

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Adlife Marketing &amp; Communications Co., Inc.

Index No.

Plaintiff(s),

*Summons**-against-*RICHARD P. LIEBOWITZ, JAMES H. FREEMAN,  
LIEBOWITZ LAW FIRM, PLLC, and LIEBOWITZ LAW  
GROUP, PLLC

Date Index No. Purchased: May 11, 2021

Defendant(s).

To the above named Defendant(s)

Richard P. Liebowitz, James H. Freeman, Liebowitz Law Firm, PLLC and Liebowitz Law Group, PLLC

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is New York County  
which is the location of the Defendants

Dated: May 15, 2021

SRIPLAW

by 

Joel B. Rothman

Attorneys for Plaintiff

Adlife Marketing &amp; Communications Co., Inc.

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

ADLIFE MARKETING &  
COMMUNICATIONS CO., INC.,

Plaintiff,

v.

RICHARD P. LIEBOWITZ, JAMES H.  
FREEMAN, LIEBOWITZ LAW FIRM,  
PLLC, and LIEBOWITZ LAW GROUP,  
PLLC,

Defendants.

**INDEX NO.**

**COMPLAINT FOR LEGAL  
MALPRACTICE**

Plaintiff ADLIFE MARKETING & COMMUNICATIONS CO., INC., by and through its undersigned counsel, brings this Complaint against Defendants, RICHARD LIEBOWITZ, JAMES FREEMAN, LIEBOWITZ LAW FIRM, PLLC, and LIEBOWITZ LAW GROUP, PLLC, for damages and equitable relief, and in support therefor states as follows:

**JURISDICTION AND VENUE**

1. This is an action for legal malpractice, breach of contract, breach of fiduciary duty, and fraud.
2. The New York Supreme Court has subject matter jurisdiction over this action as the court with original general jurisdiction over civil disputes in New York state.
3. The court has personal jurisdiction over the defendants pursuant to NY CPLR § 301 in that all defendants reside in and/or maintain a principal place of business in New York.

4. Venue is proper pursuant to NY CPLR § 503 in that the parties agreed in their agreement that disputes arising out of their agreement would be venued in New York County, New York.

### **PARTIES**

5. Plaintiff ADLIFE MARKETING & COMMUNICATIONS CO., INC. (“Adlife”) is a Rhode Island corporation with its principal place of business in Pawtucket, Rhode Island.

6. Defendant RICHARD P. LIEBOWITZ is a citizen of the state of New York and a resident of Westchester County.

7. Defendant JAMES H. FREEMAN is a citizen of the state of New York and a resident of New York County.

8. Defendant LIEBOWITZ LAW FIRM, PLLC is a New York professional limited liability company (“LLF”), that until recently maintained its principal place of business at 11 Sunrise Plaza, Suite 305, Valley Stream, New York 11580, but more recently moved to a post office box in a UPS store in New Rochelle, New York.

9. Defendant LIEBOWITZ LAW GROUP, PLLC is a New York professional limited liability company (“LLG”), that until recently maintained its principal place of business at 11 Sunrise Plaza, Suite 305, Valley Stream, New York 11580, but more recently moved to a post office box in a UPS store in New Rochelle, New York.

10. Defendant RICHARD P. LIEBOWITZ resides in Westchester County, New York and practices law through LLF and LLG.

11. Defendant JAMES H. FREEMAN resides in New York County, New York and practices law through LLF and LLG

**PLAINTIFF ADLIFE**

12. Adlife is a full-service advertising agency. The vast majority of Adlife's revenue comes from print and digital advertising services and social media services. Adlife still produces color printed grocery circulars. Adlife is one of only a handful of food image libraries in the world that can serve the needs of grocers and food wholesalers for images to feature in these circulars because every image in Adlife's image library was painstakingly color corrected for optimal use in the four-color printing process. Printed color retail circulars continue to be critical to the success of Adlife's clients, but images that are not color corrected cannot be easily used to produce large volumes of color printed circulars on short deadlines for supermarkets.

13. Prior to 2016, 95% of Adlife's total revenue was generated by the creation and distribution of printed circulars and in-store signage. In previous years Adlife employed over 50 people focused solely on the creation and distribution of printed grocery retail circulars, in-store signage and social media services. Today Adlife's business employs thirty people, but the majority are still focused on the graphic design of print and digital advertisements. Only a small number are busy addressing the rampant infringement online that Adlife has experienced.

14. Desktop publishing and the internet have decimated Adlife's business and its investment in its copyrights. The unauthorized copying, display and distribution of Adlife's images has grown exponentially since desktop publishing and internet technologies became affordable in the late 1990s and early 2000s. These technologies allowed almost anyone to steal Adlife images by simply right clicking and copying or scanning Adlife's images and pasting them wherever they liked, including in promotions, without paying Adlife a penny. Adlife has discovered hundreds of infringers of its images online, and every day Adlife discovers more and more infringement.

15. Adlife needed help to control and address the problem of infringement of its images online. Adlife turned to Mr. Liebowitz for help. Mr. Liebowitz promised Adlife that he had the necessary expertise and experience to assist Adlife. In the end, Mr. Liebowitz damaged Adlife.

### **DEFENDANTS**

16. Defendant Richard Liebowitz is a lawyer and an owner of LLF and LLG.
17. Liebowitz established LLF and LLG upon his admission to the New York bar in 2015.
18. Liebowitz maintained a website at <www.copyrightenforcers.com>.
19. Liebowitz's practice is almost completely comprised of suing defendants on behalf of photographers for infringements discovered online.
20. The Honorable Jesse M. Furman of the Southern District of New York described Liebowitz thusly:

Richard Liebowitz, who passed the bar in 2015, started filing copyright cases in this District in 2017. Since that time, he has filed more cases in this District than any other lawyer: at last count, about 1,280; he has filed approximately the same number in other districts. In that same period, he has earned another dubious distinction: He has become one of the most frequently sanctioned lawyers, if not the most frequently sanctioned lawyer, in the District. Judges in this District and elsewhere have spent untold hours addressing Mr. Liebowitz's misconduct, which includes repeated violations of court orders and outright dishonesty, sometimes under oath. He has been called "a copyright troll," *McDermott v. Monday Monday, LLC*, No. 17-CV-9230 (DLC), 2018 WL 5312903, at \*2, 2018 U.S. Dist. LEXIS 184049, at \*9-10 (S.D.N.Y. Oct. 26, 2018); "a clear and present danger to the fair and efficient administration of justice," *Mondragon v. Nosrak LLC*, No. 19-CV-1437 (CMA) (NRN), 2020 WL 2395641, at \*1, \*13 (D. Colo. May 11, 2020); a "legal lamprey[ ]," *Ward v. Consequence Holdings, Inc.*, No. 18-CV-1734 (NJR), 2020 WL 2219070, at \*4 (S.D. Ill. May 7, 2020); and an "example of the worst kind of lawyering," *id.* at \*3. In scores of cases, he has been repeatedly chastised, warned, ordered to complete ethics courses, fined, and even referred to the Grievance Committee. And but for his penchant for voluntarily dismissing cases upon getting into hot water, the

list of cases detailing his misconduct — set forth in an Appendix here — would undoubtedly be longer.

*Usherson v. Bandshell Artist Mgmt.*, No. 19-CV-6368 (JMF), 2020 WL 3483661, at \*1

(S.D.N.Y. June 26, 2020). Judge Furman’s decision and its appendix is attached hereto as Exhibit 1.

21. Not only has Liebowitz been sanctioned and admonished by many courts, he has also admitted to filing more cases than he could ethically and professionally handle, including during the time period in which he was representing the plaintiff Adlife.

22. Liebowitz, facing contempt sanctions for misleading a court regarding the reasons for his failure to appear at a court ordered discovery conference, admitted through counsel that he was a young and inexperienced lawyer who lacked law firm management knowledge and experience.

23. In his short time as an admitted lawyer, Mr. Liebowitz and other members of his firm have victimized many, including his clients. Plaintiff is one such victim.

24. Defendant James Freeman is a lawyer and at all relevant times practiced law with defendant Richard Liebowitz.

25. Upon information and belief, defendant Freeman is a de facto partner and owner of LLF and/or LLG who is entitled to share in the profits of LLF and/or LLG.

#### **ADLIFE AGREEMENT WITH LIEBOWITZ**

26. On or about November 20, 2017, Adlife engaged Liebowitz and LLF pursuant to Liebowitz’s standard retainer agreement. A true and correct copy of the agreement between LLF and Adlife is attached hereto as Exhibit 2.

27. Adlife performed all terms and conditions precedent required pursuant to the retainer agreement, or performance has been waived or excused.

**ADLIFE v. KARNs**

28. On September 23, 2019, Liebowitz, on behalf of Adlife, filed a copyright infringement action against Karns Prime and Fancy Food Ltd. in federal district court in the Middle District of Pennsylvania, Case No. 1:19-cv-01638 (hereinafter the “Karns Case”). Attached hereto as Exhibit 3 is a true and correct copy of the docket in the Karns Case.

29. Before the Karns case was filed, Adlife advised Mr. Liebowitz that fifty-nine (59) of Adlife’s images were infringed approximately three hundred (300) times by Karns. Adlife provided Mr. Liebowitz with the evidence of infringement via a link to a shared folder where all the documents supporting Adlife’s claims could be found.

30. Mr. Liebowitz agreed to accept the case from Adlife despite the fact that, unbeknownst to Adlife at that time, Mr. Liebowitz was not admitted to practice law or appear in court in the Middle District of Pennsylvania where the Karns Case needed to be filed.

31. Furthermore, despite advising Mr. Liebowitz and LLF that fifty-nine (59) of Adlife’s images were infringed approximately three hundred (300) times by Karns, the complaint Mr. Liebowitz filed on behalf of Adlife against Karns on September 23, 2019 alleged only that Karns infringed thirty-six (36) Adlife copyrighted images a total of eighty-nine (89) times.

32. After the Karns Case was filed, on February 3, 2020, Mr. Liebowitz sent an email to Ms. Jones asking “Karns would like a spreadsheet of the 22 different copyright registrations and the effective date of each registration. Can you kindly put this together? Thank you so much!” Ms. Jones immediately responded and provided the spreadsheet requested.

33. On February 21, 2020, Mr. Liebowitz sent an email with written discovery requests. Ms. Jones reviewed the discovery requests immediately, and on February 25, 2020, she discussed them with defendant James Freeman. Ms. Jones told Mr. Freeman that all the

documents responsive to Karns' discovery requests were provided to Mr. Liebowitz before the case was filed. Ms. Jones followed up the call with an email to Mr. Freeman and Mr. Liebowitz that attached the Terms of Use document applicable to the images at issue in the Karns case to produce in discovery.

34. On February 26, 2020, Mr. Liebowitz sent an email to Douglas Fleurant, the CFO of Adlife, and Joel Albrizio, the CEO of Adlife, that asked "Can we get a total count to date of the number of photos used by Karns?" Mr. Albrizio responded the same day that "We already have 59 images. That's a lot of images."

35. On April 13, 2020, Mr. Freeman sent an email to Ms. Jones that copied Mr. Liebowitz and attached a second set of discovery requests served by Karns on Adlife on March 13, 2020. In the email, Mr. Freeman asked for a telephone call with Ms. Jones. The call was held that afternoon with Ms. Jones, Mr. Albrizio, and Mr. Fleurant in attendance. Adlife provided Mr. Freeman with all the information he requested to respond to the discovery requests from Karns. The next day, April 14, 2020, Donna Halprin, an employee of LLF, sent Mr. Albrizio interrogatory answers to sign by HelloSign, and he electronically signed them.

36. Ms. Jones received no further updates in the Karns Case until Monday, August 3, 2020 when Mr. Liebowitz sent an email asking "Can you kindly gather all the copyright registrations for the Karn's case. See attached Exhibit A. We need to produce this Tuesday." Despite the short notice, Ms. Jones dropped what she was doing and resent Mr. Liebowitz and Mr. Freeman the link to the Adlife shared folder containing all the copyright registration certificates for images infringed by Karns. Ms. Jones also sent Mr. Liebowitz an email advising him to give her more notice in future, since that was what their weekly meetings were all about.

37. The August 3, 2020 update was the last time Adlife was updated substantively on the Karns Case before November 15, 2020. November 15<sup>th</sup> was the date that Adlife first learned some of what was really going on in the Karns case that Messrs. Liebowitz and Freeman failed to advise Adlife about. And it turns out that Messrs. Liebowitz and Freeman had been missing deadlines and failing to comply with the scheduling order in the case for months by the time Adlife learned some of what had occurred on November 15, 2020.

38. Defendants failed to advise Adlife of their failures. They failed to advise Adlife that they missed discovery deadlines, responded to discovery requests late, and failed to comply with discovery altogether. Defendants failed to appear and cooperate with Karns' counsel to prepare and file a Joint Statement as required by court order, and instead on August 18, 2020, Karns filed its joint statement unilaterally.

39. On August 19, 2020, Karns filed its motion for summary judgment. The defendants failed to advise Adlife of the filing of the summary judgment motion.

40. On August 24, 2020, the court in the Karns case held a status conference at which it was discovered that Mr. Liebowitz was not admitted to the Middle District of Pennsylvania, and so the court entered a stay of the proceedings pending appearance of counsel qualified to represent Adlife. The defendants failed to advise Adlife of the court's order or what transpired at the status conference.

41. On October 30, 2020, when counsel admitted in the Middle District of Pennsylvania still had not appeared for Adlife, Karns filed a motion to dismiss for lack of prosecution. The defendants failed to advise Adlife of Karns' motion.

42. On November 12, 2020, eighty (80) days after Adlife was ordered to obtain new counsel admitted in the district, Mr. Freeman petitioned for special admission (pro hac vice) in

the case. The next day, local counsel, Mark G. Wendaaur, IV, appeared for Adlife. But Adlife remained uninformed of what was going on in the case.

43. On November 13, 2020, Mr. Freeman filed a brief in opposition to the motion to dismiss for lack of prosecution. The brief failed to adequately address the substantive issues on the motion or the failure of Mr. Freeman and Mr. Liebowitz to cooperate in discovery and the litigation on Adlife's behalf. The defendants failed to advise Adlife of the filing in opposition to the motion to dismiss for lack of prosecution.

44. On November 15, 2020, Liebowitz finally advised Adlife by email about events that transpired in the case, but he could not bring himself to tell Adlife the whole truth, and instead he made crucial omissions to protect himself:

On the case against Karns, months ago they did a SJ on the issue that we did not provide proof of actual damages, but we are going for statutory damages, so you do not need to prove actual damages for a statutory damages case. So their motion will likely not succeed and even if it does you still have the \$750-\$150,000 for statutory for willful infringement. Our response was put on pause, as I needed to get a local lawyer in Harrisburg which took some time to get. The judge did not set a time limit on when to get a local lawyer in Harrisburg. I thought the parties would do a meditation before having to get a local lawyer in Harrisburg, PA. Instead of trying to in good faith do a mediation they did a motion for lack of prosecution, which has almost no shot of winning as the court never set a time limit to get a local lawyer. In any event, I got a local lawyer late last week to come in and we responded to them and told the judge to require the other side to participate in a mediation. The judge is likely going to set a status conference in the upcoming few weeks to talk about mediation and to talk about new discovery deadlines. Karns never produced any documents in the case so we have a strong argument that they have not engaged in good faith. The case is taking its course. Let me know if you want to jump on the phone to discuss more.  
Thank you.

Best,

Richard Liebowitz

45. By the time Adlife received the email above from Mr. Liebowitz, it was too late for Adlife in the Karns case. Despite the appearance of new counsel for Adlife, on February 23, 2021, the court in the Karns Case granted Karns' motion to dismiss for failure to prosecute and dismissed the case. The court attributed the dismissal to Adlife's failure to participate in the litigation, and to Adlife's decision to retain and remain a client of Mr. Liebowitz despite Mr. Liebowitz's history of repeated sanctions by federal district courts across the country.

**ADLIFE v. POPSUGAR**

46. Liebowitz, on behalf of Adlife, filed a copyright infringement case against Popsugar, Inc. for the use of a single Adlife image by Popsugar in the Southern District of New York on November 25, 2018, case number 1:18-cv-10976-AKH. Attached hereto as Exhibit 4 is a true and correct copy of the docket in this case.

47. The image at issue was taken by Malcolm Bedell, and Adlife acquired copyright ownership in the image from Bedell. Before acquiring ownership, Bedell issued licenses for the image. However, Bedell failed to inform Adlife of all the licenses he had issued, and in other cases Adlife only learned about those licenses after letters were sent by Adlife's attorneys to alleged infringers who were accused of using the Bedell images.

48. Adlife informed the defendants of this possibility prior to engaging the defendants to represent Adlife in connection with the infringement by Popsugar.

49. Defendants never sent a letter to Popsugar regarding its use of the Bedell image at issue prior to filing suit. Instead, defendants simply filed suit without prior notice to Popsugar.

50. It was negligent for defendants to simply file a lawsuit in federal court without sending letters, but defendants did so anyway in all their cases.

51. The Southern District of New York was an improper venue for the case defendants filed against Popsugar, something that the defendants knew or should have known before filing.

52. Soon after the case was filed, counsel for Popsugar advised Mr. Liebowitz that a) venue was improper, and b) that there was a strong possibility that the image at issue had been licensed to Popsugar for its use by the prior owner of the image, Bedell.

53. Mr. Liebowitz failed to advise Adlife that he had been told of the possibility that Bedell had licensed the image to Popsugar. Mr. Liebowitz failed to investigate further the possibility that the license defense was valid.

54. Mr. Liebowitz failed to dismiss the action immediately upon learning that Popsugar had a valid license defense. That failure was negligent.

55. On January 9, 2019, Mr. Liebowitz on behalf of Adlife stipulated to the transfer of venue of the case to the Northern District of California, case number 5:19-cv-00297. Attached hereto as Exhibit 5 is a true and correct copy of the docket in this case.

56. Mr. Liebowitz engaged local counsel in the Northern District of California to represent Adlife at Adlife's expense because Mr. Liebowitz was not admitted in that district.

57. The defendants litigated the Popsugar case for almost a full year before finally realizing that Popsugar had a valid license defense even though defendants were told of the possibility of that defense at the outset.

58. On November 20, 2019, Mr. Liebowitz caused local counsel to file a motion to dismiss the action on behalf of Adlife.

59. Popsugar opposed the motion. Popsugar argued that Adlife had litigated this case for months after it knew it had no claim against Popsugar. Popsugar argued that it should be afforded the right to seek its attorney's fees and costs because the action was frivolous.

60. The cause of Popsugar's attorneys' fees was the defendants' litigation strategy and its failure to notify Popsugar by letter before commencing litigation and generating legal fees for Popsugar as a result.

61. The court granted the motion and dismissed the action with prejudice.

62. Popsugar continued to demand its attorneys' fees and costs from Adlife.

63. Mr. Liebowitz, without consulting Adlife, and without the agreement of Adlife, conceded to Popsugar that Adlife was liable to pay Popsugar its attorneys' fees and costs.

64. Mr. Liebowitz, without consulting Adlife, and without the agreement of Adlife, agreed to engage in mediation over the amount of attorneys' fees and costs owed to Popsugar by Adlife.

65. Mr. Liebowitz ultimately advised Adlife to pay Popsugar \$50,000 in attorneys' fees and costs.

66. The cause-in-fact of the attorneys' fees and costs incurred by Popsugar was Mr. Liebowitz's litigation strategy.

67. But for Liebowitz's negligence, Adlife would not have paid Popsugar for any attorneys' fees or costs.

**COUNT I**  
**LEGAL MALPRACTICE**

68. Plaintiff incorporates the allegations of paragraphs 1 through 67 of this Complaint as if fully set forth herein.

69. This is a claim for legal malpractice against Richard Liebowitz individually, James Freeman individually, LLF, and LLG.

70. Liebowitz and Freeman, individually and on behalf of LLF and LLG, failed to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession by committing the acts and omissions alleged herein and other and further acts and omissions as may be determined in discovery and proven at trial.

71. Liebowitz's and Freeman's breaches of duty, individually and on behalf of LLF and LLG, proximately caused damages to Adlife.

72. Adlife sustained actual and ascertainable damages as a consequence of Liebowitz's and Freeman's breaches of duty.

73. Liebowitz's and Freeman's breaches of duty were willful, wanton, dishonest, and reflect conduct that approaches criminality.

74. Adlife is entitled to recover punitive damages from Liebowitz and Freeman.

**COUNT II**  
**BREACH OF FIDUCIARY DUTY**

75. Plaintiff incorporates the allegations of paragraphs 1 through 74 of this Complaint as if fully set forth herein.

76. This is a claim for breach of fiduciary duty against Richard Liebowitz individually, James Freeman individually, LLF, and LLG.

77. At all relevant times, Liebowitz and Freeman, individually and on behalf of LLF and LLG, owed fiduciary duties to Adlife.

78. Liebowitz and Freeman, individually and on behalf of LLF and LLG, breached fiduciary duties to Adlife by committing the acts and omissions alleged herein and other and further acts and omissions as may be determined in discovery and proven at trial.

79. The tortious conduct by Liebowitz and Freeman, individually and on behalf of LLF and LLG, alleged herein was independent of the legal malpractice alleged.

80. The actions of Liebowitz and Freeman, individually and on behalf of LLF and LLG, damaged Adlife.

81. Liebowitz's and Freeman's breaches of fiduciary duty were willful, wanton, dishonest, and reflect conduct that approaches criminality.

82. Adlife is entitled to recover punitive damages from Liebowitz, Freeman, LLF and LLG.

83. Adlife is entitled to an accounting of the cases handled by Liebowitz, Freeman, LLF, and LLG, from their engagement through and including the present.

84. Adlife is entitled to the imposition of a constructive trust on funds in the possession of Liebowitz, Freeman, and the entities they own or control that received the proceeds of Adlife's cases.

**COUNT III**  
**BREACH OF LLF CONTRACT**

85. Plaintiff incorporates the allegations of paragraphs 1 through 84 of this Complaint as if fully set forth herein.

86. Adlife and Liebowitz, by and through LLF, entered into an agreement for legal services.

87. Liebowitz, by and through LLF, breached the agreement with Adlife by committing the acts alleged herein and other and further breaches as may be determined in discovery and proven at trial.

88. Adlife performed all of its obligations under the contract and to the extent it has not, said non-performance has been excused.

89. Adlife has been damaged.

90. Adlife is entitled to damages caused by the breach, including interest thereon.

Dated: New York, New York  
March 15, 2021

Respectfully submitted,

/s/ Joel B. Rothman

JOEL B. ROTHMAN

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