

FRIDAY, FEBRUARY 3, 2012

# DAILY REPORT

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An ALM Publication

## Cain sued over book cover photo

Buford advertiser claims ex-Republican presidential candidate violated copyright

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A metro Atlanta advertising agency is suing former presidential candidate Herman Cain and the New York publisher of his biography, claiming that its copyright of the book's cover photo has been infringed.

Buford-based Adventure Advertising LLC sued Cain, Simon & Schuster and Cain's organization, T.H.E New Voice Inc. in U.S. District Court in Atlanta on Jan. 25. The ad agency claims that it owns the copyright to a photo on the cover of Cain's book, "This is Herman Cain My Journey to the White House," and that the publisher has used it without permission.

The picture in question was taken during a 2011 photo shoot of Cain arranged by Friends of Herman Cain Inc. and was intended solely for use in Cain's political campaign, according to the ad agency.

Adventure Advertising seeks an injunction that would halt sales of Cain's book. It also asks the court to impound all copies of Cain's biography for destruction and for Cain and his publisher to surrender all profits derived from the copyright infringement.

The case has been assigned to U.S. District Chief Judge Julie E. Carnes.

Blakely H. Frye of Hill, Kertscher & Wharton, representing Adventure Advertising, said that company personnel were unaware, until they saw Cain's book, that one of their photos had been used on the cover.

Frye said the photos taken for Cain were sold to him "for the campaign." But, he added, "They did not sell the copyright or photos for use as a book cover or in the book."

Frye said his firm had contacted Cain publisher Simon & Schuster before filing suit, although he



Blake Frye

declined to talk about discussions with the publisher. He said there have been no discussions so far with either Cain or his representatives.

A spokesman for Cain couldn't be reached for comment by press time. The in-house attorney at Simon & Schuster whom the case has been assigned also couldn't be reached for comment.

The Cain suit joins two other intellectual property disputes that have sprung from the 2012 presidential campaign.

This week, Republican presidential candidate Newt Gingrich was sued in federal court in Illinois for playing the song, "Eye of the Tiger" the theme song of "Rocky III" at his rallies. The song's co-author, Frank M. Sullivan III, a former member of the rock band Survivor, and his company, Rude Music Inc., has claimed that Gingrich's use of the song at rallies that have subsequently been posted on the Internet infringes the song copyright. That case is *Rude Music v. Newt* 2012, 1:12-cv-640 C.D. Ill..

Contacted by the Daily Report, the Gingrich campaign had no immediate response.

NBC last week asked the campaign of Republican presidential candidate Mitt Romney to pull a campaign ad that featured a segment of a 1997 "NBC Nightly News" report. According to The Associated Press, NBC claimed the footage was used without permission and gave viewers the erroneous impression that NBC News and former Nightly News anchor Tom Brokaw "agree with the political position espoused by the videos." Romney's campaign responded that they considered their use of a 30-second snippet of the broadcast to be "fair use" permitted by federal copyright laws.

Adventure Advertising's suit against Cain

claims that after an April 2011 photo shoot, Friends of Herman Cain paid the advertising agency \$1,050 for three photographs, including the photo that is the subject of the lawsuit.

"Adventure Advertising did not transfer the copyright in the photographs to Friends of Herman Cain, nor did it grant Friends of Herman Cain the right to use the work in any context outside of advancing the presidential campaign of Cain," the suit said, "nor did it grant any rights to sub-license the photographs or to publish any photograph in a book to any third parties," according to the suit.

The suit said that in addition to those photos, Cain's company, T.H.E New Voice, on July 12, 2011, paid \$350 for a second Cain photograph for publication in a magazine. But, according to the suit, the \$350 check mailed to Adventure Advertising that same day by Cain came with an invoice with the notation, "For cover photo: This is Herman Cain."

"Adventure Advertising's accounting department had no reason to ascribe any importance to the notation and cashed the check" as payment for the magazine publication of the second photo, the suit said.

But on July 14, two days after the date on the invoice, T.H.E New Voice requested permission to use the Cain photo at issue, the suit claimed. That request came from Cain's administrative assistant via an email asking to use the photo in question for Cain's biography, according to the suit.

Adventure Advertising never replied or granted permission for use of the photo as the biography's cover, the suit claims.

The case is *Adventure Advertising v. Simon & Schuster*, No. 1:12-cv-272, N.D. Ga.

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