

Timothy A. La Sota, PLLC
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May 29, 2023

Via email to:

Jon M. Paladini
PIERCE COLEMAN
7730 E. Greenway Road, Suite 105
Scottsdale, Arizona 85260
jon@piercecoleman.com

Re: Your letter of May 24, 2023

Dear Mr. Paladini:

This firm represents Paul Frommelt. I am in receipt of your letter sent on May 24, 2023, which you explicitly state is sent on behalf of the Town of Payson. Your letter misstates the law and is a transparent attempt to improperly silence the Town of Payson's political opponent.

This letter is hardly intended to be exhaustive in terms of the reasons your letter is objectionable, both legally and practically. But suffice it to say that the first fatal flaw in your assertions is that there has been no commercial use made of any registered trademark. See Arizona Revised Statutes § 44-1451(A)(1). Similarly, federal trademark law requires a commercial use of a trademark in order for there to be a cause of action. See 15 U.S.C. § 1125(c)(3); *Bosley Med. Inst. v. Kremer*, 403 F.3d 672, 676–77 (9th Cir. 2005)(holding that the statutory requirement that the plaintiff's mark be used “in connection with the sale, offering for sale, distribution, or advertising of any goods or services” requires commercial use of the plaintiff's mark).

In addition, while parody may not be a complete defense to a trademark infringement claim, here, given the lack of confusion between the Town's mark and the image used by Plaintiff (which was to simply re-post what someone else had create) clearly would not result in the requisite confusion to provide a cause of action. See, e.g., *Dr. Seuss Enters. v. Penguin Books USA, Inc.*, 109 F.3d 1394, 1405 (9th Cir.), cert. dismissed, 521 U.S. 1146, 118 S.Ct. 27, 138 L.Ed.2d 1057 (1997)(stating that parody is a significant factor that a court may consider in a likelihood-of-confusion analysis.)

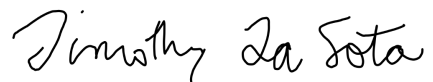
Mr. Paladini
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You should also know that Mr. Frommelt will not hesitate to exercise his rights to seek redress for any violations of his rights under the United States Constitution pursuant to suit under 42 United States Code § 1983. Your letter was ill-advised and a naked attempt to squelch the free speech rights of the Town opponents. It hardly seems a coincidence that Mr. Frommelt is a board member of Transparent Payson, which has sued the Town alleging that the Town illegally repealed two citizen passed ballot measures.

My client will not be signing the cease and desist letter you included and my sincere advice to the Town and to you is to drop this.

Very truly yours,

TIMOTHY A. LA SOTA PLC

A handwritten signature in cursive script that reads "Timothy La Sota".

Timothy A. La Sota