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May 7, 2012

VIA EMAIL

Jonathan P. Froemel, Esq.
Barnes & Thornburg, LLP

[REDACTED]
[REDACTED]

Re: School Family Media and PTA

Dear Jon:

In light of PTA's recently expressed desire to resume litigation, I think it is necessary to reset the discussion and shift to issues that we have not discussed for a long time. There is no good faith basis for litigation under the Trademark Act or the Lanham Act. If the idea of litigation appeals to PTA, it can only be because PTA misunderstands the legal standards and underestimates the risk and expense. It has probably failed so far to even consider that bringing litigation would cause School Family Media to counterattack by challenging the enforceability of the PTA trademarks and producing evidence that PTA's present challenges result from causes that have nothing to do with alleged trademark or Lanham Act violations.

I have offered mediation because we need to engage the clients more directly in this issue, and mediation with an experienced trademark attorney is the most efficient way to do it. This letter outlines my thinking. I want to first discuss these issues with you. Then, I will ask you to present this letter and other information to PTA along with an invitation for mediation.

The primary purposes of trademark law, including the Lanham Act, is to promote competition by preventing consumer confusion about the source and origin of goods or services. Also, the Lanham Act prevents false advertising. In order to prevail, a plaintiff must prove that a substantial proportion of consumers are likely to be confused about the source or origin of products, or else misled in some other material way.

The standard of proof is rigorous. PTA would be required to produce consumer surveys to show that a substantial portion of the public is likely to be misled or confused about the source, origin or quality of goods and services. "Puffing" is a normal feature of advertising and is perfectly acceptable unless it misleads a substantial proportion of consumers. The plaintiff is also required to prove that the alleged violation caused damage.

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Our dialogue concerning School Family Media and PTA goes back almost four years, to mid 2008. Neither of our clients has identified a single incident of actual confusion during that four-year period. Nor has there been a single consumer complaint that School Family Media advertising was incorrect or misleading in any way. It is difficult to imagine that a consumer survey would determine likelihood of confusion in a degree sufficient to sustain a trademark or Lanham Act claim. After four years of conversation, I do not know of a simple fact that would justify an award of damages, or an injunction. If School Family Media believed that local parent groups were being misled or confused, it would immediately take corrective action.

Moreover, since the middle of 2008, School Family Media has been making changes in response to PTA's concerns. It did not believe there was any likelihood of confusion in the first place, but is committed to taking the high road. It has added disclaimers and modified other materials to rule out any possible likelihood of misleading consumers. It has offered additional changes, not because it thinks consumers are confused or misled but because it is willing to accommodate, as long as the accommodation is reasonable.

I understand that PTA may be experiencing organizational stress. According to news reports, PTA's national constituency is declining as local parent teacher organizations either choose not to affiliate with PTA in the first place or, in some cases, choose to dissolve an existing affiliation. I understand perfectly that this is upsetting to PTA because nobody likes to lose customers or clients. However, shifting consumer choices are the inevitable product of any free market system. If PTA is losing members, it is not because of School Family Media.

An important difference between PTA and School Family Media has a bearing on this issue. PTA is a national advocacy organization that promotes certain policies through lobbying and other activities. It recruits and encourages the formation of local member organizations in order to provide a base. The local organizations pay dues that support the national effort. PTA also sells goods and services to member organizations to generate additional income, but this is incidental to its primary not-for-profit mission.

School Family Media is not an advocacy organization. It is relatively neutral on the issue of educational policy and does not engage in lobbying. In contrast to PTA, School Family Media's primary mission is to provide parent teacher organizations of all kinds with access to a broad array of goods and services without regard to the organizations' affiliations. It offers goods and services to local PTAs along with all other forms of PTOs. Many local PTAs are happy customers of School Family Media.

There are two main points of friction between School Family Media and PTA. First, PTA resents School Family Media's claim that its publications reach every parent teacher organization in the country, including PTAs. Second, it resents the fact that School Family Media makes available information on how a local parent group that is affiliated with PTA can dissolve that affiliation.

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School Family Media and PTA both sell advertising to vendors who want to introduce themselves, their products and services to local parent teacher organizations of all kinds. School Family Media has a natural advantage, because it provides access to all parent teacher organizations without regard to affiliation whereas PTA is more narrowly focused on its own member organizations.

PTA may argue that advertising through PTA media is more accurately targeted to the leaders of PTAs, but it would be difficult to argue that this is a material distinction because PTA leaders can and do identify themselves by providing email addresses and other contact information directly to School Family Media. School Family Media doesn't claim to have the same data base as PTA, but it does send published media to every school in the country and also has a very substantial data base of individual contact information including with PTA leaders. The claim that School Family Media reaches some 87,000 parent teacher organizations, including PTAs, is substantially correct.

I also understand PTA's resentment that School Family Media provides information on how a local parent group can disaffiliate from PTA. However, it does not encourage local PTAs to disaffiliate. Nor, for that matter, does it provide incentives. It does no more than provide information that it believes to be accurate to groups that have independently decided to disaffiliate.

It is important to note that School Family Media has no motive to persuade local PTAs to disaffiliate, because it would be just as happy to provide the same goods and services if the affiliation remains intact. A local organization's affiliation with PTA has no material economic significance for School Family Media.

The competition between PTA and School Family Media that actually matters focuses on the value of goods and services provided to local parent teacher organizations and the value of the advertising and communications media that each organization offers to parties who wish to deliver a message to local PTOs.

I personally do not believe that there have been any trademark or Lanham Act violations in that arena. If you think otherwise, we should discuss it. School Family Media has charged me with the responsibility to identify and help correct any actual violations. If you think I have omitted or misstated any of the facts or legal principles, please say so. I am very willing to address and consider differences of opinion, if they exist. If there are genuine problems that I and School Family Media are not yet aware of, School Family Media will address and correct them but I do not think that is the case.

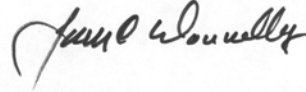
I enclose my most recent draft of a mediation and arbitration agreement. I think it would serve both parties very well, and resolve the current impasse.

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Unless it can demonstrate that there have been material violations, PTA should work within the framework that we have been discussing. Rejecting School Family Media's offer in favor of litigation would in my view signal an abuse of the litigation process.

Very truly yours,

A handwritten signature in dark ink, appearing to read "James C. Donnelly, Jr.", written in a cursive style.

James C. Donnelly, Jr.

JCD/III
Enclosure