

**VIA FACSIMILE--CONFIRMATION FIRST CLASS MAIL**

May 11, 2006

Mr. Ken Trevino, Chief Executive Officer  
CORPUS CHRISTI CHAMBER OF COMMERCE FOUNDATION  
1201 N. Shoreline Blvd.  
Corpus Christi, TX 78401

**Re: *Unauthorized Use of the I♥NY® Trademark***

Dear Mr. Trevino:

CMG Worldwide, Inc., ("CMG"), is the exclusive, worldwide agent for the New York State Department of Economic Development ("NYSDDED"), a New York State agency, proprietor of certain trademark rights and the right of association and sponsorship in and to the I♥NY® trademark. As such, CMG pursues and prosecutes all claims and causes of action arising out of, or relating to, the unauthorized use of the I♥NY® trademark.

Enclosed is evidence that the Corpus Christi Chamber of Commerce Foundation, through its Leadership Corpus Christi Program, has utilized the I♥NY® trademark in association with the I Love My Corpus Christi city promotional campaign and t-shirts without the necessary permission from our client. Be advised that such unauthorized use is in contravention to the aforementioned rights and will not be tolerated.

This letter therefore represents a formal demand that the Corpus Christi Chamber of Commerce Foundation immediately cease and desist any and all unauthorized use of the I♥NY® trademark. Be advised that a fee will be required to absolve your company for the unauthorized use of our client's trademark that has already occurred.

We will expect your acknowledgment and response within five days of your receipt of this letter, confirming your willingness to cease and desist all use of the I♥NY® trademark in association with your business. In addition, we request that Corpus Christi Chamber of Commerce Foundation provide an accounting detailing any monies collected from items sold or distributed featuring the I♥MY CC mark, as well as both the retail and wholesale prices of these items.

Should you fail to comply with our request, be advised that CMG is prepared to utilize all legal avenues available to ensure that our client is disassociated from your company and that it is fairly compensated for any and all past use.

Nothing contained herein or omitted herefrom constitutes a waiver of any of the rights or remedies at law or in equity of the New York State Department of Economic Development, and CMG Worldwide, Inc., all of which are hereby expressly reserved.

Respectfully,

Coti Edwards, Esq., Legal Counsel

cc: Jonathan Faber, Esq., President  
New York State Department of Economic Development

WOOD, BOYKIN & WOLTER  
A PROFESSIONAL CORPORATION  
LAWYERS

615 NORTH UPPER BROADWAY, SUITE 1100  
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Writer's email: jdbell@wbwpc.com

May 24, 2006

Ms. Leslie Schickel  
CMG Worldwide  
10500 Crosspoint Boulevard  
Indianapolis, Indiana 46256

Via Facsimile 317-570-5500  
and First Class Mail

Re: Claimed Unauthorized Use of "I Love New York" Trademark

Dear Ms. Schickel:

I have been referred the letter dated May 11, 2006, from Ms. Coti Edwards to Ken Trevino, the Chief Executive Officer of the Corpus Christi Chamber of Commerce Foundation. You and I also discussed this matter briefly by telephone on Wednesday, May 17, and I agreed to provide you a response.

As I mentioned to you on the telephone, the "I Love My CC" campaign was generated by a group of thirty young, civic-minded individuals participating in the Leadership Corpus Christi Program sponsored by the Corpus Christi Chamber of Commerce Foundation. The Leadership Corpus Christi Program is a year-long project involving the education of future community leaders in Corpus Christi as to the history, government structures and business climate in Corpus Christi. The "I Love My CC" campaign was developed as a class project by this year's group in order to help boost community spirit.

Corpus Christi suffered several set backs in the past year, including the closure of a major US Navy installation, a drought dealing a severe blow to the agricultural economy, and an acute awareness of hurricane threats with the near miss of Hurricane Rita which followed Hurricane Katrina last fall. The "I Love My CC" campaign was very well received by local businesses and community leaders in helping to foster a positive attitude by Corpus Christians about their community.

I also mentioned to you on the telephone that the campaign has been limited to fostering a heightened community spirit in Corpus Christi. No campaigning has been done outside Corpus Christi, the entire focus of the effort being on the local population. The campaign has included the printing and distribution of T-shirts, bumper stickers, and flyers, and the business community has responded by sponsoring billboards, some newspaper and other media advertising, and similar promotions. An "I Love My CC" poster contest recently was concluded involving school children in grades 1 through 8.

Letter to Ms. Leslie Schickel  
May 24, 2006  
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I was taken aback by your statement in our telephone conversation that you considered it an infringement upon the New York trademark by our use of the words "I Love My CC" even in the absence of any type of design mark. To assert that no one except people in New York can express a love for their community appears to me to be overreaching. As I understood it, you maintain that not only the use of any design including the word "I" and a heart with a geographic location but even using the words "I Love" with a geographic location are in violation of New York's intellectual property rights.

Since our conversation, I have discussed this matter with the Chamber of Commerce Foundation and the Leadership Class. I additionally have reviewed a variety of filings with the US Patent and Trademark Office.

Each of the trademark registrations I was able to find that are held by your client pertain to a particular design depicting the letters "I" and "NY" along with a red heart shape. I could not find any word trademarks registering exclusive rights to the words "I Love" in reference to a geographic location. If you have a registration of the words "I Love" without any particular design, please forward it to me.

I additionally noticed a large number of other registrations of design marks for the following geographic locations:

- I ♥ ATL (Atlanta, Georgia)
- I ♥ OC (Orange County, California)
- I ♥ Orlando (Florida)
- I ♥ LA (Los Angeles)
- I ♥ My Independence (Independence, Missouri)
- I ♥ Florida (the state)
- I ♥ America

All of the above registrations involve the use of a heart design in place of the word "Love" but the implication of community, state, and national pride and affection is clear. Most of the designs are stylistically different from the New York design, although several are fairly close. The above list is in no way exhaustive, with similar expressions of affection being made for Hawaii, Park City, New Orleans, and even Detroit. In fact, it appears that over thirty other similar marks either have been published or are pending publication.

The fact that "I♥" is being used by various cities and other geographic areas shows that it is not associated only with New York and not indicative of or suggestive only of New York. If "I♥" was ever distinctive of New York, it obviously has lost its distinctiveness. While it also appears that you are contesting some of the more recent filings with the USPTO, at least ten similar registrations already have been granted.

Letter to Ms. Leslie Schickel  
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After careful consideration, we simply cannot see how any confusion, dilution or other negative impact of any type whatsoever can take place by our "I Love My CC" campaign in Corpus Christi. Our design is significantly different in font, style, display and use from the design marks held by your client.

As noted above, this campaign is purely a local, community-building effort. We simply do not see how your client's particular design of the letters I NY with a heart can be parlayed into prohibiting anyone in America from expressing a love for his or her hometown.

Based upon the above, we respectfully decline to comply with your request that the Corpus Christi Chamber of Commerce Foundation shut down the "I Love My Corpus Christi" promotional campaign. We are in no way using your client's registered trademarks in association with our campaign, so we do not see anything from which we should cease and desist.

Very truly yours,



John D. Bell

JDB/vcs

cc: Corpus Christi Chamber of Commerce Foundation  
Leadership Corpus Christi Class 34

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**VIA FACSIMILE**  
**CONFIRMATION FIRST CLASS MAIL**

June 1, 2006

Mr. John D. Bell  
WOOD, BOYKIN & WOLTER, P.C.  
615 North Upper Broadway, Suite 1100  
Corpus Christi, TX 78477-0397

**Re: *Unauthorized Use of the I♥NY® Trademark***

Dear John:

I am in receipt of your letter of May 24, 2006. While we appreciate your prompt response, the legal landscape of this situation is more involved than your analysis reflects. This letter is offered to assist your understanding of the legal implications of the Corpus Christi Chamber of Commerce Foundation's (hereinafter "CCCCF") use of the I□NY® trademark and to propose a resolution which is fair to all parties.

The I♥NY® mark and brand is one of the most famous and recognizable trademarks in the world. It has been heralded as one of the 24 greatest corporate logos of all time (See CNN.com/Travel, *Tourism slogans: They still "Love New York,"* May 14, 2002.) The I□NY design is founded upon extensive Federal trademark registrations, elaborate licensing campaigns, and a vigilant policing system that prevents entity such as the CCCCCF from appropriating this valuable mark and the related intellectual property rights.

It seems incongruous, if not ironic, that the young business men and women of Leadership Corpus Christi Class 34 would elect by committee to take an established trademark of New York State, change it in a minimal way to the extent to inject the Corpus Christi identity into the mark, then hold that design out as a symbol for Corpus Christi. We do not have to get into the details of this aspect of the situation, as we are willing to look past it in context of a settlement arrangement; however, the point is worth noting as it would seem to contradict the very essence of a Chamber of Commerce section seeking to distinguish its city.

There is no reasonable debate but that the CCCCCF built its campaign around the I□NY® mark. In fact, there is nothing unusual about this situation to the extent that almost every infringement we deal with involves a company that is seeking to siphon or otherwise appropriate the value and goodwill of our client's mark. The "I♥MY CC" campaign only works in context of an immediate familiarity with I□NY®. The similar examples provided in your letter merely demonstrate the popularity of the I□NY® trademark and that many entities, including the CCCCCF, are willing to trade on the goodwill of New York's most famous brand. Your examples do nothing to resolve the liability that has attached to the CCCCCF.

As a general rule, an accused infringer may not claim that it must be excused from infringement simply because others are guilty of the same wrong (Intell. Prop. L. Bus. Law. § 10.4.3 (2005 ed.) citing *National Lead Co. v. Wolfe*, 223 F.2d 195, 204 (9th Cir.1955); *Playboy Enterprises, Inc. v. Chuckleberry Publishing, Inc.*, 486 F.Supp. 414, 423 n. 9 (S.D.N.Y.1980), *aff'd*, 687 F.2d 563 (2d Cir.1982); *Century 21 Real Estate Corp. v. Sandlin*, 846 F.2d 1175, 1181 (9th Cir.1988) (discovery regarding other infringers is irrelevant to the issue of likelihood of confusion). For confidentiality reasons, we will not disclose the identities of entities with which we have settled infringing uses. Suffice it to say that there are thousands of companies that we have pursued as infringers, and we police against unauthorized uses of this mark on a daily basis.

In addition to the various Federal trademark registrations and common law trademark rights, you should also be aware that the NYSDDED owns the copyright to the I□NY design. The NYSDDED therefore possesses the exclusive right to create derivative works of their I□NY design. As such, the CCCCf is in violation of the NYSDDED's copyright interests, as well as its trademark rights, through its appropriation of the I□NY® into its I□MY CC product and logo.

You should also consider that, assuming we would have approved the uses that the CCCCf makes of our client's intellectual property, (which we would not have due to the directly competitive nature of the use), CCCCf was required to have a license from the owner of the intellectual property interests it utilized. A license for this brand would typically involve an advance guarantee of \$2,500, which is due prior to any sales taking place. A licensor is not obligated to share risk with its licensee, and for this reasons, advance guarantees are customary in this industry. As such, the very first issuance of your client's design caused our client to lose the requisite licensing fees, and the use undermines the style guide and protocol of this brand as well as the value of all of our existing licensees who have operated and licensed this mark according to market value and our stringent licensing requirements.

With all this in mind, I am prepared to propose a resolution that is proportionate and fair to all parties. Based on our knowledge of this use and the extent of activity that has taken place, I believe we would be able to resolve this matter based on a settlement fee of \$2,000. Feel free to contact me by phone at (317) 570-5007 or by email at [Leslie@CMGWorldwide.com](mailto:Leslie@CMGWorldwide.com) if you have any questions. I look forward to your response.

Respectfully,

Leslie W. Schickel  
Business & Legal Affairs

cc: Jonathan Faber, Esq., President  
Coti J. Edwards, Esq., Legal Counsel  
New York State Department of Economic Development

**Via Facsimile and First Class Mail**

September 22, 2006

Mr. John D. Bell  
WOOD, BOYKIN & WOLTER, P.C.  
615 North Upper Broadway, Suite 1100  
Corpus Christi, TX 78477-0397

**Re: *Unauthorized Use of the I♥NY® Trademark***

Dear John:

Some time has passed since we last discussed our clients' dispute. In our correspondence of June 1, 2006, we offered a very reasonable settlement fee of \$2000 for the past use if your client agreed to immediately cease and desist its use of the New York State Department of Economic Development's I♥NY® trademark in connection with its Leadership Corpus Christi Class 34 "I♥MYCC" promotional campaign. When we last spoke, you were preparing to leave for a vacation, but told me that you would "send some emails" and get back to us. That was on June 22, 2006. We emailed you on August 15, 2006 and have yet to receive a reply.

In June we suggested that your client act quickly, as the more time that passes, the more difficult it will be for the Corpus Christi Chamber of Commerce Foundation to discontinue the campaign. Your unresponsiveness indicates that you may have interpreted that notion as a course of action that would work to the Foundation's favor; actually, it will only serve to complicate settlement discussions and expose the Foundation to greater damages if it does not cease and desist the use of our client's trademark. As we have monitored the ongoing infringement, we have discovered that the use has proliferated to billboards, commercials, local business support, increased website traffic, etc. As such, and considering the amount of time that has passed without a response from your client, we must revoke our settlement offer of \$2000 and insist upon a one-time fee of \$5000 in order to settle your client's unauthorized use of the I♥NY® trademark.

Our previous correspondence has clearly explained how your client's actions have violated both the trademarks and copyrights held by the NYSDDED. We have attached our client list and some news articles which outline our expertise in the licensing industry. We urge you and your client to consider the damages your client is exposed to if we are forced to litigate, which may include compensatory damages, treble damages, profits from the unauthorized use, rehabilitative advertising, and attorney's fees. Should you fail to respond to this letter, we will have no choice but to inform our client of its available remedies.

Feel free to contact me by phone at (317) 570-5007 or by email at Leslie@CMGWorldwide.com if you have any questions. I look forward to your response.

September 22, 2006  
Page 2 of 2

Nothing contained herein or omitted herefrom constitutes a waiver of any of the rights or remedies at law or in equity of the New York State Department of Economic Development, and CMG Worldwide, Inc., all of which are hereby expressly reserved.

Respectfully,

Leslie W. Schickel  
Business & Legal Affairs

cc: Mark Roesler, Esq., Chairman & CEO  
Coti J. Edwards, Esq., Legal Counsel  
New York State Department of Economic Development

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\*\*BOARD CERTIFIED-CIVIL TRIAL LAW  
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Writer's email: jdbell@wbwpc.com

September 22, 2006

Ms. Leslie Schickel  
CMG Worldwide  
10500 Crosspoint Boulevard  
Indianapolis, Indiana 46256

Via Facsimile 317-570-5500  
and First Class Mail

Re: Claimed Unauthorized Use of "I Love New York" Trademark

Dear Ms. Schickel:

I have worked with the volunteers and Board members of the Corpus Christi Chamber of Commerce Foundation in every way possible to resolve this matter, but those efforts have been determined by you and your client to be unacceptable. Our first offer was to change the look and design of our campaign simply to read, "I Love My CC" replacing the heart shape with the word "Love." Your response was that any such expression using the word "Love" and a geographic area also would be considered a violation.

When you suggested a \$2,000 settlement of the case, we seriously considered that offer and proposed that we pay \$2,000 for the ability to continue the "I Love My CC" campaign in Corpus Christi as planned. As I mentioned to you on several occasions, this is a local, community-based program designed to promote community spirit in Corpus Christi. It in no way dilutes, impacts or in any way infringes on the registration for your client's New York campaign. Your response was that under no circumstances would your client agree to the continuation of our campaign for any amount of money. The \$2,000 simply was to atone for the limited use already transpired.

With the above two reasonable efforts similarly rebuffed, I do not see any other means by which we can resolve this issue. As I mentioned in my letter last May, we have identified a large number of registrations for design marks ranging from Atlanta to Los Angeles utilizing a very similar design to your New York design. Since that time, we have observed even more cities and towns utilizing the same method of promoting appreciation for their hometowns. Last month, I was in the small town of Frisco in the northern part of Texas, and I noticed a picture in the weekly newspaper of the Mayor presenting someone with an "I ♥ Frisco" t-shirt. If the initial use of this idea for other locations began with a trickle, it has now developed into a deluge of use all across the United States as a means of expressing community pride. I have not undertaken a search outside the United States, but I would assume that use of "I ♥ [city]" is endemic around the world.

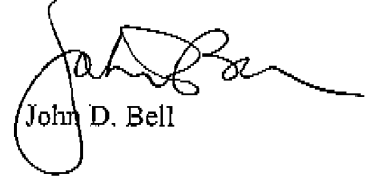
Letter to Ms. Leslie Schickel  
September 22, 2006  
Page 2

Your letter of June 1, 2006 mentioned the additional legal theory of New York's claiming a copyright in the design. We have searched the copyright registrations, and we have not been able to find any registration of this copyright by a New York entity. If your claim is based upon an unregistered copyright under the standards associated with copyright law, that would appear to be substantially weaker to any claims that could be presented under the Lanham Act.

In conclusion, the Corpus Christi Chamber of Commerce Foundation is not willing to pay \$5,000 for the past use of the "I Love My CC" promotional materials any more than it was willing to pay \$2,000. I appreciate your comments that an accused infringer may not claim an excuse from infringement because others are guilty of the same wrong. The basis of our position is that the "I ♥" and similar expressions of "I Love" independent of any affiliation with New York do not have any protected status. If the design trademark originally obtained ever had such distinctiveness, it obviously has been lost. Further, all of the registered marks that I have been able to discover held by your client are design marks, rather than word marks.

Based upon the above, we respectfully continue in our belief that nothing we are doing with the "I Love My Corpus Christi" promotional campaign is in any way infringing upon or diluting your client's registered trademarks or, for that matter, any copyright claims. As a result, we will continue with our local campaign for community pride in Corpus Christi.

Very truly yours,



John D. Bell

JDB/vcs

xc: Corpus Christi Chamber of Commerce Foundation  
Leadership Corpus Christi Class 34