

NORTH CAROLINA

GUILFORD COUNTY

ITG BRANDS, LLC,

Plaintiff,

v.

WILL SPENCER, THE WINSTON CUP  
MUSEUM, LLC, and JKS  
MOTORSPORTS, INC.,

Defendants,

IN THE GENERAL COURT OF  
JUSTICE  
SUPERIOR COURT DIVISION  
23-CVS-2481

**BRIEF IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
CONTEMPT**

**INTRODUCTION**

Will Spencer and the Winston Cup Museum, LLC (the "Museum") agreed that they would not "make any defamatory or disparaging statements . . . in social media." They further agreed that they would not "encourage or aid anyone to take any action that would violate any terms of this Agreement as if Defendants had done it themselves." Given Defendants' prior conduct, ITG knew that Mr. Spencer could not be trusted. Thus, ITG requested, as a condition of settlement, that Defendants' agreements be entered as an order of the Court punishable by contempt. ECF No. 40. The Court entered the agreement as final judgment, and as expected, Mr. Spencer has now failed to honor his word.

On December 1, 2023, The Museum linked its Facebook page to an hour-long interview of Will Spencer. The interviewer began the video with the following monolog:

There are some things you got to know about Will Spencer and the Winston Cup Museum before we get going. If you're a race fan you've probably seen the articles about the Winston Cup Museum having to close on December 16<sup>th</sup>, 2023, and maybe you've seen the stuff about the lawsuits surrounding it the questionable at best United States judicial system has allowed a large company to bully this guy into closing his Museum.

Defendants' actions in participating in and promoting a disparaging and defaming video and encouraging others to disparage and defame ITG plainly violate the injunctions entered in this case. They should be held in criminal, or at a minimum, civil contempt.

### **BACKGROUND**

Throughout the course of this litigation, and especially after ITG filed its Motion for Preliminary Injunction, Will Spencer made multiple false statements to the media to make himself out as the victim and ITG as the bully. Affidavit of Geraldine Bowen Barker ¶ 16, attached as **Exhibit A**. Specifically, on July 3, 2023, Spencer posted a statement on the Winston Cup Museum Facebook page, announcing the closing of the museum. In this statement Spencer says, "As everyone is fully aware, ITG has filed numerous lawsuits against me, my wife, our primary businesses, and the museum, saying that ITG's purchase of Winston Cigarettes from R.J. Reynolds Tobacco Company in 2015 somehow gave it ownership of Winston Cup history." *Id.* His statement continued that the lawsuits have been too costly and that he has been forced to concede. *Id.*

These false statements spurred numerous articles in local and national media, largely adopting Will Spencer's fiction that ITG was using litigation to force him into

a settlement and that Mr. Spencer was a hero for preserving NASCAR history. *Id.* ¶ 17.

Mr. Spencer continued his false narrative in the August 17, 2023 edition of the Winston-Salem Journal. There, Mr. Spencer announced the reopening of the museum “primarily because a proposed Aug. 17 mediation session was not held.” *Id.* ¶ 18. Spencer stated that reason mediation was not held was because “ITG’s tactic is to run the clock down, have the current lawsuit dismissed and file another or get the current one amended to get more time,” thereby making legal expenses so costly over time that he would be forced to agree to a settlement. *Id.*

These statements and bullying narrative are false. First, Mr. Spencer knew that there was no litigation strategy or supposed bullying involved in the mediation delay. In actuality, Mr. Spencer knew that mediation was delayed because ITG’s lead counsel had a month-long sickness, including a five-day hospitalization for cardiac problems. *Id.*; ECF No. 29 ¶¶ 8–9; ECF No. 33 ¶¶ 8–9.

More broadly, the narrative that Mr. Spencer is the victim of anything other than his own greed is not true. As to this claim of “multiple lawsuits,” ITG previously filed a lawsuit against Defendant JKS because JKS converted ITG’s promotional materials and vehicles. Barker Aff. ¶ 5. It had nothing to do with the Winston Cup whatsoever. *Id.* Rather, ITG had contracted with Zoom Insights (“Zoom”) to provide marketing services. Zoom failed, owing ITG millions of dollars. Zoom had contracted with JKS and Mr. Spencer for the buildout of some of ITG’s events. *Id.* To that end, JKS was storing ITG’s vehicles, lighting equipment, and other personal property for

use at those events. Rather than return ITG's property, JKS converted the property and sold the property to ITG's detriment. *Id.*

ITG sued JKS for conversion. To settle the case, ITG offered to engage Spencer and JKS to provide the build outs for ITG's Winston "adults-only" events—first at a reduced rate to cover the amounts that JKS converted and then, over time, at the full market rates. *Id.* ¶ 7. ITG was willing to partner with Spencer in a way that would have made him significant sums of money and thought it had reached a deal with Spencer to do so after a first mediation. *Id.* ¶ 8. Then Spencer rejected ITG's offer, demanding more money, into the millions of dollars. *Id.*

Exacerbating the situation, Spencer and the Winston Cup Museum then filed several trademark applications covering derivations of ITG's famous WINSTON marks. *Id.* ¶ 9. ITG filed letters of protest over the same. All of the applications were rejected. *Id.*

As ITG was preparing to file this case to, among other things, protect its intellectual property, ITG offered a grand bargain to settle the previous conversion lawsuit against JKS—where Spencer had kept hundreds of thousands of dollars of ITG's promotional materials and vehicles—as well as the Winston-related issues encompassed in this lawsuit. *Id.* ¶ 10. In exchange for that settlement, all ITG requested was that Defendants (1) grant ITG access to the photos in the museum for copying; (2) agree not to file any additional Winston-related trademark applications—applications which, thus far, had all been rejected by the United States Trademark Office; and (3) not market the Winston Brand in violation of the Master Settlement

Agreement. *Id.* Once again, ITG and Spencer mediated these issues, even reaching the principal terms of a settlement at mediation. *Id.* ¶ 12.

However, after weeks going back and forth with Spencer’s attorneys, Spencer refused to close that deal too, even though it would have cost him nothing. *Id.* He then went on to file more Winston-related trademark applications, which—like his previous attempts—were again rejected in their entirety by the Trademark Office. *Id.* ¶ 13.

The situation reached its boiling point at the NASCAR All-Star Race at North Wilkesboro, where Spencer and the Museum’s use of ITG’s marks caused significant confusion among the racing public as to whether Spencer’s Museum (which was marketing to children) was affiliated with or approved by ITG. *Id.* ¶ 15, ECF No. 19.9. To protect its marks and to ensure the responsible marketing of its products, ITG filed the Motion for Preliminary Injunction. ECF No. 17.

Following lead counsel’s recovery from cardiac problems, the parties mediated a third time. *Id.* ¶ 19. ITG did not leave anything for later negotiation and the parties signed the Mediated Agreement at the conclusion of the mediation. Moreover, given Mr. Spencer’s proven history of defamation and untrustworthiness, ITG would not settle the matter unless the Court entered the Mediated Agreement as an order enforceable by contempt. ECF No. 40.

### **RELEVANT PROVISIONS IN THE COURT ORDER**

On November 2, 2023, the Court entered the Final Order and Judgment resolving the case (“the Judgment”) (ECF 40). The Judgment states “the Mediated

Agreement attached to the Consent Motion as Exhibit 1 (ECF No. 38.1) is adopted and enforceable as an Order of the Court.” The Judgment continues “Defendants . . . shall not take any actions prohibited under the Mediated Agreement.” *Id.*

Because of Mr. Spencer’s prior defamatory statements to the media and on social media, the Mediated Agreement states that Defendants will not “make any defamatory or disparaging statements . . . in social media.” Mediated Agreement ¶ 6. The Mediated Agreement also prevents Defendants from “encourage[ing] or aid[ing] anyone to take any action that would violate any terms of this Agreement as if Defendants had done it themselves.” *Id.* ¶ 8.

#### **DEFENDANTS VIOLATED THE JUDGMENT AND THE MEDIATED AGREEMENT**

On December 1, 2023, Defendants posted a video to, among other social media, their Winston Cup Museum Facebook page. Barker Aff. ¶ 20. The video begins with a seriously defamatory and disparaging statements directed toward ITG. *Id.* The disparaging statements continue the same false narrative of Will Spencer as the victim that ITG sought to prevent in the Mediated Agreement. *Id.* If that was not bad enough, the background for the disparaging monologue is the headlines for the news articles that contained Mr. Spencer’s previous disparaging and defamatory statements about ITG:

NASCAR & MOTORSPORTS

# Winston Cup Museum announces closure due to financial concerns

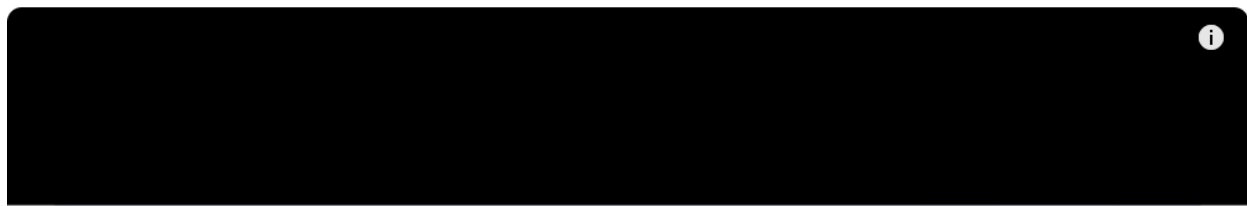
by: [Emily Mikkelsen](#), [Brayden Stamps](#), [Justyn Melrose](#)

Posted: Nov 14, 2023 / 10:43 AM EST

Updated: Nov 15, 2023 / 05:49 AM EST



Video (0:15).



**WINSTON-SALEM, N.C.** — The [Winston Cup Museum](#) needs your help in renaming the museum.

That's after the [museum recently reopened](#) following a [brief closure due to a lawsuit with ITG](#). The museum owner said the lawsuit claimed, "ITG's purchase of Winston Cigarettes from R.J. Reynolds Tobacco Company in 2015 somehow gave it ownership of Winston Cup history."



Video (0:19)

As of December 7, 2023, the Video has been viewed over 150,000 times. Barker Aff. ¶ 21.

Rather than distance themselves from the Video, the Defendants celebrated the defamation and disparagement, reposting the Video on their Winston Cup Museum Facebook page:



Barker Aff. ¶ 22.

## ARGUMENT

Under North Carolina law, there are two types of contempt, civil and criminal. *Cox v. Cox*, 92 N.C. App. 702, 705, 376 S.E.2d 13, 16 (1989). “Willful disobedience of, resistance to, or interference with a court’s lawful process, order, directive, or instruction or its execution” constitutes criminal contempt. N.C. Gen. Stat. § 5A-11(a)(3). Willful criminal contempt is punishable by censure, imprisonment up to 30 days, a fine not to exceed five hundred dollars (\$500.00), or any combination of the



three. N.C. Gen. Stat. § 5A-12. The Court institutes criminal contempt proceedings “by an order directing the person to appear before a judge at a reasonable time specified in the order and show cause why he should not be held in contempt of court.” N.C. Gen. Stat. § 5A-15(a).

Failure to comply with an order of a court can alternatively constitute civil contempt as long as (1) the order remains in force; (2) the purpose of the order may still be served by compliance with the order; (3) the noncompliance by the person to whom the order is directed is willful; and (4) the person to whom the order is directed is able to take reasonable measures that would enable the person to comply with the order. N.C. Gen. Stat. § 5A-21(a). A person who is found in civil contempt may be imprisoned up to 90 days and, if the contempt has not been purged, may be imprisoned up to twelve months. N.C. Gen. Stat. § 5A-21(b1). An aggrieved party may petition, or the Court “may direct the alleged contemnor to appear at a specified reasonable time and show cause why he should not be held in civil contempt.” N.C. Gen. Stat § 5A-23(a), (a1).

Will Spencer and the Winston Cup Museum violated the Judgment incorporating the Mediated Agreements’ prohibitions against defaming and disparaging ITG. It is no defense that the interviewer made the defamatory and disparaging statements, because Defendants reposted the disparaging video on their own Facebook page. *Hartnett v. Hardenbergh*, No. 3:23-CV-17-HEH, 2023 WL 4934998, at \*12 (E.D. Va. Aug. 2, 2023) (“This Court has held that someone who

republishes or reproduces a defamatory writing can be liable if they do so knowing the post is false or inherently improbable.”).

Moreover, Mr. Spencer and the Museum plainly encouraged and aided the interviewer in his disparagement of ITG, in further violation of the Judgment, by participating in and promoting the Video and then celebrating the Video on the Winston Cup Museum Facebook page.

### **CONCLUSION**

Defendants’ conduct is obviously intentional and shows a complete lack of respect for the Court’s orders, ITG’s rights, or the rule of law. Will Spencer and the Winston Cup Museum should be required to show cause as to why they should not be held in contempt. Following the show cause hearing, ITG respectfully requests that the Court hold Will Spencer and the Winston Cup Museum in criminal contempt. One hundred fifty thousand people have already seen the video Spencer posted. Considering the egregious nature of the misconduct, even if Defendants remove the offending video and publish a retraction, Will Spencer should be held in criminal contempt as punishment for his willful actions.

In the alternative, ITG respectfully requests that the Court hold Will Spencer and the Winston Cup Museum in civil contempt until they purge the contempt by (i) removing the link to the offending video and (ii) publishing a retraction of the content of the video.

Respectfully submitted, this the 8th day of December 2023.

/s/ Daniel L. Colston

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**CERTIFICATE OF COMPLIANCE**

The undersigned hereby certifies that this brief complies with Rule 7.8 of the General Rules of Practice and Procedure for the North Carolina Business Court in that it (excluding the caption, any index, table of contents, or table of authorities, signature blocks, and required certificates) contains no more than 7,500 words, as determined by the word count feature of Microsoft Word.

This, the 8th day of December, 2023.

/s/ Daniel L. Colston  
Daniel L. Colston

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was served on all parties to this action pursuant to the Court's ECF system.

This the 8th day of December, 2023.

/s/ Daniel L. Colston  
Daniel L. Colston