

KONIECZNY WIERZBICKI

KANCELARIA RADCÓW PRAWNYCH

Kraków, October 15, 2019

Mr. Jacob Ewerdt
Director for Innovation and Intellectual Property
Office of the U.S. Trade Representative
600 17th Street, NW Washington, D.C. 20508

Re: Rebuttal to the letter of the Motion Picture Association of America, Inc. on the 2019 Special 301 Out of Cycle Review of Notorious Markets, dated September 30, 2019
Docket No. USTR-2019-0013

Dear Mr. Ewerdt:

Acting on behalf of CDA S.A. [joint-stock company], seated in Wrocław, Poland (hereinafter referred to as: **"the Company"** or **"the Client"**), copy of the power of attorney is attached hereto, referring to the letter of the Motion Picture Association of America (MPAA), dated October 1, 2018, I submit this rebuttal comment in response to the request for rebuttal comments scheduled in the announcement of the Office of the U.S. Trade Representative of August 19, 2019 [Docket No. USTR-2019-0013] in order to address all the unsubstantiated, misleading and untrue statements in the said letter concerning the website CDA.pl, operated by my Client.

Most importantly, it should be noted MPAA has already submitted almost identical statements regarding cda.pl last year in the comment on the 2018 Special 301 Out of Cycle Review of Notorious Markets, dated October 1, 2018. In response to the said letter, my Client successfully and extensively rebutted MPAA claims in letter to the Office of the U.S. Trade Representative and what is worth underlining is that cda.pl was not included in the 2018 Out-of-Cycle Review of Notorious Markets.

In the comment on 2019 Special 301 Out of Cycle Review of Notorious Markets, dated September 30, 2019 however, MPAA modified these statements only to a minimal extent, not without avoiding providing yet another false information regarding the cda.pl website operator. Nevertheless, in order to prevent further exposure of the Company to damage to its reputation and credibility, I hereinafter reiterate all the relevant information regarding my Client and operation of cda.pl. Above all, it must be strongly stated once again that:

1. **CDA.pl is not a piracy website**, it operates in full accordance with the Polish and European legal regulations;
2. CDA S.A. is a public joint-stock company, with its business seat in Wrocław (Poland), operating in full transparency, fulfilling all of its legal obligations and publishing all relevant information in the way determined by the law and internal stock exchange regulations;

3. CDA S.A. is constantly seeking to ensure the best possible copyright protection, in specific by developing its takedown policies and tools and fully cooperating with relevant associations and authorities in that regard;

4. **The MPAA's letter includes numerous misleading and false information regarding cda.pl;**

5. Publication of the MPAA's letter causes significant damage to reputation and credibility of my Client.

Legitimacy of the CDA.pl website

First of all, MPAA's claims that CDA.pl is a "piracy website" is unsubstantiated and false. CDA.pl website includes two sections, both legitimate and operating in full compliance with the law. One is a VOD service (sVOD, which stands for "subscription VOD"), operated in cooperation with verified organizations providing legal content, which generates the vast majority of CDA S.A. profits (ca. 91%). Those profits are divided between the Company and the owners of the intellectual property rights, who receive over half of the revenue as a commission.

The other section includes aVOD (which stands for "advertisement VOD") service, which generates revenue from advertisements displayed with the content uploaded by verified partners and users and a hybrid, hosting internet social platform, which relies on user generated content and is generally accessible, also by unverified users. It must be emphasized that the Terms and Conditions of the Website strictly prohibit providing content to which the user does not have intellectual property rights. Moreover, the Company fully cooperates with legal authorities and holders of intellectual property rights in order to combat content that infringes on copyright. Due to the introduction of the new policy re. sale of advertising space without the intermediaries, the Company regained more control as to where the ads are displayed. As a result, crowning the several-year process of limiting the revenues from advertising displayed with user generated content, since May 2018 CDA.pl generates revenue from advertisements displayed solely with the content from verified users and partners.

Obviously, since CDA.pl includes the generally accessible hybrid, hosting internet social platform, there is a risk that some of the unverified users post content that infringes on copyright or violates the law in some other way. This problem is common for all the websites which contain user generated content, including such giants as YouTube or Dailymotion, that far outpace the Company in terms of users, revenue and employees, not mentioning the funds that can be spent on combating copyright-abusing content from the website. Nevertheless, the Company strives to detect such infringements and respond to them by removing illegal content and blocking users persistently violating the rules.

According to art. 14 sec. 1 of the Act of 18 July, 2002 on Providing Services by Electronic Means (hereinafter referred to as "APSEM"), which implements the Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce") – "The responsibility for the stored data shall not be borne by the person, who, making the resources of a teleinformation system available for the purpose of the data storage by a service recipient, is not aware of unlawful nature of the data or the activity related to them, and in case of having been informed or having received a message on unlawful nature of the data or the activity related to them, makes immediately the access to the data impossible". The Company employs the "notice & takedown" procedure, as described in art. 14 sec. 1 of the APSEM, and, as a result, does not bear the liability for violations of the law (including copyright infringements) committed by the users of the website CDA.pl.

Moreover, my Client is ready to implement all necessary protection measures in the event of introducing further legal obligations in this respect.

Specific tools introduced by my Client enable to promptly respond to the reported infringements. The Company provides the "report abuse" form on its website, which is located under a link in the menu and also next to every displayed material. Additionally, going beyond its obligations imposed by the law, the Company launched a special platform ("direct takedown tool" platform) for film distributors, TV publishers and anti-piracy organizations, giving them free access to all content uploaded by the users of CDA.pl and enabling them to delete the copyright-infringing content on their own, without the need to wait for the response from the Company's employees. This additional mean of protection of copyright is available for all interested parties and has already been used, including by the Polish branches of American corporations (e.g. Warner Bros. or Fox). Also, my Client fully and willingly cooperates with legal authorities, including law enforcement, in any case involving violation of law, provides requested data and information. The Company assures that its intention is to operate in compliance with the law, therefore the Company declares that will meet its obligations and adapt to new regulations if there is any new legislation introduced, either Polish or European, which adopts stricter legal rules than observed by my Client.

CDA S.A. is a legal entity, operating transparently

Furthermore, CDA S.A. is a legal entity, a public joint-stock company, registered in the Register of Entrepreneurs of the National Court Register (KRS), under the no. 0000671280, with its registry files kept by the District Court for Wrocław-Fabryczna, Division VI for the National Court Register and pays taxes in Poland. Since May 8, 2019, The Company is listed on the NewConnect stock exchange, an alternative trading system organized and operated by Giełda Papierów Wartościowych S.A. in Warszawa [Warsaw Stock Exchange]. Therefore, the Company is subject not only to reporting obligations for tax and registration purposes, but also to provide information required by the stock exchange and the Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC Text with EEA relevance (hereinafter referred to as: "**MAR Regulation**"). On the website spolka.cda.pl the Company provides extensive and comprehensive information about its structure, operations and finances, which includes publishing current reports, as required by MAR Regulation. All the information provided herein can also be obtained from the above mentioned website (reports and Information Document for the purposes of listing the Company and its shares on the NewConnect stock exchange).

Introducing new means of copyright protection

As described above, the Company is constantly seeking to introduce new tools and policies aimed at more comprehensive copyright protection. The Company is working on improving verification and response time as part of the "notice & takedown" procedure. Moreover, going significantly beyond its legal obligations it has introduced an additional tool enabling the holders of the intellectual property rights to delete content that may violate their rights. Also, in order to clear any potential doubts as to its business model, the Company introduced a new advertisement sale policy which excludes advertisements from being viewed with the content generated by unverified users. Summarizing, the Company makes every effort to respond to any copyright infringement that may occur.

Misleading and false statements in the MPAA's letter

The letter submitted by the MPAA includes a number of misleading and false statements aimed at hurting my Client's reputation. Most obviously, it was prepared with the false preconceived assumption that CDA.pl is a "piracy website", which was already extensively rebutted herein.

Also, one of the main claims made specifically against CDA.pl was that it uses Cloudflare services in order to "mask the IP location of the website", which allegedly affects copyright holders' ability to "identify its precise host". The Company uses Cloudflare services, but in fact for the contrary reasons than the reasons falsely pointed out by MPAA, since Cloudflare services are used on cda.pl exclusively for two reasons. Firstly, in order to secure the website from the DDoS (Distributed Denial of Service) hacking attacks, to which it was already exposed in the past, and secondly, for the website to be generated quicker on the end users' side. Moreover, the Company masks only IP of the CDA.pl website, in order to prevent DDoS attacks, whereas **the servers that host video materials are not supported by Cloudflare**. It is also worth emphasizing that Cloudflare services are used for the very same reasons by numerous, fully legitimate websites around the world, including giants in the industry such as Cisco, Microsoft Azure and IBM Cloud, as well as many big websites on the Polish market.

What should be noted is that regardless of MPAA's indication in the said letter, the website operator of cda.pl is not a "Comedian S.A." that very likely does not even exist as it does not figure in the register of entrepreneurs of National Court Register, but the Company itself. Furthermore, contrary to what MPAA implies, the Company does not operate "anonymously and outside the boundaries of the law". As it was widely described herein, my Client is operating in compliance with the Polish and European law, is a public joint-stock company and thus, is obligated by provisions of the law and regulations of the stock exchange to provide extensive information about its operations, structure and finances.

It is also unfair and false to compare the Company to the entities that "fail to take adequate steps to ensure their services are not being used to facilitate copyright infringement". In fact, as described above, the Company takes not only all legally required actions but also put in extra effort to ensure copyright protection.

No representative of the MPAA has contacted the Company before the publication of the letter in question. It might have prevented the publication of their hasty and not supported by facts opinion, however the MPAA also did not respond to the letter from the Company, which was sent to them after the publication of last year MPAA comment on the 2018 Special 301 Out of Cycle Review of Notorious Markets, dated October 1, 2018, correcting false claims MPAA's letter was riddled with and which were also reported in this year comment. It is also worth noting that some of the members of the MPAA can be considered as competitors of the Company and its services, who develop their own VOD services on the Polish market, where CDA.pl currently has the biggest share (sVOD section). Therefore, MPAA's opinion re. CDA.pl presented to this Office cannot be treated as objective but rather as a means of pressure on competition.

The Company was subject to significant damage resulting from the publication of MPAA's letter

Already the publication of last year MPAA comment on the 2018 Special 301 Out of Cycle Review of Notorious Markets, dated October 1, 2018 has caused significant reputational and financial damage to the Company as then it was awaiting on its debut on the NewConnect stock exchange in Warszawa and had to submit to the stock exchange authorities rebuttals of the untrue and misleading statements from the said letter. As a result, the debut of the Company on the New Connect stock exchange was

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delayed and it finally took place only just on May 8, 2019. Furthermore, the publication of the said MPAA comment involving unsubstantiated, misleading and untrue statements caused a series of press articles in Poland, whose authors unreflectively cited the said letter wrongly as a verified source and repeated the same unsubstantiated, misleading and untrue statements.

Needless to say, also the MPAA comment on 2019 Special 301 Out of Cycle Review of Notorious Markets, dated September 30, 2019 has a highly negative impact on the reputation and credibility of my Client. The MPAA's letter which indicates CDA.pl website as a pirate site and unfairly lists it along with other websites widely known for their notoriety in copyright violations, which cases, contrary to CDA.pl, are well-documented and founded on strong factual basis. Such actions negatively affect the image of the Company and thus negatively influence the interest of potential investors which may lead to occurring significant financial losses by my Client.

Summarizing, the Company strongly objects against considering its website, CDA.pl as a Notorious Market, as MPAA comment implies. Also, the Company strongly believes that the unsubstantiated, misleading and untrue statements re. CDA.pl mentioned in the MPAA's letter do not constitute basis for even considering CDA.pl as a Notorious Market.

Please do not hesitate to contact me should you need any further information or clarification.

Sincerely,


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Attorney at law Michał Konieczny

Attachments:

- Copy of the power of attorney

Cc:

- Mr. Piotr Wilczek, the Ambassador of the Republic of Poland in the United States of America, Embassy of the Republic of Poland in Washington, DC, 2640 16th St NW Washington, DC 20009

Wrocław, dnia 10 października 2019 r.

PEŁNOMOCNICTWO

Ja, niżej podpisany Jarosław Ćwiek – Prezes Zarządu spółki pod firmą CDA Spółka Akcyjna z siedzibą we Wrocławiu (54-204), ul. Legnicka 50, posługującą się NIP: 8982201542 oraz REGON: 021976118, zarejestrowanej w Rejestrze Przedsiębiorców Krajowego Rejestru Sądowego przez Sąd Rejonowy dla Wrocławia - Fabrycznej we Wrocławiu, VI Wydział Gospodarczy Krajowego Rejestru Sądowego pod numerem KRS: 0000671280 (dalej jako: „Spółka”), o kapitale zakładowym wynoszącym 1.015.464,50 zł, opłaconym w całości, uprawniony do jej jednoosobowej reprezentacji, niniejszym upoważniam:

Radcę prawnego Michała Koniecznego,

Radcę prawnego Marcina Wierzbickiego,

działających w ramach kancelarii Konieczny, Wierzbicki Kancelaria Radców Prawnych Spółka Partnerska z siedzibą w Krakowie (30-549), ul. Kącik 4,

do występowania w imieniu Spółki we wszystkich sprawach przed United States Trade Representative Office, a także polskimi organami administracji oraz przedstawicielstwami dyplomatycznymi Rzeczypospolitej Polskiej oraz Stanów Zjednoczonych Ameryki w związku z przygotowywanymi przez U.S. Trade Representative Office corocznymi raportami o naruszeniach praw własności intelektualnej na świecie (Out-of-Cycle Review of Notorious Markets).


PREZES ZARZĄDU
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Jarosław Ćwiek
Jarosław Ćwiek – Prezes Zarządu

Wrocław, October 10, 2019

POWER OF ATTORNEY

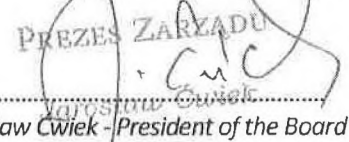
I, the undersigned Jarosław Ćwiek – President of the Board of Directors of the Company operating under the business name CDA Spółka Akcyjna [joint-stock company], seated in Wrocław (54-204), ul. Legnicka 50, using the tax identification number [NIP]: 8982201542 and REGON no.: 021976118, registered in the Register of Entrepreneurs of the National Court Register [KRS], under the no. 0000671280, with its registry files kept by the District Court for Wrocław-Fabryczna, Division VI for National Court Register, (hereinafter referred to as: „the Company”), with the share capital amounting to 1.015.464,50 PLN, paid in full, entitled to its one-man representation, I hereby authorize:

Attorney at Law Michał Konieczny,

Attorney at Law Marcin Wierzbicki,

operating within the law office Konieczny, Wierzbicki Kancelaria Radców Prawnych Spółka Partnerska, seated in Kraków (30-549), ul. Kącik 4,

to act on behalf of the Company in all cases before the United States Trade Representative Office, as well as Polish administrative authorities and diplomatic missions of the Republic of Poland and the United States of America, regarding the annual special reports issued by the U.S. Trade Representative Office on worldwide copyright infringements (Out-of-Cycle Review of Notorious Markets).


PREZES ZARZĄDU
.....
Jarosław Ćwiek
Jarosław Ćwiek - President of the Board
of Directors

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POŚWIADCZAM ZGODNOŚĆ Z ORYGINAŁEM

Kraków, dnia

15. 10. 2019

radca prawny
Michał Konieczny