



Food Company, Inc.

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C. Michael Carter
Executive Vice President, General Counsel and Corporate Secretary

September 28, 2009

Via E-Mail and Overnight Mail

The Honorable Mats Johansson, MP (mats.johansson@riksdagen.se)
The Honorable Luciano Astudillo, MP (luciano.astudillo@riksdagen.se)
Riksdagen
S-100 12 Stockholm
Sweden

Re: *Bananas!**

Dear Honorable Johansson and Honorable Astudillo,

We respectfully provide our brief (attached) perspective on *Bananas!** so that you may have a more complete understanding, given the upcoming October 1 screening. Kindly let us know if we can provide any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Carter", written in a cursive style.

C. Michael Carter

Attachment

***Bananas!** Is a False, Defamatory And Irresponsible Film**

Dole is a strong believer in freedom of speech, but the filmmakers acted irresponsibly when they released a knowingly false film. Under the First Amendment to the United States Constitution, the free speech rights entail a duty to act responsibly and avoid making knowingly false statements. As the great scholar Alexander Bickel once said, the First Amendment requires those who invoke it to exercise “self-discipline and self-restraint” to avoid disseminating false information. But the *Bananas!** filmmakers abdicated any sense of responsibility, self-restraint, or self-discipline when they released this film despite knowing its entire premise has been ruled to be a fraud on Dole and California's courts. As the United States Supreme Court has ruled, “[T]here is no constitutional value in false statements of fact.”

From start to finish, *Bananas! knowingly promotes as fact a false story that was adjudicated a fraud on Dole and on California's courts before the film was ever screened.** Before screening the film, they *knew* that the film is filled with factual falsehoods. They *knew* that a highly respected California judge—the very same judge who had presided over the *Tellez* trial that is the centerpiece of *Bananas!**—had ruled that the *Tellez* trial was part of a “heinous” conspiracy orchestrated by the film’s “star,” attorney Juan Dominguez, to defraud Dole and U.S. courts. They *knew* that the judge had found that this pervasive fraud had “contaminated each and every one of the [*Tellez*] plaintiffs” and that *Tellez* “was built on somebody's imagination, a case that was put together with smoke and mirrors.” They *knew* that the judge had “apologize[d] to all the jurors who had to sit through that case and make a decision based on nothing but the imagination of somebody, dreamed up in a back room of some law office in [Nicaragua].”

The *Bananas! filmmakers left Dole no choice but to bring a lawsuit to protect the reputation of the company and its 75,000 employees.** The filmmaker admittedly *never even contacted Dole* before completing the film. But when Dole learned of the film, it repeatedly brought this fraud—and much, much more—to the filmmakers’ attention. Sensitive to free speech and artistic expression concerns, Dole implored them not to screen the film without making substantial changes to take account of the judge’s ruling and detailed findings and other facts showing the truth. But the filmmakers ignored the truth and screened this blatantly false film anyway. This is a textbook case of “actual malice” – knowingly false and reckless speech that is not protected by the First Amendment.

Objective observers have recognized the film’s deep flaws. The Editor of the Los Angeles Business Journal has unequivocally stated that “The right thing would have been to pull back the movie But since Gerten has chose not to do the right thing, I’m left to conclude that he is an irresponsible filmmaker who’s presented us with a skewed movie based on his own biases. And a hypocrite too.” A film critic observed, “[t]his film in its current form is too compromised for any kind of theatrical and TV distribution.” (*Hollywood Reporter*) The American University’s Center for Social Media issued a recent report chronicling intensified concerns about unethical conduct in documentary filmmaking and has identified *Bananas!** as an example of a film that has “recently raised ethics questions.” And the Los Angeles Film Festival declared, “there seems to be little question that the version of reality that the film portrays does not match the reality that emerged in the courtroom.”

Gerten is no defender of free speech. In fact, he has now filed a baseless counterclaim against Dole *for exercising its free speech rights* to criticize the false movie.