

Exhibit 172

To: Werner, Ruth (COUNCIL)[RWerner@DCCOUNCIL.US]
From: Thorn Pozen
Sent: Mon 12/5/2016 7:35:49 PM (UTC)
Subject: RE: Sign Litigation Update

Grrr. Thanks. Going through it now.

Thorn

Thorn Pozen

Partner

Goldblatt Martin Pozen LLP

1625 – K Street, NW

Suite 700

Washington, DC 20006

Phone: 202-795-9999 (Main); 202-795-9105 (Direct)

Fax: 202-795-9192

tpozen@gmpllp.com

www.gmpllp.com



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From: Werner, Ruth (COUNCIL) [mailto:RWerner@DCCOUNCIL.US]

Sent: Monday, December 5, 2016 2:23 PM

To: Thorn Pozen

Subject: FW: Sign Litigation Update

From: Pittman, James (OAG) [mailto:james.pittman@dc.gov]

Sent: Monday, December 05, 2016 1:19 PM

To: Battle, Mike (COUNCIL) <MBATTLE@DCCOUNCIL.US>; Forrest, Katrina (Council) <kforrest@DCCOUNCIL.US>; Hickey, Darby (Council) <dhickey@DCCOUNCIL.US>; Hilgendorf, Shawn (Council) <shilgendorf@DCCOUNCIL.US>; Meadows, David (Council) <DMeadows@DCCOUNCIL.US>; Kang, Irene (Council) <ikang@DCCOUNCIL.US>; Jackson, Tania (Council) <tjackson@DCCOUNCIL.US>; Meah, Turia "Tai" (Council) <tmeah@DCCOUNCIL.US>; Werner, Ruth (COUNCIL) <RWerner@DCCOUNCIL.US>; Grant, Schannette (COUNCIL) <sgrant@dccouncil.us>; Willingham, Jonathan (Council) <jwillingham@DCCOUNCIL.US>; Rentz, Nicole (Council) <nrentz@DCCOUNCIL.US>; Yoshino, Keiko (Council) <kyoshino@DCCOUNCIL.US>; Gulstone, Ronan (Council) <RGulstone@DCCOUNCIL.US>; Mitchell, Barbara (Council) <bmitchell@DCCOUNCIL.US>; Phelps, Anne (Council) <aphelps@DCCOUNCIL.US>; Norflis, Terrance (Council) <TNorflis@DCCOUNCIL.US>; Austin, Michael (Council) <maustin@DCCOUNCIL.US>; Rosen-Amy, Samuel (Council) <srosenamy@DCCOUNCIL.US>; Blackwell, Michele (Council) <mblackwell@DCCOUNCIL.US>

Subject: Sign Litigation Update

Good afternoon:

Last week, OAG joined the Mayor's Office of Policy and Legislative Affairs to brief Council staffers on the current status of the city's DigiMedia litigation on behalf of DCRA. Many Council staffers asked for additional documents/information in preparation for Tuesday (tomorrow). Attached you will find all the documents requested, including a November 17 opinion from the Federal Highway Administration on a nearly identical issue. Also attached is the court ruling in favor of the District that highlights the likelihood of the District's success on the merits of the case.

Attachments

1. Digi media kit
2. Appendix N (sign regulations)
3. FHWA opinion, dated November 17, 2016
4. Rulemaking related to the sign exemption in Appendix N, Section 101.3.5.3
 - a. July 12, 2016 Notice of Proposed and Emergency Rulemaking issued by the City Administrator (expired November 8, 2016)

RECORD ID: 1001593

- b. October 18, 2016 PR21-0990 Memorandum and Introduction of Proposed Rulemaking by Chairman Mendelson
- c. November 4, 2016 Second Notice of Emergency Rulemaking issued by the City Administrator (expires March 4, 2017)
- d. LIMS report on PR21-0990, showing deemed approval date of January 18, 2017

5. Court Order issued in Digi litigation before the D.C. Superior Court, dated November 10, 2016

Summary of Digi Media litigation:

This past summer, Digi Media (“Digi”) began installing large-format digital signs throughout the District, despite having no sign permits to do so and in violation of the District’s subsequent orders to stop. Once DCRA learned of Digi’s signs, DCRA issued no fewer than 15 Stop Work Orders and Correction Orders, yet Digi continued to install its large-format digital signs, ignoring DCRA’s orders. Because Digi continued to defy the District’s regulations and DCRA’s regulatory and enforcement authority, on August 31, 2016, the Attorney General brought suit in Superior Court under D.C. Code § 6-1407 to obtain a court order to force Digi to stop. Digi aggressively opposed the District’s efforts over the course of numerous filings and five hearings before the Court.

On November 10, 2016, the Court granted the District’s motion and issued a Preliminary Injunction Order, prohibiting Digi from putting up any more signs until final resolution of the case on the merits, but declined to order removal of the signs until final resolution. In its Order, the Court noted: “DCRA is an important agency in the District, charged with protecting the health, safety, economic interests, and quality of life of District residents. The public interest is served by upholding DCRA’s enforcement and regulatory authority and in ensuring that entities like Digi operating in the District comply fully with the District’s Construction Codes and DCRA orders. Like any resident of the District wishing to engage in construction work, the onus was on Digi to communicate with DCRA directly regarding DCRA’s permitting requirements. Digi failed to do so, possibly at its peril.” The case is currently in the discovery phase.

As outlined in its media kit (attached), Digi plans to install over 50 signs in 20 locations in the District. As part of the litigation, the District is seeking removal of the large-format digital signs Digi has already installed at the following locations:

5335 Wisconsin Ave. NW (Chevy Chase Pavilion mall, corner of Wisconsin and Western)

1350 Connecticut Ave. NW (breezeway next to Krispy Kreme)

111 Massachusetts Ave. NW (along New Jersey, Massachusetts, and 2nd St. frontages)

1101 Vermont Ave. NW (corner of 14th and L St.)

4301 Connecticut Ave. NW (next to CVS entrance)

1200 New Hampshire Ave. NW (corner of New Hampshire and M St., above Mei Wah restaurant)

2850 New York Ave. NE (rooftop of old Washington Times building)

64 New York Ave. NE (street level along Florida Ave. and 1st St.)

James A. Pittman

Office of Attorney General for the District of Columbia

441 Fourth Street, NW, Suite 1100S

Washington, DC 20001

(202) 724-6517 desk

(202) 689-7508 mobile

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