

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GEORGE KALMAN, )

Plaintiff, )

v. )

PEDRO A. CORTÉS, in his )  
official capacity as the )  
Secretary of the Commonwealth )  
of Pennsylvania, and John or Jane Doe, an )  
employee of the Pennsylvania Department of State, )  
Corporation Bureau, in his or her individual )  
capacity, )

Defendants. )

Civil Action No. \_\_\_\_\_

**COMPLAINT**

**A. Introductory Statement**

1. This is a civil rights action for declaratory and injunctive relief and damages brought under 42 U.S.C. §1983, challenging the constitutionality of § 1303(c)(2)(ii) of Title 15 of the Pennsylvania Consolidated Statutes (“the Blasphemy Prohibition”). This statute prohibits corporate names that contain “words that constitute blasphemy, profane cursing or swearing or that profane the Lord’s name.” This statute violates the Establishment Clause and the Free Speech Clause of the First Amendment to the United States Constitution because the Blasphemy Prohibition inserts a test of religious acceptability into the Commonwealth’s acceptance of business names. As a result of the enforcement of this statute, Plaintiff has been prevented from incorporating his business under the name of his choice: “I Choose Hell Productions, LLC.”

Plaintiff requests that this Honorable Court declare that 15 Pa. C.S. § 1303(c)(2)(ii) is unconstitutional on its face and as applied, issue permanent injunctive relief to enjoin the Secretary of the Commonwealth of Pennsylvania from enforcing the law, and award Plaintiff damages, costs and reasonable attorneys' fees.

**B. JURISDICTION**

2. This action seeks to vindicate rights protected by the First Amendment to the United States Constitution and is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over this civil rights action pursuant to 28 U.S.C. §§ 1331 and 1343. This Court also has jurisdiction pursuant to 28 U.S.C. §§ 2201 and 2202 to declare the rights of the parties and to grant all further relief found necessary and proper.

**C. VENUE**

3. Plaintiff's constitutional claim arose in Chester County, Pennsylvania, and, therefore, venue properly lies within the Eastern District of Pennsylvania pursuant to 28 U.S.C. §1391(b)(2).

**D. PARTIES**

4. Plaintiff George Kalman ("Kalman") resides in Downingtown, Pennsylvania. Kalman is the founder and CEO of a film production and distribution company which currently does business under the name "I.C.H. Productions, LLC". I.C.H. Productions is registered as a Pennsylvania limited liability corporation and has its principal place of business in Downingtown, Pennsylvania.

5. Defendant Pedro A. Cortés is the Secretary of the Commonwealth of Pennsylvania. He is sued in his official capacity. In his official capacity as Secretary, Cortés is statutorily responsible

for administering the Department of State, including processing filings concerning business entities. In particular, the Department of State is responsible for approving and licensing business names in the Commonwealth of Pennsylvania pursuant to statute and enforcing 15 Pa. C.S. §1303. At all times relevant hereto, Cortés was acting under color of state law.

6. Defendant John or Jane Doe is or was an employee of the Pennsylvania Department of State, Corporations Bureau responsible for processing corporate Certificate of Organization requests and who processed and rejected Kalman's original request for a Certificate of Organization. At all times relevant hereto, Doe was acting under color of state law.

#### **E. FACTS**

7. On September 26, 2007, Kalman applied to the Commonwealth of Pennsylvania, Department of State, Corporation Bureau, for a Certificate of Organization, under 15 Pa. C.S. §8913, for his production company business.

8. In his original application for a Certificate of Organization, Kalman sought to register his limited liability company under the name "I Choose Hell Productions, LLC."

9. Kalman chose that name because of his personal philosophy, expressed in his films, that it is better to struggle through difficult times in life than to commit suicide: even if life is "hell," it is better to choose hell than suicide.

10. Kalman wanted exclusive rights to use the name "I Choose Hell Productions, LLC" as a corporate and business name in the Commonwealth of Pennsylvania.

11. By letter dated October 1, 2007, Doe returned Kalman's original application and notified him that his choice of corporate name, "I Choose Hell Productions, LLC," was rejected as a

violation of 15 Pa. C.S. § 1303(c)(2)(ii). Specifically, Doe's letter, a true and correct copy of which is attached hereto as Exhibit A, stated that the filing was being returned because "[t]he entity name may not contain words that constitute blasphemy, profane cursing or swearing or that profane the Lord's name," quoting directly from 15 Pa. C.S. § 1303(c)(2)(ii). Doe's letter further instructed Kalman that in order for his filing to be accepted he must submit a "corrected filing" with another business name.

12. 15 Pa. C.S. § 1303(c)(2)(ii) provides, in pertinent part: "The corporate name shall not contain . . . words that constitute blasphemy, profane cursing or swearing or that profane the Lord's name." This statutory mandate has been incorporated into administrative regulations as well. 19 Pa. Admin. Code § 17.5.

13. Because he needed to be able to initiate business, Kalman crossed out "I Choose Hell Productions" on his original application, wrote in "I.C.H. Productions" and resubmitted the application to the Department of State on or about October 12, 2007. A true and correct copy of the resubmitted application is attached hereto as Exhibit B.

14. The Department of State received the amended application on October 17, 2007.

15. On December 4, 2007, the Department of State certified I.C.H. Productions, LLC.

16. As a result of § 1303(c)(2)(ii) and the Defendants' enforcement of said statute, Kalman has been prohibited and prevented from certifying the corporate name of his choice and from obtaining the exclusive right to use that name for business in Pennsylvania.

17. Plaintiff Kalman continues to desire to operate his business under the corporate name "I Chose Hell Productions, LLC" and would immediately seek certification of his company under that name if enforcement of § 1303(c)(2)(ii) were enjoined.

18. Defendants are charged with enforcing § 1303(c)(2)(ii) and have demonstrated by their actions an intent to enforce its prohibitions against those who apply for a Certificate of Organization under 15 Pa. C.S. § 8913.

19. Absent declaratory and permanent injunctive relief by this Court, enjoining enforcement of § 1303(c)(2)(ii), Plaintiff suffers and will continue to suffer a loss of his First Amendment rights, an injury for which there is no adequate remedy at law.

**F. CLAIMS**

20. Plaintiff incorporates the allegations of the preceding paragraphs as if fully set forth herein.

21. 15 Pa. C.S. § 1303(c)(2)(ii) constitutes an unconstitutional establishment of religion in violation of the Establishment Clause of the First Amendment to the United States Constitution as incorporated by the Fourteenth Amendment.

22. The denial of Plaintiff's application pursuant to 15 Pa. C.S. § 1303(c)(2)(ii) is an unconstitutional abridgement of free speech in violation of the First Amendment to the United States Constitution as incorporated by the Fourteenth Amendment.

23. 15 Pa. C.S. § 1303(c)(2)(ii) is unconstitutionally vague and overbroad, and impermissibly vests unbridled discretion in the officers of the state in violation of the First and Fourteenth Amendments to the United States Constitution.

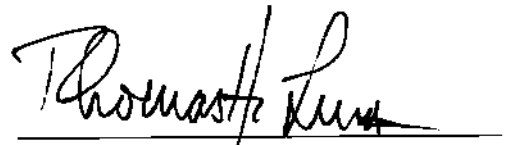
24. Plaintiff has suffered and will continue to suffer deprivation of his rights and resulting damages because of Defendants' enforcement of 15 Pa. C.S. § 1303(c)(2)(ii).

**G. RELIEF**

WHEREFORE, Plaintiff requests that this Court grant the following relief:

- A. Enter a declaratory judgment that 15 Pa. C.S. § 1303(c)(2)(ii) violates Plaintiff Kalman's rights under the First and Fourteenth Amendments to the United States Constitution.
- B. Issue permanent injunctive relief prohibiting Defendant, his employees, agents, successors and assigns from enforcing 15 Pa. C.S. § 1303(c)(2)(ii) against Plaintiff or anyone else;
- C. Award Plaintiff actual and nominal damages;
- D. Award Plaintiff his costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and
- E. Grant such other relief as the Court deems just and appropriate.

Dated: February 18, 2009



Thomas H. Lee, II  
Pa. I.D. No. 49867  
Leora F. Eisenstadt  
Pa. I.D. No. 204856  
Elizabeth H. Kimmelman  
Pa I.D. No. 207006  
Matthew Bleich  
Pa I.D. No. 208069  
DECHERT LLP  
Cira Center  
2929 Arch Street  
Philadelphia, PA 19104  
215-994-4000

Mary Catherine Roper  
Pa I.D. No. 71107  
ACLU FOUNDATION OF  
PENNSYLVANIA  
P.O. Box 40008  
Philadelphia, PA 19106  
(215) 592-1614

Seth F. Kreimer  
Pa. I.D. No. 26102  
3400 Chestnut St.  
Philadelphia, Pa. 19104  
215-898-7447  
215-573-2025 Fax  
skreimer@law.upenn.edu

Attorneys for Plaintiff

# **EXHIBIT A**

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
CORPORATION BUREAU  
206 NORTH OFFICE BUILDING  
P.O. BOX 8722  
HARRISBURG, PA 17105-8722  
WWW.DOS.STATE.PA.US/CORPS

BUSINESS PROCESSING DIVISION  
717-787-1057

RE: 3758762  
I CHOOSE HELL PRODUCTIONS LLC

DATE: 10/01/2007

TO WHOM IT MAY CONCERN:

THIS FILING IS BEING RETURNED FOR THE FOLLOWING REASONS:

1. 161 - YOUR CHECK HAS BEEN DEPOSITED. PLEASE RETURN THIS NOTICE ALONG WITH YOUR CORRECTED FILING. FAILURE TO DO SO MAY RESULT IN FURTHER REJECTIONS.
2. 170 - The entity name may not contain words that constitute blasphemy, profane cursing or swearing or that profane the Lord's name.

PLEASE RETURN THIS LETTER OR A COPY THEREOF WITH THE RELATED FILE WITHIN 30 DAYS IN ORDER TO RETAIN YOUR ORIGINAL FILE DATE IF A FILING IS REQUIRED. REJECTION OF A DOCUMENT DOES NOT CONSTITUTE A NAME RESERVATION.

"IN ACCORDANCE WITH 19 PA CODE SECTION 11.12 (a) (2) THE DATES ON ANY MISSING DOCUMENTS OR CERTIFICATES, WHICH ARE NEEDED TO SUPPORT THIS SUBMITTAL, MUST BE OPERATIVE OR EFFECTIVE ON OR AS OF THE ORIGINAL DATE OF THE SUBMISSION IN ORDER FOR THE ORIGINAL DATE TO BE RETAINED."

For additional information regarding business and/or CORPS Filings, please visit our online "Searchable Database" located at [WWW.CORPORATIONS.STATE.PA.US/CORP](http://WWW.CORPORATIONS.STATE.PA.US/CORP).

Bate, Michele  
38 Blakely Rd  
Downingtown, PA 19335

# **EXHIBIT B**

ST, PA04B

From: pao4b@state.pa.us  
Sent: Wednesday, September 26, 2007 11:25 AM  
To: ra-st-pao4b@state.pa.us  
Subject: PA04B New Registration

*Handwritten initials*

**PENNSYLVANIA DEPARTMENT OF STATE  
CORPORATION BUREAU  
Certificate of Organization  
Domestic Limited Liability Company  
(15 Pa.C.S. § 8913)**

Document will be returned to the name and address you enter below.

Name

NICHELE BATE  
Address  
38 BLAKELY RD  
Address

Commonwealth of Pennsylvania  
CERTIFICATE OF ORGANIZATION 2 Page(s)

City State Zip Code  
DOWINGTOWN PA 19355



T0729160197

Email: mbate@gglw.com

Fee: \$125

In compliance with the requirements of 15 Pa.C.S. § 8913 (relating to certificate of organization), the undersigned desiring to organize a limited liability company, hereby certifies that:

1. The name of the limited liability company (designator is required, i.e., "company", "limited" or "limited liability company" or abbreviation):  
~~ICHSSE HELL PRODUCTIONS LLC~~ *ICHT Productions LLC*

2. The (a) address of limited liability company's initial registered office in this Commonwealth or (b) name of its commercial registered office provider and the county of venue is:

(a) Number and Street City State Zip County  
38 BLAKELY RD DOWINGTOWN PA 19355 15

(b) Name of Commercial Registered Office County

3. The name and address, including street and number, if any, of each organizer is (all organizers must sign on page 2):

Name Address  
GEORGE KALMAN 38 BLAKELY RD DOWINGTOWN PA 19355

4. *Strike out if inapplicable term*  
A member's interest in the company is to be evidenced by a certificate of membership interest.

5. *Strike out if inapplicable*  
Management of the company is vested in a manager or managers.

6. The specified effective date, if any is:  
11 01 2007  
Month Day Year hour, if any

7. *Strike out if inapplicable term:* The company is a restricted professional company organized to render the following restricted professional service(s):

8. For additional provisions of the certificate, if any, attach an 8 1/2 x 11 sheet.

*Handwritten signature*

IN TESTIMONY WHEREOF, the organizer(s)  
has (have) signed this Certificate of  
Organization this  
\_\_\_\_\_ day of \_\_\_\_\_.

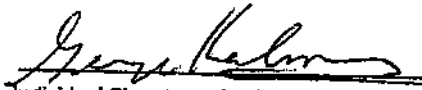
9/27/2007 PA DEPT. OF STATE

OCT 17 2007

P.O. Box 8722  
Harrisburg, PA 17105-8722  
(717) 787-1067

1. The enterprise structure is:  
Limited Liability Company
2. The enterprise legal name is:  
~~ICHOOSEHELL PRODUCTIONS LLC~~ ICH Productions LLC
3. The enterprise's fictitious name is:

IN TESTIMONY WHEREOF, the undersigned have caused this application to be executed this  
26 day of September, 2007.



Individual Signature of GEORGE KALMAN

0994620070926

To avoid any delay or rejection, signature form(s) should be received within 7-10 days  
of the registration submission date.

*Corrections made on 10/14/2007.*

