

## CONDITIONS OF USE FOR THIS PDF

The images contained within this PDF may be used for private study, scholarship, and research only. They may not be published in print, posted on the internet, or exhibited. They may not be donated, sold, or otherwise transferred to another individual or repository without the written permission of The Museum of Modern Art Archives.

When publication is intended, publication-quality images must be obtained from SCALA Group, the Museum's agent for licensing and distribution of images to outside publishers and researchers.

If you wish to quote any of this material in a publication, an application for permission to publish must be submitted to the MoMA Archives. This stipulation also applies to dissertations and theses. All references to materials should cite the archival collection and folder, and acknowledge "The Museum of Modern Art Archives, New York."

Whether publishing an image or quoting text, you are responsible for obtaining any consents or permissions which may be necessary in connection with any use of the archival materials, including, without limitation, any necessary authorizations from the copyright holder thereof or from any individual depicted therein.

In requesting and accepting this reproduction, you are agreeing to indemnify and hold harmless The Museum of Modern Art, its agents and employees against all claims, demands, costs and expenses incurred by copyright infringement or any other legal or regulatory cause of action arising from the use of this material.

### **NOTICE: WARNING CONCERNING COPYRIGHT RESTRICTIONS**

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

AP

"distinctive quality - which just was -  
donations -

(not just over what -)

not what you mean and mean -

certainly more for both -

New York

"Actually you are deeper than  
semantics. While MOMA has  
exhibited the work of numerous  
abstract artists, it is a leader of  
the first of abstractism in art.

Not about in non-abstract.

New York. (not just a question of exclusive rights to title)  
understanding art -

New York.

quality of the - Painting - B + P.

The Museum of Modern Art Archives, NY

Collection:  
PI/COMMSSeries/Folder:  
IV.A.11

1. Particulars & specific combinations of works we object to.
2. One sole grounds that it will confuse the public.
3. One not claiming exclusive rights to either use of word modern or art.
4. Have welcomed the est. of other museums who show recent pcty, or, films, photo, photo — will continue to — & will continue ~~to~~ feel to — but comp. heavily. But none other and name so similar to mine —
5. Do not have to go to court to show what is word & what is art — Do not consider it a legal question anyway — Have lots of opp. than more than 150 books — etc. etc.

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

take

What is Modern Art -

How issue is coming to court -

not there

that is not the issue

Morris -

"It's okay this so-called  
• modern thing exists and when it  
needs a long-winded answer."

well 2d, j -

What is Modern -

What is Art.

odd that he wants to make a judgment -

The Museum of Modern Art Archives, NY

Collection:  
PI/COMMSSeries.Folder:  
IV.A.11

selling - but my name on order to  
public non-profit ed. inst. - since  
under Order August 1945.

— claims to demonstrate  
to the 2500 members & —  
visitors what & why we consider  
modern art. Have been doing that  
for 30 years.

6. ~~points~~ devote to asking M.H. to  
select another name - in interests  
of future &

many many suggestions —

July of contemporary art -

July of Permanent Art

July of Art - Painting -

Painting - Not just Museum

Painting - Not just gallery -

Not just gallery of modern art

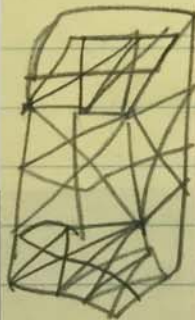
Not just modern art gallery

Not just's Folly -

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

There has been considerable interest shown by the press in a lawsuit which the Museum of M.A. has recently instituted against Mr. H.A. The purpose of this action is to restrain Mr. Hartford from using the name "Gallery of M.A." to describe a museum and gallery which he plans to build at Columbus Circle, seven blocks distant from our Museum. The press has indicated some confusion as to the issues involved, and we would <sup>therefore</sup> like to clarify our position.

MOMA has ~~not~~ been known by that name for over 25 years and has, we believe, established a special meaning for the name which is



As one likes a free loader. We choose to believe that Mr. H. has no such intention but we are confident that the confusion that will result if M.H. calls his new place the G of M.A. will certainly lead to free loading — to the detriment of the public.

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

## THE MUSEUM OF MODERN ART

Mr. William A. M. Burden,  
Mrs. John D. Rockefeller 3rd,  
Dr. Henry Allen Moe, Mr. Ralph F. Colin,  
Mr. René d'Harnoncourt, Mrs. Elizabeth Shaw

Date March 14, 1962

To:

Re: Huntington Hartford

From:

Richard H. Koch

I have just heard from Winthrop Stimson that Huntington Hartford's lawyer has reported that Mr. Hartford has signed the settlement agreement regarding our suit about the name "Gallery of Modern Art", and that papers formally terminating the action are now in the course of preparation. You will recall that under the terms of the settlement Mr. Hartford is required, whenever he officially uses the name "Gallery of Modern Art", to follow it with the phrase "including the Huntington Hartford Collection".

I have recently noticed that the large sign on the Columbus Circle side of Mr. Hartford's gallery conforms to this requirement.

RHK

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

*File*

Drafted February 1959, following meeting on February 5, 1959 with Ralph Colin, Walter J. Holaka (Winthrop, Stimson, Putnam & Roberts), Mr. Venema (Winthrop, Stimson, Putnam & Roberts, Rene d'Harnoncourt, Alfred H. Barr, Jr., Charles Keppel, James White and Elizabeth Shaw.

*Date May 27, 1961*

In an effort to clear up some misunderstanding and confusion concerning our lawsuit against Huntington Hartford we would like to set forth the reasons for our action.

Our purpose is to restrain Mr. Hartford from using the name "Gallery of Modern Art" to describe an institution which, like our, will exhibit paintings, sculpture, photographs, architectural models, etc., in a building located only seven blocks away. We have taken this action because we feel the proximity of location and similarity of names and functions will inevitably confuse the public.

We have never claimed an exclusive right to the use of the words modern art. It is the particular combination of four words -- Gallery of Modern Art which we think will be confusing if used without any distinguishing adjective, as the words gallery and museum are used interchangeably.

We think this will be confusing because it is almost identical to the name we have used for nearly 30 years to identify the sponsorship of hundreds of exhibitions, books, classes and other educational activities we carry on in New York as well as in other cities throughout this country and abroad.

FOR STUDY PURPOSES ONLY. NOT FOR REPRODUCTION.

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

## THE MUSEUM OF MODERN ART

Date May 25, 1961

cc: Dick Koch

To: Rene d'Harnoncourt

Re: Huntington Hartford

From: Elizabeth Shaw

Dear Rene:

A Huntington Hartford story which appears in the current Newsweek is attached as well as a copy of a statement we drafted in 1959 but never released.

Mr. Husted brought the Newsweek story to Dick Koch's attention and he (Dick) has asked me if you, he and I could get together soon to discuss it.

As we never issued any statement the clipping morgues of newspapers and news magazines do not contain our version of what we have done and why. Therefore every time the Hartford Museum gets into the news, which will probably happen time and again in the coming months, a somewhat distorted version of our position is printed again.

As I recall we did not issue a statement in 1959 because we did not want to stir up any attention. However, I agree with Dick that the time has come to review our position and figure out how soon we can get a more accurate version of the events printed so that it will become part of the record. Hartford, as you know, is publishing a magazine which is due to appear in the fall; presumably he will be hiring a director for the Museum, he may even build it. All these events will be news and our name will be mentioned time and again.

Another possibility we might consider is a report to our staff and trustees, reiterating our position and mentioning the current status of the case. This would not be for publication, but simply to give those associated with the Museum the facts in case they are questioned by their friends.

Feb. 1959

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

*Drafted Feb. 1959, following meeting of (see list on attached minute)* *File Huntington Hartford*

In an effort to clear up some misunderstanding and confusion concerning our lawsuit against Huntington Hartford we would like to set forth the reasons for our action.

Our purpose is to restrain Mr. Hartford from using the name "Gallery of Modern Art" to describe an institution which, like ours, will exhibit paintings, sculpture, photographs, architectural models, etc., in a building located only seven blocks away. We have taken this action because we feel the proximity of location and similarity of names and functions will inevitably confuse the public.

We have never claimed an exclusive right to the use of the words modern art. It is the particular combination of four words-- Gallery (which is synonymous with museum) of Modern Art which we think will be confusing if used without any distinguishing adjective, *for the words gallery - museum are used interchangeably*. We think this will be confusing because it is almost identical to the name we have used for nearly 30 years to identify the sponsorship of hundreds of exhibitions, books, classes and other educational activities we carry on in New York as well as in other cities throughout this country and abroad.

Feb. 1959

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

Museum of Modern Art vs Huntindon Hartford

MEETING IN THE COMMITTEE ROOM 3:0 p.m. ON THURSDAY, FEBRUARY 5, 1959.

Present:

Mr. Ralph Colin  
 Mr. Walter J. Holska )  
 Mr. Venema ) Winthrop, Stimson, Putnam & Roberts  
 Mr. d'Harnoncourt  
 Mr. Barr  
 Mr. Keppel  
 Mr. White  
 Mrs. Shaw

Mr. d'Harnoncourt opened the meeting by saying that its purpose was to try to find out if ~~there were~~ any further facts and figures had come to light and to clarify the Museum's position generally.

Barry: There is to be a press conference middle of next week.

Barry: More concerned with getting editors etc. correctly informed than with getting 3 inches of space.

Colin: group statement should say specifically what the issue is and as well as what it is.

Barry: Many heard neither would be against press conference, but not against release.

Barry: News conference is only another device. We are to have 100 at what we expect have about 5 with people on the spot.

Barry: Our arguments are convincing.

Barry: Anyone know who the PI's press are?

Barry: It is not a specific organization to say the least.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

Xolin: The faster the better.

Rene: ~~affix~~. If there is a press conference. And we were questioned about our opinion on contemporary art - as we surely will be - what line should we take?

Colin: ~~Muse~~ emphasise that ~~modern art~~ question is not ~~a~~ basis of ~~a~~ law suit. <sup>this</sup>  
Delighted to discuss it some other time but not in connection with this suit.

d'H: wondering if we can put this all on a release.

Shaw: No

Vanema: 'modern art question' is not apoint in law at all. *anyway*

Rene: Our opinion ison record in our publications, exhibitions, etd. during the past 30 years.

Colin: We would welcome as many museums as people are willing to start showing any type of art but not in our name.

Rene: Like to have press conference middle of next week.

*Shaw. Tues. (Shaw now Mon for Tues)*

Barr: More concerned with getting editors etc. correctly informed than with getting 3 inches of space.

Colin: press statement should say specifically what the issue is not as well as what it is.

Rene: many board member would be against press conference, but not against release.

Shaw: Press conference is only another device. We we do not have one we will in effect have about 8 with people on the phone.

Rene: Our arguments are convincing.

Barr. Anyone know who HH's press man is?

Rene: He got specific organisation to pay for advertisement

*insert: Mr. d'H asked Mrs. Shaw to prepare statement which she said she'd do*

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

1936 or 7 was last exhibition (drawings in Rockefeller Center)

d'H: Meeting to try to find out if there are any further facts and figures come to light and to clarify Museums position.

Mr. Keppel. Talked about Jacques Lindon. Question whether additional action should now be started by him. Whether there would be any advantage in having a concurrent action based on appropriation of the name.

Colin Hartford tried to buy name the summer before last. from Lindon. L. refused. (Colin suspects) and H could not get G of M A registered as corporation. L authorised Colin to act for him. L operates from his home under name of Gallery of Modern Art.

Mrs. S This is surely very confusing. Plans of MMA were only called

Colin Thought Lindon and Hartford less confusing than Hartford and MMA because Lindon is a straight commercial gallery H's lawyer. Apparently they had

Colin Suspect HH of using name for publicity only. Not yet registered.

d'h Has heard HH say that part of his gallery is going to be a museum and part and gallery with pictures for sale. 10 year old fight with HH about Modern

Shaw. In NY Times last year story saying painting will be shown and well as film showing etc.

? We sell 1 painting (ALS and repros) also frequently artist shows paintings for sale (Colin) ...discussion about ALS. can be put on calendar for March

? If HH sells pictures we will have a much clearer course of action

d'h. Selling will happen on top floor like commercial gallery. (think)

What Would that be apparent from the <sup>plans</sup> plans that were filed? (were any plans filed?)?

Regulations are that museum galleries cannot be higher than a certain floor

Is HH's gallery higher than that regulation? do not know. argument about personal

Mr. d'h raised question of Musée d'art Modern Société Anonyme about people

Mr Barr produced memo. We are interested in doing a service to the public

Soc Ann. not existing any longer. collection transferred to .?.. Mrs. ? added

word '1920' after Musée d'Art Modern after request from MMA. Sometimes only called

Soc Ann. HH is not gallery of Modern Art (also we are agreed about that)

d'H As a corporate <sup>body</sup> has the Soc Ann/ done anything in the last 10 years? the other

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

Barr 1936 or 7 was last exhibition (drawings in Rockefeller Center)

Colin: Was name Museum d'art Modern used?

Barr: "Societe Anonyme" - Museum d'art Modern 1920 Collection.

Mr. V: Since 1940-ish we have had exclusive use of name MMA

Mr. Barr: The fact is that nobody thought of us, including Soc Ann, as (anyhow else?)

Mr. White: He was talkign to HH's architect (?Stone) some time ago who asked him about our being worried about HH's gallery. Answered yes we were and noticed that all the plans of the building were called 2 Columbus Circle. Was this a point of interest? Perhaps the plans of MMA were only called 11 W 53 St.

Colin: Before suit opened was talking to H's lawyer. Apparently they had tried to get HH to chose another name but he was adamant.

Holska: mentioned story in Times last week.

Shaw: It is hard to disentangle our 10 year-old fight with HH about Modern art and the present issue. Made harder by HH obviously not wanting to disentangle it.

d'h: Timing of News in connection with fund raising drive. V important.

HH's official answer is due on Feb 20? Case can be put on calendar for March (which means about June in fact) instead of Oct. But HH almost certainly can get it adjourned (not sure if I understood this bit)

dH: public relations: most important thing from our point of view is that we want to be sure that it is understood what we are against is anything which is going to make things confusing for the public. This is not an argument about personal opinions and aesthetic questions. It is not that we are concerned about people going to the wrong address. We are interested in doing a service to the public rather than jealously guarding our name.

Question raised by Mr. C. (which is often slant papers have taken) that it is because HH is behind Gallery of Modern Art (who we are against anyway) that we are taking this so seriously. Would we be so worried if it was someone other than HH. (Mrs shaw). Papers have asked this question and our answer has been

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

definitely NO.

HH is NEWS so anything he says ~~makes~~ a good story.

Back to Lindon and confusion in his case less apparent.

Colin: dangerous for him to start suit

d'H: re Museum of Primitive and Gallery of Primitive Art

identical situation except G P A is a gallery and Museum of P A and

G f P A are friends, therefore G of P A would have changed name surely if asked by M of P A

Mr Colin: we should force action as soon as possible

Shaw: What are our chances of winning

Holska: Pretty good 65 - 35

Shaw: Is the suit worth it

Colin and Holska: Yes yes. All that .... unfair competition

MMA is correct. <sup>we</sup> they have acquired a tremendous amount of goodwill

during their 30 yearsoof existence. Huntingdon H wants to come in and take

what is ours away from us, which is obviously unfair. HH8s deliberate choice

of name is <sup>suspect</sup>

Barr: Aside from this question of unfair competition we would like to emphasise the question of public confusion. In New Yorker, which is the most used reference for art events, Gallery of Modern Art will precede Museum of Modern Art. In alphabetical listings this will be always the case. Is this (public confusion) legally a claim against HH?

Colin: yes.

Shaw: reads clipping (which)

Colin: Suggests that we ought to get out statement now and not allow people to make their own interpretation bringing in irrelevant quarrel with HH about what is modern art ~~xxxx~~. Statement should say this <sup>is</sup> nothing to do with present issue.

Barr: HH wants to use <sup>modern</sup> Modern rather than <sup>contemporary</sup> because contemporary would exclude him from exhibiting art of earlier centuries.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

d'H: We are not trying to pre-empt 'modern art', only trying to prevent confusion between institutions

d'H: Museum and Gallery are absolute synonyms.

Shaw: From now on let us make sure press gets news from the museum and not other places

Shaw: What will be in HH's answer?

Colin: Probably he will formally deny charges. But may also issue a statement elaborating and possibly with counter charges. Therefore we should issue statement before. in which we ought to say HH admits he is cashing in or trespassing on our reputation.

Shaw: read from Newsweek (A & P)  
very

d'H: We need to give/dignified statement saying we are concerned with prevention of our services to the public etc..... confusion

Colin: we are at a loss to understand why HH is not equally concerned about this. We can only infer that he is trying to cause confusion deliberately, particularly after having had suggested to him so many other names.

Shaw: If we make a statement HH will only come back with another more sensational statement.

Colin: Got to get background statement in before Answer. we are not going to be able to compete <sup>publicity-wise</sup> with him when he files his Answer, which will be NEWS

Rene: must get in point about hardship to public over confusion.

Important to have statement on record whether or not it is widely publicised (phone)

Rene: First statement should be straightforward.

Colin: Why not call press conference? And at a time when it is difficult for the press to get back to HH before next issue of papers.

Have d'H and Barr present and Counsel

Shaw: We would get better cover from press conference.

Barr: Have to be very clear ~~xxxxx~~ and strict about what to say

Not losing... *money... many* *(fairly hard)*

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

Third  
Draft  
7/15/58

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
THE MUSEUM OF MODERN ART,

Plaintiff,

-against-

HUNTINGTON HARTFORD, individually and  
doing business as HUNTINGTON HARTFORD  
ENTERPRISES,

Defendant.

:  
:  
: COMPLAINT  
:  
:  
:  
:-----X

For the Plaintiff, complaining of defendant, by Winthrop,  
Stimson, Putnam & Roberts, its attorneys, alleges that:

FIRST: At all the times hereinafter mentioned  
plaintiff was and still is a corporation duly organized and  
existing under and by virtue of the laws of the State of New  
York.

SECOND: On information and belief, ~~at all the~~  
~~times hereinafter mentioned~~ defendant was and still is a  
resident of the State of New York and doing business in  
the County of New York under the name of Huntington Hartford  
Enterprises.

THIRD: On or about September 19, 1929, The Regents  
of the University of the State of New York granted a pro-

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

visional charter which incorporated <sup>Lillie</sup> (Lizzie Bliss, Josephine B. Crane, Frank Crowninshield, Paul J. Sachs, Mary Sullivan, Abby A. Rockefeller, A. Conger Goodyear and their associates and successors as "The Museum of Modern Art", plaintiff herein. Said provisional charter was made absolute by said Regents on or about March 19, 1931.

X  
FOURTH: Plaintiff is an educational institution. For the twenty-nine years last past, it has engaged in the activities hereinafter set forth under the name "The Museum of Modern Art", and said activities have been identified by the public as being engaged in by plaintiff under the name "The Museum of Modern Art".

A. Painting and Sculpture: Since its incorporation in 1929, plaintiff, under and using the name "The Museum of Modern Art", has collected more than [1,360] paintings and sculptures and exhibited the same to the general public; has collected many thousands of drawings and prints, which it has exhibited to the general public; and has borrowed paintings, sculptures, drawings and prints from private and public collections throughout the world and

PoS. catalog -  
Boon paper - 400  
Dec 31, 1956 -

5000 prints - 24.  
750 sketches - ?  
drawing prints etc

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

exhibited the same to the general public. During fiscal year 1956-1957 alone, plaintiff's exhibition building was visited by [639,14<sup>4</sup>] persons.

B. Architecture and Design: Since 1931, plaintiff, under and using the name "The Museum of Modern Art", has shown to the general public over [150] exhibitions relating to architecture, industrial design, design of household furnishings, and graphic design; has temporarily erected and displayed three full-scale houses in plaintiff's outdoor exhibition area; has collected over [7,500] photographs and documents, which have been exhibited to the general public; has collected more than [800] design objects, architectural models, drawings and examples of graphic design and exhibited the same to the general public; and has sponsored design competitions for lamps, furniture, textiles, playground equipment and posters.

C. Photography: Since 1932, plaintiff under and using the name "The Museum of Modern Art", has exhibited its collection of more than [2500] photographs, and has staged more than [44] photography exhibitions.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

Belton V.2441

Master

15' master film

est. - no source

MMA -

E.P. weekly all figs  
files not  
accessible

MMA -

H. Frost - last  
of C/E's.of Japan, the D. Motion Picture Films: Since 1935, plain-

tiff, under and using the name "The Museum of Modern Art",

has collected more than [18,000] feet of motion picture film

produced throughout the world relating to over [2,500] dif-

ferent subjects and has exhibited the same twice daily in

its auditorium to a total of approximately [250,000] persons

in fiscal year 1956-1957 alone.

E. Circulating Exhibitions: Since 1938,

under and using the name "The Museum of Modern Art", plain-

tiff has prepared and circulated [510] exhibitions to

educational and non-profit institutions throughout the

United States and Canada, [39] such exhibitions having

been circulated in fiscal year 1956-1957 alone.

F. International Program of Cultural Exchange:

Since 1952, under and using the name "The Museum of Modern

Art", plaintiff has organized and sent more than [40]

exhibitions abroad to Latin America, Europe, Asia and Africa;

has organized the United States representation at such inter-

national art exhibitions as the II and IV Biennals at Sao

Paulo, Brazil, the II and IV International Art Exhibitions

Japanese and special exhibitions of plaintiff's publications

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

have been held in Mexico, Colombia, Peru, Chile, Brazil of Japan, the III International Contemporary Art Exhibition in India, and the Tenth Inter-American Conference in Italy and Japan. Venezuela; has purchased the American Pavilion at the Venice Biennale, and organized the United States representation at the XXVII and XXIX Biennales at Venice; has prepared exhibitions under contract to, or otherwise for, the United States Information Agency, the Foreign Ministry of Japan and the government of India; and is now completing for the United States Department of State the decoration and furnishing of the Main Committee Room in the UNESCO Headquarters Building in Paris.

G. Publications: Since 1929, under and using the name "The Museum of Modern Art", plaintiff has published approximately [200] books on the visual arts, about [100] of which are currently in print, some of which have sold as many as [80,000] copies. During fiscal year 1956-1957 alone, plaintiff sold approximately [100,000] copies of its publications, all of which bore the imprint "The Museum of Modern Art". Plaintiff's publications have been translated into French, German, Spanish, Portuguese, Swedish and Japanese and special exhibitions of plaintiff's publications

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

24-Blg  
7  
0

24-Blg  
Bulletin  
Vol. XVI # 2

bKq.

bKq.

bKq.

bKq.

serviced art instructors in over 90 New York City public have been held in Mexico, Colombia, Peru, Chile, Brazil, high schools with visual teaching aids; has conducted free India, New Zealand, Indonesia, The Netherlands, France, classes for teachers in the New York City primary public Italy and Japan.

schools, with a current enrollment 1932 [100] teachers

H. Library: Since 1929 (?), under and using annually; in 1952 and 1953 produced and sponsored a series the name "The Museum of Modern Art", plaintiff has acquired of television programs on creative activities for young a library of approximately [15,000] books, periodicals and people and their parents; and aided in the organization of catalogs, [10,000] clipping files on art, film, and the a program of creative activities for the children's wards dance, [25,000] lantern slides, [75,000] units in the photo- at New York Hospital. Since 1942, under and using the name graphic archives, and [500] bound volumes of photographs "The Museum of Modern Art", plaintiff has exhibited a recording plaintiff's collections and exhibitions, all of specially installed workshop-gallery known as the Christmas which are accessible to the public. During fiscal year Holiday Carnival, where [45,000] children have played with 1956-1957 alone, plaintiff's library was used by over 8,000 persons, [10,000] slides were lent to lecturers, and [1,769] bookings of plaintiff's [263] circulating film Milan Trade Fairs and which was presented at 1957 Exposition and programs were made to [406] organizations, in connection with Brussels World Fair.

all of which activities plaintiff used the name "The Museum of Modern Art".

FIFTH: Under and using the name "The Museum of Modern Art", plaintiff, in fiscal year 1956-1957 alone,

I. Education: Since 1937, under and using expended the sum of [The William Dollars], and since its the name "The Museum of Modern Art", plaintiff has operated an art school for children, young people and amateur adults, [Billion Dollars] to conduct the activities set forth in with a current enrollment of about [3,500] annually; has

The Museum of Modern Art Archives, NY

Collection:  
PI/COMMSSeries/Folder:  
IV.A.11

Ed. Bkg.

OK  
serviced art instructors in over [50] New York City public  
Paragraph FOURTH, ~~which~~.

high schools with visual teaching aids; has conducted free

Ed. Bkg.

[Exhibitions]  
COAE

SIXTH: Plaintiff is entirely supported by con-  
tributions and dues of members located in every State of the  
schools, with a current enrollment of about [100] teachers  
United States and many foreign countries, by contributions  
annually; in 1952 and 1953 produced and sponsored a series  
from private donors and charitable foundations, by admission  
of television programs on creative activities for young  
fees to its building, by proceeds from the sale of books and  
people and their parents; and aided in the organization of  
reproductions, and by fees from its other services.  
a program of creative activities for the children's wards

Ed. Bkg.

SEVENTH: As a result of plaintiff's manifold and  
at New York Hospital. Since 1942, under and using the name  
widespread activities over the past twenty-nine years under  
"The Museum of Modern Art", plaintiff has exhibited a

and using the name "The Museum of Modern Art" and ~~and~~ <sup>and</sup> ~~has~~ <sup>has</sup>  
specially installed workshop-gallery known as the Christmas  
wide circulation of its publications and exhibitions under  
Holiday Carnival, where [45,000] children have played with

Ed. Bkg.

and bearing the name "The Museum of Modern Art", the name  
specially designed toys, painted and made three-dimensional  
"The Museum of Modern Art" is well known in the United  
pictures, and which was presented at the 1957 Barcelona and  
States and throughout the world by patrons of the arts, art  
Milan Trade Fairs and is currently being presented at the  
critics, art museum administrators and laymen alike and in  
Brussels World Fair.

known by them to mean and refer only to plaintiff. The  
FIFTH: Under and using the name "The Museum of  
good will and reputation which is associated with plaintiff's  
Modern Art", plaintiff, in fiscal year 1956-1957 alone,  
name is of tremendous value, <sup>2,220,000</sup>  
expended the sum of [Two Million Dollars], and since its

X

S.R.  
2 Million  
for operations  
220,000  
for purchase  
of works of  
art.

EIGHTH: Since its incorporation in 1929, the name  
incorporation in 1929 has expended the sum of [\_\_\_\_\_  
"The Museum of Modern Art" has been continuously used by  
Billion Dollars] to conduct the activities set forth in

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

Paragraph FOURTH, supra.

to and to the use of the same are now, and have been during  
SIXTH: Plaintiff is entirely supported by con-  
the time of defendant's acts herein complained of, exclusive-  
tributions and dues of members located in every state of the  
ly owned by plaintiff.

United States and many foreign countries, by contributions  
NINTH: On information and belief, defendant has  
from private donors and charitable foundations, by admission  
acquired a certain parcel of land at No. 2 Columbus Circle  
fees to its building, by proceeds from the sale of books and  
in the Borough of Manhattan, City and State of New York, and  
reproductions, and by fees from its other services.

is about to erect or cause to be erected on said parcel a  
SEVENTH: As a result of plaintiff's manifold and  
building to be used for the exhibition of paintings,  
widespread activities over the past twenty-nine years under  
sculptures and films, under the name "Gallery of Modern Art",  
and using the name "The Museum of Modern Art" and the world-

standing. TENTH: Defendant's threatened use of the name  
wide circulation of its publications and exhibitions under  
"Gallery of Modern Art" as aforesaid, and his continued use  
and bearing the name "The Museum of Modern Art", the name  
thereof in the future, will necessarily tend to deceive and  
"The Museum of Modern Art" is well known in the United  
confuse the public and will lead the public and contributors  
States and throughout the world by patrons of the arts, art  
and prospective contributors to plaintiff to believe, con-  
critics, art museum administrators and laymen alike and is  
errary to the fact, that the activities of defendant are, or  
known by them to mean and refer only to plaintiff. The  
are associated or affiliated with, the activities of plain-  
good will and reputation which is associated with plaintiff's  
tiff, or that the activities of defendant are authorized by  
name is of tremendous value.

plaintiff, or that plaintiff is responsible therefor, which  
EIGHTH: Since its incorporation in 1929, the name  
confusion will inevitably result in injury to plaintiff and  
"The Museum of Modern Art" has been continuously used by

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

plaintiff in all of its activities, and all the rights there-  
to and to the use of the same are now, and have been during  
the time of defendant's acts herein complained of, exclusive-  
ly owned by plaintiff. ~~a place of exhibition a name other~~

~~than "Gall~~ NINTH: On information and belief, defendant has  
acquired a certain parcel of land at No. 2 Columbus Circle  
in the Borough of Manhattan, City and State of New York, and  
is about to erect or cause to be erected on said parcel a  
building to be used for the exhibition of paintings, ~~and to~~  
sculptures and films, under the name "Gallery of Modern Art".

~~standing~~ TENTH: Defendant's threatened use of the name  
"Gallery of Modern Art" as aforesaid, and his continued use  
thereof in the future, will necessarily tend to deceive and  
confuse the public and will lead the public and contributors  
and prospective contributors to plaintiff to believe, con-  
trary to the fact, that the activities of defendant are, or  
are associated or affiliated with, the activities of plain-  
tiff, or that the activities of defendant are authorized by  
plaintiff, or that plaintiff is responsible therefor, which  
confusion will inevitably result in injury to plaintiff and

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

the public.

ELEVENTH: Plaintiff, through its attorneys, has requested defendant, through his attorneys, to utilize as the name of defendant's place of exhibition a name other than "Gallery of Modern Art", but defendant, on information and belief, has refused to make any change in the proposed name.

TWELFTH: On information and belief, by reason of said acts heretofore complained of, defendant threatens to appropriate to himself the reputation, good will and high standing of plaintiff, and threatens to divert to himself the benefits and advantages which would otherwise accrue to plaintiff.

THIRTEENTH: The aforesaid threatened acts by defendant constitute infringement of plaintiff's rights in its name and unfair competition, and will cause irreparable damage and injury to plaintiff and the public. On information and belief notwithstanding that defendant has been notified of plaintiff's rights in the premises, defendant will continue said acts of infringement and unfair competi-

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

tion unless restrained by this Court, all to the irreparable loss and injury to plaintiff and the public.

FOURTEENTH: Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff demands judgment:

1. That defendant, his agents, servants, employees, privies, confederates, successors and assigns, and all persons holding by, through or under him, be enjoined during the pendency of this action and permanently from using as the name of his proposed place of exhibition the name "Gallery of Modern Art" or any other name confusingly similar to plaintiff's name "The Museum of Modern Art"; and

2. That plaintiff have such other and further relief in the premises as to this Court may seem just and proper, together with the costs and disbursements of this action.

[Subscription by attorney and verification]

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

June 26, 1958

Mr. Carey Vennema  
Winthrop, Stimson, Putnam and Roberts  
149 Broadway  
New York, New York

Dear Mr. Vennema:

I am sending you, under separate cover, some background releases on the Museum which I hope will be useful to you in compiling evidence of the Museum's fame. To abstract a few statistics for you, the Museum has presented more than 600 exhibitions since its founding in 1929 and has published about 200 books, many of which have been translated into other languages for distribution overseas. Our attendance in 1955 - 56 was 579,482 and in 1956- 57 639,145. We have more than 25,000 members from various parts of the country.

There is no other museum called "The Museum of Modern Art" in this country although overseas the name is used; specifically we have references to the following:

Museum of Modern Art. Rio de Janeiro  
Museum of Modern Art of São Paulo. São Paulo  
National Museum of Modern Art. Paris  
National Modern Art Museum. Tokyo  
Museum of Modern Art. Brussels

In addition there are two called the National Gallery of Modern Art, Rome and the Gallery of Modern Art, Milan.

I am leaving for vacation today but my assistant, Herbert Bronstein, will be glad to help you if you need additional information. The only other thing I can think of off hand is several miles of newspaper clippings indicating that we have been thoroughly identified as the Museum of Modern Art over the years.

Sincerely,

Elizabeth Shaw  
Publicity Director

ES:nr

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

LAW OFFICES OF  
WINTHROP, STIMSON, PUTNAM & ROBERTS  
SINGER BUILDING NO. 149 BROADWAY  
NEW YORK 6, N.Y.  
WHITEHALL 3-0700

MAIN OFFICE  
FORTY WALL STREET  
NEW YORK 5, N.Y.  
ADDRESS REPLY TO  
149 BROADWAY

July 1, 1958

Mrs. Elizabeth Shaw,  
Publicity Director  
The Museum of Modern Art  
11 West 53 Street  
New York 19, New York

Dear Mrs. Shaw:

Many thanks for your very informative letter of  
June 26, 1958 and the factual material pertaining to The  
Museum which arrived under separate cover. The data is just  
what we wanted and will surely be very helpful to us.

I hope your vacation is a pleasant one.

Sincerely yours,

*Carey Vennema*

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

WINTHROP, STIMSON, PUTNAM & ROBERTS  
149 BROADWAY  
NEW YORK 5, N.Y.

August 27, 1958

July 16, 1958

Mr. Carey Vennema  
Winthrop, Stimson, Putnam and Roberts  
149 Broadway  
New York, New York

Dear Mr. Vennema:  
The Museum of Modern Art

Here at last is this rather sticky document. As I told you on the phone I would not like to have to live or die by these figures. We have indicated our sources in the margin as an aid to re-checking if necessary. As you know, many of our records are literally inaccessible this summer and in cases where we found conflicting statistics, we sometimes had no authority or first hand recollection available on the premises as a check. On the other hand I doubt if anyone could disprove any of these statements.

I have enclosed two copies of our proposed complaint to be in a few cases you may want to slightly alter the text to make it a little more exact, as for example on page 3, point 3, Photography. On page four, D. Motion Pictures, I find that we have published two different figures for the number of feet of motion picture film we possess; both authorities, Mr. Barr and Mr. Griffith, are out of town. Also you may want to make it clear that we are the custodian of the films, not the outright owner. And as we agreed on the phone, the full title of the Film Library should be used. I will not be able to supply the number of persons who saw films here last year for another week or so as those files are temporarily inaccessible. of the facts which are alleged in Paragraphs FOURTH

On page 4, point F. International Program you may want to mention the International Council at the Museum of Modern Art. I am enclosing a statement explaining its history and relation to the Museum, and to the International Program. Similarly on page 6 you may want to alter the text somewhat. On page 7 we will supply a sum of total expenditures.

If any of my notes are not clear or you need additional material, please let me know and I'll be glad to do whatever I can.

Your assistance in this regard will be of great help to us.

Sincerely,

As a general guide to what we need, I should say

that the figures for the size of the various collections  
including film footage and number of ex-

Elizabeth Shaw  
Publicity Director

ES:ar  
Encls. 2

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

LAW OFFICES OF  
WINTHROP, STIMSON, PUTNAM & ROBERTS  
SINGER BUILDING NO. 149 BROADWAY  
NEW YORK 6, N.Y.  
WHITEHALL 3-0700

MAIN OFFICE  
FORTY WALL STREET  
NEW YORK 5, N.Y.  
ADDRESS REPLY TO  
149 BROADWAY

July 16, 1958

Re: Huntington Hartford matter

Mr. Herbert Bronstein  
The Museum of Modern Art  
11 West 53rd Street  
New York 19, New York

Dear Mr. Bronstein:

Referring to our telephone conversation yesterday, I have enclosed two copies of our proposed complaint to be used in the event that the Museum decides to take its controversy with Mr. Hartford to court. I shall appreciate it very much if you and Mrs. Shaw will look it over.

Of particular importance to us is the truth and accuracy of the facts which are alleged in Paragraphs FOURTH and FIFTH (pages 2 to 8). Figures and numbers have been put in brackets to denote that they must be checked, and the blanks should be filled in. Even the dates, countries and languages mentioned should be reviewed for correctness. Your assistance in this regard will be of great help to us.

As a general guide to what we need, I should say that the figures for the size of the various collections (including film footage and film subjects) and number of ex-

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

Mr. Herbert Bronstein

-2-

July 16, 1958

hibitions should be the latest which are conveniently available. It is always proper to state such figures as, for instance, "more than 1,360 paintings and sculptures", if you cannot easily ascertain whether there are 1,363 or 1,369. But if you know that there are at least 1,363, it is understating it to say "more than 1,000". The attendance and money figures should be for the most recent fiscal year for which figures are available (and be sure to mention which year it is). As to the attendance figures, I was not certain whether the more than 250,000 persons who attended film show-  
 you: ings were included among the 639,145 who visited the Museum during 1956-57. Perhaps you can tell me.

Don't hesitate to draw to my attention any omissions or inaccuracies in any portion of the complaint.

As to when you should have the figures ready for us, no one really can say yet. Probably one or two weeks would be just fine. If we find we need them sooner, we'll give you a call.

I will be on vacation for the two weeks beginning July 21st. If you need to discuss anything with us during my absence, Mr. William J. O'Hearn, Jr. of this office will be glad to help you. He and I have been working together on the complaint and he is quite familiar with the case.

Sincerely yours,

Carey Vennema

Enclosures

(post script over)

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

Mr. Herbert Bronstein

-3-

July 16, 1958

P. S. Since the above was written, we have decided to add at the end of subparagraph C. (page 3) something in the order of the following:

"and in 1954 (?) staged a photography exhibition entitled 'The Family of Man' which was visited by more than [ ] persons in plaintiff's building and by more than [ ] persons when it was subsequently sent on tour to [ ] cities in the United States [and other countries (?)]."

Perhaps you can fill in the blanks and generally make the above matter correct for us.

In connection with subparagraph D. (page 4), I have just learned that the Museum has a wholly owned subsidiary corporation, Film Library of The Museum of Modern Art, or some such similar name which actually handles the exhibition of motion picture films. Perhaps you can ascertain from Mr. Griffith whether it is correct to state, as we do in the first sentence of subparagraph D. (page 4), that " \*\*\* plaintiff, under and using the name 'The Museum of Modern Art ' \*\*\*" has done the collecting and exhibiting. If that is not true, perhaps Mr. Griffith can supply us with the information necessary to make a truthful statement.

C. V.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

## THE MUSEUM OF MODERN ART

Date ~~August 27, 1958~~

To: Sarah Rubenstein

Re: ~~Huntington Hartford Complaint~~

From: Elizabeth Shaw

Dear Sarah:

I have spoken to Carey Venema at Winthrop Stimson who has drafted the complaint against Huntington Hartford for Jim Husted, giving him your reasons for preferring not to use the figure for the total expenditure of the Museum since 1929. It seems that they had discussed the question at length and felt that it would be impressive and significant. If you can give me this figure (for operational expenses and for purchase of works of art) I will send it over to him with the rest of the material.

with operating expenses.

An additional figure you may want to use is the total value of the collection today. The Collections Department is working these figures which should be ready early next week. I estimate the collection will run around \$18,000,000.

ES:nr

Although we have published our operating expenses from time to time and probably should do so regularly it has been a policy not to release figures on the value of individual works of art or on the value of the collection as a whole. Therefore, if you do want to use the collection figure or indicate separate items or purchases this should be cleared with Mr. Shaw, Director of Collections.

Sincerely,

Elizabeth Shaw  
Publicity Director

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

# THE MUSEUM OF MODERN ART

Date Sept. 10, 1958

To: Sarah Rubenstein

Re: Huntington Hartford

From: Elizabeth Shaw

We have had another urgent request from Winthrop Stimson for the Museum's total expenditure since 1929 (operational expenses and for purchase of works of art). Mr. Husted has told his staff he is extremely eager to get the material together by the end of this week so it can be presented to Mr. Colin and readied for the full board of trustees. I realize this is a bad time for you but I am afraid we can't put them off any longer.

Dear Mr. Winthrop:

The following figure for the drawings during the fiscal year 1957-58 (Page 4, B) is approximately 100,000. I am still trying to get the figure for the total expenditure since 1929.

Therefore, I suggest that if you want to get the figure for the total value of the collection with operating expenses.

An additional figure you may want to get is the total value of the collection today. The Collections Department is working on these figures which should be ready early next week. I am sure the collection will run around 100,000,000.

ES:nr

Although we have published our operating expenses from time to time and probably should do so regularly it has been a policy not to release figures on the value of individual works of art or on the value of the collection as a whole. Therefore, if you are unable to get the collection figure or believe you need more information, this should be cleared with Mr. Barr, Director of Collections.

Sincerely,

Elizabeth Shaw  
Publicity Director

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

September 10, 1958

September 11, 1958

Mr. Carey Vennema  
Winthrop, Stimson, Putnam & Roberts  
119 Broadway  
New York, New York

Dear Mr. Vennema:  
Winthrop, Stimson, Putnam and Roberts  
119 Broadway  
New York, New York

Our records indicate that from 1929 until July 1, 1957 the Museum of Modern Art has expended \$27,572,000. This figure includes an approximation of \$200,000 for the fiscal year 1958 - 59.

The attendance figure for film showings during the fiscal year 1956-57 (Page 4, D) is approximately 170,000. I'm still trying to get the figure for the total expenditure since 1929.

We have never had a very large purchase fund and have always relied very heavily on gifts of works of art. Therefore, I suggest that if you want to have a figure for the total value of the collection, it be based on the operating expenses.

Sincerely,

An additional figure you may want to use is the total value of the collection today. The Collections Department is working these figures which should be ready early next week. I estimate the collection will run around \$18,000,000.

Elizabeth Shaw  
Publicity Director

ES:mr

Although we have published our operating expenses from time to time and probably should do so regularly it has been a policy not to release figures on the value of individual works of art or on the value of the collection as a whole. Therefore, if you do want to use the collection figure or indicate amounts spent on purchases this figure be cleared with Mr. Barr, Director of Collections.

Sincerely,

Elizabeth Shaw  
Publicity Director

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

September 18, 1958

Mr. Carey Vennema  
Winthrop, Stimson, Putnam & Roberts  
149 Broadway  
New York, N. Y.

Dear Mr. Vennema:

Our records indicate that from 1929 until July 1, 1957 the Museum of Modern Art has expended more than \$27,859,000. This figure includes an approximation of \$200,000 for the fiscal year 1958 - 59.

Since 1939 we have spent slightly more than \$1,630,000 for the purchase of works of art. As I mentioned on the phone this figure bears no relation whatsoever to the value of the collection. We have never had a very large purchase fund and have always relied very heavily on gifts of works of art. Therefore, I suggest that if you want to use this figure it be lumped in with operating expenses.

An additional figure you may want to use is the total value of the collection today. The Collections Department is currently gathering these figures which should be ready early next week. I suspect the value of the collection will run around \$18,000,000.

Although we have published our operating expenses from time to time and probably should do so regularly it has been a policy not to release figures on the value of individual works of art or on the value of the collection as a whole. Therefore, if you do want to use the collection figure or indicate amounts spent on purchases this should be cleared with Mr. Barr, Director of Collections.

Sincerely,

Elizabeth Shaw  
Publicity Director

ES:mr

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

- Compiled for Treasurer Office Report - Sep 18, 1958

		Operations Expenses	1957-58	
1	1956-7	1 909025	22080904	1
2	55-56	1 678811	183142	2
3	54-55	1 767542	136843	3
4	53-54	1 443846	185754	4
5	52-53	1 276383	77764	5
6	51-52	1 058805	118037	6
7	50-51	1 001906	60041	7
8	49-50	1 056529	91592	8
9	48-49	1 080751	154663	9
10	47-48	1 131413	49613	10
11	46-47	1 044339	14960	11
12	45-46	934648	89601	12
13	44-45	1 169558	28198	13
14	43-44	1 094090	28774	14
15	42-43	828216	33667	15
16	41-42	605855	56131	16
17	40-41	414046	18997	17
18	39-40	435764	81982	18
19	38-39	700000	1630568	19
20	37-38	140430		20
21	Oct 1 36 - June 30-37	116724		21
22	Oct 1 35 - Oct 1 36	111837		22
23	34-35	92429		23
24	33-34	83819		24
25	32-33	78010		25
26	31-32	113634		26
27	30-31	90732		27
28	29-30	101410		28
29		278577.79		29
30				30
31				31
32				32
33				33
34				34
35				35
36				36
37				37
38				38
39				39
40				40

Frank Crownshield, Paul J. Sachs, Mary Sullivan, Abby A.

Beckwith, A. Conner Goodyear and their associates and

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

## THE MUSEUM OF MODERN ART

Date ~~October 29, 1958~~

To: Mr. Rene d'Harnoncourt  
From: Charles T. Keppel

Re: ~~Huntington Hartford Suit~~

I was called today by Allen Klots, a senior partner of Winthrop, Stimson, Putnam & Roberts. He is handling the case of the Museum of Modern Art versus Huntington Hartford to restrain the latter from using a name so close to the Museum's as to jeopardize our best interests.

On October 29, or thereabouts, a summons and complaint will be served on Mr. Hartford. He will have twenty days to respond and it is customary to grant an extension of twenty more days, if asked for by the respondent.

In this type of case there is a possibility that it might come up for trial within three or four months, but it is unlikely that the serving of papers, etc. would stimulate any news of itself. However, because of the prominence of the two parties involved, publicity might be a factor. Liz Shaw knows about the case so she will be ready if some bright reporter becomes aware of the suit. In discussing this phase of the situation with Mr. Klots, he recognized that there might be more attention given to this case than usual. He asked that he be consulted if the Museum feels publicity should be sought, to clarify the MOMA position in the museum world.

CTK:B  
cc: Miss Sarah Rubenstein  
Mrs. Elizabeth Shaw  
Mr. James Husted

Frank Crowninshield, Paul J. Sachs, Mary Sullivan, Abby A.

Beckwith, A. Conger Goodyear and their associates and

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
THE MUSEUM OF MODERN ART,

Plaintiff,

-against-

HUNTINGTON HARTFORD, individually and  
doing business as HUNTINGTON HARTFORD  
ENTERPRISES,

Defendant.

COMPLAINT

-----X  
Plaintiff, complaining of defendant, by Winthrop,  
Stinson, Putnam & Roberts, its attorneys, alleges that:

FIRST: At all the times hereinafter mentioned  
plaintiff was and still is a corporation duly organized and  
existing under and by virtue of the laws of the State of  
New York.

SECOND: On information and belief, defendant is a  
resident of the State of New York and doing business in the  
County of New York under the name of Huntington Hartford  
Enterprises.

THIRD: On or about September 19, 1929, the Regents  
of the University of the State of New York, pursuant to the  
provisions of the Education Law, granted a provisional char-  
ter which incorporated Lizzie Bliss, Josephine B. Crane,  
Frank Crowninshield, Paul J. Sachs, Mary Sullivan, Abby A.  
Beckwith, A. Conner Gooden and their associates and

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
THE MUSEUM OF MODERN ART, :  
Plaintiff, :  
-against- :  
HUNTINGTON HARTFORD, individually and : COMPLAINT  
doing business as HUNTINGTON HARTFORD :  
ENTERPRISES, :  
Defendant. :  
-----X

Plaintiff, complaining of defendant, by Winthrop,  
Stinson, Putnam & Roberts, its attorneys, alleges that:

FIRST: At all the times hereinafter mentioned  
plaintiff was and still is a corporation duly organized and  
existing under and by virtue of the laws of the State of  
New York.

SECOND: On information and belief, defendant is a  
resident of the State of New York and doing business in the  
County of New York under the name of Huntington Hartford  
Enterprises.

THIRD: On or about September 19, 1929, the Regents  
of the University of the State of New York, pursuant to the  
provisions of the Education Law, granted a provisional char-  
ter which incorporated Lissie Bliss, Josephine B. Crane,  
Frank Crowninshield, Paul J. Sachs, Mary Sullivan, Abby A.  
Rockefeller, A. Conger Goodyear and their associates and

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

successors as "The Museum of Modern Art", plaintiff herein. Said provisional charter was made absolute by said Regents on or about March 19, 1931.

FOURTH: Plaintiff is an educational institution and is one of the most popular tourist attractions in the City of New York. Plaintiff is variously referred to by the public as "The Museum of Modern Art", "The Modern Art Museum", "The Modern Museum of Art", or "The Modern Art". For the twenty-nine years last past, plaintiff has engaged in the activities hereinafter set forth, both in its building located at No. 11 West 53rd Street, City, County and State of New York, and elsewhere, under the name "The Museum of Modern Art", and said activities have been identified by the public as being engaged in by plaintiff:

A. Paintings and Sculpture: Since its incorporation in 1929, plaintiff, under and using the name "The Museum of Modern Art", has collected more than 1,360 paintings and sculptures and exhibited the same to the general public; has collected many thousands of drawings and prints, which it has exhibited to the general public; and has borrowed paintings, sculptures, drawings and prints from private and public collections throughout the world and exhibited the same to the general public. During fiscal year 1956-1957 alone, plaintiff's exhibition building was visited by 639,144 persons, and since plaintiff's incorporation in 1929, its exhibition building has been visited by 10,771,616 persons.

B. Architecture and Design: Since 1931,

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

plaintiff, under and using the name "The Museum of Modern Art", has shown to the general public over 150 exhibitions relating to architecture, industrial design, design of household furnishings, and graphic design; has temporarily erected and displayed three full-scale houses in its outdoor exhibition area; has collected several thousand photographs and documents and more than 800 design objects, architectural models, drawings and examples of graphic design and exhibited the same to the general public; and has sponsored design competitions for lamps, furniture, textiles, playground equipment and posters.

C. Photography: Since 1932, plaintiff, under and using the name "The Museum of Modern Art", has shown to the general public more than 65 photography exhibitions and, since 1933, has collected more than 2,500 photographs and exhibited the same to the general public. In 1955, plaintiff, under and using the name "The Museum of Modern Art", staged an exhibition of more than 500 photographs entitled "The Family of Man" which was visited by more than 270,000 persons in plaintiff's building and by countless thousands more when it was subsequently sent on tour throughout the United States and Canada.

D. Motion Picture Film: Since 1935, plaintiff, under and using the name "The Museum of Modern Art", has caused its wholly owned subsidiary, The Museum of Modern Art Film Library Corp., to become the custodian of more than 10,000,000 feet of motion picture film produced throughout the world relating to over 2,500 different subjects, and

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

since 1939, has caused showings of such films to be given twice daily in plaintiff's auditorium. During fiscal year 1956-1957 alone, more than 170,000 persons attended showings of such films in plaintiff's auditorium, and approximately 3,200 bookings of approximately 387 circulating film programs were made to approximately 600 organizations, including 350 other educational institutions.

B. Circulating Exhibitions: Since 1931, under and using the name "The Museum of Modern Art", plaintiff has prepared and circulated 510 exhibitions of paintings, sculptures, designs and photographs to educational and non-profit institutions throughout the United States and Canada, 39 such exhibitions having been circulated in fiscal year 1956-1957 alone.

F. International Program of Cultural Exchange: Since 1952, under and using the name "The Museum of Modern Art", plaintiff has organized and sent more than 50 exhibitions abroad to Latin America, Europe, Asia and Africa; has organized the United States representation at such international art exhibitions as the II and IV Biennals at Sao Paulo, Brazil, the II and IV International Art Exhibitions of Japan, the XII International Contemporary Art Exhibition in India, and the Tenth Inter-American Conference in Venezuela; has purchased the American Pavilion at the Venice Biennale, and organized the United States representation at the XXVII and XXIX Biennales at Venice; has prepared exhibitions under contract to, or otherwise for, the United States Information Agency, the Foreign Ministry of Japan and the

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

government of India; and is now completing, at the request of the United States Department of State, the decoration and furnishing of the Executive Board Room in the UNESCO Headquarters Building in Paris.

G. Publications: Since 1929, under and using the name "The Museum of Modern Art", plaintiff has published approximately 200 books on the visual arts, about 100 of which are currently in print, some of which have sold as many as 50,000 copies. During fiscal year 1956-1957 alone, plaintiff sold approximately 79,200 copies of its publications, all of which bore the imprint "The Museum of Modern Art". Plaintiff's publications have been translated into French, German, Spanish, Portuguese, Swedish and Japanese and special exhibitions of plaintiff's publications have been held in Mexico, Colombia, Peru, Chile, Brazil, India, New Zealand, Indonesia, The Netherlands, France, Italy and Japan.

H. Library: Since 1932, under and using the name "The Museum of Modern Art", plaintiff has acquired a library of approximately 15,000 books, periodicals and catalogs, 10,000 clipping files on art, film, and the dance, 25,000 lantern slides, 75,000 units in the photographic archives, and 500 bound volumes of photographs recording plaintiff's collections and exhibitions, all of which are accessible to the public. During fiscal year 1956-1957 alone, plaintiff's library was used by an estimated 10,000 persons and approximately 8,000 slides were lent to lecturers, in connection with all of which activities plaintiff used the

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

name "The Museum of Modern Art".

I. ~~Education~~: Since 1937, under and using the name "The Museum of Modern Art", plaintiff has operated an education department and, since 1948, an art school for children, young people and amateur adults, with a current enrollment of about 3,500 annually; has serviced art instructors in over 50 New York City public high schools with visual teaching aids; has conducted free classes for teachers in the New York City primary public schools, with a current enrollment of about 100 teachers annually; in 1952 and 1953 produced and sponsored a series of television programs on creative activities for young people and their parents; and aided in the organization of a program of creative activities for the children's wards at New York Hospital. Since 1942, under and using the name "The Museum of Modern Art", plaintiff has annually installed in its building a special workshop-gallery known as the Children's Holiday Carnival, where 45,000 children have played with specially designed toys, painted and made three-dimensional pictures; in 1957, presented said workshop-gallery at the Barcelona and Milan Trade Fairs; and recently presented it at the Brussels World Fair.

FIFTH: Under and using the name "The Museum of Modern Art", plaintiff, in fiscal year 1956-1957 alone, expended the sum of \$2,220,000.00, and since its incorporation in 1929 has expended the sum of \$29,490,000.00 to conduct the activities and purchase the works of art set forth in Paragraph FOURTH, ~~ABOVE~~.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

SIXTH: Plaintiff is entirely supported by contributions and dues of members located in every state of the United States and many foreign countries, by contributions from private donors and charitable foundations, by admission fees to its building, by proceeds from the sale of books and reproductions, and by fees from its other services.

SEVENTH: As a result of plaintiff's manifold and widespread activities over the past twenty-nine years under and using the name "The Museum of Modern Art" and the worldwide circulation of its publications and exhibitions under and bearing the name "The Museum of Modern Art", the name "The Museum of Modern Art" and the variations of said name mentioned hereinbefore are well known in the United States and throughout the world by patrons of the arts, art critics, art museum administrators and laymen alike and are known by them to mean and refer only to plaintiff. The good will and reputation which is associated with plaintiff's name is of tremendous value.

EIGHTH: Since its incorporation in 1929, the name "The Museum of Modern Art" has been continuously used by plaintiff in all of its activities, and all the rights thereto and to the use of the same are now, and have been during the time of defendant's acts herein complained of, exclusively owned by plaintiff.

NINTH: On information and belief, defendant has acquired a certain parcel of land at No. 2 Columbus Circle in the Borough of Manhattan, City and State of New York, and

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

is about to erect or cause to be erected on said parcel a building to be used for the exhibition of paintings, sculptures and films, and is about to conduct said activities, or cause said activities to be conducted, under the name "Gallery of Modern Art."

TENTH: Defendant's threatened use of the name "Gallery of Modern Art" as aforesaid, and his continued use thereof in the future, will necessarily tend to deceive and confuse the public and will lead the public and contributors and prospective contributors to plaintiff to believe, contrary to the fact, that the activities of defendant are, or are associated or affiliated with, the activities of plaintiff, or that the activities of defendant are authorized by plaintiff, or that plaintiff is responsible therefor, which confusion will inevitably result in injury to plaintiff and the public.

ELEVENTH: Defendant's threatened use of the name "Gallery of Modern Art" as aforesaid, and his continued use thereof in the future, will necessarily tend to dilute the distinctive quality of plaintiff's name "The Museum of Modern Art."

TWELFTH: On information and belief, by reason of said acts heretofore complained of, defendant threatens to appropriate to himself the reputation, good will and high standing of plaintiff, and threatens to divert to himself the contributions, donations, fees, moneys and other benefits and advantages which would otherwise be received by and accrue to plaintiff.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

THIRTEENTH: The aforesaid threatened acts by defendant constitute infringement of plaintiff's rights in its name and unfair competition, and will cause irreparable damage and injury to plaintiff and the public. On information and belief, defendant will continue said acts of infringement and unfair competition unless restrained by this Court, all to the irreparable loss and injury to plaintiff and the public.

FOURTEENTH: Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff demands judgment:

1. That defendant, his agents, servants, employees, privies, confederates, successors and assigns, and all persons holding by, through or under him or them, be enjoined during the pendency of this action and permanently from using as the name under which his or their exhibition activities are to be conducted the name "Gallery of Modern Art" or any other name confusingly similar to plaintiff's name "The Museum of Modern Art"; and

2. That plaintiff have such other and further relief in the premises as to this Court may seem just and proper, together with the costs and disbursements of this action.

WINSTROP, STIMSON, PUTNAM & ROBERTS  
Attorneys for Plaintiff  
Office and Post Office Address  
40 Wall Street  
Borough of Manhattan  
New York 5, New York

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

STATE OF NEW YORK     )  
                              ) ss.:  
COUNTY OF NEW YORK    )

                              , being duly sworn,  
deposes and says, that he is an officer, to wit, the  
                              of THE MUSEUM OF MODERN ART, the  
plaintiff in the above entitled action; that he has read the  
foregoing complaint and knows the contents thereof and that  
the same is true of his own knowledge, except as to the  
matters which are therein stated to be alleged on information  
and belief and that as to those matters he believes it to be  
true.

/s/ C. T. Keppel

Sworn to before me this  
          day of                   , 1958.

Notary Public

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

# THE MUSEUM OF MODERN ART

Date January 30, 1959

To: Mr. Rene d'Harnoncourt  
Mrs. Elizabeth Shaw ✓  
From: Mr. Alfred Barr  
Charles T. Keppel

Re: Registration of the  
Museum Name & Huntington Hartford Case

I attach for your comments and suggestions the answer I have drafted to the letter sent me by Mr. Vennema, attorney in the office of Winthrop, Stinson, Putnam and Roberts, who is investigating the question of registration of the Museum's name.

This all relates to the Huntington Hartford case. As I may have to be called upon to sign for the Museum as an officer certain statements such as this, I would appreciate your letting me know which group within the Museum, like a task force, is primarily concerned with this case. It occurs to me, from the ~~press~~ comments that have appeared already, that this may become a very lively controversy, rather than just a simple law case to protect a legal right to a name.

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

# THE MUSEUM OF MODERN ART

Date January 30, 1959

To: Mr. Rene d'Harnoncourt  
Mrs. Elizabeth Shaw ✓  
From: Mr. Alfred Barr  
Charles T. Keppel

Re: Registration of the  
Museum Name & Huntington Hartford Case

I attach for your comments and suggestions the answer I have drafted to the letter sent me by Mr. Vennema, attorney in the office of Winthrop, Stimson, Putnam and Roberts, who is investigating the question of registration of the Museum's name.

This all relates to the Huntington Hartford case. As I may have to be called upon to sign for the Museum as an officer certain statements such as this, I would appreciate your letting me know which group within the Museum, like a task force, is primarily concerned with this case. It occurs to me, from the ~~present~~ comments that have appeared already, that this may become a very lively controversy, rather than just a simple law case to protect a legal right to a name.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

DRAFT

DRAFT

January 29, 1959

Mr. Carey Vennema  
Winthrop, Stimson, Putnam & Roberts  
149 Broadway  
New York 6, New York

Dear Mr. Vennema:

I am answering your letter of January 22 and I will try to give you specific information as you request with relation to obtaining a registration for the Museum of Modern Art as a service mark. As we discussed this matter on the telephone, before, I hope the answers I am giving you will be adapted for your requirements.

1. Does the Museum render services which are not incidental to the advertising or sale of merchandise?

Yes. It exhibits works of art, it offers courses in instruction, sometimes sponsors meetings in the fine arts, and does a great many other things that have no relation to advertising or sale of merchandise. In fact, that is a very small part of the Museum's total activity.

2. Does the Museum render these services in interstate or foreign commerce?

Yes. I believe you already have considerable evidence of this with relation to the International and Circulating Exhibition Programs of the Museum.

3. Does the Museum use a mark in connection with those services to designate the origin of the services -- that is, something to show that they are rendered by your museum rather than some other museum?

The Museum of Modern Art is the institution's corporate name, and has been used so often in connection with its activities and thus been widely publicized to the extent that the name itself has

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

DRAFT

DRAFT

Mr. Carey Vennema

-2-

January 29, 1959

assumed a unique identity. Like the Smithsonian Institution, it is a group of words that connotes a certain meaning.

4. What is the mark?

THE MUSEUM OF MODERN ART

5. What would be a proper description of the services?

I attach hereto a copy of the Museum's Charter which is the official description of the Museum's functions. Though written nearly 30 years ago it is a faithful statement of the Museum's services, that have brought to it the reputation it has earned.

6. What was the date of first use of the service mark?

As indicated in your letter it is November 7, 1929.

7. What was the date of first use of the service mark in interstate or foreign commerce?

Here again your letter indicates the correct answer: February, 1932.

8. What is the method of using the mark in connection with the services?

Principly, it has been used in newspaper and magazine publicity, on radio and TV, and as official identification in the Museum's many publications, pamphlets, announcements, etc..

9. Can you furnish me with specimens showing the mark as actually used in interstate or foreign commerce?

Yes. But the material is so extensive you probably want to indicate from what Mrs. Shaw has assembled for you exactly what would suit your purposes best for an exhibit. Naturally the Museum is most happy to cooperate in obtaining anything you feel would be helpful.

Sincerely yours,

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

LAW OFFICES OF  
WINTHROP, STIMSON, PUTNAM & ROBERTS  
SINGER BUILDING NO. 149 BROADWAY  
NEW YORK 6, N.Y.  
WHITELAND 3-0700

MAIN OFFICE  
FORTY WALL STREET  
NEW YORK 6, N.Y.  
ADDRESS REPLY TO  
149 BROADWAY

January 22, 1959

Re: Application to Register Service  
Mark MUSEUM OF MODERN ART

Mr. Charles T. Keppel  
The Museum of Modern Art  
11 West 53rd Street  
New York 19, New York

Dear Mr. Keppel:

Mr. Husted has referred to me the pleasant task of obtaining for The Museum of Modern Art a registration of the words MUSEUM OF MODERN ART as a service mark. Before I can prepare the necessary application, I must obtain from you certain information.

But first, however, I should like to explain precisely what it is that the Museum is endeavoring to register. Generally speaking, trademarks designate the origin of the merchandise to which they are affixed (in the sense that they distinguish the goods of one merchant from those of another), service marks designate the origin of the services in connection with which they are used (they are in effect trademarks for services rather than goods), and trade names designate businesses. Since the words "The Museum of Modern Art" form the corporate name of your museum, they, of course, are

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

Mr. Charles T. Keppel

-2-

January 22, 1959

used as a trade name when they refer to the corporate entity and the business, as on a letterhead, in the return address portion of a shipping label, or in a directory listing. In addition, the words THE MUSEUM OF MODERN ART or MUSEUM OF MODERN ART are, I assume, used by your organization in connection with the various services which you render in order to identify and distinguish them from similar services performed by other museums. If a service mark is used in interstate or foreign commerce, it may be registered in the United States Patent Office under the Lanham Trademark Act in the same manner as a trademark is registered. Trade names, on the other hand, may not be registered under the Lanham Act, nor under any other Act, for that matter.

As a step preliminary to applying for a service mark registration, I have already caused a search to be made of similar existing trademark and service mark registrations and existing trade names. A copy of the search report is enclosed. In my opinion, nothing was turned up which would conflict with the service mark MUSEUM OF MODERN ART so as to prevent its registration.

In order to complete the application for registration, I must know the following things:

1. Does the Museum render services which are not incidental to the advertising or sale of merchandise?

Of course, in my opinion, the Museum does render such

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

Mr. Charles T. Keppel

-3-

January 22, 1959

*Solent clear  
unimpaired -  
don't know  
if this is  
the right  
place.*

services, but I should like to have your views on this too, since it goes to the very heart of the matter. I should say that the Museum performs educational and entertainment services, for instance, by exhibiting and making available for exhibition works of art.

2. Does the Museum render these services in interstate or foreign commerce?

The word "commerce" is not confined to mere "commercial dealings" but has a truly broad meaning more in the nature of "social intercourse". I understand that the Museum sends circulating exhibitions all over the United States and into foreign countries. It would seem to me that an educational and entertainment service is rendered in interstate commerce whenever the works of art are shipped across state lines by the Museum for ultimate exhibition to the public in another state. The Patent Office may look at it differently, however, and insist that no service is rendered until individual employees of the Museum arrive in other states to perform services in person. Do you send people out with your circulating exhibitions? Just how is the service rendered in other states?

*Yes  
Circulating  
exhibitions  
international  
exhibition  
bulletin  
The New  
Yorker  
senders*

*abroad - constantly*

3. Does the Museum use a mark in connection with those services to designate the origin of the services -- that is, something to show that they are rendered by your museum rather than some other museum?

*none*

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

Mr. Charles T. Keppel

-4-

January 22, 1959

Again, I should assume that either THE MUSEUM OF MODERN ART or MUSEUM OF MODERN ART or M.O.M.A. appears somewhere in conjunction with your exhibitions rather than merely on your letterheads or shipping labels. Bear in mind that in an expression like "The Museum of Modern Art, New York, N. Y.", the words are used as a trade name rather than as a service mark because the addition of the address refers to the geographical location of the business. Likewise, a phrase like "sponsored by The Museum of Modern Art" constitutes a trade name use rather than a service mark use because the corporate entity is referred to specifically as a person. What I hope to have is MUSEUM OF MODERN ART all by itself used or displayed in the sale, advertising (not necessarily paid newspaper advertising) or rendering of exhibition and educational services so as to identify the services of the Museum and distinguish them from the services of others.

4. What is the mark?

Is it MUSEUM OF MODERN ART or is it actually THE MUSEUM OF MODERN ART? Or is it something else?

5. What would be a proper description of the services?

I should like to make the description as broad as possible (such as "educational service of exhibiting and making available for exhibition works of art") but there is always the very real possibility that the Patent Office will require a more specific description. In that case I should suggest something like "educa-

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

Mr. Charles T. Keppel

-5-

January 22, 1959

Note  
 tional service of exhibiting and making available for exhibition paintings, sculpture, drawings, prints, designs, models, photographs, motion picture films and lantern slides". Could you add anything to that? Bear in mind that this description must appertain to the services which are in fact rendered in interstate or foreign commerce. The Museum may actually render more extensive services within the State of New York only.

6. What was the date of first use of the service mark?

I note from the caption under the first photograph opposite page 12 of the Museum's Twenty-fifth Anniversary Bulletin, Vol. XXII, No. 1-2, that the Museum's first exhibition opened on November 7, 1929. I assume that this date marks the first use anywhere by the Museum of the service mark MUSEUM OF MODERN ART to identify its services, but I should like your confirmation of the fact.

7. What was the date of first use of the service mark in interstate or foreign commerce?

I note from the caption under the second photograph opposite page 12 that the International Exhibition of Modern Architecture in February, 1932, was the Museum's first exhibition to be circulated. Perhaps you can establish the precise date that this exhibition was opened to the public in some place other than the State of New York, if the service mark was then used in connection with the exhibition.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

Mr. Charles T. Keppel

-6-

January 22, 1959

8. What is the method of using the mark in connection with the services?

Conceivably, the mark could be used on posters or displays associated with the services, on catalogs of the exhibitions, or simply in advertising or newspaper publicity, provided it is indeed a service mark use. All the different ways in which the mark is used in interstate or foreign commerce should be enumerated.

9. Can you furnish me with specimens showing the mark as actually used in interstate or foreign commerce?

I shall need a dozen copies of a typical specimen, of a size not greater than 6" x 6". If the actual specimen is larger than 6" x 6", it must be photographed or otherwise reproduced and facsimiles not larger than 6" x 6" made of it. Perhaps it would be simplest for you to give me a call when you have located some typical specimens. Then I can come up and see if they will satisfy the Patent Office's requirements.

After examining the specimens, I shall be glad to proceed with the drafting of the application to register your service mark, incorporating the information requested above.

If you have any questions, please do not hesitate to give me a call.

Sincerely yours,

Carey Vennema

Enclosure

*Patent Office  
Examination.*

*Study Pam  
dipping books*

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

MEMORANDUM

To: E. Shaw

From: SARAH RUBENSTEIN

Date: 1/24/29

Subject: Re "Gallery of Modern Art"

Am sending a  
plate of this to  
CTK for transmittal  
to Muehrp, Shumson-  
but thought you'd  
like to know too!  
A. Porter originally got in



ART

between

tion week  
the contact

al listing put out by A.F.A.:  
List "Société Anonyme" at 50 Central Park West  
Ditto at 7 East 15th Street  
Ditto c/o attorney. Miss Dreier has moved to West  
Redding Conn.  
Vol XXIX, 1932  
Vol XXXI, 1934 Same

Though I know it may be difficult to arrange, I would hope that  
There is never mention in the descriptive text of "Museum of Modern Art"

A suggestion: might it not be better to have Jim White take charge  
as our contact with the lawyers rather than Keppel who is rather remote from  
the Museum and who seems very slow in transmitting essential material on the subject

P. S. February 1st - While the above was being typed you came in to see me so  
we could talk about the Hartford problem. I understood that you would call a meeting  
Monday afternoon, but I can understand why you couldn't.

Elizabeth tells me now that a meeting is being called tomorrow. I have asked her to ask Colin which she had omitted, since I feel the  
Museum's claim to the precise name Hartford is being very essential. I am  
in opposing our case but in preventing a lot of questionable publicity. I hope  
Colin can come.

I now understand that Jim White is on my way now since I talked to  
you I finally received the draft of answers to our lawyers' questions drawn up  
by Keppel.

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

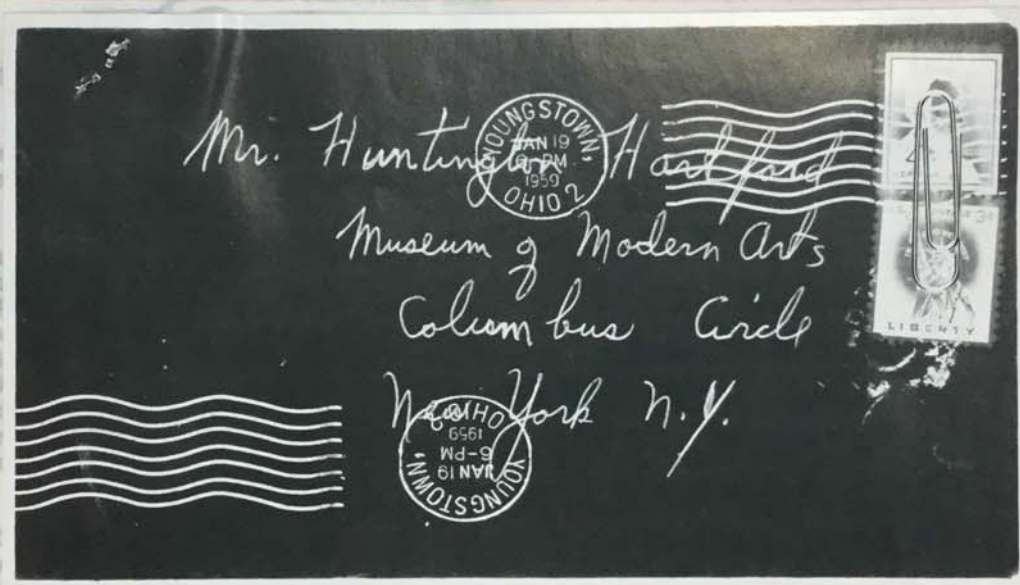
# THE MUSEUM OF MODERN ART

Date 5 February 1959

To: Alfred Barr

Re: Société Anonyme

From: Marie Alexander



A suggestion: might it not be better to have Jim White take charge as our contact with the lawyers rather than Koppel who is rather remote from the Museum and who seems very slow in transmitting essential material on the case?

P. S. February 14th - While the above was being typed you came in to see me so we could talk about the Hartford problem. I understood that you would call a meeting Monday afternoon, but I can understand why you couldn't.

Elizabeth tells me now that a meeting is being called tomorrow, Thursday, at 3:00. I have asked her to ask Colin which she had omitted, since I feel that London's claim to the precise name Hartford is being may be essential, not only in clearing our case but in preventing a lot of questionable publicity. I hope Colin can do so.

I now understand that Jim White is on jury duty and since I talked with you I finally received the draft of answers to our lawyers' questions drawn up by Koppel.

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

# THE MUSEUM OF MODERN ART

Date 5 February 1934

To: Alfred Barr

Re: Société Anonyme

From: Marie Alexander

Checked Art Index. Only two listings for the Société Anonyme appear between January 1929 and 1937. The first, a review of the Brooklyn exhibition in April 18 Art News, page 13, number 29 does not mention any sub-title but simply Société Anonyme

Checked American Art Annual listing put out by A.F.A.:  
 Vol XXVI, 1929: List "Société Anonyme" at 50 Central Park West  
 Vol XXVII, 1930: Ditto at 7 East 15th Street  
 Vol XXIX, 1932: Ditto c/o attorney. Miss Dreier has moved to West Redding Conn.  
 Vol XXXI, 1934: Same

Though I know it may be difficult to arrange, I would hope that Ralph Calin could visit with our lawyers. I understand that the lawyers did not seem to know until I told him. I hope we can meet before the Trustees meeting because if we were there will be questions.

A suggestion: might it not be better to have Jim White take charge as our contact with the lawyers rather than Koppel who is rather remote from the Museum and who seems very slow in transmitting essential material on the subject

P. S. February 13th - While the above was being typed you came in to see me so we could talk about the Hartford problem. I understood that you would call a meeting Monday afternoon, but I can understand why you couldn't.

Elizabeth tells me now that a meeting is being called tomorrow, Thursday, at 3:00. I have asked her to ask Colin which she had omitted, since I feel that London's claim to the precise name Hartford is being very essential, not only in winning our case but in preventing a lot of questionable publicity. I hope Colin can come.

I now understand that Jim White is on jury duty and since I talked with you I finally received the draft of answers to our lawyers' questions drawn up by Koppel.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

## THE MUSEUM OF MODERN ART

copy: Mrs. Shaw ✓

Date 2 February 1959

To: Mr. d'Harnoncourt

Re: H. Hartford case

From: Alfred Barr

B - sent Feb. 6

CONFIDENTIAL

Dear Rene:

Though reassured by your answer that there will be some meeting this week about the Huntington Hartford situation, I am not at all reassured by the conduct of the matter thus far.

Judging from the preliminary press response, I foresee Hartford's using the situation for maximum publicity not only for his museum but for his opinions about modern art as expressed in that really poisonous advertisement and in his other extremist publications. I am disturbed too that Charles Keppel who is apparently the Museum's contact with our lawyers did not seem to know until I told him about Jacques Lindon's role. He now reports that the lawyers intend to use the Lindon claim to the title as an "ace in the hole" which would take the opponent by surprise. If Lindon really is an ace in the hole can't we play it now and finesse the publicity of a lawsuit in which the tabloids at least will be on Hartford's side?

Though I know it may be difficult to arrange, I would hope that Ralph Colin could meet with our lawyers, you, Elizabeth and myself, if you think I would be useful. I hope we can meet before the Trustees meeting because I'm sure there will be questions.

A suggestion: might it not be better to have Jim White take charge as our contact with the lawyers rather than Keppel who is rather remote from the Museum and who seems very slow in transmitting essential material on the case?

P. S. February 4th - While the above was being typed you came in to see me so we could talk about the Hartford problem. I understood that you would call a meeting Monday afternoon, but I can understand why you couldn't.

Elizabeth tells me now that a meeting is being called tomorrow, Thursday, at 3:00. I have asked her to ask Colin which she had omitted, since I feel that Lindon's claim to the precise name Hartford is using may be essential, not only in winning our case but in preventing a lot of questionable publicity. I hope Colin can come.

I now understand that Jim White is on jury duty and since I talked with you I finally received the draft of answers to our lawyers' questions drawn up by Keppel.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

# THE MUSEUM OF MODERN ART

Date February 5, 1959

Mr. John J. Harwood  
Mr. John J. Harwood  
Mr. John J. Harwood

February 5, 1959

Re: Hartford Case

Palm Beach News  
Brazilian Avenue and County Road  
Palm Beach, Florida

Dear Sir:

On or about January 12 the Palm Beach News carried a story or an interview with Huntington Hartford about his new gallery in New York City. We are very anxious to see this article and would appreciate it if you could send us a copy for our files. Thank you in advance.

Sincerely,

Elizabeth Shaw  
Publicity Director

ES:nr

The Museum of Modern Art Archives, NY	Collection: PI/COMMS	Series.Folder: IV.A.11
---------------------------------------	-------------------------	---------------------------

# THE MUSEUM OF MODERN ART

Date February 6, 1959

To: Mr. Rene d'Harnoncourt  
Miss Sarah Rubenstein  
Mrs. Liz Shaw ✓  
From: Mr. Allen Porter  
Charles T. Keppel *Wf*

Re: Hartford Case

## MEMORANDUM

To: *Harold Steiner*  
From: ELIZABETH SHAW  
Date:  
Subject:

*Please return post  
card to P.O. -  
& please return other  
attached ~~cards~~  
material to me -*

*OK - am Keeping  
Record - 188*

by the attached, the lawyers think we should keep record of how many pieces of mis-marked mail come in by virtue of the Huntington Hartford announcement. Each piece received should be returned to the post office.

The Museum of Modern Art Archives, NY	Collection: PI/COMMS	Series.Folder: IV.A.11
---------------------------------------	-------------------------	---------------------------

# THE MUSEUM OF MODERN ART

Date February 6, 1959

To: Mr. Rene d'Harnoncourt  
Miss Sarah Rubenstein  
Mrs. Liz Shaw  
From: Mr. Allen Porter  
Charles T. Keppel

Re: Hartford Case

As you see by the attached, the lawyers think we should keep a careful record of how many pieces of mis-marked mail come to the Museum by virtue of the Huntington Hartford announcement. However, each piece received should be returned to the post office.

Dear Mr. d'Harnoncourt:

I am writing you in response to your letter of February 3, enclosing a photostatic copy of the envelope of a letter delivered by the Post Office to the Museum of Modern Art via the postman, Mr. Huntington Hartford, and is correctly addressed.

I think your suggestion to keep track of the number of letters received which are obviously mis-addressed for the Museum is a good one as it shows the confusion being created. However, I would merely keep a tally of the number of misdirected pieces of mail you receive, so that if it became pertinent someone could testify that over a certain period a certain number of pieces of mail were misdirected to the Museum. I would not photostat the envelopes, however, as you already know, there are still too many people who are inclined to interfere with the mail, and while it is true that the mere photostating of an envelope is not a violation of the direction of mail would be a violation of law in some states, it would be better to give the Post Office the

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

LAW OFFICES OF  
WINTHROP STIMSON, PUTNAM & ROBERTS  
40 WALL STREET, NEW YORK 5, N.Y.  
WHITEHALL 3-0700 CABLE "WINTSTIM"

February 4, 1959

Mr. Charles T. Keppel, Treasurer  
The Museum of Modern Art  
11 West 53rd Street  
New York 19, New York

Dear Mr. Keppel:

I acknowledge the receipt of your letter of February 3, enclosing a photostatic copy of the envelope of a letter delivered by the Post Office to The Museum of Modern Art but intended for Huntington Hartford, and incorrectly addressed.

I think your suggestion to keep track of the number of letters received which are obviously not intended for the Museum is a good one as it shows the confusion being created. However, I would merely keep a count of the number of misdirected pieces of mail you receive, so that if it became pertinent someone could testify that over a certain period a certain number of pieces of mail were misdirected to the Museum. I would not photostat the envelopes, however. As you undoubtedly know, there are statutes making it a crime to interfere with the mails, and while I do not believe that the mere photostating of an envelope in order to prove misdirection of mail would be a violation of any of these statutes, it might be unwise to give Hartford an opportunity

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

Mr. Charles T. Keppel

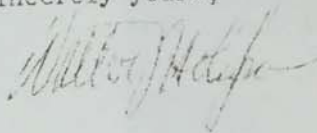
-2-

February 4, 1959

to charge, for publicity purposes, that you were in any way interfering with his mail.

I think it would be well also to keep a record of other instances of confusion, such as telephone calls, visitors, inquiries of any kind, or anything else which would show confusion in the mind of the public.

Sincerely yours,



The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

CC: Mr. d'Harnoncourt  
Mr. Barr  
Mr. Keppel

February 10, 1959.

February 18, 1959

Mr. Walter J. Holska  
Winthrop, Stimson, Putnam and Roberts  
40 Wall Street  
New York, N.Y.

Mrs. Elizabeth Shaw

Dear Mr. Holska,

A small point in view of our discussion here on Thursday: on page 243 of "The Proud Possessors" by Aline Saarinen (currently a best-seller), Katherine Dreier's activities are described as follows:

Enclosed herewith are two copies of the  
"She formed a group to exhibit, publish and propagandize modern art. Marcel Duchamp and the surrealist photographer Man Ray attended its accouchement. Since Miss Dreier's idea was to promote 'Art, not personalities,' Man Ray obligingly baptized the group 'The Societe Anonyme, Inc.: Museum of Modern Art, 1920.' Miss Dreier liked explaining his joke. 'Since "Societe Anonyme" is also the French for "incorporated" and as we incorporated, we became Incorporated Incorporated,' she would say, laughing heartily."

Actually, as Mr. Barr pointed out, the year, 1920, was added later. However, as someone at our meeting said they did not believe there were any references to the use of the subtitle, Museum of Modern Art, by Miss Dreier, I did want to call this current reference to your attention.

Sincerely,

Elizabeth Shaw  
Publicity Director

ES:cl

FOR STUDY PURPOSES ONLY. NOT FOR REPRODUCTION.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

LAW OFFICES OF  
WINTHROP, STIMSON, PUTNAM & ROBERTS  
40 WALL STREET, NEW YORK 5, N.Y.

WHITEHALL 3-0700 CABLE "WINSTIM"

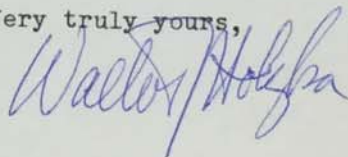
February 18, 1959

Mrs. Elizabeth Shaw  
Museum of Modern Art  
11 West 53rd Street  
New York, New York

Dear Mrs. Shaw:

Enclosed herewith are two copies of the  
Answer of Huntington Hartford in the action to  
enjoin him from using the name "Gallery of Modern Art".

Very truly yours,



2 Enclosures

FOR STUDY PURPOSES ONLY. NOT FOR REPRODUCTION.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

Mrs Shaw

**Queens College**

FLUSHING 67, N. Y.

54 Richards Road  
Port Washington, New York  
March 23, 1959

Director, The Museum of Modern Art  
11 West 53 Street  
New York 19, N.Y.

Dear Sir:

Several weeks ago I read in the Art section of the Sunday New York Times an article by Miss A.B. Saarinen in which she discusses the controversy between your Museum and Mr. Huntington Hartford. I am very much interested in obtaining first-hand information on Mr. Hartford's curious views on art and should therefore appreciate it if you were to send me his address or give me the titles and publishers of his pamphlets that are mentioned in Miss Saarinen's article.

Yours very truly,

*Lienhard Bergel*

Lienhard Bergel

FOR STUDY PURPOSES ONLY. NOT FOR REPRODUCTION.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

March 24, 1959

Mr. Lienhard Bergel  
54 Flushing Road  
Port Washington, N.Y.

Dear Mr. Bergel:

You may obtain information about Mr. Huntington Hartford's views on art from Huntington Hartford Enterprises, 420 Lexington Avenue, New York, New York.

They should be able to supply you with a reprint of "The Public Be Dammed," an article by Mr. Hartford which appeared in The Southern Artist, volume 2, no. 1, 1955.

If you would like any further help, don't hesitate to let us know.

Sincerely,

Elizabeth Shaw  
Publicity Director

ES:mg

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

*Lizell Bliss*  
*Lee*

successors as "The Museum of Modern Art", plaintiff herein.  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK 19, 1931.

-----X  
THE MUSEUM OF MODERN ART, popular tourist attractions in the  
City of New York. Plaintiff, usually referred to by the  
public as "The ~~against~~ Modern Art", "The Modern Art Museum",  
HUNTINGTON HARTFORD, individually and ~~Modern Art~~ COMPLAINT  
doing business as HUNTINGTON HARTFORD  
ENTERPRISES, years last past, plaintiff has engaged in the  
activities hereinafter set Defendant. in its building

-----X  
County and State  
of New York, and elsewhere, under the name "The Museum of  
Modern Art", and said activities have been identified by the  
Stimson, Putnam & Roberts, its attorneys, alleges that:  
public as being engaged in by plaintiff:

FIRST: At all the times hereinafter mentioned  
plaintiff was and still is a corporation duly organized and  
existing under and by virtue of the laws of the State of  
New York. sculptures and exhibited the same to the general  
public; has collected many thousands of drawings and prints

SECOND: On information and belief, defendant is a  
which it has exhibited to the general public; and has been  
resident of the State of New York and doing business in the  
County of New York under the name of Huntington Hartford  
and public collections throughout the world and exhibited the  
Enterprises.

same to the general public. During fiscal year 1936-1937  
THIRD: On or about September 19, 1929, the Regents  
of the University of the State of New York, pursuant to the  
provisions of the Education Law, granted a provisional char-  
ter which incorporated Lizzie Bliss, Josephine B. Crane,  
Frank Crowninshield, Paul J. Sachs, Mary Sullivan, Abby A.  
Rockefeller, A. Conger Goodyear and their associates and

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

successors as "The Museum of Modern Art", plaintiff herein. Said provisional charter was made absolute by said Regents on or about March 19, 1931.

FOURTH: Plaintiff is an educational institution and is one of the most popular tourist attractions in the City of New York. Plaintiff is variously referred to by the public as "The Museum of Modern Art", "The Modern Art Museum", "The Modern Museum of Art", or "The Modern Art". For the twenty-nine years last past, plaintiff has engaged in the activities hereinafter set forth, both in its building located at No. 11 West 53rd Street, City, County and State of New York, and elsewhere, under the name "The Museum of Modern Art", and said activities have been identified by the public as being engaged in by plaintiff:

A. Painting and Sculpture: Since its incorporation in 1929, plaintiff, under and using the name "The Museum of Modern Art", has collected more than 1,360 paintings and sculptures and exhibited the same to the general public; has collected many thousands of drawings and prints, which it has exhibited to the general public; and has borrowed paintings, sculptures, drawings and prints from private and public collections throughout the world and exhibited the same to the general public. During fiscal year 1956-1957 alone, plaintiff's exhibition building was visited by 639,144 persons, and since plaintiff's incorporation in 1929, its exhibition building has been visited by 10,771,616 persons.

B. Architecture and Design: Since 1931,

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

plaintiff, under and using the name "The Museum of Modern Art", has shown to the general public over 150 exhibitions relating to architecture, industrial design, design of household furnishings, and graphic design; has temporarily erected and displayed three full-scale houses in its outdoor exhibition area; has collected several thousand photographs and documents and more than 800 design objects, architectural models, drawings and examples of graphic design and exhibited the same to the general public; and has sponsored design competitions for lamps, furniture, textiles, playground equipment and posters.

C. Photography: Since 1932, plaintiff, under and using the name "The Museum of Modern Art", has shown to the general public more than 65 photography exhibitions and, since 1933, has collected more than 2,500 photographs and exhibited the same to the general public. In 1955, plaintiff, under and using the name "The Museum of Modern Art", staged an exhibition of more than 500 photographs entitled "The Family of Man" which was visited by more than 270,000 persons in plaintiff's building and by countless thousands more when it was subsequently sent on tour throughout the United States and Canada.

D. Motion Picture Films: Since 1935, plaintiff, under and using the name "The Museum of Modern Art", has caused its wholly owned subsidiary, The Museum of Modern Art Film Library Corp., to become the custodian of more than 10,000,000 feet of motion picture film produced throughout the world relating to over 2,500 different subjects, and

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

since 1939, has caused showings of such films to be given twice daily in plaintiff's auditorium. During fiscal year 1956-1957 alone, more than 170,000 persons attended showings of such films in plaintiff's auditorium, and approximately 3,200 bookings of approximately 387 circulating film programs were made to approximately 600 organizations, including 350 other educational institutions.

100 of which E. Circulating Exhibitions: Since 1931, under and using the name "The Museum of Modern Art", plaintiff has prepared and circulated 510 exhibitions of paintings, sculptures, designs and photographs to educational and non-profit institutions throughout the United States and Canada, 39 such exhibitions having been circulated in fiscal year 1956-1957 alone.

have been held F. International Program of Cultural Exchange: Since 1952, under and using the name "The Museum of Modern Art", plaintiff has organized and sent more than 50 exhibitions abroad to Latin America, Europe, Asia and Africa; has organized the United States representation at such international art exhibitions as the II and IV Bienals at Sao Paulo, Brazil, the II and IV International Art Exhibitions of Japan, the III International Contemporary Art Exhibition in India, and the Tenth Inter-American Conference in Venezuela; has purchased the American Pavilion at the Venice Biennale, and organized the United States representation at the XXVII and XXIX Biennales at Venice; has prepared exhibitions under contract to, or otherwise for, the United States Information Agency, the Foreign Ministry of Japan and the

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

government of India; and is now completing, at the request of the United States Department of State, the decoration and furnishing of the Executive Board Room in the UNESCO Headquarters Building in Paris. since 1948, an art school for children, young

G. Publications: Since 1929, under and using the name "The Museum of Modern Art", plaintiff has published approximately 200 books on the visual arts, about 100 of which are currently in print, some of which have sold as many as 80,000 copies. During fiscal year 1956-1957 alone, plaintiff sold approximately 79,200 copies of its publications, all of which bore the imprint "The Museum of Modern Art". Plaintiff's publications have been translated into French, German, Spanish, Portuguese, Swedish and Japanese and special exhibitions of plaintiff's publications have been held in Mexico, Colombia, Peru, Chile, Brazil, India, New Zealand, Indonesia, The Netherlands, France, Italy and Japan. the Children's Holiday Carnival, where

H. Library: Since 1932, under and using the name "The Museum of Modern Art", plaintiff has acquired a library of approximately 15,000 books, periodicals and catalogs, 10,000 clipping files on art, film, and the dance, 25,000 lantern slides, 75,000 units in the photographic archives, and 500 bound volumes of photographs recording plaintiff's collections and exhibitions, all of which are accessible to the public. During fiscal year 1956-1957 alone, plaintiff's library was used by an estimated 10,000 persons and approximately 8,000 slides were lent to lecturers, in connection with all of which activities plaintiff used the

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

name "The Museum of Modern Art".

I. Education: Since 1937, under and using the name "The Museum of Modern Art", plaintiff has operated an education department and, since 1948, an art school for children, young people and amateur adults, with a current enrollment of about 3,500 annually; has serviced art instructors in over 50 New York City public high schools with visual teaching aids; has conducted free classes for teachers in the New York City primary public schools, with a current enrollment of about 100 teachers annually; in 1952 and 1953 produced and sponsored a series of television programs on creative activities for young people and their parents; and aided in the organization of a program of creative activities for the children's wards at New York Hospital. Since 1942, under and using the name "The Museum of Modern Art", plaintiff has annually installed in its building a special workshop-gallery known as the Children's Holiday Carnival, where 45,000 children have played with specially designed toys, painted and made three-dimensional pictures; in 1957, presented said workshop-gallery at the Barcelona and Milan Trade Fairs; and recently presented it at the Brussels World Fair.

FIFTH: Under and using the name "The Museum of Modern Art", plaintiff, in fiscal year 1956-1957 alone, expended the sum of \$2,220,000.00, and since its incorporation in 1929 has expended the sum of \$29,490,000.00 to conduct the activities and purchase the works of art set forth in Paragraph FOURTH, SUPRA.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

SIXTH: Plaintiff is entirely supported by contributions and dues of members located in every state of the United States and many foreign countries, by contributions from private donors and charitable foundations, by admission fees to its building, by proceeds from the sale of books and reproductions, and by fees from its other services.

SEVENTH: As a result of plaintiff's manifold and widespread activities over the past twenty-nine years under and using the name "The Museum of Modern Art" and the worldwide circulation of its publications and exhibitions under and bearing the name "The Museum of Modern Art", the name "The Museum of Modern Art" and the variations of said name mentioned hereinbefore are well known in the United States and throughout the world by patrons of the arts, art critics, art museum administrators and laymen alike and are known by them to mean and refer only to plaintiff. The good will and reputation which is associated with plaintiff's name is of tremendous value.

EIGHTH: Since its incorporation in 1929, the name "The Museum of Modern Art" has been continuously used by plaintiff in all of its activities, and all the rights thereto and to the use of the same are now, and have been during the time of defendant's acts herein complained of, exclusively owned by plaintiff.

NINTH: On information and belief, defendant has acquired a certain parcel of land at No. 2 Columbus Circle in the Borough of Manhattan, City and State of New York, and to plaintiff.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

is about to erect or cause to be erected on said parcel a building to be used for the exhibition of paintings, sculptures and films, and is about to conduct said activities, or cause said activities to be conducted, under the name "Gallery of Modern Art." will continue said acts of

TENTH: Defendant's threatened use of the name "Gallery of Modern Art" as aforesaid, and his continued use thereof in the future, will necessarily tend to deceive and confuse the public and will lead the public and contributors and prospective contributors to plaintiff to believe, contrary to the fact, that the activities of defendant are, or are associated or affiliated with, the activities of plaintiff, or that the activities of defendant are authorized by plaintiff, or that plaintiff is responsible therefor, which confusion will inevitably result in injury to plaintiff and the public. name under which his or their exhibition

ELEVENTH: Defendant's threatened use of the name "Gallery of Modern Art" as aforesaid, and his continued use thereof in the future, will necessarily tend to dilute the distinctive quality of plaintiff's name "The Museum of Modern Art." 2. That plaintiff have such other and further relief in the premises as to this Court may seem just and proper, together with the costs and disbursements of this action.

TWELFTH: On information and belief, by reason of said acts heretofore complained of, defendant threatens to appropriate to himself the reputation, good will and high standing of plaintiff, and threatens to divert to himself the contributions, donations, fees, moneys and other benefits and advantages which would otherwise be received by and accrue to plaintiff.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

STATE OF NEW YORK

THIRTEENTH: The aforesaid threatened acts by defendant constitute infringement of plaintiff's rights in its name and unfair competition, and will cause irreparable damage and injury to plaintiff and the public. On information and belief, defendant will continue said acts of infringement and unfair competition unless restrained by this Court, all to the irreparable loss and injury to plaintiff and the public. his own knowledge, except as to the

matters which are therein stated to be alleged on information

FOURTEENTH: Plaintiff has no adequate remedy at law. and belief and that as to those matters he believes it to be true.

WHEREFORE, plaintiff demands judgment:

1. That defendant, his agents, servants, employees, privies, confederates, successors and assigns, and all persons holding by, through or under him or them, be enjoined during the pendency of this action and permanently from using as the name under which his or their exhibition activities are to be conducted the name "Gallery of Modern Art" or any other name confusingly similar to plaintiff's name "The Museum of Modern Art"; and

2. That plaintiff have such other and further relief in the premises as to this Court may seem just and proper, together with the costs and disbursements of this action.

WINTHROP, STIMSON, PUTNAM & ROBERTS  
Attorneys for Plaintiff  
Office and Post Office Address  
40 Wall Street  
Borough of Manhattan  
New York 5, New York

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

STATE OF NEW YORK        )  
                                  {ss:  
COUNTY OF NEW YORK    )

CHARLES T. KEPPEL                   , being duly sworn,  
deposes and says, that he is an officer, to wit, the  
Treasurer                   of THE MUSEUM OF MODERN ART, the  
plaintiff in the above entitled action; that he has read the  
foregoing complaint and knows the contents thereof and that  
the same is true of his own knowledge, except as to the  
matters which are therein stated to be alleged on information  
and belief and that as to those matters he believes it to be  
true.

C T Keppel

Sworn to before me this

29 day of October , 1958.

Edna V. Kane  
Notary Public

Edna V. Kane  
Notary Public, State of New York  
No. 03-2025915  
Qualified in Bronx County  
Certificate filed in New York County  
Commission expires March 30, 1959

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

- - - - -x

THE MUSEUM OF MODERN ART, :

Plaintiff, :

-against- : ANSWER

HUNTINGTON HARTFORD, individually :

and doing business as HUNTINGTON :

HARTFORD ENTERPRISES, :

Defendant. :

- - - - -x

Defendant, by STROOCK & STROOCK & LAVAN, his  
attorneys, answering the complaint herein:

1. Denies knowledge or information sufficient to  
form a belief as to the truth of any of the allegations con-  
tained in paragraphs FIRST, THIRD, FOURTH, FIFTH and SIXTH  
of the complaint.

2. Denies knowledge or information sufficient to  
form a belief as to the truth of any of the allegations con-  
tained in paragraphs SEVENTH and EIGHTH of the complaint,  
except that defendant denies that the name "The Museum of  
Modern Art" and any variations of said name are known by  
patrons of the arts, art critics, art museum administrators  
and laymen alike in the United States and throughout the  
world to mean and refer only to plaintiff, and that all the  
rights to the name "The Museum of Modern Art" and to the use  
of the same are now, and have been during the time of de-  
fendant's acts complained of in the complaint, exclusively  
owned by plaintiff.

3. Denies each and every allegation contained in  
paragraphs TENTH, ELEVENTH, TWELFTH, THIRTEENTH and FOURTEENTH  
of the complaint.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

FOR A FIRST SEPARATE AND COMPLETE  
DEFENSE, DEFENDANT ALLEGES:

4. The proposed "Gallery of Modern Art" has been a matter of public knowledge since on or about June 11, 1956, when New York City newspapers published extensive reports (including drawings and an artist's conception) to the effect that defendant had acquired the parcel of land referred to in paragraph NINTH of the complaint and that defendant planned to cause to be erected thereon a building to be named "Gallery of Modern Art". On or about May 19, 1958, in connection with the appointment of an architect for the proposed "Gallery of Modern Art", New York City newspapers published further extensive reports concerning defendant's plan.

5. Upon information and belief, since on or about June 11, 1956 plaintiff has had knowledge of defendant's plan to cause to be erected on the parcel of land acquired by him at Columbus Circle a building to be named "Gallery of Modern Art".

6. With knowledge of defendant's plan as aforesaid, plaintiff failed to seek to enjoin or to take any other action with regard to the use of the name "Gallery of Modern Art" by defendant, until on or about January 8, 1959 when this suit was commenced.

7. Such failure of plaintiff to seek to enjoin or to take any other action with regard to the use of the name "Gallery of Modern Art" by defendant was relied on by defendant in the use of such name.

8. In the period between June 11, 1956 and January 8, 1959, defendant, relying on plaintiff's failure to take any action with regard to the use of the name "Gallery of Modern

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

Art" by defendant, (i) incurred substantial expenses in connection with the "Gallery of Modern Art" which defendant intends to cause to be erected on Columbus Circle, including but not limited to architectural fees and amounts spent for the acquisition of paintings for exhibition in the proposed "Gallery of Modern Art", (ii) established a trust under an indenture founding the "Gallery of Modern Art", to which defendant made available substantial funds, and (iii) as trustee of said trust incurred substantial expenses, including but not limited to the employment of a Director for said Gallery, traveling expenses of such Director in connection with inspecting domestic and foreign art galleries and advising on acquisition of paintings, and the setting up and maintaining of an office with full-time secretarial help for the "Gallery of Modern Art".

9. As a result of the foregoing, including but not limited to the publicity received by the proposed "Gallery of Modern Art", and of the steps taken in reliance on plaintiff's failure to take any action with regard to the use of the name "Gallery of Modern Art" by defendant, said name has become publicly associated in the City of New York and elsewhere with the gallery proposed to be erected by defendant and valuable good will has been built up for the "Gallery of Modern Art."

10. If the injunction sought by plaintiff were granted and defendant were prevented from proceeding with his plan to cause to be erected the proposed "Gallery of Modern Art", the name of which is an essential part of defendant's plan, defendant would suffer substantial injury, directly attributable to the failure of plaintiff to take any action as aforesaid prior to the commencement of this suit in January,

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	PI/COMMS	IV.A.11

1959, and the valuable good will built up for the "Gallery of Modern Art" would be destroyed.

11. By reason of the foregoing, plaintiff is estopped from maintaining this action.

FOR A SECOND SEPARATE AND COMPLETE  
DEFENSE, DEFENDANT ALLEGES:

12. Defendant realleges each and every allegation contained in paragraphs 4 through 10, inclusive.

13. By reason of the foregoing, plaintiff has been guilty of such laches as should in equity bar plaintiff from maintaining this action.

WHEREFORE, defendant demands judgment dismissing the complaint, together with the costs and disbursements of this action.

STROOCK & STROOCK & LAVAN  
Attorneys for Defendant  
Office and P. O. Address  
61 Broadway  
New York 6, N.Y.

The Museum of Modern Art Archives, NY	Collection:	Series/Folder:
	PI/COMMS	IV.A.11

STATE OF NEW YORK    )  
                              :    ss.:  
COUNTY OF NEW YORK   )

HUNTINGTON HARTFORD, being duly sworn, says  
that he has read and knows the contents of the foregoing  
Answer; that the same is true to his own knowledge, except  
that as to the matters therein stated to be alleged on  
information and belief, and as to those matters he believes  
it to be true.

Sworn to before me this        )  
14th day of February, 1959    )

*Huntington Hartford*

*Nettie S. Bloom*

NETTIE S. BLOOM  
Notary Public, State of New York  
No. 24-6325600  
Qualified in Kings County  
Cert. filed in New York Co.  
Commission Expires March 30, 1959