

GUNN, LEE & MILLER, P.C.

ATTORNEYS AT LAW

300 CONVENT, SUITE 1650
 SAN ANTONIO, TEXAS 78205-3717
 (512) 222-2336
 TELEX NO. 650-3319714
 TELECOPIER (512) 226-0262

** Board Certified
 Civil Trial Law
 Texas Board of
 Legal Specialization*

*+ Houston Office
 (713) 850-9922*

DONALD GUNN +
 TED D. LEE +
 MARK H. MILLER
 NICK A. NICHOLS, JR. +
 DAN CHAPMAN
 DAVID G. HENRY
 WILLIAM B. NASH
 MARK A. KAMMER
 PETER K. HAHN +

FILE: G-1039

March 26, 1990

Mr. Rex Jones, President
 Chili Appreciation Society, Inc.
 10268 Vinemont
 Dallas, TX 75218

Dear Rex:

I again apologize for my delay in getting the enclosed proposed letter to the Tolbert group out. Some major litigation kept me out of town and there was only so much of Mark Miller to go around. Other than getting married and beginning a honeymoon on March 31, 1990 (which I note only in passing), getting this matter resolved is now my top priority.

If the proposed letter is satisfactory or if you have any editorial revisions, please let know. The result I wish to reach, which may not be possible, is to convince the Tolbert group to discontinue the complained of practices without the necessity of litigation. On the other hand, if litigation is necessary, I want the letter to serve as a plaintiff's exhibit, concisely setting out why we should win, how reasonable CASI has been, and that it is the Tolbert group which is being irrational. Such a plaintiff's exhibit will help convince the judge and jury that we should win.

The proposed STATEMENT is intended to set out for the Tolbert's exactly what CASI wants and what the new lawsuit will be about. While I do not expect to get a signed STATEMENT back by return mail, it shows the Tolbert group that CASI is not being greedy but that it has certain specific reasonable demands. Hopefully this will be used by the more reasonable Tolbert members in their arguments with the hardliners concerning whether these are matters the Tolbert group should fight over. It is a slender hope but the only best way I can see to avoid another expensive battle.

After you have approved the enclosed letter and I have sent it on its way with any revisions, please send me a copy of the CASI rules so I can compare them with the Tolbert rules with respect to the copyright infringement allegation. To prove copyright infringement, we need to prove that we have been properly using a copyright notice on the documents that contain the words that were copied. CASI may have abandoned its copyright rights in its rules if the CASI rules have not had a proper copyright notice on them. Additionally, a copyright registration is a prerequisite to filing a copyright infringement suit. I need a copy of the rules to file an application for copyright registration of them.

If CASI has been publishing its CASI rules without a copyright notice, then a copyright count cannot be included in the suit. CASI can protect its future changes to the rules by putting a copyright notice on the new rules, "Copyright 1990, CASI." (The notice may be a more complicated due to the rules' history.) Additionally, if CASI seriously intends to file any

Mr. Rex Jones, President
March 26, 1990
Page 2

future copyright infringement lawsuits, it needs to obtain a copyright registration on the work to be protected within three months of the rules being first published.

I again request copies of all of CASI's bylaws, articles, membership rules, publications, etc. This specifically includes a copy of the CASI membership card. I wish to check all these for copyright and trademark compliance.

In this respect I note that I was not required to sign anywhere when applying for my lifetime membership that I would abide by CASI's articles and bylaws. Getting a written agreement from all members to abide by CASI's articles and bylaws will go a long way toward saving CASI legal problems and attorney's fees in the future. The articles and bylaws should, for example, contain a statement that the member agrees that CASI and only CASI has a right to use its trademarks, rules, etc., and that CASI and only CASI is the original Terlingua Chili Cookoff. This would create a contract problem for any persons wishing to break away from CASI while yet using any of CASI's marks listed in the bylaws (such as "original Terlingua cookoff") and create a contract problem for persons who try to belong to both CASI and Tolbert group.

Again, I apologize for the delay. You have my full attention.

Sincerely,


Mark H. Miller

MHM/sg
encls.
CASI\Cookoff1.1tr

cc: Mr. Bob Whitehead
19909 163 Avenue, N.E.
Woodinville, WA. 98072

VIA TELEFAX NO. (206) 453-7740

cc: Ms. Pat Irvine
Attorney at Law
106 W. Court Street
Seguin, Texas 78155

VIA TELEFAX NO. (512) 372-5131

GUNN, LEE & MILLER, P.C.

ATTORNEYS AT LAW

300 CONVENT, SUITE 1650
SAN ANTONIO, TEXAS 78205-3717
(512) 222-2336
TELEX NO. 650-3319714
TELECOPIER: (512) 226-0262

* Board Certified
Civil Trial Law
Texas Board of
Legal Specialization

+ Houston Office
(713) 850-9922

DONALD GUNN +
TED D. LEE +
MARK H. MILLER
NICK A. NICHOLS, JR. +
DAN CHAPMAN
DAVID G. HENRY
WILLIAM B. NASH
MARK A. KAMMER
PETER K. HAHN +

FILE: G-1039

March 26, 1990

TERLINGUA INTERNATIONAL
CHAMPIONSHIP CHILI COOKOFF, INC.
P.O. Box 617
Corsicana, TX 75110

DRAFT

Dear Sirs:

I represent the Chili Appreciation Society, Inc. (CASI).

A copy of a recent Terlingua International Championship Chili Cookoff, Inc. (the Tolbert group) advertisement is enclosed which describes and represents the Tolbert group's Terlingua chili cookoff as being the "original," "the 23rd annual," and "since 1967," and identifies the Tolbert group as "Original Terlingua International Championship Chili Cookoff, Inc."

Chief Judge Lucius Bunton's final Order of April 21, 1988 in C.A.S.I.--Chili Appreciation Society International, Inc. vs. Kathleen Ruth Tolbert, Frank X. Tolbert, Jr., Kathleen Tolbert Ryan, Cause No. SA-86-CZ-1403, filed in the United States District Court for the Western District of Texas, Pecos Division, contains in part the following Findings of Fact:

"Thus, though Frank Tolbert was a compelling personality, a good administrator, and a knowledgeable resource of chili lore, his name was not synonymous from the first or at any time relevant to this suit with the Terlingua event or the Chili Appreciation Society or the marks at issue in this suit.

Undeniably, Tolbert was a strong member of the association. However, the association, no matter its relative informality in the early years, existed apart from Tolbert and was the agent promoting the Terlingua cookoff and using the trademark Chili Appreciation Society International.

In 1983, Frank Tolbert began to conduct a separate Terlingua cookoff on the same day as the one which had its roots in 1967. Defendants did not demonstrate by the preponderance of the evidence that the Tolbert cookoff was promoted under the auspices of the same association which operated a cookoff continually from 1967. There were two cookoffs in 1984 and every year since."

The Lanham Act, the Federal Trademark Act, makes "any false description or representation" of goods or services in commerce an unlawful act (Title 15, United States Code, Section 1125(a)). The Tolbert group's description and representation to the public that it and its current chili cookoff as the "original", "the 23rd annual" and "since 1967" are contrary to Chief Judge Bunton's April 21, 1988 Findings of Fact that "the association [CASI] . . . existed apart from Tolbert and was the agent promoting the Terlingua cookoff and that in 1983, Frank Tolbert began to conduct a separate Terlingua cookoff . . ."

The Tolbert group no doubt still believes that it is the successor to the original 1967 organization and original Terlingua cookoff and that it's Terlingua Chili Cookoff is therefore the 23rd Annual. Nevertheless, the Tolbert group spent tens of thousands of dollars on attorneys, presented its best case in court and lost in a fair fight. If the Tolbert group will not honor the Court's findings, CASI may have to go back before Judge Bunton. Judge Bunton, on comparing the Tolbert group's advertising with his Findings of Fact, is unlikely to find that the Tolbert group's current advertising is truthful.

The Tolbert group was incorporated under the corporate name of "Terlingua International Championship Chili Cookoff, Inc" on July 1, 1983. Firstly, the Texas Business Corporation Act, article 2.05(e), states, in part, "The filing of articles of incorporation under Part 3 of this Act, . . . does not authorize the use of a Corporate name in this State in violation of the rights of another under the federal Trademark Act of 1946 (15 U.S.C., Section 1051 et seq.), the Texas trademark law (Chapter 16, Business & Commerce Code) . . . or the common law." Secondly, the Tolbert group's recent addition of "Original" to its corporate name is a deliberate affront to Judge Bunton's Findings of Fact. It has the effect of further confusing the public into believing that your corporation is the original 1967 organization.

A second related problem is that the Tolbert group is systematically sending Tolbert cookoff packages to promoters who have their names published in the Goat Gap Gazette after they sign up to run CASI sponsored cookoffs. The Tolbert group is aware that promoters published in the Goat Gap Gazette as promoting "CASI" cookoffs or under "CASI Rules" have agreed with CASI to conduct their cookoff under CASI rules. The literature the Tolbert group sends these new CASI promoters is confusing because it describes and represents the Tolbert group and its services as "original," "23rd annual," and "since 1967." The Tolbert group's cookoff package includes "Tolbert Rules" which are largely copied from CASI Rules, further making the Tolbert group's cookoff package confusingly similar to the local promoter.

These activities of the Tolbert group have caused improper rules to be applied at CASI sponsored events, improper results sent in by promoters to CASI, results sent to the Tolbert group rather than CASI, and bad feelings being created from what should be fun events.

CASI is willing to take the Tolbert group on in honest, open, free competition. If the Tolbert group honestly believes that it is different and better than CASI it is free to distinguish itself from CASI, locate and train its own cookoff promoters and have its own chili cookoffs. However, once CASI has gone to the expense and trouble of locating a cookoff promoter, educating the promoter in how to run a chili cookoff, and having the promoter agree to

Terlingua International
Championship Chili Cookoff, Inc.
March 26, 1990
Page 3

conduct the cookoff under CASI rules, interference by the Tolbert group with CASI's agreement and relationship with that promoter for that cookoff is unlawful.

Legally, the Tolbert group's conduct in this respect is termed "interference with beneficial contractual relationships." You may be familiar with Pennzoil vs. Texaco. Pennzoil made an oral agreement with Pennzoil. Texaco, knowing of that oral agreement, interfered with it. The resulting judgment was in favor of Pennzoil for eleven billion dollars. The lesson of that case is that in Texas an agreement is an agreement and that third parties interfere with it at their peril.

A third problem, mentioned above, is that the Tolbert group is copying CASI's cookoff rules. When CASI modifies its CASI rules the Tolbert group copies the changes. The Copyright Act of 1976, Title 17, United States Code, Section 106, makes it unlawful to infringe an author's work by copying it with a substantially similar second work. Tolbert's rules are copied from and are "substantially similar" to the CASI rules. The Tolbert group is, therefore, unlawfully infringing on the CASI's copyright rights to CASI rules.

While this firm represented CASI in its litigation with the Tolbert group, my individual representation of CASI is relatively new (although I am and have been a member of CASI). As a lover of chili and of chili cookoffs, I hope that CASI and the Tolbert group can resolve this matter without, once again, each spending tens of thousands of dollars on attorneys. That money should be spent promoting chili and the wonderful chili culture. The problems discussed above, however, are not mere technicalities. They are causing confusion and hard feelings in the chili world and damage to CASI.

CASI and the Tolbert group already fought this battle once. CASI won and is not looking for a second fight unless one is necessary. The Tolbert group, however, is reneging on the one basic rule of a fair fight, that the loser abide by the result.

A prompt response is needed from the Tolbert group concerning these matters. I enclose a Statement which sets out what the law is and states that the Tolbert group will comply with the law. If the Tolbert group believes CASI is violating the law in some ways that injure the Tolbert group I encourage you to let me know what its complaints are. Perhaps communication between the Tolbert group and CASI may help resolve these issues.

If I do not promptly receive a satisfactory response to this letter, however, CASI will have no choice but to consider its legal alternatives.

Sincerely,

DRAFT

Mark H. Miller

MHM/sg
encl.
casi\cookoff2.ltr

Terlingua International
Championship Chili Cookoff, Inc.
March 26, 1990
Page 4

cc: Mr. Rex Jones, President
Chili Appreciation Society, Inc.
10268 Vinemont
Dallas, TX 75218

cc: Mr. Stephen Grimmer
Haynes & Boone
3100 Interfirst Plaza
901 Main Street
Dallas, TX 75202
Attorneys for Terlingua International
Championship Chili Cookoff, Inc.

STATEMENT

Terlingua International Championship Chili Cookoff, Inc. (the Tolbert group), as a matter of policy, intends to comply with all laws that are applicable to it and to avoid unnecessary entanglements with lawyers and lawsuits.

The Tolbert group will respect CASI's right under the Lanham Act, Title 5, United States Code § 1125(a) by not making descriptions or representations to the public which are contrary to the Findings of Fact made by Chief Judge Lucius Bunton in the final Order of April 21, 1988 in C.A.S.I. - Chili Appreciation Society International, Inc. vs. Kathleen Ruth Tolbert, Frank X. Tolbert, Jr., Kathleen Tolbert Ryan, Cause No. SA-86-CZ-1403, filed in the United States District Court for the Western District of Texas, Pecos Division.

The Tolbert group will respect CASI's agreements with chili cookoff promoters who have agreed to conduct their cookoff under C.A.S.I. rules.

The Tolbert group will respect CASI's copyright rights in its "CASI Rules" as set forth by the Copyright Act of 1976, Title 17, United States Code.

The Tolbert group will not: (1) describe or represent that its chili cookoffs at Terlingua began prior to 1983, or that its chili cookoffs at Terlingua are the "original" Terlingua chili cookoffs, or that it is the "original" Terlingua Chili Cookoff organization, (2) solicit chili cookoff promoters who have already agreed with CASI to conduct their cookoff under CASI rules to conduct that cookoff under Tolbert rules (the Tolbert group reserves the right to communicate with anyone, anywhere, anytime concerning future cookoffs), or (3) copy CASI's chili cookoff rules.

TERLINGUA INTERNATIONAL
CHAMPIONSHIP CHILI COOKOFF, INC.

By: _____
(Full Name)

(Title)

Date: _____