

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,
FEMHEALTH USA, INC., d/b/a CARAFEM,
MILO WORLDWIDE LLC,
PEOPLE FOR THE ETHICAL TREATMENT
OF ANIMALS, INC.,

Plaintiffs,

v.

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY,
PAUL J. WIEDEFELD,

Defendants.

No. 1:17-cv-_____

DECLARATION OF ALEXANDER MACRIS

Alexander Macris deposes and says:

1. I am the Chief Executive Officer of MILO Worldwide LLC (Milo Worldwide), a plaintiff in this case. I make this declaration in support of Milo Worldwide's motion for a preliminary injunction.

2. Milo Yiannopoulos is a public figure who is known for his iconoclastic opinions about contemporary issues. Part of his distinct media personality and brand is to engage provocatively with various matters of public concern. Milo Worldwide is a corporation through which Milo Yiannopoulos carries out his activities as an author, journalist, and public speaker. Milo Worldwide is the publisher of Mr. Yiannopoulos' new book, *Dangerous*, which was published on July 4, 2017.

3. In conjunction with the publication of *Dangerous*, Milo Worldwide wished to advertise the book in various places, including transit agency advertising spaces.

4. In June 2017, Milo Worldwide submitted some proposed advertisements for the book to Outfront Media, Inc. (“Outfront”), which handles advertising for several transit agencies. We initially sought placement in the New York subway system. The New York Metropolitan Transit Authority (MTA) had some concern with the initial designs, and we adjusted the designs to address their concern, at which point our ads were accepted. They were put on display in New York subway stations on or about June 26, 2017, and remain on display at this time. The New York MTA has a policy against accepting “political” ads, but did not view our ads as violating that policy.

5. Shortly after our ads were accepted by the MTA, we submitted substantially the same ads to Outfront for placement in the Washington and Chicago transit systems (WMATA and CTA). As submitted, the advertisements simply displayed Mr. Yiannopoulos’s face, the book’s title (“Milo’s Dangerous”), an invitation to “Pre-Order Now,” and, across the top, one of several short quotations from different book reviews. The advertisements were accepted without hesitation by both WMATA and the CTA. The Chicago Transit authority also has a policy against “political” or “public issue” advertisements. Our ads were displayed in CTA stations from approximately July 3 to July 30.

6. On June 21, 2017, Milo Worldwide executed two contracts with Outfront (one for production, one for display) and paid \$27,690 for the production and display of 45 large advertisements (46” H x 60” W) in WMATA Metro stations, and 200 “car cards” (22”H x 21” W) in WMATA Metrorail cars on a space-available basis, for four weeks beginning on June 26, 2017. The advertisements were posted on that date. As posted, one of them looked like this:



7. Shortly thereafter, some WMATA riders began complaining about the advertisements. For example, one rider quoted in the media said, “WMATA does not have to advertise hate speech.” Rachel Kurzius, *Metro Takes Down Its Milo Yiannopoulos Ads*, DCist July 7, 2017, http://dcist.com/2017/07/metro_milo_ads.php. The Washington Post reported that Mr. Yiannopoulos has “espoused ideas that were widely seen as racist, xenophobic and sexist.” Martine Powers, *Metro removes controversial Milo Yiannopoulos ads from stations*, Washington Post, July 7, 2017, https://www.washingtonpost.com/news/dr-gridlock/wp/2017/07/07/metro-removes-controversial-milo-yiannopoulos-advertisements-from-stations/?utm_term=.6e104bea9bc. One complaint tweeted at WMATA and reproduced in the Washington Post said, “Hey @wmata why are there milo yionwlopsooe posters all over the metro? He is a literal nazi.” *Id.*

8. As reported in the DCist story quoted in the previous paragraph, WMATA’s Customer Relations staff initially responded to complaints with the following message: “The display of this ad is consistent with Metro’s policy of remaining content-neutral when accepting advertising. Although Metro understands that feelings and perceptions will vary among individuals within the community, we cannot reject advertising because some find it inappropriate or offensive.”

9. On July 6—ten days into our 28-day advertising campaign—Outfront informed Milo Worldwide by email that our advertisements “are being removed at the direction of the

Washington Metropolitan Area Transit Authority. They're claiming you cannot run this as it violates guidelines #9 and #14." Outfront informed us that it had expressed "concern to the fairness of this ruling," but "must be cautious to our partnership [with WMATA]."

10. According to the DCist report, when pressed to explain "what, precisely, about the ads violate[d] the guidelines," "Metro declined to answer."

11. Outfront informed us that WMATA had instructed it to draw up a contract cancellation and refund our money. When Outfront emailed us for written permission to proceed in that manner, we responded, "You do NOT have our written permission. . . . [W]e consider this to be a violation of our First Amendment rights. If WMATA is intent on pursuing this unconstitutional course of action they should expect to face the full consequences of that."

12. In response to a letter requesting WMATA to preserve all information relevant to these events, the General Counsel of WMATA responded, with a letter dated July 13, 2017, requesting that we preserve such information, including "communications with . . . political organizations, including the American Conservative Union and the cancellation of Milo Yiannopolous' appearance at CPAC." In my opinion, that request supports the conclusion that WMATA's decision to remove Milo Worldwide's advertisements promoting *Dangerous* was based on the fact that Mr. Yiannopolous is a controversial person, rather than on anything that appeared in the advertisements.

13. *Dangerous* has been selling briskly. It has been #4 or #5 on the New York Times hardcover non-fiction best-seller list for the past three weeks (July 23, 30, and August 6). It has been on the Wall Street Journal non-fiction best-seller list for the past four weeks, reaching #2 for the week ended July 9 and #1 for the week ended July 23. It has also been on the Publisher's Weekly hardcover non-fiction best seller list for the past four weeks, reaching #1 on the July 24

list. On the Amazon.com non-fiction best-seller list it was #5 for the week of July 9 and #9 for the week of July 23. Its entire first print run has already shipped, and a second printing has begun to be shipped.

14. Advertising contributes to the sales of new books. Milo Worldwide has lost and continues to lose sales of *Dangerous* by having its advertisements censored by WMATA. Re-posting of our advertisements for the remaining 18 days of the advertising run we already paid for will contribute to the book's continued sales.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 7, 2017.



Alexander Macris