

STATE OF WYOMING)
) ss.
COUNTY OF PARK)

IN THE DISTRICT COURT
FIFTH JUDICIAL DISTRICT
Civil Action No. 28501

EASTMANS' PUBLISHING, INC.,)
)
Plaintiff,)
)
vs.)
)
KUIU, INC.,)
)
Defendant.)

COMPLAINT

PATRA LINDENTHAL
Clerk of District Court

FILED **AUG 11 2016**
by JACQUE BOONE
Deputy

Plaintiff Eastmans' Publishing, Inc. ("Eastmans"), by and through its attorneys, Crowley Fleck PLLP, alleges and asserts as follows:

PARTIES, JURISDICTION, AND VENUE

1. Eastmans is a Wyoming corporation with its principal place of business in Powell, Wyoming.
2. Upon information and belief, Kuiu is a California corporation with its principal place of business in Dixon, California.
3. This Court has personal jurisdiction over Kuiu, as it does substantial business in Wyoming and breached the subject contract in Park County, Wyoming. Kuiu also agreed by contract to submit itself to the jurisdiction of this Court.
4. This Court has jurisdiction over this matter as it involves contracts being performed in Park County, Wyoming.
5. Eastmans has suffered damages in an amount sufficient for this Court's jurisdiction.
6. This Court also has jurisdiction under the Uniform Declaratory Judgments Act, Wyo. Stat. Ann. §§ 1-37-101 et seq.
7. Venue is proper before the Court under Wyo. Stat. Ann. § 1-5-107.

FACTS COMMON TO ALL CLAIMS

8. Eastmans is a publishing company in Powell, Wyoming which publishes Eastmans' Hunting Journal (EHJ), and Eastmans' Bowhunting Journal (EBJ), magazines devoted to hunting in the western United States.

9. Eastmans publishes each magazine six times a year, with distribution throughout the United States. Eastmans distributes EHJ and EBJ to subscribers (both hard copies sent through the mail, and via digital distribution), and through newsstands at retail stores.

10. Eastmans enters into contracts with others businesses (advertisers) who pay Eastmans to include advertisements for that business in issues of EHJ and/or EBJ. Eastmans has different rates for the advertisements depending on, among other things, which magazine (EHJ or EBJ) is being used, the size of the advertisements and the number of issues in which the advertisements will appear.

11. In addition, Eastmans offers advertisers the opportunity to include “inserts” in its magazines. An “insert” is a multi-page advertisement which allows an advertiser to promote its products to readers of Eastmans’ magazines. Inserts are included in issues of Eastmans’ magazines either through binding the insert directly into the magazine during the publication process, or by including a separate insert in the same bag as the magazine. As with advertisements, Eastmans charges rates to advertisers for including inserts depending on a variety of factors, including the length of the contract.

12. For both advertisements and inserts, Eastmans offers various discounts to its customers. For example, advertisers receive discounts for entering into a contract for a longer period of time.

13. On November 25, 2014, Kuiu entered into a two-year advertising contract with Eastmans. (“Advertising Contract”).

14. The Advertising Contract provided that Kuiu would pay for advertisements in all six EHJ and all six EBJ magazines to be published in 2016. Kuiu received substantial discounts for agreeing to advertise in all six issues of both magazines. In other words, the advertising rate would have been much higher for each individual issue had Kuiu not committed to advertising in every issue.

15. The Advertising Contract states that “[i]f the advertising schedule above changes we [Eastmans] have the right to back charge for any changes due to frequency discounts previously applied.” In other words, if an advertiser agrees to advertise in all six issues of the magazine for the year at the discounted rate, but then fails to advertise in all six issues, the discounted rate no longer applies and the advertiser must pay the non-discounted rate.

16. Kuiu has failed to pay amounts due under the Advertising Contract.

17. On February 1, 2016, Kuiu entered into a written agreement with Eastmans for an insert in the May/June 2016 (Issue #95) EBJ.

18. Kuiu's insert was placed in Issue #95.

19. Kuiu has failed to and refused to remit the second half of payment due under the EBJ Issue #95 written agreement.

20. On February 17, 2016, Kuiu entered into a written agreement with Eastmans for an insert in the November/December 2016 (Issue #98) EBJ.

21. Eastmans has terminated that agreement for nonpayment.

22. On February 17, 2016, Kuiu entered into a written agreement with Eastmans for an insert in the August/September 2016 (Issue #156) EHJ.

23. Kuiu has failed to perform under that written agreement.

COUNT I: BREACH OF ADVERTISING CONTRACT

24. Eastmans incorporates all previous allegations by reference.

25. Eastmans and Kuiu had a valid and binding Advertising Contract.

26. Kuiu breached the contract as alleged above.

27. Eastmans has suffered damages as a result of the breach in an amount to be proven at trial.

COUNT II: BREACH OF INSERT AGREEMENTS

28. Eastmans incorporates all previous allegations by reference.

29. Eastmans and Kuiu had valid and binding agreements for EBJ Issue #95, EBJ Issue #98, and EHJ Issue #156 as alleged above.

30. Kuiu breached the agreements as alleged above.

31. Eastmans has suffered damages as a result of the breach in an amount to be proven at trial.

COUNT III: DECLARATORY JUDGMENT

32. Eastmans incorporates all previous allegations by reference.

33. A dispute has arisen between the parties regarding the construction of the agreements, namely the propriety of estimating and calculating subscription and distribution rates in the future.

34. Such dispute affects the rights and status of the parties under the contract.

35. Eastmans requests that the Court issue a declaratory judgment that it has properly performed under the agreements with Kuiu.

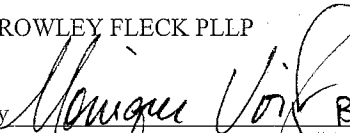
WHEREFORE, Eastmans prays for relief as follows:

- A. That this Court enter judgment in its favor and against Kuiu and award all damages allowed by law;
- B. That the Court enter judgment declaring the rights of the parties under the contract;
- C. For an award of pre-judgment interest and post-judgment interest at the highest rate allowable by law;
- D. For an award of costs of suit;
- E. For an award of attorney fees;
- F. Interest on the forgoing fees and costs at the highest rate allowed at law until paid in full; and
- G. Such other and further relief as the Court may deem appropriate.

Dated this 9th day of August, 2016.

CROWLEY FLECK PLLP

By

 BAR No. 7-4699

JEFFERY J. OVEN (Bar #6-3371)

for: CHRISTOPHER C. VOIGT (Bar #6-3313)

P. O. Box 2529

Billings, MT 59103-2529

Attorneys for Plaintiff