

18 MISC 182

Thomas A. Bednar (*pending pro hac vice*)
Kevin C. Lombardi (*pending pro hac vice*)
SECURITIES AND EXCHANGE COMMISSION
100 F Street, NE
Washington, DC 20549
Telephone: (202) 551-6218 (Bednar)
Telephone: (202) 551-8753 (Lombardi)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,	:
	:
Applicant,	: No. 18-mc- ()
	:
- against -	:
	:
SHAWN CARTER,	:
	:
Respondent.	:
	:
-----x	

**SECURITIES AND EXCHANGE COMMISSION'S
APPLICATION FOR AN ORDER TO SHOW CAUSE AND
FOR AN ORDER REQUIRING COMPLIANCE WITH SUBPOENA**

The Securities and Exchange Commission ("Commission") respectfully submits this Application for an Order to Show Cause and for an Order Requiring Compliance with Subpoena ("Application"), together with the supporting memorandum of law and Declaration of Danette Edwards ("Edwards Declaration") and exhibits thereto, based on the following:

1. Since January 23, 2018, Respondent Shawn Carter has refused to comply with lawful Commission investigative subpoenas for him to appear in the investigation titled *In the Matter of Iconix Brand Group, Inc.* (Internal File No. HO-12747) (the "Iconix Investigation"). As set forth in the Edwards Declaration, Respondent Carter's legal team failed to honor multiple commitments to provide dates for his testimony and then backtracked on this commitment altogether, essentially refusing to appear in response to two lawfully issued subpoenas.

2. On April 18, 2018, counsel for the Commission clearly communicated to Respondent Carter's counsel that the Commission would be forced to seek judicial intervention if Respondent Carter did not promptly comply with the subpoenas. In subsequent conversations, counsel for the Commission advised Respondent Carter's counsel that, by April 30, 2018, Respondent Carter would have to provide a date on which he would appear for testimony or the Commission would be forced to file a subpoena enforcement action. Respondent Carter – through counsel – refused to provide any dates for his testimony on the April 30, 2018 deadline.

3. The nature of the Iconix Investigation is set forth in more detail in the Edwards Declaration, which is hereby incorporated by reference, and establishes that the subpoenas to Respondent Carter were lawfully issued. On November 23, 2015, pursuant to Section 20(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t(a)] and Section 21(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(a)], the Commission issued an Order Directing Private Investigation and Designating Officers to Take Testimony in the Iconix Investigation (the "Formal Order").

4. Pursuant to the Formal Order, the Commission is investigating whether any person or entity has violated or is violating antifraud provisions of the federal securities laws, including Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], by making materially false or misleading statements in connection with the offer or sale of securities, among other things.

5. The Formal Order designates certain individuals as officers of the Commission empowered to subpoena witnesses, to take evidence, and to require the production of any records deemed relevant or material to the investigation, pursuant to Section 19(c) of the Securities Act [15 U.S.C. § 77s(c)] and Section 21(b) of the Exchange Act [15 U.S.C. § 78u(b)].

6. On November 16, 2017, one of the designated Commission officers issued a subpoena and properly served it on Respondent Carter through his counsel. The subpoena required Respondent Carter to appear for testimony on January 23, 2018. Respondent Carter refused to appear.

7. On February 23, 2018, one of the designated Commission officers issued a subpoena and properly served it on Respondent Carter through his counsel. The subpoena required Respondent Carter to appear on March 21, 2018. Again, Respondent Carter refused to appear.

8. The Commission therefore applies to this Court for entry of an Order to Show Cause, in the form attached, requiring Respondent Carter to show cause why he should not be ordered to appear for testimony within 10 days at the Commission's Headquarters, 100 F Street, NE, Washington, DC 20549.

9. Jurisdiction is conferred upon this Court, and venue properly lies in this District, pursuant to Section 21(c) of the Exchange Act [15 U.S.C. § 78u(c)].

10. The Commission has not made any other application for similar relief with respect to Respondent Carter or the Iconix Investigation.

11. Prior to filing this application, the undersigned counsel served copies of this application and all accompanying papers on counsel for Respondent Carter.

WHEREFORE, the Commission respectfully requests:

I.

That the Court enter an Order to Show Cause, directing Respondent Carter to show cause why this Court should not enter an Order requiring him to appear for testimony before the Commission.

II.

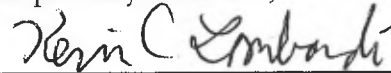
That the Court enter an Order requiring Respondent Carter to comply fully with the subpoena within ten (10) days.

III.

That the Court order such other and further relief as may be necessary and appropriate to achieve compliance with the subpoena within the time period set forth in the proposed Order to Show Cause.

Dated: May 2, 2018

Respectfully submitted,



Kevin C. Lombardi (*pending pro hac vice*)

Tel: (202) 551-8753

Email: lombardik@sec.gov

Thomas A. Bednar (*pending pro hac vice*)

Tel: (202) 551-6218

Email: bednart@sec.gov

SECURITIES AND EXCHANGE
COMMISSION

100 F Street, NE

Washington, DC 20549

Facsimile: (202) 772-9282

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Date: _____

Time: _____

The testimony of Respondent shall continue day-to-day until completed. The Commission staff may consent in writing to another location, date, or time.

If Respondent refuses to appear on the appointed date and time, the Commission will have established a *prima facie* case of civil contempt against him, and he may be held in civil contempt for failure to comply with the Order without further notice or hearing.

II.

IT IS FURTHER ORDERED that a copy of this Order and the papers supporting the Commission's application be served upon Respondent by transmitting the papers on or before _____, 2018 by personal service, or by email or overnight delivery service to his counsel.

III.

IT IS FURTHER ORDERED that Respondent shall file and serve any opposing papers in response to the application no later than _____, 2018 at _____ a.m. / p.m. Service shall be made by delivering the papers to counsel for the Commission by email to Thomas A. Bednar at bednart@sec.gov and Kevin C. Lombardi at lombardik@sec.gov, or by overnight delivery to the aforementioned counsel at 100 F Street, NE, Mail Stop 5985, Washington, DC 20549, Tel: (202) 551-6218 or (202) 551-8753. The Commission shall file and serve any reply papers by _____, 2018 at _____ a.m. / p.m. The

Commission shall serve any reply papers on Respondent by personal service or by email or overnight delivery service to his counsel.

SO ORDERED.

Dated: _____, 2018
New York, New York

UNITED STATES DISTRICT JUDGE