

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

WILCOX & FETZER LTD., )  
a Delaware Corporation, )  
 )  
Plaintiff, )  
 )  
v. ) Civil Action No. 2037-VCP  
 )  
EVC, INC. and ECRW, INC., d/b/a )  
CORBETT & WILCOX, )  
 )  
Defendants. )

**MEMORANDUM OPINION**

Submitted: November 5, 2007

Decided: November 16, 2007

Gregory V. Varallo, Esquire, Geoffrey G. Grivner, Esquire, RICHARDS, LAYTON & FINGER, P.A., Wilmington, Delaware, *Attorneys for Plaintiff*

John C. Phillips, Jr., Esquire, Brian E. Farnan, Esquire, PHILLIPS, GOLDMAN & SPENCE, P.A., Wilmington, Delaware, *Attorneys for Defendants*

**PARSONS, Vice Chancellor.**

This action is before the Court on the motion of Plaintiff, Wilcox & Fetzer Ltd., for violation of the Consent Decree entered on December 19, 2006. Wilcox & Fetzer asserts that Defendants violated the Consent Decree on at least four separate occasions. Defendants respond that the actions complained of were committed by third parties and did not violate the Consent Decree. Defendants also argue that Plaintiff's motion is barred by the doctrine of laches.

Wilcox & Fetzer urges the Court to declare that Defendants violated the Consent Decree, thereby triggering an automatic extension of the disclaimer period for an additional nine months and a requirement that Defendants pay Plaintiff's attorneys' fees and costs in pursuing this motion. For the reasons stated, I find that Defendants violated the Consent Decree in connection with marketing materials distributed by the Delaware Trial Lawyers' Association ("DTLA") at its annual convention, but that Wilcox & Fetzer is guilty of laches for not pursuing that violation sooner. Accordingly, I am ordering that the Consent Decree disclaimer period be extended for seven months from the date of this Memorandum Opinion and that Defendants reimburse Wilcox & Fetzer for 50% of its reasonable attorneys' fees and costs.

## **I. FACTS**

Wilcox & Fetzer brought this action to enjoin Defendants, EVC, Inc. and ECRW, Inc., d/b/a Corbett & Wilcox ("Corbett & Wilcox" or "Defendants"), from using the name "Wilcox" in the firm name Corbett & Wilcox in a manner which allegedly deprived Plaintiff of the valuable trademark and trade name rights it owns in the name and mark "Wilcox & Fetzer." These rights stem from more than 15 years of Plaintiff's exclusive

and continuous use of the name and mark to offer services to the Bar. The complaint sought injunctive relief and damages under the Uniform Deceptive Trade Practices Act, *6 Del. C.* §§ 2531-2536, for Defendants' wrongful and damaging advertising campaign, suggesting that Plaintiff and Corbett & Wilcox had merged or otherwise "joined forces."

## **II. PROCEDURAL FACTS**

The Court conducted a trial in this action on July 17-19, 2006. At the end of the trial, the Court urged the parties to pursue a settlement. The parties ultimately entered into a settlement agreement on November 15, 2006. As part of that agreement, the parties stipulated to a Consent Decree, which the Court entered on December 19, 2006. Broadly, the Consent Decree requires Defendants to ensure that a disclaimer appears after Corbett & Wilcox in any and all materials that it or its affiliates distribute for a nine month period. The Consent Decree also provides that Defendants are responsible for Plaintiff's reasonable attorneys' fees and costs associated with any successful enforcement of the Consent Decree's terms.

On November 8, 2006, while negotiating the settlement, the parties memorialized an ancillary agreement in a side letter (the "Side Letter"). The Side Letter relates to potential enforcement of certain provisions of the settlement. In relevant part, the Side Letter creates a defense under the Consent Decree if a third party refers to Corbett & Wilcox in an electronic posting without the disclaimer and Corbett & Wilcox can show that it did not know about that posting.

On September 18, 2007, one day before the disclaimer period expired, Wilcox & Fetzer filed the pending motion for violation of the Consent Decree, seeking a nine

month extension of the disclaimer period and payment of its reasonable attorneys' fees and costs.

### III. PARTIES' CONTENTIONS

Wilcox & Fetzer accuses Defendants of failing to ensure that all directory listings, advertising, and marketing materials reflecting the name "Corbett & Wilcox" contain the disclaimer required by the Consent Decree. Based on these alleged breaches, Wilcox & Fetzer seeks to hold Corbett & Wilcox in contempt of the Consent Decree.<sup>1</sup> Plaintiff emphasizes that the parties expressly agreed that even "negligent" and "innocent" breaches of the Consent Decree would entitle Wilcox & Fetzer to remedies, including an automatic extension of the nine month disclaimer period and reasonable attorneys' fees and costs.<sup>2</sup> Specifically, Plaintiff asserts at least three breaches in its initial motion and an additional breach in its reply.

Defendants deny violating the Consent Decree and claim to have gone to great lengths to comply with its provisions.<sup>3</sup> Defendants contend that the alleged violations concern acts of third parties that do not fall under the Consent Decree. Additionally, Defendants argue that Wilcox & Fetzer sat on its rights and that its motion, filed just before the disclaimer period expired, is barred by laches. Accordingly, Defendants request a denial of Plaintiff's Motion, an award of their costs and attorneys' fees in

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<sup>1</sup> Pl.'s Mot. for Violation of Consent Decree ("Pl.'s Mot.") at 5. The required disclaimer reads, "Corbett & Wilcox is not affiliated with Wilcox & Fetzer, Court Reporters." Pl.'s Mot. Ex. A, Consent Decree, ¶ 1.

<sup>2</sup> Pl.'s Mot. at 5-6.

<sup>3</sup> Defs.' Opp'n to Mot. for Violation of Consent Decree ("Defs.' Opp'n") at 1-2.

defending against the Motion, and a declaration that the time period for the disclaimer has expired.

As background, Wilcox & Fetzer notes that on the very day the Court entered the Consent Decree, December 19, 2006, Defendants breached it.<sup>4</sup> Specifically, Defendants circulated invitations which contained the required disclaimer, but used a typeface substantially smaller than the smallest type used on the invitations. Defendants acknowledged the breach, paid Plaintiff \$459.30 for its legal fees in enforcing the Consent Decree, and agreed to reset the nine month disclaimer period by one day. Plaintiff's pending motion alleges that Corbett & Wilcox violated the Consent Decree in four additional respects.

**A. NCRF Letter**

Wilcox & Fetzer first seeks relief for a January 19, 2007 letter sent on behalf of the National Court Reporters Foundation ("NCRF") that it contends violated the Consent Decree. The NCRF letter made reference to Corbett & Wilcox without the required disclaimer in its letterhead listing of Ellie Corbett Hannum as Chair of the organization.<sup>5</sup> Plaintiff asserts that because Hannum, a principal of Corbett & Wilcox, chairs the NCRF Board, she had the power to cause the disclaimer to appear on the letterhead.

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<sup>4</sup> Pl.'s Mot. at 3.

<sup>5</sup> Pl.'s Mot. Ex. C, the NCRF letter.

Defendants respond that Wilcox & Fetzer's claim regarding the NCRF letter is barred by laches.<sup>6</sup> Defendants contend that the three elements of laches are satisfied, namely: (1) Plaintiff had knowledge of a potential claim relating to the NCRF letter as evidenced by its counsel's February 1, 2007 letter to Corbett & Wilcox's counsel enclosing the letter; (2) Plaintiff acted unreasonably in waiting over seven months, nearly the entire disclaimer period, before bringing this claim; and (3) Corbett & Wilcox was substantially prejudiced by Plaintiff's delay as the nine month disclaimer period would restart upon a finding of a violation.

In addition to the laches defense, Defendants contend that the NCRF letter was distributed by a third party without Corbett & Wilcox's knowledge and does not violate the Consent Decree, which only applies to Corbett & Wilcox materials.<sup>7</sup> Moreover, Defendants note that in late 2006, Hannum notified the NCRF of the disclaimer requirement and requested the name Corbett & Wilcox be removed from all NCRF materials. Further, after receiving notice from Wilcox & Fetzer about the NCRF letter, Hannum promptly contacted the Foundation and again requested that the name Corbett & Wilcox be removed from NCRF materials. NCRF promptly heeded that request.

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<sup>6</sup> Defs.' Opp'n at 5.

<sup>7</sup> *Id.* at 5-6.

## B. DTLA Materials

Wilcox & Fetzer also claims that advertising materials DTLA distributed at its convention on June 22 and 23, 2007, violated the Consent Decree.<sup>8</sup> The distributed materials included the name Corbett & Wilcox without the required disclaimer. Plaintiff contends that Corbett & Wilcox registered and paid exhibitor fees for the DTLA convention and that, as a result, DTLA distributed the offending materials.

Defendants advance several arguments in response.<sup>9</sup> Defendants assert that they included the required disclaimer in the Exhibitor Registration form submitted to the DTLA. Further, Defendants note that they only paid to rent space at the DTLA convention and declined to be a paid advertiser. They also argue that there was no risk of confusion at the DTLA convention because Plaintiff's principal, Kurt Fetzer, stood in front of the Wilcox & Fetzer booth, located one booth apart from Corbett & Wilcox's, where he could view prominent Corbett & Wilcox banners and handouts, all of which contained the required disclaimer. Finally, Defendants raise the equitable defense of laches, arguing that Plaintiff presumably discovered any perceived violation on June 22, 2007 at the convention, but did not mention it until July 13, when its counsel wrote to Corbett & Wilcox's counsel complaining about the DTLA materials. By letter dated July 18, 2007, Defendants' counsel disagreed with Plaintiff's assertion that the DTLA

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<sup>8</sup> Pl.'s Mot. at 4.

<sup>9</sup> Defs.' Opp'n at 6-9.

materials constituted a violation.<sup>10</sup> Plaintiff took no further action until it filed the motion now before me on September 18, 2007.

### C. STAR Listing

Next, Wilcox & Fetzer asserts that an online directory listing of Corbett & Wilcox in the Society for Technological Advancement of Reporting (“STAR”) violated the Consent Decree.<sup>11</sup> Plaintiff argues that the directory listing did not include the required disclaimer and therefore constituted a violation.

Defendants respond that the STAR electronic listing is a third party act not subject to the Consent Decree.<sup>12</sup> Additionally, Defendants contend that the Side Letter protects Corbett & Wilcox from any liability based on an electronic posting by a third party of which it has no knowledge. The Side Letter, in relevant part, creates a defense under the Consent Decree if a third party improperly refers to Corbett & Wilcox in an electronic posting without the knowledge of Corbett & Wilcox. In her affidavit, Hannum avers that Corbett & Wilcox was unaware that STAR published a list of its members on its website and that the only fee it paid STAR was for annual membership dues. Finally, Defendants contend that Hannum explicitly informed STAR of the required disclaimer and that STAR “simply dropped the ball” and failed to include the disclaimer on the electronic listing.<sup>13</sup>

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<sup>10</sup> Pl.’s Mot. Ex. F, Defs.’ counsel’s July 18, 2007 letter to Pl.’s counsel.

<sup>11</sup> Pl.’s Mot. at 5.

<sup>12</sup> Defs.’ Opp’n at 9.

<sup>13</sup> *Id.* at 11.



#### **D. NCRA Listing**

Lastly, Wilcox & Fetzer, in its reply brief, alleges an additional violation of the Consent Decree. Specifically, Plaintiff infers from an October 9, 2007 listing on the National Court Reporting Association's ("NCRA") website that included one entry for Corbett & Wilcox with the disclaimer and one without, that some listings on the NCRA website failed to contain the required disclaimer during the disclaimer period.<sup>14</sup> To explain its failure to assert this violation earlier, Plaintiff states that it was unaware of the NCRA website issue until Defendants raised it in their answering papers.<sup>15</sup> While attempting to confirm the veracity of Defendants' statement that the NCRA website included the disclaimer, Plaintiff discovered that the website included a second listing that did not include the disclaimer.

Defendants, at argument and in supplemental briefing, emphasize that Wilcox & Fetzer did not raise any issue regarding the NCRA website in its Motion.<sup>16</sup> Further, Defendants note that Plaintiff never asserted during the disclaimer period that Corbett & Wilcox's listing on the NCRA website violated the Consent Decree. In fact, the only evidence regarding the alleged NCRA website violation before the Court is an October 9, 2007 printout of the website which post-dates the disclaimer period.

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<sup>14</sup> Pl.'s Reply Br. at 8. An October 2007 search of the NCRA Professional Services locator produced two listings for Corbett & Wilcox. Plaintiff avers that one listing contained the disclaimer and the other did not.

<sup>15</sup> Pl.'s Nov. 12, 2007 Supp. Letter at 2.

<sup>16</sup> Supp. Affs. in Supp. of Defs.' Opp'n to Mot. for Violation of Consent Decree ("DSA") at 2.

#### IV. ANALYSIS

Two documents, the Consent Decree and the Side Letter, govern this dispute. The Consent Decree provides that for a period of nine months Corbett & Wilcox would carry a prominently placed disclaimer on any and all materials reflecting the name “Corbett & Wilcox,” including but not limited to all of “its stationary, transcript pages and binders, envelopes, labels, directory listings . . . , signage, advertising, marketing materials, and any other medium of any kind, including any electronic media (collectively the “Materials”).”<sup>17</sup> The disclaimer had to appear on any and all Materials which contain the name Corbett & Wilcox, and Defendants were responsible to “ensure” the inclusion of the disclaimer on all Materials “regardless of whether such Materials are used or distributed by an employee, independent contractor, subcontractor or other person or firm affiliated in any way with [Defendants].”<sup>18</sup> Further, the Consent Decree provides that:

Any violation of the Consent Decree found to have been committed by Defendants, their employees, contractors, subcontractors, or *any other persons or firms acting on behalf of Defendants or in the course of the business of Defendants*, whether or not knowing, willful, negligent or innocent in nature, shall extend the time period of Paragraph 1 of this Consent Decree by an additional nine (9) months from the date of the finding of such violation, even if the initial nine month period shall have already expired by the date of the Court’s finding of the violation.<sup>19</sup>

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<sup>17</sup> Pl.’s Mot. Ex. A ¶ 1.

<sup>18</sup> *Id.* ¶ 2.

<sup>19</sup> *Id.* ¶ 4 (emphasis added).

Additionally, under the Consent Decree, Plaintiff is not required to prove scienter on the part of Defendants to establish a violation.<sup>20</sup> Finally, the Consent Decree provides that Defendants are responsible for Plaintiff's reasonable attorneys' fees and costs incurred in any successful enforcement of any of its terms.<sup>21</sup>

The Side Letter tempers somewhat the strict liability imposed on Corbett & Wilcox for violations. Under the Side Letter, the parties agreed that "to the extent that third parties refer to Corbett & Wilcox in electronic postings without the knowledge of Corbett & Wilcox . . . it would be a defense to an enforcement action by Wilcox & Fetzer that Corbett & Wilcox was unaware of such posting."<sup>22</sup>

This Court has the jurisdiction to enforce consent decrees that it enters.<sup>23</sup> Further, the enforcement of such decrees lies in the broad discretion of the Court.<sup>24</sup> I now turn to the four alleged violations of the Consent Decree.

#### **A. NCRF Letter**

The NCRF letter is not within the category of "Materials" covered by the Consent Decree. According to the Consent Decree, "Materials" include but are not limited to:

all of its [Defendants'] stationary, transcript pages and binders, envelopes, labels, directory listings printed after the date hereof (although any and all electronic directory listings

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<sup>20</sup> *Id.* ¶ 5.

<sup>21</sup> *Id.* ¶ 3.

<sup>22</sup> Pl.'s Mot. Ex. E at 1.

<sup>23</sup> *Scott v. Durham*, 1979 WL 178484, at \*2 (Del. Ch. May 22, 1979).

<sup>24</sup> *Id.* (citing *Wilmington Homes, Inc. v. Wyler*, 202 A.2d 576, 580 (Del. Ch. 1974)).

shall be changed promptly after the date hereof), invoices, business cards circulated or handed out after the date hereof, signage, advertising, marketing materials, and any other medium of any kind, including any electronic media (collectively the “Materials”).<sup>25</sup>

The NCRF letter thanks donors for supporting the Foundation’s Angels Drive, a philanthropic effort.<sup>26</sup> The document’s letterhead lists Hannum as Chair of the NCRF and a member of Corbett & Wilcox. There is no disclaimer. I find that the NCRF letter is not Corbett & Wilcox stationary or advertising or marketing material or any other form of “Material” within the meaning of the Consent Decree. Thus, no disclaimer was required and the NCRF letter did not violate the Consent Decree.<sup>27</sup>

### **B. DTLA Materials**

The marketing materials from the DTLA convention about which Wilcox & Fetzer complain consist of two separate one-page documents. The first, entitled, “2007 Convention Exhibitors,” states: “The following companies have provided significant financial support for this CLE event. Please show them your appreciation by visiting them during our breaks!”<sup>28</sup> The document then alphabetically lists 24 exhibiting companies in two columns, including Corbett & Wilcox and Wilcox & Fetzer. The bottom of the page lists a second group of 7 vendors who “have paid DTLA to distribute

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<sup>25</sup> Pl.’s Mot. Ex. A ¶ 1.

<sup>26</sup> Pl.’s Mot. Ex. C.

<sup>27</sup> Even assuming the NCRF letter violated the Consent Decree, the doctrine of laches arguably would apply and greatly limit any relief Wilcox & Fetzer might obtain.

<sup>28</sup> Pl.’s Mot. Ex. D.

their materials at registration or are running an ad in these materials.” That list again includes Wilcox & Fetzer. The second document in issue bears the headline, “DTLA Offers Door Prizes to Encourage Attendees to Visit Vendors.”<sup>29</sup> As occurs at many professional association meetings, this document states that all attendees will receive a card containing the names of all the exhibitors and that those who have the card initialed by each exhibitor will be eligible to participate in a drawing for various prizes. The sample card shown on the document lists Corbett & Wilcox and Wilcox & Fetzer. Neither of the documents in issue, however, contains the disclaimer.

To determine if the distribution of these documents at the DTLA convention violated the Consent Decree, I first consider whether they are “Materials” within the meaning of the Decree. The Consent Decree broadly defines “Materials” to include “advertising” and “marketing materials.” Here, the DTLA materials publicized the convention and the firms participating in the convention as exhibitors, including Corbett & Wilcox. Consequently, I find that the DTLA materials constitute marketing materials and, perhaps, advertising, as well. Therefore, each of the DTLA documents falls within the scope of the Consent Decree.

The Consent Decree also reaches Materials distributed by persons other than Defendants in certain circumstances. Paragraph 2 obligates Defendants to ensure that the required disclaimer is on any and all Materials which use the name Corbett & Wilcox, “regardless of whether such Materials are used or distributed by an employee,

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<sup>29</sup> *Id.*

independent contractor, subcontractor or other person or firm affiliated in any way with [Defendants].” Further, the remedy provision of the Consent Decree expressly covers any violation committed by “Defendants, their employees, contractors, subcontractors, or any other persons or firms acting on behalf of Defendants or in the course of the business of Defendants.” In distributing the disputed documents, DTLA acted in the capacity of a person or firm affiliated with Defendants and acting on their behalf in the course of the business of Corbett & Wilcox to publicize their participation as an exhibitor at the DTLA convention. Thus, for purposes of the Consent Decree, Defendants are responsible for DTLA’s distribution of the two documents without the required disclaimer.

Plaintiff and Defendants are all relatively sophisticated parties who entered into the Consent Decree upon the advice of able counsel to avoid continued litigation. The Consent Decree, in broad language, essentially imposes strict liability for any violation of its terms. Defendants are “responsible to ensure” the inclusion of the required disclaimer on any and all “Materials,” not just to use “best efforts.” Moreover, upon any violation, “whether or not knowing, willful, negligent or innocent in nature,” the Decree virtually requires the extension of the disclaimer period by another nine months. Here, the use and distribution of the DTLA materials violated the Consent Decree, thereby triggering the remedy provision.<sup>30</sup>

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<sup>30</sup> At argument, Defendants’ counsel suggested that the Consent Decree, as Plaintiff interprets it, would require Corbett & Wilcox to do the impossible. In the case of the DTLA incident, at least, that argument rings hollow. Defendants knew from communications with Plaintiff when the parties filed the Consent Decree and from the NCRF incident in February 2007 that Wilcox & Fetzer believed the Decree applied to actions of third parties. Because Defendants registered and paid

Lastly, Defendants point to their lack of intent and lack of confusion, but the Consent Decree explicitly excludes these defenses. The Decree provides, for example, that state of mind is not a factor. Specifically, Wilcox & Fetzer is not required to prove scienter on the part of Defendants to establish a violation of the Consent Decree. Therefore, Defendants' argument as to their intent is irrelevant. Similarly, the Consent Decree does not require a showing of confusion or likelihood of confusion.

For these reasons, I find that the DTLA materials violated the Consent Decree. In terms of an appropriate remedy, however, Defendants raise the equitable defense of laches. I discuss the impact of that defense in Part IV.E, *infra*.

### **C. STAR Listing**

Whether the STAR electronic directory listing for Corbett & Wilcox violates the Consent Decree depends on the parties' Side Letter. In relevant part, the Side Letter provides: "to the extent that third parties refer to Corbett & Wilcox in electronic postings without the knowledge of Corbett & Wilcox . . . it would be a defense to an enforcement action by Wilcox & Fetzer that Corbett & Wilcox was unaware of such posting." The STAR directory listing is an electronic posting and Corbett & Wilcox presented credible evidence, *i.e.*, Hannum's affidavit, that it did not know about the listing. Indeed, it

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exhibitor fees for the DTLA convention, they knew or should have known that DTLA would use materials along the lines of the two disputed documents to publicize the identity of its exhibitors. Although Corbett & Wilcox included the disclaimer on the line for their Company name on the registration form, they took no other action to ensure that the disclaimer appeared anywhere else the Corbett & Wilcox name did. In these circumstances, I consider avoiding the claimed violation to have been well within the realm of possibility.

appears that Corbett & Wilcox gave instructions to STAR that should have avoided this problem. Yet, in the words of STAR's Executive Director, STAR "simply dropped the ball." Therefore, in relation to the STAR directory listing, Plaintiff failed to show that Defendants violated the Consent Decree.

#### **D. NCRA Listings**

Plaintiff's claim of a violation based on the NCRA listings suffers from two serious flaws. First, Plaintiff never raised this alleged violation with Defendants during the nine month disclaimer period, which ended September 19, 2007. Wilcox & Fetzer first mentioned the NCRA listing on October 12, 2007, in its reply in support of its motion for violation of the Consent Decree. In preparing for that reply, Plaintiff checked the NCRA website and found two listings for Corbett & Wilcox, one of which included Corbett & Wilcox's current address and the disclaimer and another which included their old address without the disclaimer.<sup>31</sup> Wilcox & Fetzer adduced no direct evidence that any listing of Corbett & Wilcox appeared on the NCRA website during the disclaimer period without the required disclaimer. Instead, Plaintiff urges this Court to infer that occurred from the existence of two separate listings in October. This argument is not very persuasive, however, because nothing prevented Plaintiff from accessing the NCRA website during the disclaimer period. Based on the ease with which Plaintiff could have

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<sup>31</sup> Defendants submitted an affidavit from the Project Manager for the entity responsible for hosting the NCRA website, stating that the problematic old listing for Corbett & Wilcox was the result of an "unknown technical error." The affidavit further indicates that the entity's technical department has attempted to resolve the problem, and believes they have succeeded. DSA Ex. B.



discovered any NCRA problem and the strict liability nature of the Consent Decree, I am not willing to find a violation on the limited circumstantial evidence presented.

Plaintiff's claim of violation based on the NCRA listings also fails for a second reason, namely, the Side Letter. The NCRA listing is an electronic posting of a third party. In supplemental affidavits, Defendants present credible evidence that they did not know of an NCRA listing that mentioned Corbett & Wilcox without the required disclaimer. Therefore, Corbett & Wilcox has established a valid defense under the Side Letter to Plaintiff's charge that the NCRA listing violated the Consent Decree.

#### **E. Laches**

Laches is an equitable defense that prevents the enforcement of a claim in equity where a plaintiff unreasonably delayed in bringing suit to the detriment of the defendant or third parties.<sup>32</sup> To demonstrate laches, a party must show: (1) that the plaintiff had knowledge of the invasion of his rights; (2) that he unreasonably delayed bringing suit; and (3) that the delay resulted in injury or prejudice to the party raising the defense or a third party.<sup>33</sup>

Defendants raise the affirmative defense of laches. As only the distribution of the DTLA documents violated the Consent Decree, I will limit the laches analysis solely to

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<sup>32</sup> *Scureman v. Judge*, 626 A.2d 5, 13 (Del. Ch. 1992).

<sup>33</sup> *Fike v. Ruger*, 752 A.2d 112, 113 (Del. 2000) (citing *Fed. United Corp. v. Havender*, 11 A.2d 331, 343 (Del. 1940)).

Plaintiff's actions as to that violation.<sup>34</sup> The DTLA distributed the disputed materials at the DTLA convention on June 22 and 23, 2007. On July 13, 2007, Plaintiff's counsel notified Defendants of the alleged violation. A few days later, on July 18, Defendants' counsel dismissed Plaintiff's charges that they violated the Consent Decree and stated, "if your client feels compelled to take this matter up with the Court, we will assert that such an action is nothing more than harassment and seek fees and any other relief I can think of requesting."<sup>35</sup> Plaintiff then waited until September 18 to file this action. Plaintiff's delay in the face of Defendants' unequivocal rejection of their charges is unreasonable. Moreover, the delay prejudiced Defendants by effectively extending the constraints on Defendants' freedom of action by at least an additional two months.

In these circumstances, and mindful of the Consent Decree's provisions for strict liability and harsh consequences for any breach, I conclude that Plaintiff is guilty of laches. Generally, upon proof of a violation, the Consent Decree provides for a nine month extension of the disclaimer period and for the payment of Plaintiff's reasonable attorneys' fees and costs in successfully enforcing the Decree. Based on the applicability of laches since mid-July, and the fact that Plaintiff prevailed on only a portion of its claims, I have decided to limit the relief in this case to a seven month extension of the disclaimer period and payment of 50% of Plaintiff's attorneys' fees and costs.

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<sup>34</sup> As previously mentioned, if the NCRF letter had violated the Consent Decree, laches also might apply to that violation.

<sup>35</sup> Pl.'s Mot. Ex. F.

## V. CONCLUSION

For the reasons stated, I find that Defendants did not violate the Consent Decree with respect to the NCRF letter, the STAR directory listing, or the NCRA directory listings. As to the DTLA materials, however, Defendants violated the Consent Decree and Plaintiff is entitled to an extension of the Consent Decree and attorneys' fees and costs. Because Defendants established a defense of laches, however, I am extending the Consent Decree for only seven months, as opposed to nine months, from the date of this Memorandum Opinion. In addition, Defendants shall be responsible for 50% of Plaintiff's reasonable attorneys' fees and costs in prosecuting its motion for violation of the Consent Decree.

Plaintiff shall submit its claim for attorneys' fees and costs, including appropriate supporting documentation, within ten days of the date of this Memorandum Opinion. Defendants shall submit any objections to Plaintiff's claim within ten days thereafter.

**IT IS SO ORDERED.**