

RODNEY RIGSBY
4230 East Towne Blvd., #183
Madison, WI 53704,

CATHERINE CONRAD
4230 East Towne Blvd., #183
Madison, WI 53704,

Plaintiffs'
vs.

Date: July 13, 2012
Case No. 11-cv-4650

AM COMMUNITY CREDIT UNION
6715 Green Bay Road
Kenosha, WI 53142

TODD STREETER
6715 Green Bay Road
Kenosha, WI 53142

LORI M. SAUCIER
831 Middle Street
Bath, Maine 04530

MIDCOAST FEDERAL CREDIT UNION
831 Middle Street
Bath, Maine 04530

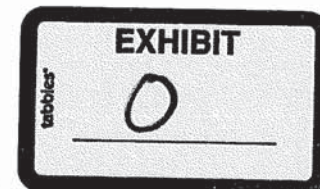
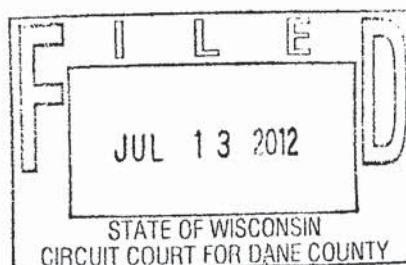
CREDIT UNION NATIONAL ASSOCIATION/
CUNA MANAGMENT SCHOOL
5710 Mineral Point Road,
Madison, Wisconsin 53705-4454

CUNA MUTUAL GROUP
5910 Mineral Point Road,
Madison, WI 53705

DAVID POLET at CUNA MUTUAL GROUP
5910 Mineral Point Road
Madison, WI 53705

BOARD OF REGENTS,
University of Wisconsin
1860 Van Hise Hall
1220 Linden Drive
Madison, WI 53706.

Defendants'



PLAINTIFF'S REVISED AMENDED SUMMONS AND COMPLAINT

Plaintiff's Catherine Conrad and Rodney Rigsby hereby submit their revised amended summons and complaint to the courts. Plaintiffs' are amending their complaint adding new Defendants' and claims.

NEW DEFENDANTS

1. Credit Union National Association/CUNA Management School is a new Defendant and is located at 5710 Mineral Point Road, Madison, WI 53705. Credit Union National Association is the trade association for credit unions across the US and is the educational and advocacy arm for it's members. This union holds the responsibility and operations for all educational programs and training schools for the credit unions they represent, which includes but is not limited to hosting and sponsoring the CUNA Management School. The defamation and infringements against Plaintiffs' occurred during the CUNA Management School of July 2011 which was jointly hosted with CUNA Mutual Group and the University's Graduate School of Business and is held on the University of Wisconsin premises. The CUNA Management School and the Credit Union Trade Association are one in the same. (See Exhibit F and Exhibit G). This entity is liable for the actions of it's attendees at the yearly school conference.
2. CUNA Mutual Group, is a new Defendant and is located at 5910 Mineral Point Road, Madison, WI 53705. CUNA Mutual Group and the Credit Union National Association are responsible together for hosting, sponsoring, booking and operations of the yearly CUNA Management School conference held in conjunction with the University of Madison Wisconsin Graduate School of Business. (See Exhibit F and G). CUNA Mutual Group is the

employer of David Polet, who was the class president during the 2011 CUNA Management School and the person who made the announcement regarding the rules on not videotaping Plaintiffs' "Banana Lady © TM" character. David Polet as an employee of CUNA Mutual Group and was on company time during Plaintiff Conrad's performance in July 2011 therefore CUNA Mutual Group is responsible for their employee and his actions during the CUNA Management School conference. CUNA Mutual Group at all times was responsible for it's school attendee's actions during the July 2011 conference and for providing a safe environment for Plaintiff Conrad to perform. (See Exhibit I).

3. David Polet, is a new Defendant who works at CUNA Mutual Group, located at 5910 Mineral Point Road, Madison, WI 53705. David Polet was the class president of the July 2011 CUNA Management School conference that Conrad performed at held in Madison, WI. Mr. Polet made the announcement regarding the rules of not videotaping of Plaintiffs' copyrighted and trademarked character "The Banana Lady © TM" to the 2011 class attendees. David Polet is responsible because he made the announcement to the CUNA Management School attendees "after" the telegram performance v. before the telegram performance so did not mitigate his own damages. Videos were posted on the internet with Plaintiffs' "Banana Lady (c) TM character regardless of Plaintiffs' warning not to do so. (See Exhibit I).
4. Board of Regents (University Madison Wisconsin) located at Board of Regents of the University of Wisconsin System, is an employer as a business at 1856 Van Hise Hall 1220 Linden Drive, Madison, WI 53706. The Board of Regents rents the facility space to the CUNA Management School and Credit Union National Association as well as co-hosts the yearly conference connected because the UW Graduate School of Business provides the educational training and certification for these credit unions and its members. The Board of Regents/UWMadison is a co-sponsor of this yearly event with the other Defendants'. The

Board of Regents are also at all times responsible for providing a safe environment for the attendees who attend their booked events at their facilities and on-site premises. CUNA Management School would not exist without the Credit Union National Association and CUNA Mutual Group sponsoring and contracting with the Board of Regents University of Madison Wisconsin to rent space for their CUNA Management School each year and provide the certification training. The Board of Regents was responsible for providing a safe environment for Plaintiff Conrad to perform in. This responsibility is no different than the Board of Regents providing a safe environment so their attendees don't slip and fall on their premises. It is personal injury. The connection with all Defendants' to the Board of Regents / University of Wisconsin Graduate School of Business is that the CUNA Management School attendees receive their graduate diplomas from the University of Wisconsin Graduate School of Business that is recognized throughout the credit unions nationwide, so this credit union educational conference is in cooperation with the University's School of Business. All Defendants' work in conjunction with each other. (See Exhibit F and G).

NEW CLAIMS

5. **Copyright infringement** – Lori Saucier who booked the singing telegram gig for a 2011 CUNA Management School birthday recipient was told to announce to the class prior to Plaintiff Conrad's performance that no videotaping or pictures of the performance were allowed to be posted on the internet because of Plaintiffs' federal copyright and trademarks of the "Banana Lady © TM" character, otherwise a license fee would apply. David Polet, class president of the 2011 CUNA Management School ended up giving the announcement in her place but did so "after" Conrad's performance not before. Despite this warning videos were posted on the internet (see Exhibit B and I). All Defendants' and the CUNA Management School attendees had no written consents and permissions from the original

copyright owner (Plaintiffs') to post their videos and did not pay a license fee therefore violated Plaintiffs' exclusive rights as a copyright owner in displaying and distribution of the performance without permissions. Plaintiffs' hold valid official US Copyrights of the "Banana Lady" © TM, Reg. no. VA 1-724-407 and on Plaintiff Conrad Reg. no. VA 1-724-469 (See exhibit C) and have applied for the copyright of the "Banana Lady © TM costume (See Exhibit J). Valid copyright holders are able to litigate because they hold a valid copyright. Plaintiffs' Conrad and Rigsby meet the two essential elements of a copyright claim in that they are both the copyright owners (authors and claimants) and that they hold the valid copyrights of all "Banana Lady © TM" and Catherine Conrad. Having registered valid copyrights are supported by the tenth and eleventh circuits of the "registration approach" being valid for a copyright claim. This is prima facie evidence. As far as the copyright application of the "Banana Lady © TM" costume goes, the Fifth, Seventh and Ninth Circuits have adopted the application approach concluding that receipt by the Copyright Office of a complete application satisfies the registration requirement of § 411(a), therefore the "Banana Lady (c) TM costume application is valid and under copyright protection as well. The costume has been fixed in a tangible medium of expression since 2007 when it was designed.

6. **Trade Dress violation of the Lanham Act 43, 15 U.S.C. 1125.** The "Banana Lady © TM is distinctive, non-functional, and distinguishes traders or manufacturer's products or services from those of others. Trade Dress includes appearances like size, color or combinations of color, shape or a product's packaging. Distinctiveness is the most important aspect of the trade dress protection. A design to be inherently distinctive should be unusual in shape, color etc when introduced in the market that is essentially distinct from others. Defendants' posted videos on the internet in violation of Plaintiffs' trade dress on

the Banana Lady costume. Plaintiffs' hold an official registered trademark in the "Banana Lady" © TM Reg. no. 3,452,811, June 4, 2008 (See Exhibit C and J for image).

7. **Right of Publicity in violation of Wisconsin Statute 895.50** whereas Defendants' posted the image of Catherine Conrad's face on the internet without written consents and permissions from Plaintiffs' Conrad or Rigsby, posting Plaintiffs' face on the commercial CUNA Management School website. (See Exhibit B and I).
8. **Trademark Infringement** whereas Defendants' posted photos of the "Banana Lady © TM" and her name on the CUNA Management School website violating Plaintiffs' registered trademark of the "Banana Lady © TM", Reg. no. 3,452,811, June 4, 2008 (See Exhibit C).

ORIGINAL CAUSE OF ACTION

1. July 13, 2011- Conrad received a phone call from Lori Marquis-Saucier with CUNA Management School to provide a birthday singing telegram for one of their attendees at their conference in Madison, Wisconsin on July 14, 2011. Conrad told Lori Marquis-Saucier that the "Banana Lady TM" telegram character they wanted was a federal copyright and trademark and that photos and videos taken of the performance were not allowed to be posted on the internet unless a license fee was paid. Lori Marquis-Saucier understood and agreed to the terms and said she'd let the class know in advance of the rules.
2. Plaintiffs' learned a week or so after the performance that photos and videos were posted on the internet from the "Banana Lady TM" telegram performed at the CUNA Management School on July 14, 2011.
3. On July 25, 2011 Conrad emailed Lori Marquis-Saucier and asked if she could forward the reminder message to the attendees who saw the "Banana Lady TM" performance to remove any videos or photos immediately. Lori Marquis-Saucier agreed and said she would address it immediately and forward the message to all of the attendees from CUNA Management School.

4. On July 26, 2011 at 7:35 am Plaintiffs' received a defamatory email from Todd M. Streeter, Chief Information Officer of AM Community Credit Union from his work email:
TMStreet@amccu.org. Mr. Streeter was upset that Plaintiffs' had asked the attendees not to post their photos and videos on the internet because their "Banana Lady TM" character brand was copyrighted and trademarked. Mr. Streeter stated that he did not care if Plaintiffs' had copyrights and trademarks, that he understood intellectual property and that he would warn the present and future CUNA Management classes and all his friends and family in the Madison area not to do business with Plaintiffs'. Plaintiffs' do not know Mr. Streeter, have never met him nor have done anything to him to warrant his defamatory actions.
5. Plaintiffs' made an appointment with AM Community Credit Union's bank president Donald Gillespie for August 12, 2011 in Kenosha, Wisconsin to discuss this matter with employee Todd Streeter's employer. Plaintiffs' showed Mr. Gillespie their cease and desist and demand letter and the email Todd Streeter had sent Plaintiffs' along with 83 other credit union managers from all over the country. Plaintiffs' told Mr. Gillespie that they wanted to approach him first so he could decide how he wanted to handle this situation and employee Todd Streeter. Mr. Gillespie through Plaintiffs' out of his office and said Mr. Streeter was entitled to his opinion.
6. August 24, 2011 – Plaintiffs' did not receive an answer from AM Community Credit Union regarding their demand letter to settle so Plaintiffs' filed a civil state lawsuit against Todd Streeter and his employer AM community Credit Union for damages and libel.
7. Mr. Streeter has caused Plaintiffs' irreparable damages to their reputation and future earnings in the local area, regionally and nationally since Mr. Streeter sent out the defamatory email to 83 credit union marketing and bank managers across the United States. Protecting our brand is our right. Plaintiffs' did nothing to Mr. Streeter. Mr. Streeter's actions have now forced his employer AM Community Credit Union, CUNA Management School and the people he forwarded his defamatory email to, to be involved. 83 people who saw the performance on July

14, 2011 and received Mr. Streeter's defamatory email are potential witnesses that could be deposed and are from all over the country as is the business Plaintiffs' conduct. The damages are already done from the negative word of mouth Mr. Streeter created and acted upon and is willful. Plaintiffs' have been actively pitching television corporate sponsorships at \$130,000 each for their trademarked character the "Banana Lady TM" to banks and credit unions across the United States teaching families about their financial health. Locally Plaintiffs' have fully pitched Summit Credit Union and Dane County Credit Union for special television financial family wellness spots starring the "Banana Lady TM". Mr. Streeter's actions have caused damage to their reputation and to their "Banana Lady TM" character who has enjoyed a solid professional and positive family reputation for the past 25 years. Now when Plaintiffs' pitch their financial family wellness television package to the marketing and credit union managers locally, regionally and nationally the likelihood is extremely high that they will have experienced Mr. Streeter's defamatory email regarding the "Banana Lady TM" and her business will be a negative response to Plaintiffs' product making it even harder for Plaintiffs' to do business.

8. Todd Streeter's publication was in a permanent form in an email and named the Plaintiffs' so the defamation is libel. Todd Streeter published words in this damaging email to 83 other people across the nation (third party) His words were untrue and against Plaintiffs' personal and business reputation. Mr. Streeter has willfully intended to hurt Plaintiffs' decreasing their respect and has induced hostile and disagreeable opinions or feelings against Plaintiffs' by sharing his defamatory email to 83 bank and credit union marketing managers who are the contact people for Plaintiffs' financial health and wellness family campaign.

REVISED AMENDED SECTION / CAUSE OF ACTION

9. The evidence of the four elements of libel are:

1. Defendant Streeter conveyed his defamatory message in words and conduct (see exhibit B, first page)

2. Published the material in an email and communicated to other people (see exhibit B, first page)

3. Plaintiffs' were identified in the publication (see exhibit B, first page) Defendant Streeter names Catherine, the name of the company in the email address and that it's a Bananagram which gives away the name of the company "Banana Productions" and website where the public finds a bananagram (www.bananalady.com).

4. Plaintiffs' suffered injury and harm to their reputation and business on a local, regional and national level (see exhibit D). Plaintiffs' have pitched Summit Credit Union (Amy Crowe), Dane County credit Union (Bonnie Rosenmeier) and Post Office Credit Union (Terry) with their financial health and wellness WISC-TV sponsorships and licensing their "Money" song. Because of Streeter's defamatory words and conduct in his email, he has caused our company the potential right to contract with these particular credit unions and banks for our financial wellness sponsorships nationwide. According to Wisconsin Statute 802.03 Pleading special matters: When a libel action is based on conduct rather than words, sub. (6) is not applicable. *Starobin v. Northridge Lakes Development Co.* 94 Wis. 2d 1, 287 N.W.2d 747 (1980). 802.03 - ANNOT. In 1966, the Wisconsin Supreme Court adopted a broad definition. In 1966 the Wisconsin Supreme Court adopted a broad definition. It said, adopting the Restatement test, that a communication is defamatory if it so harms one's reputation "as to lower him in the estimation of the community or to deter third persons from associating or dealing with him". 12 In his 8. Id. At 458, 113 N.W.2d at 138.

10. Mr. Streeter is also inconsistent in his email in regards to the videos that were posted. First he says there were videos posted of the performance from Plaintiff, then he says no one posted videos of

Plaintiff a few sentences later. Which one is it? Plaintiffs' know the videos were posted because they saw them on the internet.

11. In regards to Streeter's comment that it was positive promotion for Plaintiff posting the videos, how does he know what is positive and what is not for Plaintiffs. Plaintiffs' never asked Defendants to promote them nor did Defendants' offer to promote Plaintiffs. Plaintiffs have been in business for 25 years. Anytime a client offers to promote Plaintiff in any shape or form it is arranged before any performance is commenced.

12. Although the entire email was defamatory towards Plaintiffs' and their business in both words and conduct, the particular words were: "I quite frankly could care less about who trademarked what or who copyrighted that..." "I will warn future classes that your company has asinine rules about being able to post pictures and photos and will encourage them to seek other companies who are friendlier to the buyer". "I will pass your litigious email to other friends and family I have in the Madison area and warn them that if they do business with you, expect to get heavy handed emails and threats". This information is false. Our company does not have asinine rules, our policy is dictated by law to protect our intellectual property and to mitigate our damages every time we book entertainment. Streeter also states that we are over zealous in the email and this is false as well.

13. Todd Streeter had a total disregard for the law, our business and reputation. Our entire business is intellectual property and by law we have to protect it or we lose it. Mr. Streeter being a CIO, web designer, graphic designer and free lance photographer should know the laws regarding intellectual property, especially as CIO of AM Community Credit Union. Mr. Streeter does the credit union's website and is on the committee of the CUNA Management School as well. Being an expert IT person Mr. Streeter was perfectly capable of carrying out his threats passing his email on to the other 83 participants in his email. Like the Unabomber, you don't wait and see if they're going to follow through with their threats. Mr. Streeter is armed and dangerous and should be treated as such. As CIO

he is privy to fraud laws, controls the codes, privacy and has access to the account holders for four branches. With the information he has at his disposal you have to take his threats seriously. Do you think someone from Homeland Security or Fort Know would take him seriously? His specialty is knowing how to get to and send information so sent 83 fellow credit union members the defamatory email to harm and damage Plaintiffs' reputation and future business. Mr. Streeter sent this email from his work so has no regard for his employer as well. He is arrogant and believes he is above the law. Whether Lori Saucier followed through per Plaintiffs' policy to notify the 83 people at the CUNA Management School the day of the telegram in regards to not taking pictures, videotaping and posting visual clips on the internet of Plaintiff is not Plaintiffs' issue. If Lori Saucier chose to not mitigate her damages that is not Plaintiffs' issue either. Either way no one forced Todd Streeter to write and send the defamatory email as he did. Even in his email he admits he is aware of intellectual property owners protecting their brands yet does not care despite his knowledge and expertise as a web designer, graphic designer and free lance photographer. Mr. Streeter should especially know the laws given he is the CIO, Chief Information Officer for AM Community Credit Union. Below is a definition of a CIO from the internet:

Definition of CIO from Wikipedia: Executive responsible for development, implementation, and operation of a firm's information technology policy. He or she oversees all information systems infrastructure within the organization, and is responsible for establishing information related standards to facilitate management control over all corporate resources. The title of Chief Information Officer in Higher Education may be the highest ranking technology executive although depending on the institution, alternative titles are used to represent this position. Generally, the CIO reports to the chief executive officer, chief operations officer or chief financial officer.

14. The day of the performance on July 14, 2011, Plaintiff Conrad was texting her location to who she thought was her contact Lori Saucier on her location and where to meet for an escort to the meeting hall. When Conrad got off the elevator at Grainger Hall to meet Lori Saucier, she was met instead by Any Jesse, who in turn walked Conrad up to the hallway outside the meeting room where she was to perform. Lori Saucier was not present for the telegram..

15. Through the discovery process in litigation Plaintiffs' learned that Lori Saucier (Conrad's contact for the telegram gig) passed her responsibility to make the announcement she was supposed to do to CUNA Management School class president, David Polet (regarding the rules of not videotaping and posting Conrad's Banana Lady's image on the internet). Per Conrad's policy and instructions to Lori Saucier to make the "before" Conrad's performance on July 14, 2011, David Polet made the announcement "after" her performance instead.

CONCLUSION

In conclusion, all Defendants' are jointly and severally liable for the defamatory words and conduct that was the causal link to damages of Plaintiffs' reputation and lost income and infringements on Plaintiffs intellectual properties. Joint and several liability is when two or more persons are both responsible for a debt, claim or judgment Defendants in a civil suit can be held jointly and severally liable only if their concurrent acts brought about the harm to the plaintiff. The acts of the defendants do not have to be simultaneous: they must simply contribute to the same event. In fact, two or more people can be liable for the same act or acts. If parties have joint and several liability, then they are each liable up to the full amount of the damages. All Defendants' share in the joint and several liability for the same act or acts that contributed to the harm and damages caused to Plaintiffs'. All Defendants' understand intellectual property because they own their company logos which are copyrights and trademarks. The Board of Regents/University of Wisconsin have their own copyrights and trademarks on their mascot "Bucky Badger" and the motion "W" so definitely understand intellectual property. Licensing alone for the use of Bucky Badger is over two million dollars a year. The rules that apply to videotaping Plaintiffs' copyrights and trademarks of the "Banana Lady © TM" are no different than that of using Bucky Badger's image without paying a license fee. The Board of Regents would never allow the CUNA Management School attendees to videotape "Bucky and post photos of him on the internet. Defendant Streeter's words and conduct in his defamatory email to Plaintiffs' were not actions

of just a member but as the CIO of AM Community credit Union and as an Officer with the CUNA Management School which represents all people in the school with his actions. Mr. Streeter's defamatory email from last July 2011 was to make sure that all 2012 CUNA Management School attendees know of his desires to harm Plaintiffs' business and reputation so is still dangerous and a threat to Plaintiffs'. The CUNA Management School, CUNA Mutual Group and the Credit Union National Association are all intertwined and are connected. The CUNA management School even sells their own merchandise so should understand intellectual property as well. Any reasonable and right thinking citizen would take Streeter's email words and conduct as defamatory and is a strict liability. His email publication is made "solely from spite or ill will" and is an abuse and not a proper use of the privileged occasion. All Defendants' had a Duty of Care, a legal obligation to adhere to a reasonable standard of care while performing any acts that could foreseeably harm Plaintiffs'. By breaching their Duty of Care in not making the announcement regarding the rules of videotaping Plaintiffs' character because of their copyrights and trademarks in a timely fashion (before performance) they all contributed to the damages caused by Mr. Streeter's email defamatory words and conduct and the videos that were posted on the internet. Plaintiffs' had worked for years to perfect their TV financial family health and wellness campaign for their pitch to secure financial sponsorships from banks and credit unions nationwide and had just received the copyright on their campaign theme "Money Song" before Defendants' caused them harm. If not for the words, and conduct of all Defendants' contributory negligence, Plaintiffs' have been able to proceed with an untainted reputation to pitch to their potential new sponsors. Their TV campaign started with WISC TV (See Exhibit D and H) which extended to the La Crosse and Spokane Washington markets. Once their financial health and wellness TV spot was aired they could have sold this sponsorship to any TV market in the US. Defendants' have caused irreparable damage from lost income opportunities that Plaintiffs' could have benefitted from earning the residual income from these TV spots of their merchandise and products from being aired.


PRAYER FOR RELIEF

Plaintiffs' pray for the courts to judge in their favor and against all Defendants listed in this case. Plaintiffs' are seeking:

1. Monetary relief as the courts deem fit for the respective remedies for each claim
2. Court costs and fees reimbursed

Respectfully submitted,


Rodney Rigsby,


Catherine Conrad

Date: July 13, 2012