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December 17, 2009

VIA E-MAIL AND U.S. MAIL

Martin D. Singer, Esq.
Lavelly & Singer
2049 Century Park East, Suite 2400
Los Angeles, CA 90067-2908

Re: Demi Moore / W Magazine Photograph

Dear Marty:

We are counsel for Happy Mutants, LLC d/b/a BoingBoing.net (“Boing Boing”). I am writing in response to your letter of December 15, 2009, concerning the November 17, 2009, Boing Boing post entitled “Was Demi Moore Ralph-Laurenized on ‘W’ Mag Cover, With Missing Hip Flesh?” (<http://boingboing.net/2009/11/17/demi-moore-is-ralph.html>) (the “November 17 Post”).

We have carefully reviewed your December 15 letter. Our client, of course, takes very seriously any allegations of defamation or that statements it publishes are untrue. We believe, however, that your claims are meritless for a number of reasons.

As a threshold matter, as you apparently recognize, virtually the entirety of the November 17 Post (and all of the content of which your client complains) consists of a quotation of statements made by Los Angeles photographer and freelance writer Anthony Citrano. That material was preceded by the phrase “Anthony Citrano says:”, with a hyperlink to Mr. Citrano’s website. The only original text contributed by Boing Boing writer Xeni Jardin was the title: “Was Demi Moore Ralph-Laurenized on “W” mag cover, with missing hip-flesh?” That title is a *question* – opening the issue up for discussion and debate – and does not purport to make a factual assertion or statement concerning the photograph (or Ms. Moore). (In fact, by posing the title as a question, rather than an assertion, Boing Boing has separated itself from Mr. Citrano’s statements and invited its readers to decide for themselves whether they agree with those statements).

Moreover, as you know, Ms. Moore is a public figure. Indeed, by first posing for a magazine cover and then posting about her photograph on Twitter, Ms. Moore has explicitly thrust herself into the public eye (and into this debate) and invited commentary and discussion of her appearance and figure. Accordingly, the “neutral reportage” privilege applies, and Khawar v. Globe International, Inc., 19 Cal. 4th 254, 268 (1998) (holding that the privilege does not apply

to “private figures”) is inapplicable. This is especially true in light of the *subsequent* November 20 Boing Boing Post entitled “Demi claims missing hipflsh is for real. But \$5,000 says it's Moore photoshopping.” (<http://www.boingboing.net/2009/11/20/moore-on-demi-and-th.html>) It appears that you may have been unaware of this second post, which both quotes and links to Ms. Moore’s Twitter post (“Here is the original image people my hips were not touched don't let these people bullshit you!”), as well as Mr. Citrano’s open “challenge” to Ms. Moore for proof that the image was not retouched or photoshopped.

Even aside from the foregoing, it is abundantly clear that the November 17 and 20 Posts (collectively, the “Demi Moore Posts”) are protected by the First Amendment and otherwise cannot give rise to a claim for defamation.

First, it is important to recognize the context in which the Demi Moore Posts were made. As you certainly are aware, the Demi Moore Posts are part of an ongoing discussion concerning the use of photoshopping tools to alter the appearances of female models. More broadly, this issue (originally sparked by revelations that Ralph Lauren edited images of model Filippa Hamilton to make her waistline appear narrower) has led to broad public debate concerning body image issues and the manner in which the practices of professional photographers contribute to such issues. See, e.g., <http://shine.yahoo.com/event/fallbeauty/image-of-ultra-thin-ralph-lauren-model-sparks-outrage-521480/>; <http://opinion.latimes.com/opinionla/2009/10/ralph-lauren-photoshop-filippa-anorexia-eating-disorder-bulimina.html>; <http://www.now.org/press/10-09/10-15.html> This is an extremely serious issue with broad public repercussions, and one which Boing Boing has covered intensely.

In the context of this broad public debate, Boing Boing, a highly respected Internet magazine and blog, was entitled to call into question whether the image of Ms. Moore was altered or retouched. Indeed, that was a wholly reasonable conclusion from the photograph, and many individuals (including those posting to Ms. Moore’s Twitter account) have drawn the same conclusion. Moreover, given Mr. Citrano’s expertise in the field of fashion photography, Boing Boing acted reasonably in publishing his opinions and views concerning the manipulation of the photographs.

Likewise, Ms. Moore’s refutation and response to Mr. Citrano’s statements, and Mr. Citrano’s reply, plainly advance the overall public discourse on important issues. In fact, as you know, the back-and-forth between Ms. Moore and Mr. Citrano has *itself* generated intense public interest – much of it sparked by Ms. Moore’s own decision to inject herself into this debate by posting about the photograph on her Twitter account. Any attempt to silence or stifle this debate and discussion by asserting defamation claims would be contrary to public policy and any such claims plainly would subject to California’s anti-SLAPP statute. See, e.g., *Gilbert v. Sykes*, 147 Cal. App. 4th 13, 21-22 (2007).

Second, even if it could be proven that the statements at issue were “provably false” (which we dispute), given Ms. Moore’s status as a public figure, she cannot possibly prove that any of the statements were made with “actual malice.” *Ampex Corp. v. Cargle*, 128 Cal. App. 4th 1569, 1578-79 (2005) (defamation claims against website dismissed for failure to prove that statements were made with actual malice); *Christian Research Institute v. Alnor*, 148 Cal. App. 4th 71, 84 (2007) (same). Indeed, representatives of W Magazine have conceded that retouching was done

on the photograph, but have vaguely asserted that the retouching was nothing “unusual or out of the ordinary.” See <http://jezebel.com/5402326/the-curious-case-of-demi-moores-left-hip>. That is confirmed by the December 11, 2009, letter from Art Partner, which is artfully worded and does not unequivocally state that retouching or photoshopping was not performed on any part of the photograph. Thus, it was reasonable for Boing Boing to believe that the photograph was retouched in ways that (as confirmed in the case of Ralph Lauren and Filippa Hamilton) have now become common in the fashion business.

In any event, the Boing Boing post was reasonably and thoughtfully premised upon the opinion of Mr. Citrano – a professional photographer with expertise in fashion photography (including manipulation and retouching techniques). Moreover, Mr. Citrano makes clear (as quoted by Boing Boing) that his conclusions are based entirely on his “[b]eing an observer (and occasional shooter) of all things fashion,” and are a result of “just...looking at” the photograph. Mr. Citrano never once states that he possesses any specific knowledge of the process by which the photograph was altered or had any conversations with the photographers, with W Magazine, or with Ms. Moore. That his personal conclusions were reasonable – any by no means malicious – is confirmed by the fact that numerous publications other than Boing Boing have explicitly questioned whether the photograph was altered, with far greater insistence than did Boing Boing. See, e.g., <http://www.popeater.com/2009/11/19/demi-moore-photoshop-controversy/>; <http://www.thehollywoodgossip.com/2009/11/demi-moore-photoshop-controversy-worst-w-cover-ever/>; <http://www.celebridoodle.com/celebridoodle/2009/11/demi-moores-photoshop-disaster.html>

Additionally, as noted above, as soon as Ms. Moore posted her denial (on November 19, 2009), that denial was posted and linked to on the Boing Boing website. Thus, if anything, by November 20, 2009, Boing Boing expressly had acknowledged that there existed a difference of opinion on the matter, that Mr. Citrano’s statements had been challenged by Ms. Moore, and that Boing Boing readers could decide for themselves whether to believe Ms. Moore or Mr. Citrano.

Finally, the Demi Moore Posts are not in any manner disparaging or defamatory. To the contrary, any criticism of the photographs by Mr. Citrano is directed entirely at those who may have altered the photographs – expressing the opinion that the photograph is “bad art (in the sense such mistakes clearly interfere with the photographers goal - let's call it ‘aesthetus interruptus’).” Indeed, Mr. Citrano expressly stated that “[t]o reiterate, Demi is a beautiful woman who needs no help from retouching. This was never about her, nor about retouching – I have no problem with her.” Your claim that Boing Boing insinuated that Ms. Moore “secretly uses extraordinary artificial means to alter her appearance,” or that she “needed, requested, or required digital modification” is simply false. Likewise, we fail to see how your client’s image or reputation has been tarnished or damaged by any of the statements made by Boing Boing (or Mr. Citrano, for that matter).

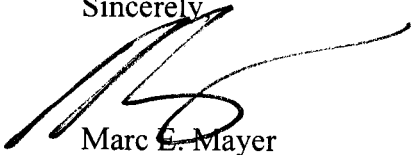
Notwithstanding the foregoing, because Boing Boing believes very strongly in ensuring accuracy and journalistic integrity, Boing Boing is prepared to do the following:

1. Boing Boing shall create a new posting advising its readers of your communication, and quoting the statements made by Mr. Freedman and Art Partner;

2. In its new posting, Boing Boing shall provide a link to the full text of the materials sent yesterday, including your December 15, 2009, letter and the two attachments thereto; and
3. Boing Boing shall place a link to the new blog posting prominently underneath the Demi Moore Posts, along with an "editor's" note at the of the Demi Moore Posts referring readers to the new post.

We trust that this shall resolve this matter.

Sincerely,



Marc E. Mayer
A Professional Corporation of
MITCHELL SILBERBERG & KNUPP LLP

MEM/mem

cc: Rob Rader, Esq.