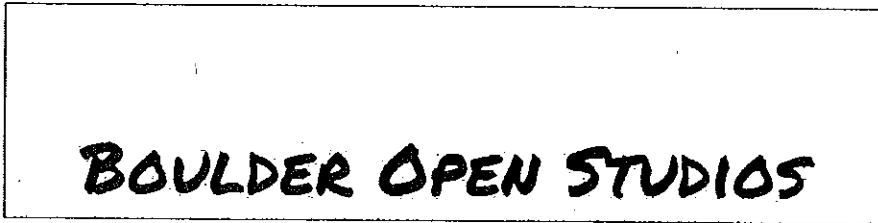




Boulder Metalsmithing Association shared John Uhr's post.

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Brilliant idea, John Uhr. Boulder Open Studios.



John Uhr

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A funny thing happened this evening. Completely by coincidence, I made the acquaintance of Open Studios board-member and attorney, Howard Bernstein. He was discu...

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Robert Manes, Deb Hallinan Batson and 30 others

3 Comments

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Boulder Metasmithing Association

October 10 at 11:17am · 🌐

John Uhr

A funny thing happened this evening. Completely by coincidence, I made the acquaintance of Open Studios board-member and attorney, Howard Bernstein. He was discussing with Chris Brown (respected photographer and O.S. artist) a certain controversy surrounding Open Studios suing a small arts organization. Since I have a passing interest in the matter, I asked Mr. Bernstein a number of questions I had been wondering about and listened carefully to the answers. We spoke for around 45 minutes and at the end I inquired whether Open Studios would abide by the results of the upcoming mediation if it should go against them. His answer (after assuring me that Open Studios would most certainly win) was an emphatic "why would we?"
.....more on our conversation as I have time.

OK, it's later: ...

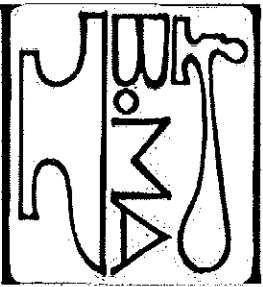
This article reports on an unexpected conversation I had with Open Studios lawyer and board-member, Howard Bernstein. The conversation took place at about 6 PM Oct 10th at Chris Brown's photography studio and in the presence of Chris and Mr. Bernstein's wife, who listened with interest and occasional interjections. If Mr. Bernstein disagrees with my characterization of his position, I would welcome his input. These are his words and position to the best of my memory. I would also like to add that I hold no enmity toward Mr. Bernstein and believe he has the best interest of Open Studios at heart.

- 1) Mr. Bernstein believes that due to the their many years of use of the term, good works, etc. that Open Studios owns the right to the phrase "open studios(s)" for promotion of events in all of Boulder County. I asked if an individual artist (such as Chris Brown) would be allowed to post a sign saying "open studio" and he indicated that he would. I took this to mean that they only wished to control usage by organizations, but didn't pursue the point
- 2) While Mr. Bernstein seemed very anxious to make this issue about Boulder Metasmithing Association and its director/founder, Beth Merkel, it was apparent that he believes that any organization in B. • [Chat \(20\)](#)

Styles			
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2) While Mr Bernstein seemed very anxious to make this issue about Boulder Metalsmithing Association and its director/founder Beth Merkel, it was apparent that he believes that any organization in Boulder County using the term "open studios" is violating OS's rights and that allowing them to continue would be irresponsible. He would very much prefer that other organizations voluntarily stop using the term and that litigation is a last resort if they refuse to stop using it.

3) Mr Bernstein believes that Boulder Metalsmithing's attempt to trademark the term "open studios" was clearly an attempt to get exclusive rights to it's use. (keeping OS from being able to use it). I suggested that it was simply an attempt to ensure that the phrase could continue to be used by anyone, in the face of Open Studio's demands. I said that I and everyone I had spoken to would be equally against anyone else claiming exclusive rights to the term.

4) I pointed out that literally thousands of organizations use the term "open studios", many of them for far longer than Boulder's OS and that I could find no instances of any of them suing to keep exclusive rights, but Mr Bernstein insisted many times that they were "forced" to take legal action. It was clear to me during the course of our discussion that OS is pursuing exclusive rights to the term and will oppose any use of it, using legal means if voluntary compliance is not forthcoming in the misguided belief that they are protecting OS and their artists.

The Solution:
A search for "open studios" reveals that virtually all other of the thousands of open studio organizations attach their open studios name to their location. "Open studio" is a common generic phrase, while "open studios Cornwall" provides the uniqueness commonly valued in a trade name. For the same reason, common descriptive phrases like "farmer's market", "art fair", "film festival" are attached to a location like Boulder County, Pearl St. or CU International when used as an organization's name. I suggested that a simple solution for OS would be to attach their name to "Boulder" or "Boulder County". Mr Bernstein emphatically rejected this idea seemingly because "open studios" had always been "open studios" and always would be. Tradition! The response is ironic because one of the main reasons Mr. Bernstein gave for preventing the use of the term by others is the the potential for "confusion".

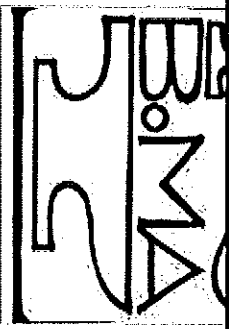
• Chat (21)

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Mr Bernstein also seems to be overlooking a much greater potential source for confusion. If OS doesn't claim "Boulder Open Studios" as a trade name, what prevents another organization from doing so, for instance, as a public forum for discussion of open studios issues and controversies? Talk about confusion!

It seems to me that Open Studios simply made an easily fixed mistake in not using the more appropriate, specific and descriptive name of Boulder Open Studios. Fixing this would do much more to avoid confusion than using a generic descriptive phrase and then being "forced" to prevent other organizations to stop using it.

To make things much easier for Open Studios to adopt this solution, I have purchased the tradename "Boulder Open Studios" and the domain name "boulderopenstudios.org". I am offering these names to Open Studios free of charge if they will acknowledge that the term "open studios" is simply a common generic phrase which should be available for anyone to use.

Like Comment Share

32

Write a comment...

Jillian Kazienko good ideal this is all just silly!

Like · Reply · 2 · October 12 at 2:51pm

Constance Klinger I am thrilled that this happened. Thank you, John Uhr!

Like · Reply · 1 · October 12 at 10:31am

Ruth Balster Thank you John Uhr-I agree-brilliant!

Like · Reply · 1 · October 13 at 6:36pm

Write a comment... Chat (21)

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Boulder Metalsmithing Association

October 13 at 2:30pm · 25

Does everyone know what an open studio is? I bet you do, but just in case, here it is, straight from Wikipedia. An open studio is "a studio or workshop which is made accessible to allcomers, where artistic or creative work can be viewed and created collaboratively. An Open Studio is intended to foster creativity and encourage experimentation in an atmosphere of cultural exchange, conversation, encouragement, and freedom of expression." These are just some of the local businesses and organizations which use the words 'open studio' on their websites in the same context as BoMA does. Will Open Studios will sue them all?

STONELY • Chat (20)

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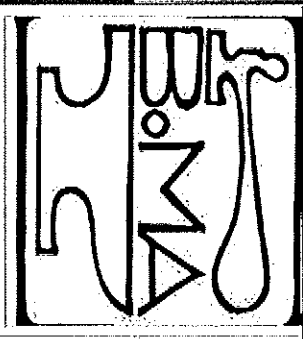
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Boulder Metalsmithing Association October 12 at 7:38am • Chat(20)

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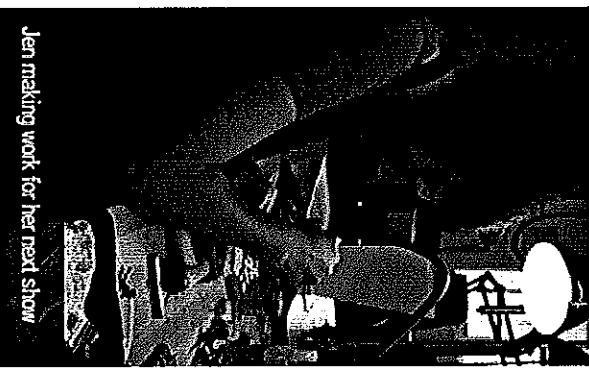


Complaint

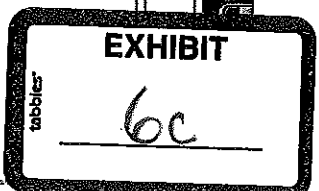
To read Open Studios Complaint filed in Federal Court click here or download the file below.

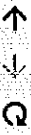
open_studios_complaint.pdf
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This is What BOMA Open Studio Looks Like



Jen making work for her next show





Press

The Daily Camera, our local Boulder newspaper, ran an article about the lawsuit:

Prominent local art group sues local metalworkers to protect its 'Open Studios' name

Others wrote letters to the editor of the newspaper, calling the lawsuit silly and demanding Open Studios stop the bullying:

Drop the lawsuit by Babs Galero

A silly lawsuit by Open Studios by Jen Lesea Ames

Open Studios lawsuit disappointing by Ruth Balster

Open Studios lawsuit and act of bullying by John Urh

Daily Camera

Letter from BOMA Board of Directors

Dear BOMA members and subscribers:

Open Studios has filed suit against Boulder Metalsmithing Association because we use the phrase 'open studio' on our website to describe our shared studio - a common practice among studio artists and arts organizations. They've made a federal case out of this by filing an action in Federal Court!

We describe "BOMA open studio" on our website as a service we provide to people who might not otherwise have a place to work. We share tools, equipment and space and charge a fee for the service. If you'd like to see what BOMA Open Studio looks like, see the photos on this page.

Open Studios has chosen a very generic name that's been in common usage for CENTURIES by artists and art businesses alike. According to Wikipedia, the history of 'open studio' goes back to 17th century Paris in the form of gatherings of intellectuals and artists hosted by a patron.

Can you imagine a grocery store in Boulder naming itself 'Grocery Store', and expecting Safeway, King Soopers, Lucky's Market and Sprouts to



Can you imagine a grocery store in Boulder naming itself 'Grocery Store', and expecting Safeway, King Scoopers, Lucky's Market and Sprouts to stop using the words 'grocery store' in their signage, marketing and advertising? That's exactly what Open Studios is doing.

If Open Studios wanted a less common, more unique name people would immediately recognize as belonging only to them, why not "Boulder Open Studios" or "Boulder Open Studios Tour". And why did Open Studios change their name a few years ago to Open Arts only to change it back again to Open Studios?

As to the ownership of 'open studio', a simple internet search for the term 'open studio' reveals thousands of uses of 'open studio' and 'open studios' throughout the U.S. in connection with both an annual artist studio tour in a particular town or city, and a particular entity's studio which is open to either the public or artist community, as in BoMA's case. Here are just a few local examples:

- Boulder Public Library
- University of Colorado
- Front Range Community College
- Denver Museum of Art
- Art Students League of Denver
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- Front Range Open Studios Tour
- Denver School of Metals
- Clear Creek Academy
- TinkerMill
- Classic Art Academy
- Ink Lounge

Who will Open Studios sue next?

Open Studios says they've asked us nicely to stop using the phrase 'open studio' - that's not quite the case. Nor have other businesses willingly nor easily given in to their demands. At least one other abandoned their defense only after deciding they didn't have the resources to continue.

'Open studio' is a source of revenue for our small nonprofit business. Artists and arts organizations use 'open studio' to indicate a shared



'Open studio' is a source of revenue for our small nonprofit business. Artists and arts organizations use 'open studio' to indicate a shared workspace or time in a studio. People are invited to use an 'open studio' in exchange for payment. 'Open studio' is an important revenue stream for artists and small businesses alike.

The current Executive Director of Open Studios has taken advantage of our 'open studio' as a member of Boulder Metalsmithing Association. She worked on her own projects in our studio and even made a donation to the studio.

'Open studio' is a very common phrase used by metalsmithing schools and guilds all over the country. Metalsmiths know what this phrase means, are looking for it, and are willing to pay for it. A dozen people have contacted us about 'BOMA open studio' time in the past few weeks. 'BOMA open studio' generates revenue for our non-profit!

We need your help to pay for our legal costs - defending our non-profit from another Boulder arts organization is certainly NOT something we budgeted for. A donation of any size - \$10, \$20, \$50 - would help. Donations are tax-deductible and donors will receive a receipt for tax-reporting purposes. Scroll up on this page to make a donation.

If you have an opinion about Open Studios actions, contact them and let them know what you think.

Thank for your support!
BOMA Board of Directors

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We need your help to raise funds for our legal defense. A donation in any amount would go a long way. Donations are tax-deductible and donors will receive a receipt for tax-reporting purposes.

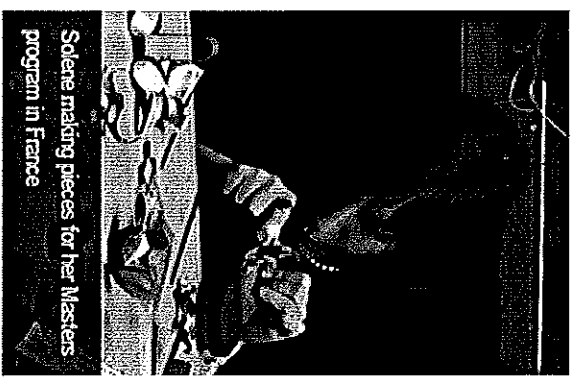


Complaint

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This is what our open studio looks like



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Avery making earrings

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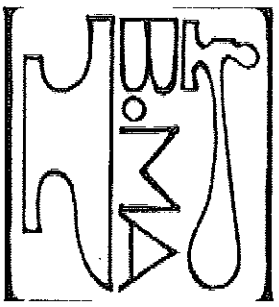
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**Thank for your support!
BOMA Board of Directors**

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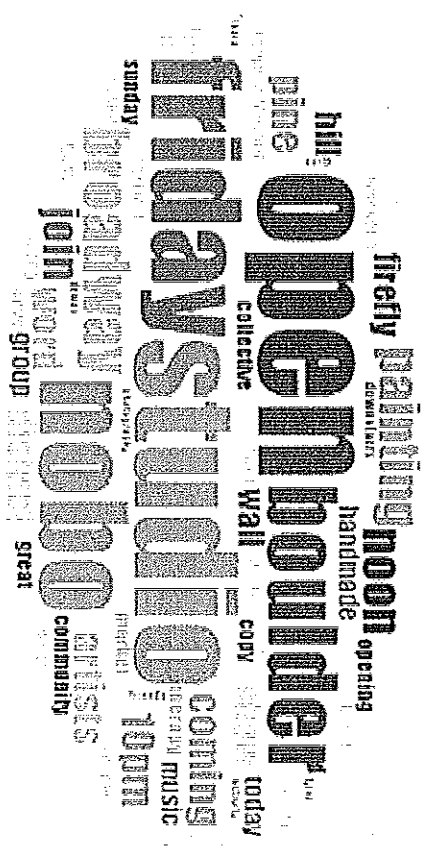
Boulder Metalsmithing Association shared a post
October 6 at 11:44am · US

What are your most used words on Facebook? Open studio seems to loom large for some...



Lisa Nesmith
October 6 at 7:01am · QuizStar

Well now, this is interesting...

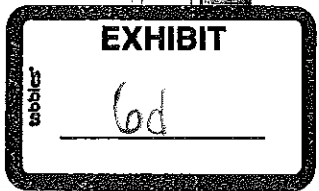


My most used words on Facebook. What are yours?

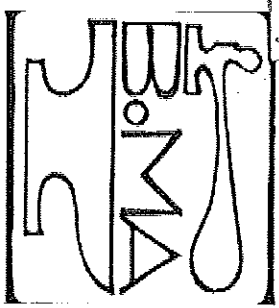
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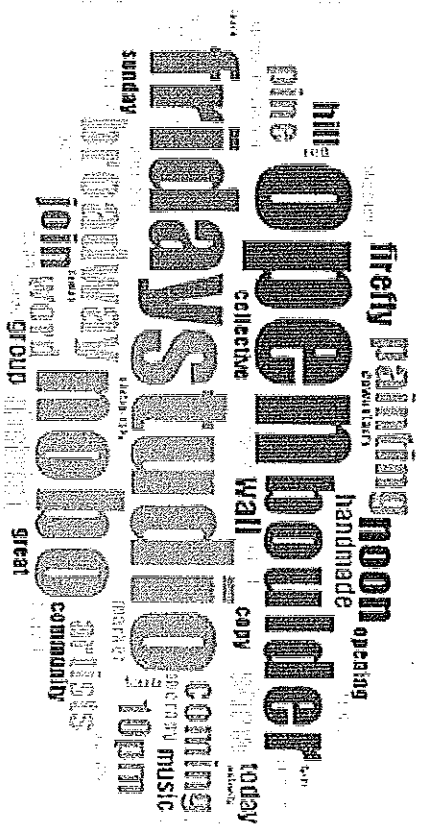
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What are your most used words on Facebook? Open studio seems to loom large for some...

Lisa Nesmith
October 5 at 7:58am QuizzStar

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Jen Lessee-Ames More evidence that open studio is so ubiquitous
October 5 at 11:47am



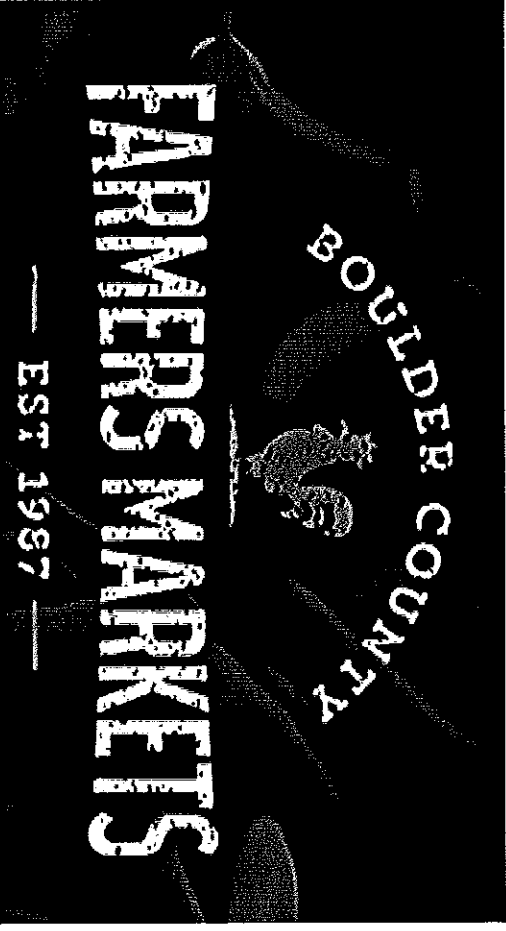
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Boulder Metalsmithing Association shared John Uhr's post

October 12 at 7:26am ·

Silly indeed!



John Uhr
October 11 at 9:59pm ·

How silly would it be if Boulder County Farmers Market had named themselves just "Farmers Market", and then started suing anyone who hung out a "Farmers market" sign on the grounds that they were trying to sow confusion as to who was the REAL "farmers market"? There are endless variations of this analogy which Beth Merkel originally pointed out in her Daily Camera letter.

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Chat (20)

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Boulder Metalsmithing Association shared John Uhr's post.

October 10 at 7:02am

From our friend John Uhr: "A funny thing happened this evening. Completely by coincidence, I made the acquaintance of Open Studios board-member and attorney, Howard Bernstein. He was discussing with Chris Brown (respected photographer and O.S. artist) a certain controversy surrounding Open Studios suing a small arts organization. Since I have a passing interest in the matter, I asked Mr Bernstein a number of questions I had been wondering about and listened carefully to the answers. We spoke for around 45 minutes and at the end I inquired whether Open Studios would abide by the results of the upcoming mediation if it should go against them. His answer (after assuring me that Open Studios would most certainly win) was an emphatic "why would we?"more on our conversation as I have time."

OPEN Studios PARTICIPANT

OPEN Studios

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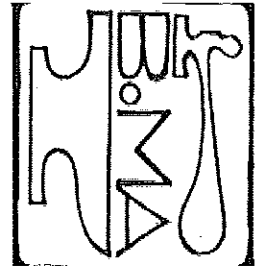
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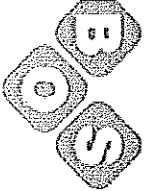
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PARTICIPANT



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John Uhr
October 9 at 10:10pm

A funny thing happened this evening. Completely by coincidence, I made the acquaintance of Open Studios board-member and attorney, Howard Bernstein. He was discou...

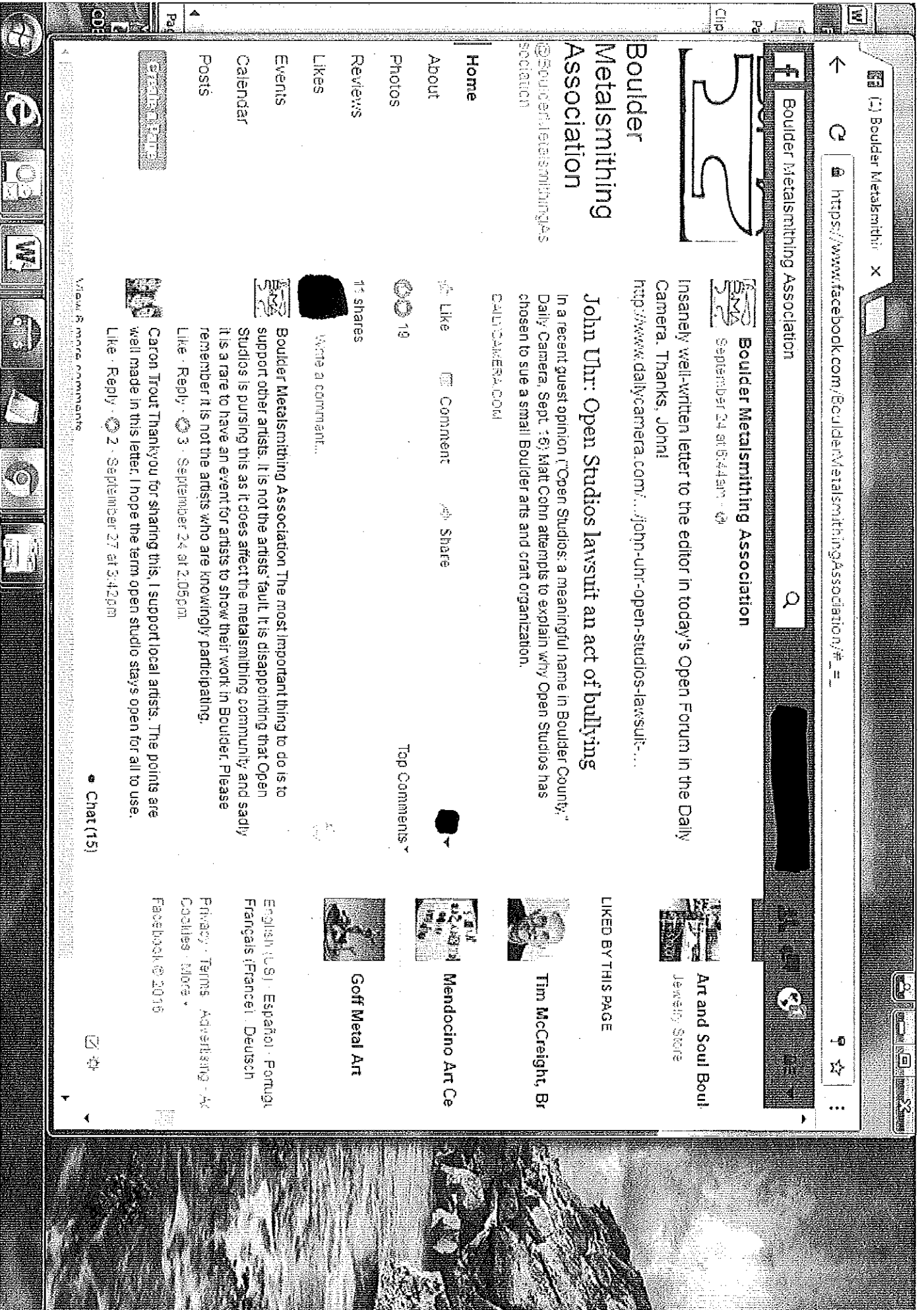
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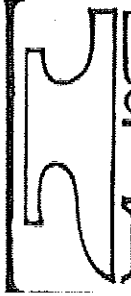
Lynn Waneka Rysdahl likes this.

Boulder Metalsmithing Association
October 7 at 9:37am





Boulder Metalsmithing Association



Boulder Metalsmithing Association

September 24 at 8:44am

Insanely well-written letter to the editor in today's Open Forum in the Daily Camera. Thanks, John! <http://www.dailycamera.com/.../john-uhr-open-studios-lawsuit-...>

John Uhr: Open Studios lawsuit an act of bullying

In a recent guest opinion ("Open Studios: a meaningful name in Boulder County," Daily Camera, Sept. 18) Matt Cohn attempts to explain why Open Studios has chosen to sue a small Boulder arts and craft organization.

DAVID SAHERA COOL

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17 shares

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Created 2016

Caron Trout Thankyou for sharing this, I support local artists. The points are well made in this letter. I hope the term open studio stays open for all to use.

Like · Reply · 2 · September 27 at 5:42pm

Chat(15)

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Goff Metal Art

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Post 1:

- It's a rare to have an event for artists to show their work in Boulder. Please remember it's not the artists who are knowingly participating.
- Like · Reply · 3 · September 24 at 2:05pm

Post 2:

- Caron Trout Thankyou for sharing this. I support local artists. The points are well made in this letter. I hope the term open studio stays open for all to use.
- Like · Reply · 2 · September 27 at 3:42pm

Post 3:

- Pam Caidin What about the technicality that they are "Open Studios", and BOMA calls it "open studio", sans "S"? I would think that would be enough.
- Like · Reply · 2 · September 25 at 8:53pm

Post 4:

- Jen Lessea-Ames All members of BOMA you should be sharing these posts re: letters on your personal and business Facebook pages and encourage those that care about your livelihood to boycott!
- Like · Reply · 2 · September 24 at 8:53am

Post 5:

- Carrie Appel I just learned about this lawsuit what a bunch of bullshit. Keep fighting!
- Like · Reply · 2 · September 26 at 4:50am

Post 6:

- Shellee Funk Completely agree. It is an insane lawsuit.
- Like · Reply · 3 · September 25 at 5:36pm

Post 7:

- Jim Milner Hello Mr. Milner,
- Thank you for informing us of this. I have passed this information along to the staff liaison for Boulder County. Organizations are required to report on their funding through the grant application and final grant report. If you w... See More
- Like · Reply · September 27 at 9:07pm

Post 8:

- Jim Milner so I got this reply from SCFDD in response to my communication with them about the stupid lawsuit***** Hello Mr. Milner,
- Thank you for informing us of this. I have passed this information along to the staff liaison for Boulder County. Organizations are required to report on their funding through the grant application and final grant report. If you fill out a public information request to view their grant application c
- Chat (17)

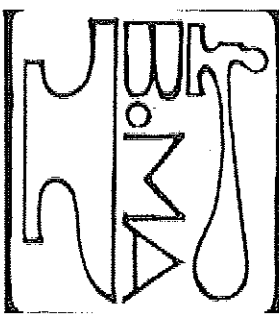
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- Tim McCreight, Br
- Mendocino Art Ce
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Boulder Metalsmithing Association

@BoulderMetalsmithingAs... Association

- Home About Photos Reviews Events Calendar Posts

Boulder Metalsmithing Association
September 23 at 5:08am
'Open Studios lawsuit disappointing.' Another AWESOME guest opinion in the Daily Camera. Thank you, Ruth Balster!

Ruth Balster: Open Studios lawsuit disappointing

As a member of the Boulder Metalsmithing Association (BoMA), I wanted to suggest how disappointed it makes me to think that Open Studios feels the need to bring a lawsuit against BoMA!

Like Comment Share



Write a comment...

Boulder Metalsmithing Association Well said Ruth. It is very disappointing and sad.

- Like Reply 2 · September 23 at 10:42am
Nancy Gorecki Great letter Ruth. I hope they take your words to heart.
Like Reply 2 · September 23 at 11:32am
Joan Scott What she said!
Like Reply 2 · September 23 at 12:23pm

LIKED BY THIS PAGE

Tim McCreight, Br

Mendocino Art Ce

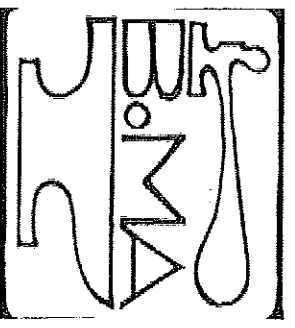
Goff Metal Art

Rio Grande Jeweli Wholesale & Supply

Art and Soul Boul Jewelry Store

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Boulder Metalsmithing Association

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sociation

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Boulder Metalsmithing Association
September 22 at 9:28pm

It's not over yet. You've probably heard Open Studios has filed suit in Federal Court against Boulder Metalsmithing Association because we use the phrase 'open studio' to describe our shared studio - a practice very common among studio artists and arts organizations. You can help. Email Open Studios at cindy@openstudios.org telling them what you think about their action; make a donation to the BoMVA legal defense fund (we've raised over \$2,000 to date) at <http://www.bouldermetalsmiths.com/legal-defense.html>; sign our petition at the studio; or email a letter to the editor at the Daily Camera at opentorum@dailycamera.com. For more information visit <http://www.bouldermetalsmiths.com/legal-defense.html>



Legal Defense

We need your help to raise funds for our legal defense. A donation in any amount would go a long way. Donations are tax-deductible and donors will receive a receipt for tax-reporting purposes.

BOULDERMETALSMITHS.COM

Like Comment Share

2

Write a comment...

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Tim McCreight, Br



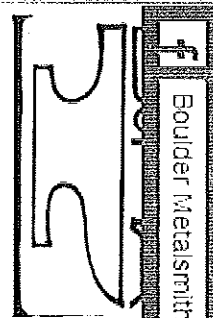
Mendocino Art Ce



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Français (France) · Deutsch

Chat (18)



Boulder Metalsmithing Association

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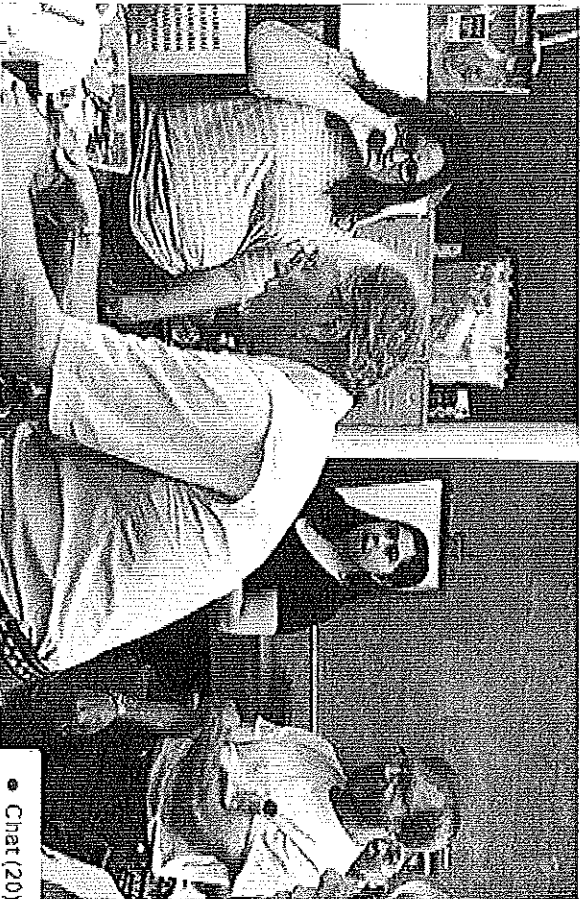
https://www.facebook.com/BoulderMetalsmithingAssociation/photos/a.379225868801641.86915.353339838056911/?type=3



Boulder Metalsmithing Association

September 13 · 9

BoM/A still needs your help. Open Studios has filed suit against Boulder Metalsmithing Association because we use the phrase 'open studio' to describe our shared studio - a practice very common among studio artists and arts organizations. They've made a federal case out of this by filing an action in Federal Court! You can help. Email Open Studios telling them what you think about their action, make a donation to the BoM/A legal defense fund (we've raised over \$2,000 to date) sign our petition at the studio, or email a letter to the Daily Camera editor. for more information visit <http://www.bouldermetalsmiths.com/legal-defense.html>



Chat (20)



Art and Soul Bowl Jewelry Store

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Tim McCreight, Br

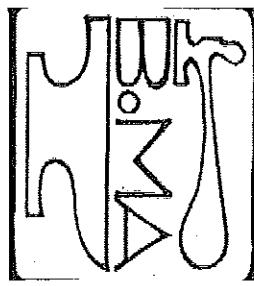


Mendocino Art Ce



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Boulder Metalsmithing Association

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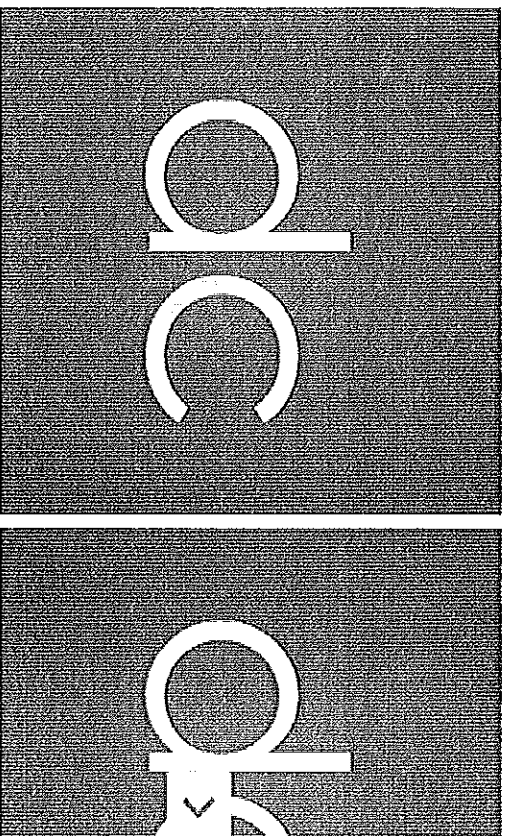
https://www.facebook.com/BoulderMetalsmithingAssociation/?_nc=

Boulder Metalsmithing Association

Write a comment...

Boulder Metalsmithing Association
September 5 · 19

Drop the Lawsuit Yet another fabulous letter to the editor in the DC today.
Thanks, Jen!



Jennifer Lessea-Ames: Drop the lawsuit

Jennifer Lessea-Ames: Drop th

https://www.facebook.com/BoulderMetalsmithingAssociation/photos/?ref=page_internal

Chat (17)

Media News Publish

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Wholesale & Supply

Art and Soul Boul
Jewelry Store

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Browser tabs: (2) Boulder Metalsmithing X

Address bar: https://www.facebook.com/BoulderMetalsmithingAssociation/?_...
 The page title: Boulder Metalsmithing Association

Navigation: Home, About, Photos, Reviews, Likes, Events, Calendar, Posts

Logo: BOMA

Section: Boulder Metalsmithing Association
 @BoulderMetalsmithingAs... Association

Post: **Boulder Metalsmithing Association**
 September 4 · 0

Text: Awesome letter to the editor by Babs Galero in today's Daily Camera. Read on!

Image: A large graphic with the word "OPEN" in white, hollow letters on a dark background.

Text: **Babs Galero: A silly lawsuit by Open Studios**
 It has come to my attention that Open Studios in Boulder is suing Boulder Metalsmithing Association over the use of the phrase "open studios."
 CALLFORCAMERA.COM

Interactions: Like, Comment, Share

Comments: 18
 Write a comment...

Chat (17)

LIKED BY THIS PAGE

- Tim McCreight, Br
- Mendocino Art Ce
- Goff Metal Art

Language: English (US), Español, Português, Français (France), Deutsch

Privacy: Terms, Advertising, Cookies, More

Footer: Rio Grande Jewels Wholesale & Supply, Art and Soul Bowl Jewelry Store

Facebook profile page for Beth Merckel. The browser address bar shows <https://www.facebook.com/bethmerckel>. The profile picture is a black and white portrait of a woman with dark, curly hair. The name "Beth Merckel" is displayed prominently. Navigation tabs include Timeline, About, Friends, Photos, and More. A "DO YOU KNOW BETH?" section contains the text "To see what she shares with friends, send her a friend request." and an "Add Friend" button. An "Intro" section lists her professional affiliations: President and Founder at Boulder Metalsmithing Association, Metalsmith and Jewelry Designer at Beth Merckel Designs, Former Culinary Assistant at Sur La Table, Former Project Manager at Apple Inc., and Studied Psychology at University of Colorado. A "Boulder Open Studios" event is listed for October 10 at 9:38pm, with the text "What a great idea, John Uhr". A chat notification for "Chat (17)" is visible at the bottom of the profile section.

Background image of a rocky, mountainous landscape. A white rectangular label is overlaid in the bottom right corner, containing the text "EXHIBIT" and "6f". A vertical label on the right edge of the image reads "TINY LABEL TEMPLATE". At the bottom of the image, there is a date and time stamp: "9:22 AM 10/20/2016".

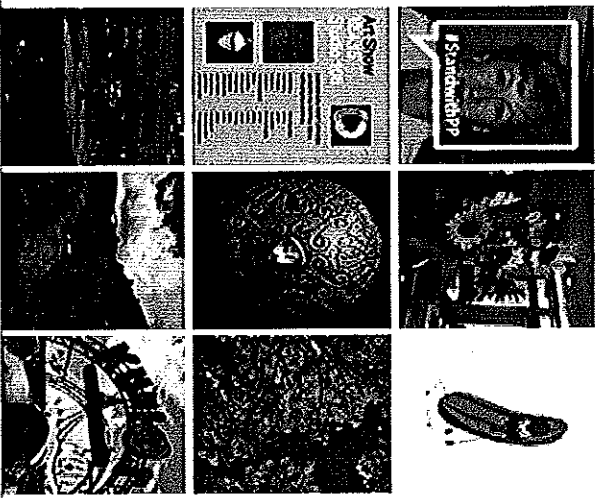
Beth Merckel

https://www.facebook.com/beth.merckel

Beth Merckel

- Former Culinary Assistant at Sur La Table
- Former Project Manager at Apple Inc.
- Studied Psychology at University of Colorado Boulder
- Went to Germantown Academy
- Went to Castilleja School
- Went to Deerfield High School
- Married to William Abbott

Photos



What a great idea, John Uhr

BOULDER OPEN STUDIOS

John Uhr
October 10 at 11:17am · 🌐

A funny thing happened this evening. Completely by coincidence, I made the acquaintance of Open Studios board member and attorney, Howard Bernstein. He was disc...

Like

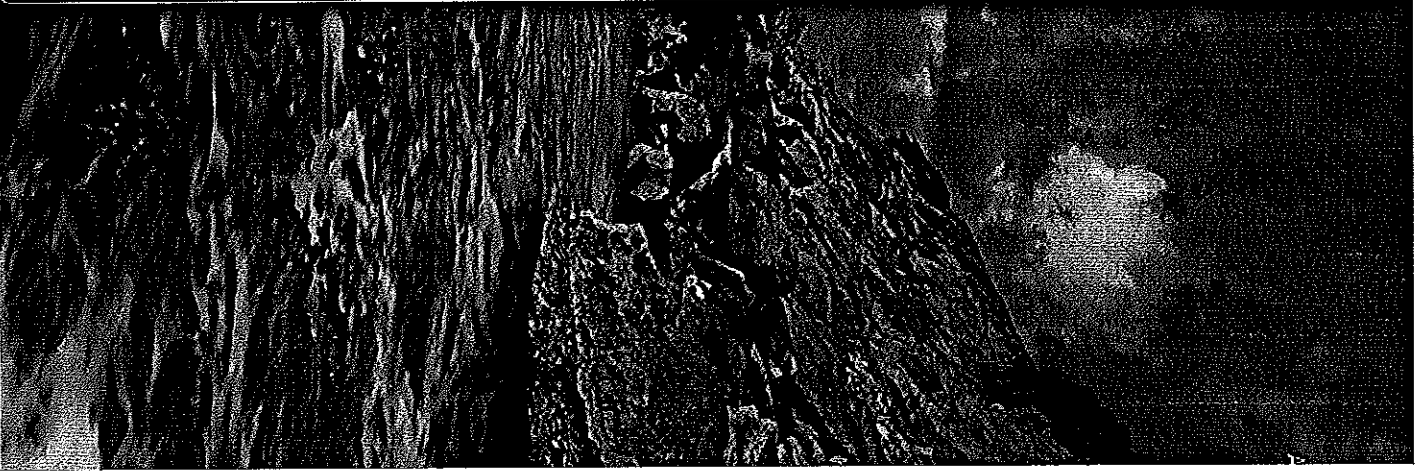
Michelle Throne
Jen Lesca-Ames
Renee Crum

Write a comment...

Chat (17)

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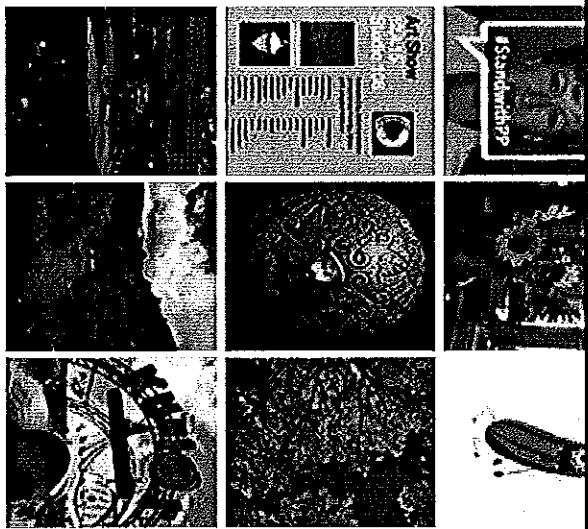
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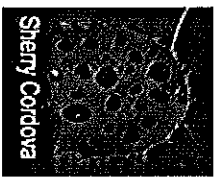
Beth Merkel

https://www.facebook.com/beth.merkel

Beth Merkel



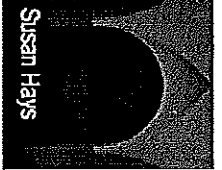
Friends · 247



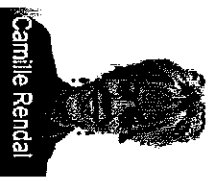
Sherry Cordova



Louis Ramirez



Susan Hays



Camille Rendal



Matt Myers



Pam Cain

John Uhr
October 10 at 11:17am ·

A funny thing happened this evening. Completely by coincidence, I made the acquaintance of Open Studios board-member and attorney, Howard Bernstein. He was discussing with Chris Brown (respected photographer and OS artist) a certain controversy surrounding Open Studios suing a small arts organization. Since I have a passing interest in the matter, I asked Mr Bernstein a number of questions I had been wondering about and listened carefully to the answers. We spoke for around 45 minutes and at the end I inquired whether Open Studios would abide by the results of the upcoming mediation if it should go against them. His answer (after assuring me that Open Studios would most certainly win) was an emphatic "why would we?" more on our conversation as I have time.

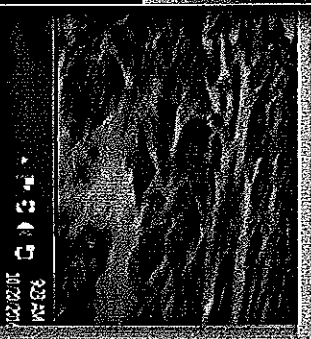
Ok, it's later ...
This article reports on an unexpected conversation I had with Open Studios lawyer and board-member, Howard Bernstein. The conversation took place at about 6 PM Oct 10th at Chris Brown's photography studio and in the presence of Chris and Mr. Bernstein's wife, who listened with interest and occasional interjections. If Mr Bernstein disagrees with my characterization of his position, I would welcome his input. These are his words and position to the best of my memory. I would also like to add that I hold no enmity toward Mr. Bernstein and believe he has the best interest of Open Studios at heart.

1) Mr Bernstein believes that due to the their many years of use of the term, good works, etc. that Open Studios owns the right to the phrase "open studios(s)" for promotion of events in all of Boulder County. I asked if an individual artist (such as Chris Brown) would be allowed to post a sign saying "open studio" and he indicated that he would. I took this to mean that they only wished to control usage by organizations, but didn't pursue the point.

2) While Mr Bernstein seemed very anxious to make this issue about Boulder Metalworking Association and its director/founder Beth Merkel, it was apparent that he believes that any organization in Boulder County using the term "open studios" is violating OS's rights and that allowing them to continue would be irresponsible. He would very much prefer that other organizations voluntarily stop using the term and that litigation is a last resort if they refuse to stop.

Chat (15)

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10/27/2016 10:52 AM

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Facebook profile page for Beth Merkel. The page header shows the name "Beth Merkel" and the URL "https://www.facebook.com/beth.merkel". Below the header is a grid of profile pictures for friends: Camille Rendal, Matt Myers, Pam Caidin, Tze Joy, Kevin Potter, and Lisa Nesmitin. A navigation bar at the top includes links for "English (US)", "Español", "Português (Brasil)", "Français (France)", and "Deutsch". There are also links for "Privacy", "Terms", "Advertising", "Ad Choices", and "Cookies".

The main content area contains a search bar with the letter "Q" and a list of text posts. The visible text includes:

2) While Mr. Bernstein seemed very anxious to make this issue about Boulder Metalsmithing Association and its director/founder Beth Merkel, it was apparent that he believes that any organization in Boulder County using the term "open studios" is violating OS's rights and that allowing them to continue would be irresponsible. He would very much prefer that other organizations voluntarily stop using the term and that litigation is a last resort if they refuse to stop using it.

3) Mr. Bernstein believes that Boulder Metalsmithing's attempt to trademark the term "open studios" was clearly an attempt to get exclusive rights to its use (keeping OS from being able to use it). I suggested that it was simply an attempt to ensure that the phrase could continue to be used by anyone, in the face of Open Studio's demands. I said that I and everyone I had spoken to would be equally against anyone else claiming exclusive rights to the term.

4) I pointed out that literally thousands of organizations use the term "open studios", many of them far longer than Boulder's OS and that I could find no instances of any of them suing to keep exclusive rights, but Mr. Bernstein insisted many times that they were "forced" to take legal action. It was clear to me during the course of our discussion that OS is pursuing exclusive rights to the term and will oppose any use of it, using legal means if voluntary compliance is not forthcoming in the misguided belief that they are protecting OS and their artists.

The Solution:
A search for "open studios" reveals that virtually all other of the thousands of open studio organizations attach their open studios name to their location. "Open studio" is a common generic phrase, while "open studios Cornwall" provides the uniqueness commonly valued in a trade name. For the same reason, common descriptive phrases like "farmer's market", "art fair", "film festival" are attached to a location like Boulder County, Pearl St. or CU International when used as an organization's name. I suggested that a simple solution for OS would be to attach their name to "Boulder" or "Boulder County". Mr. Bernstein emphatically rejected this idea seemingly because "open studios" had always been "open studios" and always would be. Tradition! The response is ironic because one of the main reasons Mr. Bernstein gave for preventing the use of the term by others is the potential for "confusion".

Mr. Bernstein also seems to be overlooking...

At the bottom of the page, there is a "Chat (15)" button and a search icon.

Partial view of a document table with columns labeled "Title" and "Subtit". The table contains the text "AAB AAb" and "g 2".

Beth Merckel

https://www.facebook.com/beth.merckel

Beth Merckel

open studios issues and controversies? Talk about confusion!

It seems to me that Open Studios simply made an easily fixed mistake in not using the more appropriate, specific and descriptive name of Boulder Open Studios. Fixing this would do much more to avoid confusion than using a generic descriptive phrase and then being "forced" to prevent other organizations to stop using it.

To make things much easier for Open Studios to adopt this solution, I have purchased the tradename "Boulder Open Studios" and the domain name "boulderopenstudios.org". I am offering these names to Open Studios free of charge if they will acknowledge that the term "open studios" is simply a common generic phrase which should be available for anyone to use.

Like Comment Share

3

Write a comment...



Beth Merckel

October 10 at 10:00am · 🌐

Open Studios is suing Boulder Metalsmithing Association for using the words open studio to describe our shared studio which offers artists a place to work that they might not have otherwise. Sounds like our scheduled mediation/settlement conference is a waste of time because Open Studios' lawyer says they won't abide by the results of the conference. I wonder if the judge would be interested to hear this?



CAMBRIDGE OPEN

Chat (18)

Fit Re Bel shc are



Facebook interface showing a post by Beth Merkel. The post text reads: "Open Studios is suing Boulder Metalsmithing Association for using the words open studio to describe our shared studio which offers artists a place to work that they might not have otherwise. Sounds like our scheduled mediation/settlement conference is a waste of time because Open Studios' lawyer says they won't abide by the results of the conference. I wonder if the judge would be interested to hear this?"

The post includes several images related to "Open Studios":

- Logo for "BOS PARTICIPANT" with the text "Boulder Open Studios" below it.
- Logo for "OPEN STUDIOS" with the text "Boulder • Colorado" below it.
- Logo for "OPEN STUDIOS" with the text "all colors" above it.
- Logo for "OPEN STUDIOS BOTETOURT ART IN THE COUNTRY" with a palette icon.
- Logo for "CAMBRIDGE ARTS STUDIO" with the text "OPEN STUDIOS" below it.
- Logo for "OPEN STUDIOS CORNWALL 2016" with a circular graphic.
- Logo for "OPEN STUDIOS" with the text "THE STUDIO OF THE YEAR" above it.
- Logo for "OPEN STUDIOS" with the text "SOUTH EAST" above it.

Metadata for the post: October 10 at 10:00am · 0 reactions. User: John Uhr, October 9 at 11:10am. Chat (18).

Microsoft Word document snippet showing text: "Open Studios' I wonder if the judge would be interested to hear this?"

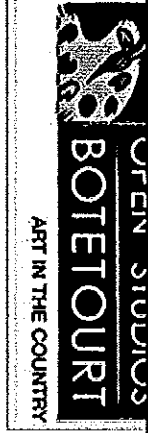
Word ribbon options visible: Styles, Font (F), Paragraph (P), Layout (L), References (R), Mailings (M), Review (Re), Send (S), View (V), Window (W), Help (H).

Document title: cc AAB AABCC. A

Facebook browser window showing a post by John Uhr on October 9 at 11:10pm. The post text reads: "A funny thing happened this evening. Completely by coincidence, I made the acquaintance of Open Studios board-member and attorney, Howard Bernstein. He was discou... See More". The post has 3 likes and several comments. Comments include: "Pam Caidin Damn. Yes, show it to the judge!", "Susan Hays shame on them!", and "Linda Parks They are so out of line, so if an architect, graphic designer, The Studio in Boulder yes that exists on Pearl Street where a client of mine has an office space, an interior designer, hair studio, or any other type of studio wants to do and 'Open Studio' they would sue. Come on trademark your signrage then and let this rest. Boy, do I now have a bad taste in my mouth on that organization and would never visit any studio aligned with that association." The browser's address bar shows "https://www.facebook.com/beth.merkel". The bottom of the browser window shows a taskbar with various application icons.

Beth Merkel

https://www.facebook.com/beth.merkel



John Uhr
October 9 at 11:10pm · 🌐

A funny thing happened this evening. Completely by coincidence, I made the acquaintance of Open Studios board-member and attorney, Howard Bernstein. He was discou...
See More

Like Comment Share

3

Pam Caidin Damn. Yes, show it to the judge!

Like · Reply · October 10 at 11:02am

Susan Hays shame on them!

Like · Reply · October 10 at 11:08am

Linda Parks They are so out of line, so if an architect, graphic designer, The Studio in Boulder yes that exists on Pearl Street where a client of mine has an office space, an interior designer, hair studio, or any other type of studio wants to do and "Open Studio" they would sue. Come on trademark your signrage then and let this rest. Boy, do I now have a bad taste in my mouth on that organization and would never visit any studio aligned with that association.
Like · Reply · October 10 at 1:40pm

Write a comment...

Chat (18)

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