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December 9, 1999

Dr. George Gerbner
234 Golf View Road
Ardmore, PA 19003

Re: Pacitti vs Macy's

Dear Dr. Gerbner:

As I promised to you in our telephone conversation of December 8, I would attempt to reduce the irreducible, and give you a two page synopsis of our case.

Joanna Pacitti and her parents are represented by Joseph Claffy, Alfred Putnam, and me. The lawsuit of the Pacittis against Macy's is pending in the U. S. District Court for the Eastern District of Pennsylvania, where it is assigned to President Judge James T. Giles.

The case claims that Macy's failed to perform its bargain with Joanna Pacitti that the winner of the Macy's promotion, "Annie 20th Anniversary Talent Search" would appear on Broadway in the role of Annie. Joanna won the broad-based promotion wherein thousands of girls were auditioned at six of Macy's stores in the early summer of 1996, and Joanna was chosen from all of these girls at an "Annie-Off Final Callback" at Macy's Herald Square store in New York in August.

As I outlined to you in our conversation, Joanna seeks damages from Macy's for breach of contract, for misrepresenting its promotion, for fraud, and for other reasons. Our inquiry of you concerns measurement of damages.

One obvious theory of damages is that Joanna did not receive what she bargained for, the starring role of Annie on Broadway. Although I have now received your resume, there may or may not be any basis in your experience for evaluating, coming to a conclusion, and testifying about the loss of an opportunity in a theatrical career, especially in the career of a young person. We would anticipate obtaining as an expert a theatrical agent or someone versed in the financial consequences of stardom, and the financial prospects opened by reason of the premiere girls' role in

all of American theater, that of Annie in "Annie".

Our second theory of damages is that Macy's received tremendous publicity from promoting the contest. Because Macy's contest promised something that Macy's had no ability to perform when it promised the winner of the contest that she would be Annie on Broadway (since Macy's had not bothered to secure this important concession from the producers with whom it staged the promotion), under this theory Macy's should pay damages to the one person who was injured by its misrepresentation: Joanna Pacitti. We have postulated among ourselves that the trial court might be receptive to a theory that Macy's realized favorable publicity, and that the value of that publicity, if it can be established with some degree of certainty, should be paid over to Joanna because it would be unjust for Macy's to be enriched by it.

The nature of the publicity which Macy's received seems to be in the following areas:

- A. Self-generated publicity from Macy's print advertising;
- B. Publicity within the store during the times that the contest promotion ran;
- C. "News" stories aired and published by local media, mostly generated by Macy's own promotional news releases;
- D. Publicity favorable to Macy's for its role in the selection of a star for the 20th Anniversary Broadway production of Annie;
- E. Residual publicity of the manner of Joanna's selection used to stimulate interest in the production from August, 1996 to February, 1997 when Joanna was fired by the producers after over 100 performances; and
- F. Feature stories on national television and in print in which the selection of Joanna as the 20th Anniversary Broadway Annie was reported as a public interest story, always with the contextual message that Macy's had enabled Joanna's success by being the cultural agency giving such a wonderful opportunity to so many girls.

There may be more examples of publicity for Macy's, but of those described, the last certainly seems to be the most important.

We expect through discovery - request for production of documents,

Dr. George Gerbner
Page Three

oral depositions, or the like - to determine on which of the national shows and in which markets these major stories took place. From this a market share can be developed and a value might be ascribed to the publicity Macy's received for free based upon the cost for advertising on a particular show as applied to the duration of the show, with allowances for the fact that the exposure redounding to Macy's benefit is not perceived to be paid for advertising, but even a more favorable form of publicity. Perhaps the inquiry would be: if Macy's could have paid for this publicity, what would the charge have been, or better yet: if it can be assumed that the publicity from advertising is worth more than the advertising dollar paid for it, what is the value of the publicity received by Macy's under these circumstances where it did not pay for any of the favorable coverage.

This is probably a longer letter than you wanted, but I hope it crystallized our needs somewhat better for you than the materials which I sent to you.

Concomitantly, your resume is briefer than I require, because it does not state the disciplines in which you were awarded your degrees, nor does it suggest that your expertise is in the areas which we require. There does seem to be emphasis on cultural or sociological issues, and I hope that between the lines there is the expertise to come to grips with our issues.

I do wish to confirm that there will be no work undertaken by you for a fee unless that work is specifically authorized one of the three lawyers. You did inquire as to the time commitment. At this point I think that there will be one-half day in deposition and one half-day in trial if the case does not settle. I understand that your rate for the full day is \$2500 and assume that a half-day rate would be half that.

I look forward to hearing from you concerning this matter.

Sincerely yours,



Albert C. Oehrle

ACO:pm

cc: Alfred W. Putnam, Jr., Esquire
Joseph F. Claffy, Esquire