

Subject: Re: Disparagement

EXHIBIT D1

From: Kirstin Jahn <Kirstin@jahnlaw.com>

Date: 10/25/2016 3:25 PM

To: Kate Merlin <katelynnmerlin@gmail.com>, Howard Bernstein <howard@bernsteinattorney.com>

CC: Sara Bridgeforth <admin@bernsteinattorney.com>

Kate,

Please specifically identify or link specifically to the information which is posted which you consider disparaging. The reason for my email was to ensure I received all the remarks you indicated were disparaging.

I will need to look at this specific information so I can further discuss it with my client and then continue with our further discussions of this issue.

Thank you.

Kirstin

On 10/25/2016 2:04 PM, Kate Merlin wrote:

Dear Kirsten,

I received your memorialization email, and we see that your client has removed certain posts regarding Open Studios from BOMA's Facebook page. However, I was disappointed to find several instances on BOMA's website and Facebook that are still making or promoting disparaging, and possibly even defamatory statements about Open Studios and Mr. Bernstein.

During our phone call, I described BOMA's legal defense page and the disparaging language it contained. You told me that BOMA needs to raise more money for its legal defense. However, on this page there is no indication that settlement has been reached or that the conflict has ended. In fact, nowhere on the internet could we find an announcement that BOMA and Open Studios have agreed to settle this matter. The legal defense page as well as both Facebook pages still contain posts as well as links to articles which imply or directly state that Open Studios is a bully, that Mr. Bernstein is getting rich off of this litigation, that the lawsuit is silly, is "creating sour grapes," that Open Studios is willing to sue every arts organization, and asks "who will Open Studios sue next?" The legal defense page states that Open Studios didn't "ask nicely," but instead bullies and threatens smaller organizations, and that Open Studios shouldn't use or doesn't have rights to its name. The legal defense page directly states that Open Studios is "making a federal case" (i.e., that Open Studios is not only overreacting, but should not defend its exclusive rights to its name, as ALL trademark cases are filed in federal court). In general, all of the pages re-litigate the dispute over whether Open Studios can use its name exclusively and continue to case Open Studios in a bad light.

During our phone call I explained to you that BOMA should remove all references to Open Studios from its website and Facebook pages. BOMA has no reason to continue to say anything about Open Studios, and it certainly should not be defaming or encouraging or promoting others to defame Open Studios or Mr. Bernstein. This case is settled, and everyone needs to move on. I was quite disturbed by your decision to include in your proposed final draft of the settlement agreement a statement about "first amendment rights." This indicates to me that your client has no intention of "moving on" from this litigation, but to continue to disparage Open Studios and Mr. Bernstein and attempting to litigate its case in the court of public opinion.

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Sincerely,

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Kate Merlin
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