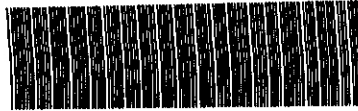


~~copy appeal~~
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**THE CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD**

HEARING LOCATION:
Environmental Control Board
66 John Street
10th Floor
New York, NY 10038
(212) 361-1400



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Method of Appearance
Live Hearing

DECISION AND ORDER
Violation #: 034801196M et al. (5 NOVs)
Hearing Date: October 8, 2010

To: Lindsay Garroway Esq
80 Maiden Lane
Suite 507
New York, NY 10038

City of New York v. SUITE 504 IN WINDOW
OUTDOOR LL

Total Civil Penalty: \$0.00

5 Notice(s) of Violation (NOV(s)) was/were issued to the Respondent. On the record before me, and upon the Further Findings of Fact/Conclusions of Law stated below, I find as follows and, where applicable, order payment and compliance.

NOV: 034801196M
PLACE OF OCCURRENCE: 63 GREENE STREET MANHATTAN
DATE OF OCCURRENCE: 08/17/2009
ISSUING OFFICER/AGENCY: 0816 DOB
ECB CODE: B162
CHARGE: AC 28-502.6
DISPOSITION: DISMISSED
CIVIL PENALTY IMPOSED: \$0.00

NOV: 034801197Y
PLACE OF OCCURRENCE: 63 GREENE STREET MANHATTAN
DATE OF OCCURRENCE: 08/14/2009
ISSUING OFFICER/AGENCY: 0816 DOB
ECB CODE: B162
CHARGE: AC 28-502.6
DISPOSITION: DISMISSED
CIVIL PENALTY IMPOSED: \$0.00

NOV: 034801198X
PLACE OF OCCURRENCE: 63 GREENE STREET MANHATTAN
DATE OF OCCURRENCE: 08/20/2009
ISSUING OFFICER/AGENCY: 0816 DOB
ECB CODE: B162
CHARGE: AC 28-502.6
DISPOSITION: DISMISSED
CIVIL PENALTY IMPOSED: \$0.00

NOV: 034801199H
PLACE OF OCCURRENCE: 63 GREENE STREET MANHATTAN
DATE OF OCCURRENCE: 08/21/2009
ISSUING OFFICER/AGENCY: 0816 DOB
ECB CODE: B162
CHARGE: AC 28-502.6
DISPOSITION: DISMISSED
CIVIL PENALTY IMPOSED: \$0.00

NOV: 034801418Z
PLACE OF OCCURRENCE: 63 GREENE STREET MANHATTAN
DATE OF OCCURRENCE: 08/26/2009
ISSUING OFFICER/AGENCY: 0816 DOB
ECB CODE: B162
CHARGE: AC 28-502.6
DISPOSITION: DISMISSED
CIVIL PENALTY IMPOSED: \$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 034801196M AC 28-502.6 NOV: 034801197Y AC 28-502.6 NOV: 034801198X AC 28-502.6
NOV: 034801199H AC 28-502.6 NOV: 034801418Z AC 28-502.6

Appearances: Susan Huot Esq. for the NYC Department of Buildings (DOB); Lindsay Garroway for Inwindow Outdoor LLC (Inwindow).

On the August 14, 2009, August 17, 2009, August 20, 2009, August 21, 2009, August 26, 2009, the DOB charged that Inwindow violated NYC Administrative Code §28-502.6 by failing to obtain an OAC registration while engaged in outdoor advertising business.
New York City Environmental Control Board

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In support of its case, the DOB produced several documents from the Internet. The first, printed from Inwindow's website on August 26, 2009, identifies its place of business as 63 Greene Street, New York, New York. Ex. 1. The second, printed from Inwindow's website on May 19, 2009, describes Inwindow's business. Ex. 2. Both articles include photographs of advertisements on storefronts, but do not identify the locations of the storefronts. A third shows an article from the New York Times website, dated May 12, 2009. Ex. 3. In the article, Ray Lee, managing director of real estate at Inwindow, discusses Inwindow's business of running ads in vacant storefronts.


Inspector Salvatore testified that the DOB had received multiple complaints about Inwindow's signs in vacant storefronts. Alex Berger, a DOB sign attorney, called him into his office and showed him the NYTimes article. He researched the DOB's OAC registry and did not find Inwindow's name listed. On each of the dates listed above, he again researched the OAC registry and still did not find Inwindow's name. On none of the dates did he go to the place of occurrence to investigate whether there was an advertising sign installed there by Inwindow. He could not identify having observed on any particular date, a specific advertising sign within the City of New York attributable to Inwindow.

By virtue of the articles, Ms. Huot argues that Inwindow has admitted being an outdoor advertising company, which should be sufficient to hold it responsible under §28-502.6. She adds that the existence of a sign is not necessary to support the violations. She then requested a subpoena to call Inwindow's director of real estate, Whitney McGuire, as a witness.

Ms. Garroway did not dispute that Inwindow was not registered with the DOB as an OAC. However, she moved to dismiss each notice of violation on the ground that the DOB has failed to prove its case. She added that the DOB did not identify a specific sign as a basis for the issuing the violation. She opposed the subpoena request.

New York City Administrative Code §28-501 defines an Outdoor Advertising Company to mean, "A person, corporation, partnership or other business entity that as a part of the regular conduct of its business engages in or, by way of advertising, promotions or other methods, holds itself out as engaging in the outdoor advertising business." It further defines Outdoor Advertising Business to mean, "The business of selling, leasing, marketing, managing, or otherwise either directly or indirectly making space on signs situated on buildings and premises within the city of New York available to others for advertising purposes, whether such advertising directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered on the same or a different zoning lot and whether such sign is classified as an advertising sign pursuant to section 12-10 of the zoning resolution."

The DOB claims that on each date of occurrence Inwindow engaged in the outdoor advertising business. It rests its case solely on articles pulled from the Internet on various dates in the spring of 2009, and random searches of the OAC registry by Inspector Salvatore. Yet it offers no first-hand observation or claim that on each date of occurrence, Inwindow had in fact made space on a specific sign, located on a specific building within NYC, available to others for advertising purposes, the foundation of what constitutes engaging in the outdoor advertising business. Rather it seeks to punish Inwindow based on its words alone. On that basis, I denied the DOB's request for a subpoena to compel the testimony of Ms. McGuire, Inwindow's direct employee, to fill in the gaps of its legally insufficient case. The burden of proof and persuasion falls on the DOB to establish its case. I find that it has not done so and dismiss all NOVs.

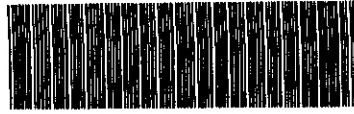
TOTAL CIVIL PENALTY: \$0.00	
	OCT 26 2010
Fri Oct 2010 10/22/10 17:49:36	Control 5
10/22/2010	Date
Laura Fieber, Administrative Law Judge	

**PAYMENT DUE WITHIN TEN (10) DAYS
READ BACK OF THIS ORDER – PROTECT YOUR RIGHTS**



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ENVIRONMENTAL CONTROL BOARD**

HEARING LOCATION:
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66 John Street
10th Floor
New York, NY 10038
(212) 361-1400



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Method of Appearance
Live Hearing

DECISION AND ORDER
Violation #: 034770387X et al. (2 NOVs)
Hearing Date: October 15, 2010

To: COHEN HOCHMAN & ALLEN
80 MAIDEN LN.
SUITE 507
NEW YORK, NY 10038

City of New York v. 226 LAFAYETTE CO INC

Total Civil Penalty: \$0.00

2 Notice(s) of Violation (NOV(s)) was/were issued to the Respondent. On the record before me, and upon the Further Findings of Fact/Conclusions of Law stated below, I find as follows and, where applicable, order payment and compliance.

NOV: 034770387X
PLACE OF OCCURRENCE: 66 SPRING STREET MANHATTAN
DATE OF OCCURRENCE: 03/26/2009
ISSUING OFFICER/AGENCY: 0816 DOB
ECB CODE: B162
CHARGE: AC 28-502.6
DISPOSITION: DISMISSED

CIVIL PENALTY IMPOSED: \$0.00

NOV: 034770389J
PLACE OF OCCURRENCE: 66 SPRING STREET MANHATTAN
DATE OF OCCURRENCE: 03/26/2009
ISSUING OFFICER/AGENCY: 0816 DOB
ECB CODE: B167
CHARGE: ZR 42-53
DISPOSITION: DISMISSED

CIVIL PENALTY IMPOSED: \$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 034770387X AC 28-502.6 NOV: 034770389J ZR 42-53

Petitioner DOB was represented by Mr. Alex Berger. Respondent 226 Lafayette Co. Inc. appeared by attorney Ms. Lindsay Garroway, along with witness Ms. Ashley Wilson. NOV 34770387X alleges a violation of NYC Building Code § 28-502.6, property owner acting as an outdoor advertising company failure to obtain valid OAC registration number while engaged in outdoor advertising business; NOV 34770389J alleges a violation of NYC Zoning Resolution 42-53, outdoor advertising sign in an M1-5B zoning district exceeds the surface area limits of 750 square feet. Both NOVs were issued with respect to an outdoor advertising sign for "Gears of War" displayed at 66 Spring St. (the "subject premises"). Petitioner submitted a photograph of the sign on the subject premises as petitioner's exhibit 1.

Ms. Garroway moved to dismiss NOV 34770387X based on the fact that the named respondent is the owner of the subject premises and had entered into a written lease agreement with Colossal Media, a duly registered outdoor advertising company (OAC) for the display of the advertisement in question. A copy of the lease was submitted as respondent's exhibit 1. Ms. Garroway argued that since respondent had a valid lease with a duly registered OAC, it was not required to have an OAC registration number for itself. Mr. Berger did not oppose the motion. I find that respondent building owner had a valid lease agreement with Colossal Media, a duly registered OAC, for the outdoor advertising sign at the subject premises, and therefore was not required to obtain an OAC registration number itself. Accordingly respondent's motion is granted and NOV 34770387X is dismissed.

Ms. Wilson testified that she is an employee of Colossal Media, the OAC that marketed the sign in question. A copy of the sales sheet used to market the sign was submitted as respondent's exhibit 2. The sales sheet gives the dimensions of the sign at 40 feet in height by 18.5 feet in width, for a total area of 740 square feet. Ms. Wilson also testified that subsequent to the issuance of the NOVs, a permit application was approved by DOB for a new advertising sign in the same location as the sign in question, and that the square footage was verified as 740 square feet, see respondent's exhibits 3 & 4. Ms. Garroway argued that the testimony of Ms. Wilson and the exhibits submitted established that the sign in question was not 1000 square feet as alleged in NOV 34770389J, but was in fact only 740 square feet and therefore did not exceed the surface area requirements of the cited zoning resolution section. I find respondent's evidence credible, and note that the NOV stated that the sign observed was "approx." 1000 square feet. There was no basis given for how this approximation was arrived at. I therefore find that the sign in question was in fact 740 square feet, and therefore did not exceed the surface area limits of 750 square feet in a M1-5B zoning district. Based on the foregoing, NOV 34770389J is dismissed.

TOTAL CIVIL PENALTY: \$0.00

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OCT 28 2010

10/22/2010

Fri Oct 2010 10/22/10 15:58:48

Control 5

Philip Sturges, Administrative Law Judge

Date

**PAYMENT DUE WITHIN TEN (10) DAYS
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