

May 11, 2011

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VIA EMAIL – SERVINJ@NEWSCHOOL.EDU  
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Mr. Jacques Servin  
79 Lorimer Street, Apt. 5  
Brooklyn, New York 11206

Re: **Coal Cares Website**

Dear Mr. Servin:

We represent Peabody Energy Corporation (“Peabody”).

Yesterday, an organization called Coal is Killing Kids (“CKK”) launched a website called “Coal Cares” at [www.coalcares.com](http://www.coalcares.com). This domain name is registered under the pseudonyms Harold Schweppes and G.A.T.T., which we understand are connected with you and Igor Vamos and your activities as “The Yes Men.” We therefore assume that you acted in conjunction with CKK to create, disseminate and publicize this website.

The website is identified on the top of the home page as “A goodwill campaign from your neighbors at Peabody Coal.” The entire website masquerades as a Peabody production, even down to the copyright notice on the home page, and includes a fake news release on the media page. The website promotes a nonexistent Peabody “Coal Cares” program and invents quotes from Peabody executives. Nowhere on the website is there any indication that this is a commentary, parody or satire.

Peabody acknowledges that your purpose in launching the site was to comment on Peabody’s policies and political positions. The First Amendment protects your right to do that, and Peabody has no objection to any truthful commentary or criticism. But neither the First Amendment nor the trademark laws permit the use of a company’s trademark and trade name to deceive people about the source of the message being given. By launching a fake Peabody website and attributing to Peabody your invented positions, programs and quotations, you and your colleagues have infringed Peabody’s trademark and trade name, and have falsely designated the source of your website, all in violation of Section 43(a) of the U.S. Trademark Act, 15 U.S.C. § 1125 (a)(1)(A), and also engaged in unfair competition and deceptive trade practices.

While the law recognizes a right to use famous names and trademarks in artistic works and political commentary, the leading case in this field makes clear that that right is extinguished when the use of the name or mark “explicitly misleads as to the source or the content of the work.” *Rogers v. Grimaldi*, 875 F.2d 994 (2d Cir. 1989). For example, in enjoining use of the domain name <drinkcoke.org> and <mymcdonalds.com> to attract visitors to an anti-abortion

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website, the Eighth Circuit held that “the use of trademarks has not been protected where it is likely to create confusion as to the source or sponsorship of the speech of goods in question.” To the same effect is *Planned Parenthood As’n of Am., Inc. v. Bucci*, 1997 WL 133313 (S.D.N.Y. March 24, 1997) (use of <plannedparenthood.com> to attract users to an anti-abortion website); *Anheuser-Busch, Inc. v. Balducci Publ’n’s*, 28 F.2d 769, 776 (8<sup>th</sup> Cir. 1994) (“A parody creating a likelihood of confusion may be subject to a trademark infringement action”; injunction against alleged parody ad for “Michelob Oily” affirmed).

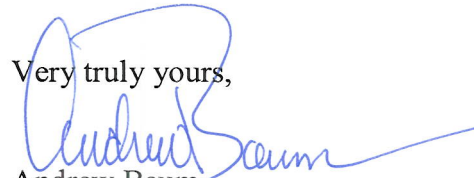
Your actions have already created substantial actual confusion among the public. Our client has been besieged with emails and telephone inquiries from persons who believe that Peabody is actually involved with the “Coal Cares” website. This may give you the satisfaction of knowing you have helped perpetrate a successful hoax, but it also establishes without question your liability for trademark infringement as well as malicious interference with our client’s business.

Just as the First Amendment protects the right of you and your colleagues to speak about energy related issues, Peabody has a First Amendment right not to be involved in the dissemination of a message with which it does not agree. See *Wooley v. Maynard*, 430 U.S. 705 (1977). We trust that your respect for First Amendment rights will lead you to the proper conclusion that using Peabody’s name to disseminate your message violates not only Peabody’s intellectual property rights but also its constitutional rights.

We therefore ask that you, and those with whom you are affiliated in this project, immediately remove from the “Coal Cares” website, and any and all other materials, the name of Peabody or Peabody Energy. If this is done within 24 hours of receipt of this letter, Peabody will consider this matter fully resolved. However, if you continue to mislead the public and violate Peabody’s rights by continuing to use its name, Peabody will have no choice but to commence a civil action against you and the other individuals involved in this infringement, seeking immediate and permanent injunctive relief, treble damages, costs and attorneys’ fees.

The foregoing is without prejudice to any rights or remedies of Peabody Energy Corp., all of which are expressly reserved.

Very truly yours,



Andrew Baum

AB:cm