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September 27, 2016

DENVER
LAS VEGAS
LOS ANGELES
LOS CABOS
ORANGE COUNTY
PHOENIX
RENO
SALT LAKE CITY
TUCSON

By Email and First Class Mail

Phil Clark
P.O. Box 2824
Yuma, AZ 85366
info@cybermayorofyuma.com

Re: Copyright & Trademark Infringement

Dear Mr. Clark:

This law firm represents the City of Yuma (the "City"). As you know, the City has contacted you numerous times over the past several years and requested that you cease using the City's logo. It has been brought to our attention that you are currently using the City's logo on your website, <http://cybermayorofyuma.com>. Your continued abuse of the City's intellectual property rights subjects you to significant liability for both trademark and copyright infringement. The City has asked me to contact you in a final attempt to resolve this amicably.

First of all, the City has trademark rights in the logo. The logo is a symbol that City residents and tourists associate with the City and your unauthorized use of the logo, especially coupled with your use of images of City officials, is likely to cause residents to believe that your website is sponsored by or authorized by the City which it is not. Even if other content on your website may dispel that initial belief of sponsorship or affiliation, the initial interest confusion is still actionable under the Lanham Act. Under Federal law, the City is entitled to its damages, your profits for violation of its federal trademark rights, and the costs of the associated action. *See* 15 U.S.C. § 1117(a).

Second, you are liable for willfully infringing the City's copyrights in the logo. The City first published its logo in 1995 and later sought and was awarded U.S. Copyright Registration No. VA0001206997. Your continued copying of the logo over the past decade in flagrant disregard for the City and its citizens entitles the City to statutory damages for copyright infringement. The fact that the City has warned you numerous times makes it clear that you are acting intentionally.

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These statutory damages available under the Copyright Act can be significant. Specifically, the City is entitled (and will seek) damages in range of \$750 to \$150,000 per violation of its copyright as provided by 17 U.S.C. § 504. So that we are clear, this means that the City would receive \$750 to \$150,000 for each use of the logo on your website and elsewhere. Since your infringement was unquestionably willful, the City also would be entitled to recover from you its attorneys' fees and the costs of the action. *See* 17 U.S.C. § 505.

In prior correspondence, you argued your use would qualify as "fair use" under 17 U.S.C. § 107. We disagree. As an initial matter, so called "fair use" is an affirmative defense meaning that the burden of proof is on you to establish that it applies. Further, the factors used by courts to assess whether fair use exists weigh heavily on the City's behalf. One such factor is "the amount and substantiality of the portion used in relation to the copyrighted work as a whole." This factor favors the City as you have copied the logo in its entirety. While you have the right to state your positions on government and local politics, there is simply no need to copy the City's logo to do so.

We recognize that there is an unfortunate and acrimonious history between you and the City. We do not believe that it is in anyone's interest for this dispute to mature into litigation. If you remove all references to the logo from your website and cease using the logo, the City will not pursue claims against you. However, the City will certainly act accordingly to protect its rights should you continue this infringement.

We ask that you respond to this letter no later than 5:00 P.M. on **October 5, 2016**. We await your response.

Sincerely,

SNELL & WILMER L.L.P.



Joseph G. Adams

cc: Richard Files (via e-mail only)
Steven Moore (via e-mail only)

JGA:c11