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PATENT, TRADEMARK, COPYRIGHT,
UNFAIR COMPETITION AND
RELATED ANTI-TRUST MATTERS

April 3, 1987

Ms. Ann Livingston
Gunn, Lee & Jackson
711 Navarro, Suite 720
San Antonio, Texas 78205

Re: International Chili Society, Inc. v. C.A.S.I.,
H. Ray King, and A. Vann York; Civil Action
No. H-86-3968

Dear Ms. Livingston:

This is to acknowledge receipt of your undated letter setting forth what C.A.S.I. is presently willing and not willing to do toward settlement of the above matter and a copy of a settlement proposed by C.A.S.I. - Chili Appreciation Society executed by Mr. Larry F. Burruss as president. If I have misspelled Mr. Burruss' name, please let me have the correct spelling as I intend no offense to the gentleman.

Since we began settlement discussions, several actions have been taken on your part which have raised some very serious reservations and questions in our client's mind. I will defer responding directly to your letter until I share with you our client's present perspective based on the development of events in this matter.

When we first conversed about amicable settlement of this matter, our discussions ran along the lines that it was in the best interest of all involved to quickly resolve this matter to minimize attorney's fees and to enable those involved to focus on their separate endeavors.

Filing of Mr. York's answer appeared to be a reasonable action consistent with the original understanding. The accompanying venue motion was also proper in our opinion to prevent waiver of that right, but somewhat suspect in the absence of citing any authorities.

The subsequent filing of the affidavit of Mr. York with the Court has injected several new troubling concerns into our client's perspective. I feel certain that you have received the supplemental response we filed with the court and I would assume that you have shared that with both of your clients so they are

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fully alerted to and aware of these concerns. Our client's first concern is whether either of your clients has a sincere good faith intent in finally resolving this matter in an amicable manner. Secondly, the affidavit statements of Mr. York's regarding the true intent of Exhibit B raised further concern whether either of your clients or their agents will abide by any amicable settlement. In view of the settlement agreement executed by Mr. Burruss, my client has indicated the willingness to go forward with an effort to amicably settle this matter. Absent the executed agreement of Mr. Burruss showing a good faith effort, I am certain my client would have instructed me to withdraw both settlement offers based on Mr. York's affidavit.

I truly do not know whether to thank you for filing Mr. York's affidavit or not. I simply have never seen an affidavit voluntarily filed that so clearly stated prior actual knowledge raising the inference of bad faith prior to admitting undertaking use of another's mark by C.A.S.I. executive director.

I will now address in the same order the three issues you have raised with the executed C.A.S.I. settlement agreement and our client's concerns.

1. If you will supply us with the Fifth Circuit trademark cases justifying or explaining your client's insistence on the words "not uninvalidated" instead of "valid" we will reconsider our following comments and statements. As I told you in San Antonio, you are simply confusing patent law and trademark law and the proposed language change is wholly unacceptable until you justify the proposed language. There is no reason for such a change unless you contemplate future litigation concerning that agreement and which only further enhances our client's stated concern.

As the United States Supreme Court has held in Park-n-Fly, an incontestable registration is conclusively presumed a valid grant of an exclusive right. I really don't think it is in any of our client's best interest to litigate a well settled issue of "valid" or "not invalid".

2. Our comments with regard to item 1 are equally applicable to your second item. For your convenience, I have attached a copy of the Park-n-Fly decision to refresh your memory which states secondary meaning is present when a registration issues. I am also unaware that secondary meaning is a legal rather than a factual matter. I would appreciate copies of any cases that support your statement.

3. Mr. York's affidavit was most helpful in outlining non-party C.A.S.I.'s intent to use "World" with its logo. Unfortunately you did not attach a copy of the Texas service mark registration so we are unable to properly evaluate your comments.

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As soon as we receive a copy of the registration justifying C.A.S.I.'s use of a circled R on Exhibit A and any other registrations or marks you believe pertinent, we will be able to fully look into the matter.

Your claim of right to use the word "world" is permeated by the same lack of candor as Mr. York's affidavit. That affidavit Exhibit A clearly evidences C.A.S.I. intentionally, and with actual knowledge of our client's rights, used the word "world" in such close proximity to the words "Chili Championship" such that the connotation of "World Chili Championship" is created. Infringement, as you know, is properly determined when viewing the marks in their entireties and not by piecemeal comparison. If affidavit Exhibit A is not wilful infringement of our mark, for which our client is entitled to recover its damages and attorney fees, we will be greatly surprised.

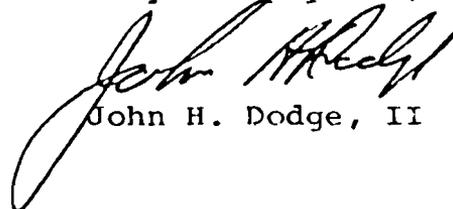
As I mentioned to you, our client is very concerned with non-party C.A.S.I.'s intent is to use the word "World" in a setting or association to create a connotation that would be confusingly similar to our mark. If C.A.S.I. has a specific manner in which they want to use the mark, please let us know. We will look at any such proposal and would be willing to include in the C.A.S.I. settlement agreement such a specific use that would not be confusingly similar to our incontestable registration.

Since you have in your possession the originals of our proposed settlement agreements, I have not enclosed an additional set.

Mr. York's affidavit makes clear the intentional bad faith deception that he personally and as agent for non-party C.A.S.I. has already made. As I have expressed to you previously our client wants to resolve this entire matter permanently. If this means naming C.A.S.I. and each individual officer and director as a party and proceeding with the suit, so be it.

I will be calling in a few days to determine how your clients desire to proceed.

Very truly yours,



John H. Dodge, II

JHD:jb

Enclosures

cc: Jim West