



National Coalition For Men (NCFM)

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July 26, 2011

Mr. Joe Harper, President & General Manager
Del Mar Thoroughbred Club
2260 Jimmy Durante Blvd
Del Mar, CA 92014

Re: Ladies Day and California's Civil Rights Laws

Dear Mr. Harper:

I am president of The National Coalition For Men ("NCFM"). NCFM is a nonprofit educational organization that raises awareness about how sex discrimination adversely affects men and boys. It is the oldest and largest men's rights organization in the world. You can learn more about NCFM by visiting our website at www.ncfm.org.

I am writing because of the upcoming "Ladies Day" promotion the Del Mar Thoroughbred Club is hosting on August 7, 2011. I am puzzled and disappointed DMTC would sponsor an event entitled "Ladies Day," which by its very name implies that men are excluded from admission or are at least not welcome or are deterred from attending, despite the postscript at the bottom of your website's Ladies Day ad reluctantly reading "Gentlemen are welcome, too."

Can you imagine the uproar and lawsuits if DMTC were to proudly market and host a "Men's Day," wherein the activities included free tickets to Chargers or Padres games, free drawings for other prizes including a \$1,158 grand prize from the Chargers or Padres, and beer tasting provided by local microbreweries, and a racing seminar with a top male jockey – with the postscript "Ladies are welcome, too?" Most women's equal rights organizations or any equal rights organization would swiftly take action if DMTC were to market and host such a "Men's Day," "Caucasians' Day," or "Heterosexuals' Day."

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Sex-based promotions such as Ladies' Day, Ladies' Night, or Men's Day violate many California anti-discrimination laws, including Civil Code sections 51 (codification of the Unruh Civil Rights Act), 51.5, and 51.6 (codification of the Gender Tax Repeal Act of 1995). Civil Code section 52 provides the remedies for violations of Civil Code sections 51, 51.5, and 51.6, in pertinent part as follows:

Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars (\$4,000), and any attorneys' fees that may be determined by the court in addition thereto....

The California Supreme Court, in two unanimous opinions, ruled Ladies' Day and Ladies' Night promotions violate California law. *Angelucci v. Century Supper Club, LP* (2007) 41 Cal.4th 160 (men do not have to assert their right to equal treatment at a Ladies' Night to have standing for an Unruh Act or Gender Tax Repeal Act claim); *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24 (Ladies' Day and Ladies' Night promotions violate the Unruh Act). Furthermore, in March of 2008, the California Attorney General issued the attached Gambling Establishment Advisory to California card rooms in response to the proliferation of ladies-only poker tournaments across the state. This advisory can also be found at <http://ag.ca.gov/gambling/pdfs/NUM8LOT.pdf>. Note that then-Attorney General/nov-Governor Jerry Brown opined that merely advertising a ladies-only poker tournament, even if men were allowed to play, violated the Unruh Act, because it deterred men from attending. And the federal courts have ruled that deterring a person from visiting a place of public accommodations based on a personal characteristic protected by the Unruh Act is actionable under the Unruh Act. See, e.g., *Lentini v. California Center for the Arts, Escondido* (9th Cir. 2005)

Furthermore, California Department of Fair Employment & Housing has published the attached Unruh Act brochure specifically targeting Ladies' Day and Ladies' Night promotions. This brochure can also be found at <http://www.dfeh.ca.gov/dfeh/publications/PublicationDocs/UnruhActBrochure.pdf>.

DMTC is also subject to anti-discrimination laws that apply the State of California its agencies, or anyone receiving financial assistance from the State because DMTC operates the annual horse racing meet for the 22nd District Agricultural Association and the State of California. Several equal protection clauses of the California Constitution guarantee all California citizens equal treatment by the State or its agencies, and California Government Code section 11195 prohibits sex discrimination by any State agency or by any entity receiving any financial assistance from the State, as follows:

No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

Also, I assume DMTC or related entities are licensed by the California Horse Racing Board, Bureau of Gambling Control, and/or Department of Alcoholic Beverage Control. California Business and Professions Code section 125.6 prohibits State of California licensees from making “any discrimination, or restriction in the performance of the licensed activity” based on those personal characteristics listed in the Unruh Act.

Accordingly, NCFM asks Del Mar Thoroughbred Club to change its Ladies Day promotion to something more gender neutral or all-inclusive such as a “Men’s and Ladies’ [or vice versa] Day” with prizes and activities appealing to both sexes, not to only women. After all, male and female patrons pay the exact same price to enter the track and therefore should enjoy equal “accommodations, advantages, facilities, privileges, or services” at the track as guaranteed by the Unruh Civil Rights Act and many other California anti-discrimination statutes and constitutional provisions. Hundreds of male patrons are likely to be at the track on DMTC’s so-called “Ladies Day,” and these male patrons are entitled to be treated as equals to the female patrons in attendance that day, just as women would be entitled to be treated as equal to the men in attendance at the track should DMTC ever decide to host a “Men’s Day” with only male-favored activities and prizes, even if female patrons were not targeted but were reluctantly welcomed.

I look forward to your earliest response regarding DMTC’s upcoming Ladies Day. I hope you find this information informative and useful, and hope DMTC will equally welcome and accommodate male and female patrons for this and all horse racing meets.

Respectfully,



Harry A. Crouch
President, NCFM

cc: Mr. Timothy Fennell, CEO and General Manager of the 22nd District Agricultural Association