

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

**GATEHOUSE MEDIA MASSACHUSETTS I,
INC., DOING BUSINESS AS GATEHOUSE MEDIA NEW
ENGLAND,**

Plaintiff,

C.A. No. _____

-against-

**THE NEW YORK TIMES CO., DOING BUSINESS
AS BOSTON.COM,**

Defendant.

AFFIDAVIT OF GREGORY A. REIBMAN

I, Gregory A. Reibman, do depose on oath and state as follows:

Background.

1. I am the Editor in Chief of the Metro Unit, GateHouse Media New England (“GateHouse”), a position I have held for seven (7) years with both GateHouse and a company called Community Newspaper Company, Inc. (“CNC”). It is my understanding that GateHouse or related entities purchased CNC’s assets in 2006. I supervise the publication of twelve (12) printed weekly newspapers in Massachusetts, all of which have related websites. The Metro-Unit covers communities and cities in the greater Boston region, including Allston/Brighton, Brookline, Cambridge, Newton, Needham, Somerville, Watertown, Wellesley, West Roxbury, Roslindale, Dover and Sherborn. I am also responsible for several specialty publications and websites owned and operated by GateHouse. As Editor in Chief, my duties include hiring and managing staff, including reporters, photographers, designers and editors. I maintain overall responsibility for the news and editorial content for both print and online editions. In addition, I frequently write and edit articles for the publications and websites under my direction.

2. With respect to the City of Newton I supervise two separate news entities: 1) *The Newton TAB*, a free weekly print newspaper; and 2) *Wicked Local Newton*, a website at <http://www.wickedlocal.com>. Both are dedicated to coverage of local news, sports and entertainment in the city. Our *Wicked Local* site includes a popular blog called the *Newton TAB* Blog, dedicated to presenting breaking news quickly and fostering community discussion on topics of the day. *Wicked Local Newton* also includes sports coverage generated by a sister publication titled the *Daily News Tribune*, a paid daily newspaper that covers both Newton and Waltham. The *Daily News Tribune* is owned by GateHouse, and also has a dedicated website, DailyNewsTribune.com.

3. The *Newton TAB* was first published over twenty-nine (29) years ago in 1979, and has been in continuous publication since that time. The *Newton TAB* has become synonymous with the delivery of timely and reliable original local content, and is an established brand name in Newton. The *Newton TAB* Blog started in April, 2006 and also has been in continuous use since its inception. The *Wicked Local Newton* site first came online in October, 2007, and has been operational since then. The *Daily News Tribune* was first printed on October 2, 1882, and was the first daily newspaper in Waltham. To my knowledge, it has been printed continuously ever since. As I detail more fully below, GateHouse and CNC have invested significant resources – time, money and labor - to establish the names and reputations of each of these brand publications in the larger Newton/Waltham community.

4. I have worked in the newspaper business my entire career. I received a Bachelor of Arts degree from Emerson College in 1978. After graduating from Emerson, I sold newspaper advertising for the *Newton TAB* and other publications. Later, I went on to work as a free-lance writer and reporter for a variety of news and business publications. I worked for a time on the

sports desk at the Dallas Morning News before returning to the Boston area where I did freelance and contractual work while attending Harvard University at night. I subsequently obtained a Certificate in Special Studies from Harvard University in business management. At about the same time, I joined CNC based here in Massachusetts, where I worked as an entertainment editor for about five years. I then joined the Boston Herald, where I was the Deputy Managing Editor for Arts. After five (5) years in that position, I left the Herald and became the Editor in Chief for CNC's Metro Unit, a position I continued to hold after GateHouse acquired CNC's assets in 2006. In all, I have been serving as Editor in Chief of the Metro Unit for over seven (7) years.

GateHouse's Business Model.

5. GateHouse's business model is to be the preeminent provider of local content and advertising in the small and mid-size markets we serve. For GateHouse, local, town-specific news (often referred to as "hyper-local" news) and advertising have always been our core business. To do this, we rely on a dedicated group of news professionals that GateHouse either employs or pays to generate news content. Today, GateHouse employs approximately 435 journalists to gather and report the news from 159 communities throughout Eastern Massachusetts. Editorial compensation, including editors and journalists, is one of the largest expenses borne by GateHouse. In my department alone, we spend \$1.8 million annually on news gathering and related expenses, such as training and equipment. For all of Massachusetts, GateHouse spends more than \$25 million annually on its news operation. In short, we pay a lot of money to produce original and authoritative coverage of the communities we serve.

6. In addition to its regular print newspapers, GateHouse has established active and vibrant on-line news editions that deliver up to the minute local news and events, and serve as online community discussion forums. Our on-line Web sites are branded as "*Wicked Local*" editions

(previously known as “Town Online”) and are an attempt to move the company’s core business of delivering hyper-local content into multi-media delivery.

7. It is important to stress that these “*Wicked Local*” websites, which are town specific, contain articles and updates generated by GateHouse journalists and correspondents who attend community events and meetings and generally spend a great deal of time inside a community getting to know its residents and history. For instance, with respect to the *Newton TAB* and its *Wicked Local Newton* website, GateHouse has journalists attending school committee meetings, Board of Aldermen meetings, conferences held by the mayor, police department briefings, sporting events, parades and other significant community events.

8. Our journalists also devote a great deal of time developing professional relationships with key stakeholders, such as elected officials, public safety workers and community activists. We scrutinize reports, such as municipal budgets or crime logs or student achievement scores. We send reporters out at a moments notice to breaking news events such as fires, accidents or crime scenes. Our reporters are paid, equipped and trained by GateHouse to generate articles that another editor or I read, review and edit. All of this information is used to constantly update our *Wicked Local* edition (as well as our other publications) with authoritative articles, videos and photography. By doing all this we are able to establish our publications, and their brand names, as the authoritative news publications for the specific local markets in question. This, in turn, makes us the “first stop” for local news in all of the communities we serve, including Newton.

9. Our *Wicked Local* editions also serve as a community discussion platforms. Residents participate in online discussions on the *Newton TAB* Blog and on our *Wicked Local* site regarding articles and letters published in the *Wicked Local* edition. For instance, for several years now the City of Newton has been debating a proposal to install artificial turf playing fields

at one of its high schools. Our reporters have attended nearly all of the countless meetings on the issue while the *TAB's* Blog has been host to more than thirty (30) separate discussion threads on the matter. The same blog has had three hundred fifty four (354) separate discussion threads about a high school building project, with many hundreds of comments. This pattern repeats itself, to varying degrees, for many of the articles and other information that appears on *Wicked Local Newton*.

10. In my experience, the first couple of sentences of an article (known as a “lede”) as well as the headline, are the most crucial portions of every article. In many instances, those introductory lines may be all a reader chooses to read of the article. Accordingly, journalists and editors chose those words with great care, seeking to provide a synopsis of the information we deem to be most significant, interesting and newsworthy.

11. Further, in my experience, no two groups of journalists and editors are likely to produce the exact same headline or lede, due to both the individual styles of the writers and the reality that every headline and lede requires a judgment call as to what are the most important facts. Even when two reporters attend the same school committee meeting chances are one may decide that the third item on the agenda was the most important, while the other may decide that the fourth item deserved being mentioned first. Even if there is only one topic discussed, separate reporters more often than not write different headlines and different ledes based on their own professional judgment, writing style and perspective. Editors are similarly unique in their perspectives.

12. I like to think of our *Wicked Local* sites as a sort of electronic “convenience store.” In a convenience store, the proprietor will place high demand staples -- such as milk or bread -- at the back of his store, thus compelling customers seeking those items to walk by, and hopefully

purchase, impulse items -- perhaps snack foods or toys – at the front of the store. Applying this analogy to our website, we promote our news staples on our homepage with headlines and ledes from our articles as a means of enticing the reader to delve deeper into our site. We also carefully surround those articles on our homepage with other items we hope our customers will find compelling. Our *Wicked Local Newton* homepage contains a host of advertising links offering a wide variety of local products and services as well as more traditional advertisements. For example, the homepage has a “Top Ads” portal, with a listing of businesses that offer a wide range of services and products. See Exhibit 1 (a true and accurate copy of a print screen from the December 18, 2008 *Wicked Local Newton* webpage). There are “block” advertisements for specific businesses, along with general listings like “Homes” and “Cars” designed to draw reader interest. See Exhibit 1. Our homepage also has “rich media” advertisements. These are high impact advertisements that include page peels (displays that fold down from the corner of the page), billboards, and other floating displays. Our homepage generally has thirteen (13) unique advertisement slots that are not repeated on article pages, and typically includes “buttons” promoting special sections and specialty products produced by GateHouse. A reader perusing that page might very well see an advertising link that could draw further interest. Attracting a reader to these and other features is critical to our ability to raise the revenue which pays our overhead.

Boston.com Announces its Intent to Launch Local Websites in the Communities Served by GateHouse Publications.

13. The Boston Globe operates an online edition called Boston.com (www.boston.com). The Boston Globe has been the region’s dominant print media for decades, and the Boston.com site has been the dominant regional news portal for the greater Boston area since its inception in 1996. Boston.com is self-described as wholly owned by the New York Times Company, a

“leading media company with 2007 revenues of \$3.2 billion, which includes The New York Times, the International Herald Tribune, The Boston Globe, 16 other daily newspapers, WQXR-FM and more than 50 Web sites, including NYTimes.com., Boston.com and About.com.” See Exhibit 2 hereto, attaching a true and accurate copy of a December 11, 2008 press release from Boston.com.

14. Boston.com, already the dominant web player for regional news in the market, is now attempting to create a network of competitive hyper-local websites for 120 towns and cities in eastern Massachusetts, many of which are already served by GateHouse. In its December 11, 2008 press release announcing the launch of <http://www.boston.com/yourtown/Newton>, Boston.com states unequivocally, “Boston.com Launches Community Web Site for Newton, Massachusetts,” and “New Site is a Pilot for ‘Hyper-Local’ Sites in Towns and Cities of Greater Boston.” See Exhibit 2 hereto. It has begun this process by creating a “Your Town: Newton” portal on the Boston.com homepage that is dedicated to local news and events in Newton. In short, this new enterprise is designed to compete directly with *Wicked Local Newton* and related sites operated by GateHouse. Both entities will cover political, community and sports events in Newton. Both emphasize the “hyper-local” nature of their content, focusing on “grass-roots” events in the community. Both entities seek to be the “first stop” for readers interested in their community’s news. Both entities also are eager to reach Newton residents and seek local businesses willing to pay for advertisements in the context of the Newton market.

Boston.com Copies Our Headlines and Ledes, and Uses Our Articles to Enhance their Boston.com/yourtown/Newton Website.

15. It came to our attention in early November that Boston.com was going to launch its Newton site, which it has now done. Upon reviewing the Boston.com/Newton site we quickly determined that Boston.com was directly copying headlines and ledes from *Wicked Local*

Newton (and our other publications), and using that as a large part of their site's presentation, very little of which appeared to be original content generated by Boston.com or related publications. These headlines and ledes generally have not been altered or changed in any way, and are precisely copied, word for word, from the original article written by GateHouse's journalists. (In a small number of examples, Boston.com has omitted a word or slightly modified a headline for spacing needs). When a reader clicks on those headlines and ledes, they are taken directly to the *Wicked Local Newton* page where the article is displayed, completely by-passing the *Wicked Local* homepage. See Exhibit 3 (a true and accurate copy of a Boston.com/yourtown/Newton web-page of December 9, 2008, with GateHouse article following). As shown on the second page of Exhibit 3, there is an article listed entitled, "Newton students in robot-building competition," with a short lede. The third page of Exhibit 3 is the actual *Wicked Local Newton* article a reader would see by clicking on the headline. The article headline reads, "Newton students in robot-building competition," which is the headline written by GateHouse staff writer Steve Bagley. In short, the headline written by GateHouse was copied verbatim by Boston.com. The same is true of the lede.

16. Another example of a Boston.com/yourtown/Newton page (December 10, 2008), with headlines and ledes from a GateHouse publication is attached hereto as Exhibit 4. As shown on the second page of Exhibit 4, there is a headline entitled, "One root beer spill cost Newton taxpayers \$13,000." Again, a reader clicking on that Boston.com link would be taken directly to the *Wicked Local Newton* article, by-passing our homepage. The third page of Exhibit 4 is the actual article written by a GateHouse reporter, and once again the headline and lede were copied verbatim by Boston.com.

17. In sum, Boston.com is directly lifting and using the professional product created by journalists and editors employed or paid by GateHouse, and they are using that work product to compete with GateHouse in the same market (and to attract our audience). Boston.com is doing so for its own benefit and for its own competitive advantage. By copying our website content, Boston.com avoids the expense and burden of hiring or paying journalists to cover a host of local, community and sports events, because they simply use the content of *Wicked Local Newton*, which actually has reporters “in the field” covering these events (as do our other publications). They also are exploiting our inside knowledge of the community and the issues of importance to that community – as determined by our editorial judgment -- when they post our work on their site. By virtue of being able to copy and use our basic bread-and-butter coverage, Boston.com can be in two places at once: 1) at all the key assignments that GateHouse journalists cover (Aldermen meetings, the mayor’s weekly press conference, football games and other sports events); and 2) any other place that Boston.com chooses to actually send a reporter to provide supplemental coverage.

18. Since November 24, GateHouse has been tracking the Boston.com/Newton site to monitor the extent to which Boston.com has been copying content from the *Newton TAB*, *Wicked Local Newton*, the *Newton Blog*, and/or the *Daily News Tribune*. Boston.com has been copying our headlines and ledes every single day since we first began monitoring its content. A binder separately labeled Exhibit 5 contains print-outs from Boston.com’s website showing the headlines and ledes copied and used by Boston.com for the period November 24 through December 12, 2008, and December 15 through December 17, 2008. No print-outs were done for the weekend days of December 13 and 14, but our headlines and ledes were used on those days as well, and they appeared to be carried over from the December 12 publication. Here are

several examples of the number and type of stories that Boston.com has been using from our publications (the times indicate when the “snapshot” of the website was taken):

- 1) Monday, 11/24, 11:45 a.m – Boston.com copied the headlines and ledes of fifteen (15) articles. These consisted of two (2) news articles, five (5) sports articles, and eight (8) articles concerning the schools. See Exhibit 5, tab A.
- 2) Tuesday, 11/25, 11:00 a.m. – Boston.com copied the headlines and ledes of twenty-four (24) articles. These consisted of six (6) news articles, nine (9) sports articles, and (9) articles concerning the schools. See Exhibit 5, tab B.
- 3) Thursday, 11/27, (Thanksgiving), 11:15 a.m. – Boston.com copied the headlines and ledes of twenty-five (25) articles. These consisted of six (6) news articles, eleven (11) sports articles, and eight (8) articles concerning the schools. See Exhibit 5, tab D.
- 4) Friday, 11/28, 12:30 p.m. – Boston.com copied the headlines and ledes of twenty-six (26) articles. These consisted of five (5) news articles, thirteen (13) sports articles, and eight (8) articles concerning the schools. See Exhibit 5, tab E.
- 5) Wednesday, 12/3, 3:30 p.m. – Boston.com copied the headlines and ledes of thirty-one (31) articles. These consisted of ten (10) news articles, sixteen (16) sports articles, and five (5) articles concerning the schools. See Exhibit 5, tab J.
- 6) Wednesday, 12/10, 2:25 p.m. – Boston.com copied the headlines and ledes of thirty-seven (37) articles. These consisted of eight (8) news articles, twenty-one (21) sports articles, and eight (8) articles concerning the schools. See Exhibit 5, tab Q.

19. I have attached hereto as Exhibit 6 a spreadsheet showing each day that Boston.com has been using our content, the nature of the content and the number of stories run. The total grows each day, but through December 17, 2008, Boston.com has used the headlines, ledes and stories from approximately five hundred eighty four (584) articles published by GateHouse. See Exhibit 6. These include stories from the *Newton TAB*, *Wicked Local Newton* and the *Daily News Tribune*. That number (584) includes stories that have run consecutive days, which Boston.com presumably has done because of the topical content and high interest in these articles. Even if we only count each article once (the first time it ran), and do not count ongoing uses, Boston.com has copied the headlines and ledes from approximately one hundred and one (101) separate

articles generated by GateHouse. A list of each of these articles is attached hereto as Exhibit 7. The list is through December 17, 2008, and is surely growing.

20. There can be no doubt that a Boston.com/Newton site that does not use the *Wicked Local Newton* original content would be a much less robust community news site than it is today and less interesting to the core readership group both companies are trying to attract. Just one example of how Boston.com./Newton is unfairly leveraging *Wicked Local Newton* (and our other publications) occurred over the recent Thanksgiving Holiday. Thanksgiving Day is a big high school football day in Massachusetts, and generates a tremendous amount of interest and enthusiasm. In fact, barring major news events, high school football may be the primary reason for local readers to go to a local website on Thanksgiving Day, or the day after Thanksgiving.

21. At significant expense, the *Newton TAB* and *Wicked Local Newton* covered two big Newton football games (Newton has two high schools) and made arrangements to cover an out-of-state championship cross country track meet. This involved sending journalists out to cover these events in person, and paying them for their services (including holiday pay).

Boston.com/Newton, with apparently no staff covering the Newton games, linked to our stories as forty-three percent (43%) of its sports offerings on Thanksgiving Day and approximately fifty-four percent (54%) on the following day. See Exhibit 5, tabs D and E. Many of the remainder of the sports stories were from the Boston College newspaper; a few were from The Boston Globe.

22. It also bears noting that when it displays the headlines and ledes from our articles, Boston.com has a reference listed, albeit in very small print, indicating the source for the underlying article. That attribution is to the *Newton TAB*, *Wicked Local*, the *Daily News Tribune*, or even the *Newton TAB* Blog. For instance, on November 27 (Thanksgiving Day),

Boston.com used a headline and lede from one of our sports stories published in the *Newton TAB* about the girls cross-country team (“South girls are X-country state champs”). See Exhibit 5, tab D. Beneath the headline and lede, Boston.com lists, “(Newton Tab, 11/18/08).” First, GateHouse has never licensed or otherwise authorized Boston.com to use the names *Newton TAB*, *Newton TAB* Blog, *Wicked Local*, or the *Daily News Tribune* in any capacity whatsoever. Second, by using our headlines, ledes, and marks, the public is likely to be confused as to (a) whether the reportage is original to Boston.com or the referenced source; and/or (b) whether GateHouse has endorsed or otherwise approved of the copying. For instance, referencing the “*Newton TAB*” potentially suggests that Boston.com owns or runs that publication, or that it is an affiliated publication. There is nothing explaining that the material is taken from an entirely separate and independent publication that is not owned by or affiliated with either Boston.com, or The New York Times Company. Further, it is unclear that readers will even recognize that the *Newton TAB*, *Wicked Local*, or *Newton TAB* Blog are actually discrete publications. To many readers, these simply may appear to be the names for online sections of Boston.com. This could very well cause readers to associate our brand names with Boston.com, thereby diminishing the individual brand recognition that we have worked so hard to establish in Newton and the other communities we serve.

Boston.com Allows Readers to By-pass Our Homepages and Related Advertising Content.

23. In many cases, the portion of our original work that appears on Boston.com may be all many readers look at. Often, readers are only interested in knowing a few basic facts about an event or incident. If, for example, a fire broke out at a local home, some readers may only scan the lede to see if anyone was injured and where the fire took place. If our headline and lede contained all the information the reader desired, they would likely never “click” on to *Wicked*

Local Newton and would never see the paid advertisements or other features that support the expenses of generating that information in the first place.

24. Even if a Boston.com reader clicks on a lede copied from *Wicked Local*, they are taken directly to that article, by-passing our homepage. To use my “convenience store” analogy, when Boston.com takes our headlines and ledes and posts direct links (called “hyperlinks” or “deep links”) to our original articles, they are essentially letting their readers go directly to the back of our store without passing through our homepage. This severely undermines our business model which depends, in large part, on enticing readers to begin their search for Newton-related news on our homepage.

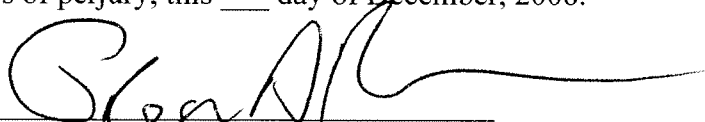
25. Boston.com follows the same “convenience store” model I have described. A reader first goes to the Boston.com homepage, and then to the Boston.com/Newton page, and only then to the article of interest. As a result, readers are subjected to a full array of Boston.com advertisers on two (or more) separate webpages before they even get to the *Wicked Local Newton* article. In short, Boston.com is using our content and work product to draw a large portion of reader interest. Boston.com is, of course, touting the benefits of its local Newton site for potential advertisers. In fact, we received a two page flyer apparently circulated by Boston.com soliciting advertisers for not only its Newton site, but additional towns as they become available. A true and accurate copy of the document we received is attached here as Exhibit 8. In that flyer, Boston.com describes its new advertising opportunities as, “[s]tandard and unique ad positions designed for the Town pages.” See Exhibit 8.

26. It is no secret that publications like the *Newton TAB*, *Wicked Local Newton* and the *Daily News Tribune* rely heavily on advertising revenue to sustain their operations. Boston.com is using our content, generated by our reporters and editors, to draw reader interest to *their* local

website, increase advertising and enhance their operations. At the same time, the potential net effect is to decrease the number of readers viewing our homepages and advertising content, thereby adversely affecting our ability to retain critical advertising dollars. Advertisers are drawn to our publications because of our local audience, and the understanding that they are reaching potential patrons. If we lose readers, the loss of advertisers follows. Boston.com is using GateHouse's own resources to take its audience, and ultimately, its advertising base.

27. I have been in the news business my entire adult life and I believe competition in journalism is a good thing, and I welcome it. If the Boston Globe wants to compete with us in Newton and the other communities we serve, they should approach it fairly. They should hire and pay their own journalists. They should generate their own original content and nurture their own contacts within the community. The parties should compete on a fair basis where the real litmus test is readers' judgment as to the ideas and the content that both sides independently generate.

Signed under the penalties of perjury, this ¹⁹ day of December, 2008.



Gregory A. Reibman