

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, D.C.**

**GENERAL MOTORS, LLC**

**Respondent**

**and**

**CASE 07-CA-053570**

**MICHAEL ANTHONY HENSON, An Individual**

**Charging Party**

**EXCEPTIONS OF COUNSEL FOR THE ACTING GENERAL COUNSEL  
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

The undersigned, on behalf of the Acting General Counsel (AGC), pursuant to §102.46 of the Board's Rules and Regulations, respectfully submits these Exceptions to Administrative Law Judge Ira Sandron's decision dated May 30, 2012.<sup>1</sup>

1. Administrative Law Judge Ira Sandron (ALJ) failed to make the critical factual finding that the official record does **not** contain any evidence that Respondent General Motors, LLC (GM) has ever provided employees with written or oral communications to clarify the Social Media Policy at issue, explain what GM means by it, define any operative terms used in it, or furnish examples to illustrate how GM will interpret and apply it.

---

<sup>1</sup> Dates refer to 2012 unless noted. The May 30 decision was supplemented by ministerial errata on June 1.

2. The ALJ failed to make the critical factual findings, based on affirmative record evidence, that GM has **never** provided employees with examples to illustrate how GM intends to interpret and apply the Social Media Policy to advance its intellectual property concerns; has **never** defined any terms used in the intellectual property passages of the Social Media Policy; and has **never** explained how GM will reconcile employees' §7 rights with the intellectual property concerns of the Social Media Policy. (Tr 128, 131-132)

3. The ALJ failed to make the critical factual finding that the Social Media Policy, in a vacuum, is the sole evidence available to evaluate how employees may reasonably construe the Social Media Policy. Thus, the ALJ failed to find that the official record does **not** contain GM's Corporate Policy Manual referenced by the Social Media Policy, **nor** does it contain any pre-existing or contemporaneous employee conduct rules, nor does it contain any other rules or policies to which GM subjects its employees, other than the disputed three-page Social Media Policy itself.

4. The ALJ erroneously found that all of the "facts are undisputed." (ALJD 2, lines 44-45) To the contrary, our post-hearing brief identified two testimonial assertions, one by GM Senior Policy Consultant Sharon Denise Ridgell (Tr 105, 107, 110-111) and another by GM Attorney Timothy Gorbatoff (Tr 133-136), that we urged be given no credence. (AGC's Post-Hearing Brief to ALJ, pp. 9-10)

5. The disputed assertion of GM witness Gorbatoff – that GM will not enforce the Social Media Policy’s restrictions as to logos and trademarks so as to violate §7 – was speculative, conclusionary, and self-serving, and elicited by the ALJ, over the undersigned’s objections, by means of a leading question. (Tr 133-136) This violated the AGC’s due process rights.

6. Compounding the due process error, the ALJ appears to have relied on witness Gorbatoff’s disputed, speculative, and self-serving testimony in drawing certain legal conclusions favorable to GM. (ALJD 4, lines 16-17; ALJD 7, lines 22-23)

7. The ALJ referred in his Decision to GM’s Ex. 1 (ALJD 4, lines 1-9), but failed to rule on the undersigned’s hearsay objection to it, although he impliedly promised to do so (Tr 90), and the hearsay issue was thoroughly briefed. (AGC’s Post-Hearing Brief to ALJ, p. 6)

8. The ALJ erred by finding that the following rule in the Social Media Policy does **not** violate the Act: “Do not incorporate GM logos, trademarks...in your posts.” (ALJD 7, lines 21-25)

9. The ALJ erred by finding that the following rule in the Social Media Policy does **not** violate the Act: “...Offensive, demeaning, abusive or inappropriate remarks are as out-of-place online as they are offline...” (ALJD 8, lines 21-29)

10. The ALJ erred by finding that the following rule in the Social Media Policy does **not** violate the Act: “...Think carefully about ‘friending’

coworkers...on external social media sites. Communications with co-workers on such sites that would be inappropriate in the workplace are also inappropriate on-line..." (ALJD 8, lines 33-42)

11. The ALJ erred by finding that the following rule in the Social Media Policy does **not** violate the Act: "Report any unusual or inappropriate internal social media activity to the system administrator..." (ALJD 9, lines 19-25)

12. The ALJ's recommended remedial notice to employees fails to identify the exact rules being rescinded as violative, and is therefore too vague to be meaningful to employees. (ALJD appendix)

Respectfully submitted this 22nd day of August, 2012.



---

Linda Rabin Hammell<sup>2</sup>  
Counsel for the Acting General Counsel  
National Labor Relations Board  
Region Seven  
Patrick V. McNamara Federal Building  
477 Michigan Avenue – Room 300  
Detroit, Michigan 48226  
Direct Dial: (313) 226-3329  
Fax: (313) 226-2090  
Email: Linda.Hammell@nlrb.gov

---

<sup>2</sup> The undersigned respectfully asks that, consistent with the notice of appearance in the transcript and all pleadings submitted in this case, the full name as shown here appear in official case documents.

## CERTIFICATE OF SERVICE

I certify that on August 22, 2012, I caused copies of Exceptions of Counsel for the Acting General Counsel to the Administrative Law Judge's Decision, and Brief in Support of Exceptions of Counsel for the Acting General Counsel to the Administrative Law Judge's Decision, in *General Motors, LLC, Case 7-CA-53570*, to be served upon all parties of record, by electronic transmission, as follows:

### Respondent:

Onika Celestine, Atty.  
[onika.celestine@gm.com](mailto:onika.celestine@gm.com)

General Motors, LLC  
300 Renaissance Center  
P. O. Box 300  
Mail Code: 482-C25-B21  
Detroit MI 48265-3000

### Charging Party:

Michael Anthony Henson  
[mikeahenson@gmail.com](mailto:mikeahenson@gmail.com)

2423 Miami Beach Drive  
Flint MI 48507



---

Linda Rabin Hammell