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February 14, 2014

VIA EMAIL ONLY¹
JRochon@girlscouts.org

Total # pages: 3

Jennifer Rochon, Esq.
Girl Scouts of the USA
420 Fifth Avenue
New York, NY 10018

Re: Girl Scouts of the USA: Cease and Desist Letter to Steven Ertelt and LifeNews

Dear Ms. Rochon:

As you know, on January 30, 2014, Brian Crawford (Chief Licensing Executive, GSUSA) wrote to my clients (Steven Ertelt and LifeNews), demanding that the “organization immediately cease using the Girl Scouts® logo.” There are a number of issues that come to my mind when I read the cease and desist letter, and which I review below, in the hope that we can work together to achieve a fair, quick and cost-effective resolution to this matter.

Mr. Crawford expressed concern that articles on the LifeNews website describe what appear to be ties between the Girl Scouts and Planned Parenthood. He noted, “Girl Scouts of the USA does not have a partnership or any relationship with Planned Parenthood and does not plan to initiate one.”

Mr. Crawford may have intended to invite a dialog with LifeNews about these points, which is certainly welcomed. Perhaps a distinction can be made between the work of individuals associated with the Girl Scouts (and perhaps misusing their positions), and the stance of the organization itself. Or, perhaps, Mr. Crawford may have been attempting to emphasize a distinction between the activities of local councils of the Girl Scouts and those of the the national organization. Certainly, further discussion along these lines may be helpful to all involved.

Mr. Crawford also appears to have concerns that the Girl Scouts’ logo was included as part of the articles on the LifeNews website that outline the apparent ties between the Girl Scouts and Planned Parenthood. He noted, “It has come to our attention that you are using the Girl

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Scouts® logo on your website LifeNews.com and in articles that outline alleged ties to Planned Parenthood.” Mr. Crawford is asking that the Girl Scouts’ logo not be included with those articles appearing on the LifeNews website – *if the Girls Scouts might find those articles objectionable.*

At a minimum, it will be important to learn from the Girl Scouts which articles the organization finds offensive, and why. Regardless of any concerns of the Girl Scouts about my clients’ use of logos to clarify matters in news stories, it is always my clients’ intent to make sure information in the news stories is as accurate as possible. So, please contact us for further discussions about the information used in the stories and any clarifications that you believe would be important to share with the many readers of my clients’ news articles.

In error, Mr. Crawford cited to 36 U.S.C. § 80106 et. seq. (NOTE: that section of the Code addresses the distribution of assets of the General Federation of Women’s Club upon liquidation), as a basis upon which the Girl Scouts sought to bar the use of the Girl Scouts’ logo on the LifeNews website. I believe Mr. Crawford meant to reference 36 U.S.C. § 80305 (emphasis added), which reads as follows:

The corporation has the exclusive right to use all emblems and badges, descriptive or designating marks, and words or phrases the corporation adopts, including the badge of the Girl Scouts, Incorporated, referred to in the Act of August 12, 1937 (ch. 590, 50 Stat. 623), and to authorize their use, during the life of the corporation, **in connection with the manufacture, advertisement, and sale of equipment and merchandise.** This section does not affect any vested rights.

So, the Code (as expected) does not infringe on the First Amendment rights of U.S. citizens, and (instead) solely bars the commercial exploitation of the Girl Scouts’ logo by third parties. In distinction, of course, my clients are simply making use of the logo as part of a news story and are not seeking any dilution of the exclusive identification of the Girl Scouts’ logo with the Girl Scouts organization.

Exploring intellectual property law, in an attempt to find a basis for barring the use of the Girl Scouts’ logo on the LifeNews website, does not result in a different outcome in my analysis about the propriety of my clients using a logo to clarify matters in news stories about the Girl Scouts.

Considering trademark law, my clients have engaged in the “classic” form of fair use in the sense that my clients have used the Girl Scouts’ mark in a purely descriptive sense to describe the Girl Scouts’ own organization and activity. Similarly, even Mr. Crawford mentioned “the Girl Scouts® logo” in his letter to my client to aid his attempt at clarity. The use of a trademark is often essential to clarify knowledge about about a matter being discussed. Further, because the LifeNews articles do not cause confusion and there is no indication of sponsorship or

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endorsement of LifeNews by the Girl Scouts, reference to the Girl Scouts' logo within the LifeNews articles is "nominative fair use." My clients have only made such use of the Girl Scouts' mark as is reasonably necessary to identify the Girl Scouts in the news articles.

Going beyond the relatively permissive authority of law governing trademarks to an analysis of this situation under copyright laws, my clients' use of the Girl Scouts' logo in articles appearing on the LifeNews website still falls within fair use. As codified in 17 U.S.C. § 107, fair use of copyright material includes "... news reporting ..."

In light of Mr. Crawford's January 30, 2014, letter – *which took a regrettably adversarial tone*, it is important for your organization to promptly respond to this letter recognizing that my clients' use of the Girl Scouts' logo has been fair and reasoned. We also welcome further dialog with the Girl Scouts about the underlying facts of the LifeNews articles that outline alleged ties of the Girl Scouts with Planned Parenthood. While the Girl Scouts must necessarily protect and enforce their rights to the Girl Scouts' logo against the commercial damage of unauthorized uses, my clients' news articles are rooted in the First Amendment of the Constitution of the United States that protects the right of U.S. citizens to communicate and discuss vital concerns in a free republic, and the news articles fall within fair use.

Thank you for your assistance and attention to these matters. I look forward to hearing back from you shortly in a continuation of this dialog.

Best regards,



Chris L. Ingold

cc: Steven Ertelt