

# Swiss bank obtains injunction against whistleblower site

## From Wikileaks

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Tuesday February 19, 2008

Swiss bank Julius Baer has obtained an injunction in a Californian court against a whistleblowers website that published details of its financial activities in the Cayman Islands. Wikileaks was founded in 2006 by Chinese dissidents, journalists, mathematicians and startup company technologists from the US, Taiwan, Europe, Australia and South Africa.

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Wikileaks aims to offer a platform for whistleblowers to expose malpractice by governments and firms across the globe in the name of transparency and freedom of speech. The site claims to contain 1.2 million documents, including confidential briefing notes on Northern Rock and the UK's identity card plans.

The site has previously published confidential documents relating to the US army's rules for engagement in Iraq, Guantanamo Bay, the Chinese government and Thailand's military junta. Users can post documents anonymously on the site, which looks like Wikipedia.

## Intermediary firm

In order to deal with Chinese censorship, Wikileaks has many backup sites such as wikileaks.be (Belgium) and wikileaks.de (Germany) which remain active. The injunction, therefore, focused on the use of the domain address instead.

Unable to lawfully attack the site's servers based in several countries, the order was served on the intermediary firm through which Wikileaks purchased the 'Wikileaks.org' name, California registrar Dynadot.

District court judge Jeffery White ordered Dynadot on 15 February to use its access to the internet website name registration system to delete the records for 'Wikileaks.org' and to replace the site's content with a blank page. The court's total of six orders also prevented anyone aware of the injunction from linking to the site's content.

"Dynadot shall immediately clear and remove all DNS hosting records for the wikileaks.org domain name and prevent the domain name from resolving to the wikileaks.org website or any other website or server other than a blank park page, until further order of this Court," the judge ruled.

The firm was told to hand over all administrative and account records and data for the wikileaks.org domain name and account plus the IP addresses of anyone who had accessed the site's admin system.

Wikileaks said it never expected to be using the alternative servers to deal with censorship attacks from the United States.

## Suspicious transactions

The Cayman Islands are located between Cuba and Honduras. In July 2000, the US Department of the Treasury Financial Crimes Enforcement Network said that there were "serious deficiencies in the counter-money laundering systems of the Cayman Islands".

"Cayman Islands law makes it impossible for the supervisory and regulatory authority to obtain information held by financial institutions regarding their client's identity," according to the Network.

It warned that failure of financial institutions in the Cayman Islands to report suspicious transactions was not subject to penalty and that these deficiencies, among others, had caused the Cayman Islands to be identified by the Financial Action Task Force on Money Laundering (The 'FATF') as non-cooperative in the fight against money laundering.

As of 2006 the US State Department listed the Cayman Islands in its money laundering "Countries of Primary Concern".

Wikileaks said the order was written by Julius Baer's lawyers and was accepted by judge White without amendment, or representations by Wikileaks or its solicitors.

## **Polygraph test**

The case is over several Wikileaks articles, public commentary and documents dating prior to 2003. The documents allegedly reveal secret Julius Baer trust structures used for asset hiding, money laundering and tax evasion.

The bank alleges the documents were disclosed to Wikileaks by offshore banking whistleblower and former vice president of its Cayman Island's offshoring operation, Rudolf Elmer.

Initial research easily turned up that 2002/03 some sensitive documents had slipped out of the Swiss banks office in the Cayman Islands, apparently reaching US tax investigation units.

They were eventually sent to the Swiss financial magazine CASH, which reported on the disclosure, but possibly due to an injunction or Swiss banking law, not the details.

When the leak of trust structures was discovered in 2003, Bank Julius Baer initiated legal investigations on the Caymans, involving the search of the home of each employee and when not gaining any insights from that, undertaking a lie detector test on the employees.

It still remained unclear where the data went. The group of people having legitimate access to these documents was small.

## **Sick leave**

Elmer, who was BJB Caymans deputy head and chief operating officer at that point in time also fulfilled the position of Hurricane Officer, whose duties included keeping backups.

Elmer, facing a spinal surgery coming up in a few days time, was on sick leave and had some trouble scheduling the test. He thus became a suspect.

He complained to the American Polygraph Association (APA), the institution his interrogator works for, the Cayman Prime Minister and other entities about the conduct of the test.

Normally sick people would not be interviewed, but the APA's Ethics Commission, stated in a letter that the ethical rules for polygraphing do not apply to the Cayman Islands, and that, as the test had not been fully carried out, most of the APA rules would not apply anyway.

He was informed there were no regulations on the Caymans for polygraph tests as in the United States. After the test Bank Julius Baer laid off Elmer as an employee and the family decided to move back to Switzerland.

### **Permanent observation**

Bank Julius Baer, not being able to substantially prove anything, but still investigating into him, allegedly hired different private investigators to track him.

According to Elmer's assertions, he was threatened not to go to the police verbally by officials of the bank, most of them composing the boards of directors and similar entities within the various distributed BJB companies and holdings.

According to Elmer's December 2007 court documents, he was subject to more or less permanent observation, as was his family.

His then 6-year old daughter was followed on her way to school, while his wife and daughter claim to have been engaged in a chase on a Swiss autobahn by the private detectives, which police confirmed to have intercepted.

Elmer said that cars driving in the dead-end street he lived in at night annoyed his neighbours and put further pressure on him.

He also was offered CHF 500,000 by the bank, according to his statement, in an effort to buy his silence. He turned down the offer and asked the bank to be charged with bribery, but was told the police found no law against bribing private persons.

### **Legal denial notice**

Bank Julius Baer also started claims against Elmer in Switzerland. These could not be followed by prosecution as BJB refused to give out information on its activity on the Cayman Islands that would provide a basis for investigation and Elmer's defence.

Elmer wrote a letter to the newly appointed CEO of Bank Julius Baer in Switzerland, Johannes de Gier, in which he explained his position.

He hinted that he was in possession – lawfully - of information on the bank's Cayman Islands operations, to make sure nothing would happen to him or his family.

Wikileaks said the document was submitted in a bundle with the legal denial notice issued by the prosecutor in Zurich after Elmer launched claims against the bank.

The prosecutor's office of Zurich-Sihl ruled that stalking can not be substance of a criminal prosecution in Switzerland, a land where no free person is restricted to move the same way as another in public space.

Acknowledging the car pursuit, the prosecutor only mentioned they were able to verify that a private investigator agency had been engaged by BJB, but did not comment any further on this incident at all.

The prosecutor's office stated that while there could be moral claims towards someone ordering such an observation, the actions did not break criminal law.

Regarding the bribery claims that Elmer had made towards the bank, the prosecutor further ruled that bribery was not applicable to a private person but only to a state entity.

The prosecutor said he did not understand Elmer's motivation for these claims, stating the whistleblower should be happy about the money and the bank dropping its complaint.

## Banking transparency

Wikileaks said the prosecutor's verdict posed important questions on how much Switzerland would be able to harmonise with the EU on the issue of banking transparency in order to stop illegal money flows.

Following the subsequent Californian injunction obtained by Bank Julius Baer, Wikileaks vowed to continue publishing details of alleged money laundering by banks through its alternative sites and servers.

It has the help of six pro-bono attorney's in San Francisco but claims it was given only hours notice by email prior to the hearing.

Wikileaks pre-litigation California council Julie Turner attended the start of hearing in a personal capacity but said she was then asked to leave the court room.

Elmer to this day claims he has not leaked any documentation related to Bank Julius Baer in order to harm anyone, only set up insurance for his and his family's personal safety.

Wikileaks said, "Whether this assertion was true, technically true or untrue, or whether Elmer had been driven a bit batty by the pressure should not distract from the actions of Bank Julius Baer in its attempts to silence its former high-level employee or the role it plays in supporting ultra-rich's offshore tax avoidance, tax evasion, asset hiding and money laundering."

As of Friday 15 February those going to Wikileaks.org have been shown "Server not found" messages.

*Also appears as: <http://dofonline.co.uk/governance/swiss-bank-obtains-injunction-against-whistleblower-site5352.html>*

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