectual property monitor believes in good faith that the video does violate the PRCA's rights, it will not contact YouTube or any similar entity, and instead will contact the General Counsel or acting General Counsel of the PRCA (or his or her designee, who will be a licensed attorney). If, after a reasonable

investigation, the General Counsel or acting General Counsel of the PRCA (or his or her designee, who will be a licensed attorney) determines it is appropriate for the PRCA to initiate a DMCA notice and takedown process against SHARK, he or she will instruct the PRCA's intellectual property monitor to do so. The PRCA will not use the DMCA notice and takedown process without the express permission from the PRCA's General Counsel or acting General Counsel (or his or her designee, who will be a licensed attorney).

2. This Agreement is not intended to restrict the PRCA's right, if any, to seek a temporary restraining order or other appropriate judicial relief if SHARK broadcasts or transmits video footage recorded by the PRCA or one of its licensees and/or broadcast partners. If the PRCA chooses to initiate such a proceeding, and the PRCA has chosen not to use the DMCA notice and takedown process, SHARK agrees that it will not use the fact that the PRCA did not use the DMCA notice and takedown process as any basis to argue against the injunctive or other judicial relief sought by the PRCA. Any such proceeding will be brought in the District Court for the District of Colorado.

b. The PRCA, its subsidiaries, its agents and its affiliates under direct control of a common parent corporation, will not discriminate in their enforcement of any provision forbidding rodeo ticket holders or other attendees from videotaping or photographing rodeo events, nor will

they encourage others to engage in such discrimination; *provided however* that it shall not be deemed discriminatory enforcement for the PRCA to authorize videotaping or photographing in furtherance of a bona fide PRCA business purpose (e.g., videotaping or photographing by the credentialed media, PRCA licensees, PRCA staff and PRCA broadcast partners, acting in those capacities).

3. ***Dismissal:*** Within five (5) court days of receipt of the payment set forth in section 1 of this Agreement, SHARK will file a stipulation and proposed order dismissing this action with prejudice, in the form attached hereto as Exhibits A and B.

4. ***Releases:*** Pursuant to and in consideration of the Parties' promises to comply with the terms and conditions of this Agreement, including the mutual releases contained in this paragraph, the Parties, and their respective officers, directors, agents, servants, employees, parents, subsidiaries, affiliated companies, attorneys, successors and assigns, hereby release each other from any and all claims arising out of or related to the facts alleged in the Action.

5. ***No Admissions:*** Execution of this Agreement and compliance with its terms is not an admission of liability, non-liability or wrongdoing by either Party.

6. ***Remedies for Breach:*** In the event of a final judicial determination that a Party has breached this agreement, the breaching Party shall compensate the non-breaching Party for damages resulting from the breach, including without limitation nominal damages and any reasonable documented attorneys' fees and costs in association with obtaining redress for the breach.

7. ***Entire Agreement:*** This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes any agreement or understanding, whether oral or written, that any party may claim was made with respect to the subject matter of the Agreement prior to the date of this Agreement. This Agreement may not be altered except by an instrument in writing signed by the Parties

against whom the modification is charged.

8. **Continuing Jurisdiction:** The court presiding over the Action shall retain jurisdiction over this Agreement and its terms.

9. **Notices:** Notice under this agreement shall be delivered as follows:

If to SHARK:

via recognized overnight delivery service to:

SHARK
PO Box 28
Geneva, IL 60134

and by electronic mail to:

copyright@sharkonline.org

If to the PRCA:

via recognized overnight delivery service to:

Matthew S. Barnett, Esq. (as acting outside General Counsel)
Barnett & Barnett P.C.
830 Tenderfoot Hill Rd.
Suite 350
Colorado Spring, CO 80906

with a copy to:

Karl Stressman
Professional Rodeo Cowboys Association
101 Pro Rodeo Drive
Colorado Springs, CO 80919

10. **Choice of Law and Venue:** This Agreement shall be interpreted in accordance with the laws of the State of Illinois. Any dispute or controversy between the Parties arising under or in connection with this Agreement shall be submitted to the court presiding over the Action, or, if the court presiding over the Action declines jurisdiction, to a state or federal court in the State of Illinois. Each Party agrees to personal jurisdiction in the State of Illinois for such purposes.

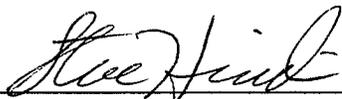
11. **Severability:** If any provision of this Agreement is found invalid or unenforceable, the balance of the Agreement, and all provisions thereof, shall remain in

full force and effect. The failure of any Party to enforce any term of this Agreement shall not be deemed a waiver of that term or any other term of this Agreement.

12. **Successors:** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assignees.

13. **Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, all of which shall constitute one and the same agreement.

SHOWING ANIMALS RESPECT & KINDNESS



By: Steve Hindi
Its President

Date: 2/5/09

PROFESSIONAL RODEO COWBOYS ASSOCIATION

By: Karl Stressman
Its Commissioner

Date: _____

full force and effect. The failure of any Party to enforce any term of this Agreement shall not be deemed a waiver of that term or any other term of this Agreement.

12. *Successors:* This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assignees.

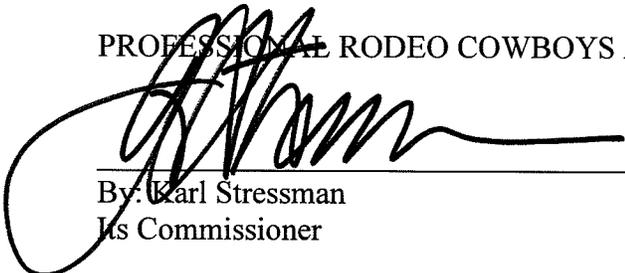
13. *Counterparts:* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, all of which shall constitute one and the same agreement.

SHOWING ANIMALS RESPECT & KINDNESS

By: Steve Hindi
Its President

Date: _____

PROFESSIONAL RODEO COWBOYS ASSOCIATION



By: Karl Stressman
Its Commissioner

Date: 2/5/09

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

SHOWING ANIMALS RESPECT AND KINDNESS,)	Civil Action No. 1:08-cv-03314
)	
Plaintiff,)	
)	
v.)	The Honorable Marvin E. Aspen
)	
PROFESSIONAL RODEO COWBOYS ASSOCIATION,)	
)	
Defendant.)	

JOINT STIPULATION REQUESTING DISMISSAL

WHEREAS, Plaintiff Showing Animals Respect & Kindness (“SHARK”) commenced the above-captioned litigation against Defendant Professional Rodeo Cowboys Association (“PRCA”), by filing a Complaint on June 9, 2008;

WHEREAS, on October 3, 2008, the PRCA filed its Answer and Affirmative Defenses to the Complaint denying the validity of SHARK’s claims; and

WHEREAS, the parties have reached an amicable resolution of their dispute with the assistance of Magistrate Judge Maria Valdez; and

WHEREAS, the parties’ resolution is embodied in the Parties’ Settlement Agreement and Mutual Releases;

NOW, THEREFORE, SHARK and PRCA, by and through their undersigned counsel, hereby jointly stipulate and request that the Court,

- (1) dismiss the complaint in this action with prejudice; and
- (2) retain jurisdiction for purposes of enforcing the terms of the Parties' Settlement Agreement and Mutual Releases. A proposed order is being submitted

herewith.

Date:

Corynne McSherry
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110
Telephone: (415) 436-9333 x122
Facsimile: (415) 436-9993
Email: corynne@eff.org

Attorneys for Plaintiff Showing Animals
Respect and Kindness

Date:

Justin L. Heather
Skadden, Arps, Slate, Meagher & Flom LLP
333 West Wacker Drive
Suite 2100
Chicago, IL 60606
Telephone: (312) 407-0700
Facsimile: (312) 407-0411
Email: justin.heather@skadden.com

Attorneys for Defendant the Professional
Rodeo Cowboys Association

EXHIBIT B

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

SHOWING ANIMALS RESPECT AND KINDNESS,)	Civil Action No. 1:08-cv-03314
)	
Plaintiff,)	
)	The Honorable Marvin E. Aspen
v.)	
)	
PROFESSIONAL RODEO COWBOYS ASSOCIATION,)	
)	
Defendant.)	

[PROPOSED] ORDER

This cause coming to be heard on the parties' Joint Stipulation Requesting Dismissal, and this Court being fully advised of the premises, IT IS HEREBY ORDERED:

- (1) the complaint in this action is hereby dismissed with prejudice; and
- (2) this Court shall retain jurisdiction for purposes of enforcing the terms of the Parties' Settlement Agreement and Mutual Releases.

SO ORDERED on this ____ day of February, 2009.

ENTERED: _____
Hon. Marvin E. Aspen

Order prepared by:

Corynne McSherry
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110
Telephone: (415) 436-9333 x122
Facsimile: (415) 436-9993
Email: corynne@eff.org

Charles Lee Mudd Jr.
Mudd Law Offices
3114 West Irving Park Road
Chicago, Illinois 60618
Telephone: (773) 588-5410
Facsimile: (773) 588-5440
cmudd@muddlawoffices.com

Attorneys for Plaintiff Showing Animals Respect and Kindness