

PUBLIC CITIZEN LITIGATION GROUP

1600 20TH STREET, N.W.
WASHINGTON, D.C. 20009-1001

(202) 588-1000

BY EMAIL to b.borovik@chia.net

June 2, 2021

Ms. Belle Borovik, "Head of IP"
Chia Network
3rd Floor
44 Montgomery Street
San Francisco, California 94104

Re: The Chia Plot Blog

Dear Ms. Borovik:

I write in response to your demands to Chris Dupres, contending that he has violated the trademark laws by using "The Chia Plot" as the name of his new web site about your company, and by registering the domain name www.thechiaplot.net to be used as the internet address for the site. You contend that he needs your permission to use these names, that he needs to apply to you for a royalty-free license, and that, if he wants to resolve this situation on an amicable basis, he needs to submit his request to you immediately.

Dupres is not going to comply with your demand. Your company has no right to give (or withhold) approval for any and all uses of its unregistered trademark on web sites that discuss your company. What's more, it is unreasonable for you to expect a journalist to ask for permission to use the company's name to talk about the company. Your attempt to condition his use of the name on his agreement to delete certain information from the site shows why no self-respecting journalist would give in to such a demand. See *WCVB-TV v. Boston Athletic Association*, 926 F.2d 42 (1st Cir. 1991).

Your assumption that Chia Network has a right to forbid use of its mark to denominate a web site as being about the company, or to demand the right to give or withhold such permission, is belied by longstanding precedent, set by series of cases decided by the federal courts more than ten years ago. Given the fact that your company is located in San Francisco, the decisions in *Bosley Medical v. Kremer*, 403 F.3d 672 (9th Cir. 2005), and *Nissan Motor Co. v. Nissan Computer Co.*, 378 F.3d 1002 (9th Cir. 2004), are the most telling: Both cases squarely preclude the use of trademark law to stop Dupres's use of a web site posted at a domain name that uses your trademark as a site for non-commercial commentary about your company. Several cases in other circuits protect the right to use a domain name in the form www.trademark.com for a web site about the trademark holder against a variety of trademark claims. *Utah Lighthouse Ministry v. Foundation for Apologetic*

Ms. Belle Borovik
June 2, 2021
page 2

Information and Research, 527 F.3d 1045 (10th Cir. 2008); *Lamparello v. Falwell*, 420 F.3d 309 (4th Cir. 2005); *TMI v. Maxwell*, 368 F.3d 433, 436-438 (5th Cir. 2004); *Lucas Nursery and Landscaping, Inc. v. Grosse*, 359 F.3d 806 (6th Cir 2004); *Taubman v. WebFeats*, 319 F3d 770 (6th Cir. 2003).

Trademark law aside, the First Amendment protects Dupres's right to use your company's name to denominate, accurately, the subject of this web site. Any effort that your company made to invoke trademark law as a reason to shut down his site, or to alter its name, would be an invocation of government power that would be subject to First Amendment scrutiny and would violate the First Amendment.

You suggest that you believe that some of your customers might be confused by the name or domain name of the web site into believing that the site is sponsored by your clients. Just how gullible do you expect your potential customers to be? I daresay that even the proverbial moron in a hurry would recognize, immediately upon visiting The Chia Plot, that it is a web site devoted to journalism about your company rather than being sponsored by your company. Dupres's site expressly states that it is not affiliated with your company; indeed, it proclaims its independence.

Moreover, Dupres has helpfully provided viewers of his site with a prominent hyperlink to your site just as, for example, did the Shops at Willow Bend site at issue in *Taubman*, the web site attacking Bosley Medical Group at issue in *Kremer*, and the site condemning Jerry Falwell's homophobia at issue in *Lamparello*. As a result, even if Internet users mistakenly looking for your company, rather than looking for information about your company, wandered onto The Chia Plot by name-guessing, they would be quickly disabused of any notion that the site belongs to or has the approval of your company. As this very letter is propagated around the Internet, readers will gain further information dissociating Dupres's news site from your own commercial site.

Finally, I note that one of your demand emails included the preposterous contention that Dupres violated European privacy rules by identifying you as the person who sent the demand email. Although Dupres took your name off his site as a friendly gesture, you have persisted in pursuing trademark claims that have no legal basis. Accordingly, your name will likely appear in stories written about your claims.

I am giving you until June 9 to retract your demand that Dupres stop using the word "chia" in the domain name for his web site and in the title of the site. Dupres is not willing to keep operating his web site subject to the threat of a claim for trademark damages. Consequently, failing a prompt retraction, a request for waiver of service could well be the next communication you receive on this topic.

Ms. Belle Borovik
June 2, 2021
page 3

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Paul Alan Levy", is written over the typed name. The signature is fluid and cursive, with a large initial "P" and "A".

Paul Alan Levy

cc: Mitch Edwards, General Counsel