

Jennifer S. Riggs
Certified in Administrative Law
Texas Board of Legal Specialization
jriggs@r-alaw.com

Jason Ray
Certified in Administrative Law
Texas Board of Legal Specialization
512 457-9812 – direct line
jray@r-alaw.com

RIGGS & ALESHIRE
A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS

700 LAVACA, SUITE 920
AUSTIN, TEXAS 78701
512 457-9806 TELEPHONE
512 457-9066 FACSIMILE

Bill Aleshire
Member, College of
The State Bar of Texas
aleshire@r-alaw.com

Laura Diamond
Member, College of
The State Bar of Texas
512 457-9831 – direct line
ldiamond@r-alaw.com

January 4, 2007

VIA FACSIMILE: 512 533-6003

Ms. Susan K. Bohn
General Counsel
Lake Travis I.S.D.
3322 Ranch Road 620 South
Austin, Texas 78738

RE: LTISD Threat Regarding Use of LTISD Logo on Citizen's Website

Dear Ms. Bohn,

This law firm represents Mr. David Lovelace in the matter you raised in your letter to him dated December 18, 2006 regarding the LTISD logo. You accused our client of infringing on the copyright of the LTISD logo. We have searched the federal copyright registry and find no record of the LTISD logo, but we will assume that the logo is copyrighted, nonetheless.

Your letter omitted any mention of the "fair use" exception in the copyright law as it applies to Mr. Lovelace's use of the logo on his website. As such, your threatening letter to Mr. Lovelace, who at the time was an unrepresented person on this subject, undoubtedly misstated the law. I will assume you were not deliberately misleading Mr. Lovelace about the copyright law but that you were just unaware of this exception. Here is an explanation of the exception.

The LTISD's exclusive right to its copyrighted material is subject to the "fair use" of the material by others. 17 U.S.C.A. § 107. One permissible "fair use" of copyrighted material is for the purpose of "criticism" or "comment." *Id.* Such a use of copyrighted material "is not an infringement of copyright." *Id.*; *Cardtoons, L.C. v. Major League Baseball Players Ass'n*, 95 F.3d 959 (10th Cir. 1996) (holding that the fair use exception as well as free speech rights permits the use copyrighted materials for purposes such as criticism and comment even if the use would otherwise violate the copyright holder's property rights); *Nat'l Rifle Ass'n of America v. Handgun Control Fed'n of Ohio*, 15 F.3d 559 (6th Cir. 1994, cert. denied) (holding that the scope of the fair use doctrine is even wider when the use of the copyrighted material relates to issues of public concern).

We find it particularly ironic that an educational institution like the LTISD would object to such free expression of criticism and comment about issues of public interest. In *Cardtoons*, the issue was whether parody baseball cards violated the rights of the baseball players whose

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images were depicted (and lampooned) on the cards. In recognizing the overriding free-speech right of the parodists, like Mr. Lovelace in this matter, the Tenth Circuit put it this way:

In order to effectively criticize society, parodists need access to images that mean something to people, and thus celebrity parodies are a valuable communicative resource. Restricting the use of celebrity identities restricts the communication of ideas. Without First Amendment protection, *Cardtoons'* trading cards and their irreverent commentary on the national pastime cannot be freely distributed to the public. *Id.* at 972.

The LTISD logo on Mr. Lovelace's website serves the same purpose as the parody card pictures of the major league players in *Cardtoons*.

There is also absolutely no danger that anyone visiting Mr. Lovelace's website would confuse his website with the LTISD official website. *See Id.* at 966-67. After all, the top of Mr. Lovelace's home page contains the following quote from Mark Twain: "God made the Idiot for practice, and then He made the School Board."

Also, in *NXIVM Corp. v. Ross Inst.*, the Court upheld a website operator's use of copyrighted material under the "fair use" exception. *NXIVM Corp. v. Ross Inst.*, 364 F.3d 471 (2d Cir. N.Y. 2004). The Court said, "We agree with the district court that defendants' writings 'are undoubtedly transformative secondary uses intended as a form of criticism. *All of the alleged harm arises from the biting criticism of this fair use*, not from a usurpation of the market by... defendants.'" *Id.* at 482 (emphasis added). We suspect that the LTISD's objection to Mr. Lovelace's use of the LTISD logo on his website is similarly directed at his "biting criticism" of the LTISD. Apparently, you singled out Mr. Lovelace for the copyright threat.

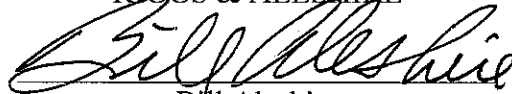
Mr. Lovelace makes fair use of the LTISD logo on his website that criticizes and comments on the LTISD. His website motto is "*Dedicated to disseminating information and facts to the parents and taxpayers of the Lake Travis Independent School District.*" The LTISD may not like Mr. Lovelace's attention or comments, but he has every right to his speech, including the fair use of the LTISD logo.

LTISD personnel are well aware of ongoing litigation between the LTISD and Mr. Lovelace and our representation of him. We are assuming that, until now, you considered Mr. Lovelace not to be represented by counsel *about this subject*. *See* Tex. Disciplinary R. Prof'l Conduct 4.02(a). We do represent Mr. Lovelace regarding this matter.

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Any further threat by LTISD against Mr. Lovelace for his fair use of the LTISD logo will be considered an *ultra vires* attempt to interfere in his protected right of free speech and will be dealt with by this law firm accordingly. I ask that you promptly withdraw the demand you made on Mr. Lovelace in your letter of December 18, 2006.

Sincerely,
RIGGS & ALESHIRE

A handwritten signature in cursive script, appearing to read "Bill Aleshire".

Bill Aleshire

Cc: Mr. David Lovelace