



October 27, 2011

VIA EMAIL ONLY TO [arosenberg@mymangreenspan.com](mailto:arosenberg@mymangreenspan.com)

Aaron Rosenberg, Esq.  
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11601 Wilshire Boulevard, Ste. 2200  
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**Re: [www.freebieber.org](http://www.freebieber.org)**

Dear Mr. Rosenberg,

I am Intellectual Property Director at the Electronic Frontier Foundation, and I represent Fight for the Future, the nonprofit organization behind the Free Bieber campaign. This letter is in response to your letter of October 25, 2011, regarding that campaign. Having reviewed your claim that my client's website violates Justin Bieber's trademark, privacy and publicity rights, I write to respond to those allegations in detail. Simply put, we believe your legal threats to be entirely baseless.

First, there is no trademark violation here. My client has launched a popular political campaign designed to raise awareness about and comment on what it believes to be the possible implications of legislation now pending in the Senate, the Commercial Felony Streaming Act. As part of that campaign, it has created a clearly political website that uses the term "Justin Bieber" as a necessary part of its message. As such, the site is fully protected by the nominative fair use doctrine. *See, e.g. Century 21 Real Estate Corp. v. Lendingtree, Inc.*, 425 F.3d 211, 218-221 (3d Cir. 2005); *New Kids on the Block v. New America Pub.*, 971 F.2d 302, 308 (9th Cir.1992). The site is also sheltered by the First Amendment. *See L.L. Bean, Inc. v. Drake Publishers, Inc.*, 811 F.2d 26, 29 (1st Cir. 1987); *Cliff Notes v. Bantam Doubleday Dell Publ'g Group*, 886 F.2d 490, 495 (2d Cir. 1989); *CPC Int'l, Inc. v. Skippy Inc.*, 214 F.3d 456 (4th Cir. 2000); *Nike, Inc. v. "Just Did It" Enter.*, 6 F.3d 1225, 1226-27 (7th Cir. 1993); *Mattel, Inc. v. MCA Records*, 296 F.3d 894, 906 (9th Cir. 2002). Finally, given the nature of the campaign, it is inconceivable that anyone would conclude that your client had endorsed it.

Your state law allegations are also without merit. With respect to the privacy claim, we cannot fathom how this political campaign in any way intrudes on any privacy right your extremely public client might assert. As for the purported right of publicity violations, state laws have long recognized that a celebrity's interest in his or her image must be balanced against the public interest in free speech. For example, the California Code explicitly immunizes uses made without consent "in connection with any news, public affairs, or sports broadcast or account, or any political campaign." Cal. Civ. Code § 3344(d). Moreover, fair uses of Mr. Bieber's likeness—such as those on display at the freebieber.org website—are subject to the fullest First Amendment protections. *Hoffman v. Capital Cities/ABC, Inc.*, 255 F.3d 1180, 1186 (9th Cir. 2001); *Comedy III Prods., Inc. v. Saderup*, 25 Cal. 4th 387, 134 (Cal. 2001) ("the very importance of celebrities in

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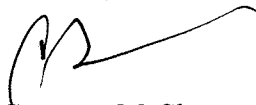
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society means that the right of publicity has the potential of censoring significant expression by suppressing alternative versions of celebrity images that are iconoclastic, irreverent, or otherwise attempt to redefine the celebrity's meaning.”). This is especially true where, as here, the images are transformative and obviously do not impinge on the celebrity's market for his own image. *Id.* at 405; *Gionfriddo v. Major League Baseball*, 94 Cal. App. 4th 400, 415 (Cal. Ct. App. 2001).

If you can provide contrary legal authority, we would be happy to review it. In the meantime, if you have any further concerns please do not hesitate to contact me or my colleague, Julie Samuels.

Sincerely,

A handwritten signature in black ink, appearing to read 'Corynne McSherry', with a long horizontal flourish extending to the right.

Corynne McSherry, Esq.