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April 8, 2000

VIA FACSIMILE: (212) 278-1733

David A. Einhorn, Esq.
Anderson Kill and Olick, PC
1251 Avenue of the Americas
New York, NY 10020

RE: SAVINSUCKS.COM

Dear Mr. Einhorn:

In response to your March 23, 2000 letter, please inform your client, Savin Corporation, that I will not relinquish my ownership of the domain name **savinsucks.com**. I will retain rightful ownership of the name because I have the absolute right to do so. My actions violate neither the Lanham Act, nor the Federal Trademark Dilution Act and they are protected by the First Amendment of the U.S. Constitution.

First off, your letter states, inter alia, that I own the "domain name" **www.savinsucks.com**. Of course, **www.savinsucks.com** is not a domain name, it is a "host name."[1] I registered a domain name. I have not created a host name. While this may appear to be a matter of semantics, the distinction between the mere registration of a domain name and the creation of a web server based upon that domain name is significant under both the Lanham Act and the Trademark Dilution Act. In fact, you have cited the very cases that explains the significance of that distinction, namely, Planned Parenthood Federal of America, Inc. v. Richard Bucci . Panavision Int'l, LP v. Toeppen, 41 USPQ2d 1310, 1314 (C.D. Cal. 1996) and Panavision Int'l, LP v. Toeppen, 41 USPQ2d 1310, 1314 (C.D. Cal. 1996).

Planned Parenthood stands for the proposition that establishing a web server fulfills the "in commerce" jurisdictional requirement of the Lanham Act. In the absence of a web server, the domain name **savinsucks.com** is inaccessible and is therefore not used "in commerce."[2] If the "in commerce" requirement of the Lanham Act is not met, the Act simply does not apply. If the Lanham Act does not apply, there is no basis for a Trademark Infringement action. Similarly, Panavision stands for the proposition that the use of a trademark as part of a domain name, without more, is not a "commercial use" of the trademark and therefore is not within the prohibitions of the Dilution Act.[3]

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[1] A host name is the name assigned to a particular Internet "server," either real or virtual, such as a mail server, a news server or a web server. For example, if a web server did exist for the domain name **savinsucks.com**, it would likely be known as **www.savinsucks.com**. A domain name, on the other hand, is simply a name that is set aside for potential use in conjunction with a mail server, news server or web server.

[2] The mere registration of a domain name does not satisfy the "in commerce" requirement of the Lanham Act. New West Corp. v. NYM Co. Of Cal., Inc., 595 F.2d 1194, 1201-1202 (9th Cir. 1979); Juno Online Services LP v. Juno Lighting, Inc., 44 USPQ2d 1913, 1920 (N.D. Ill. 1997); Lockheed Martin Corp. v. Network Solutions, Inc., 44 USPQ2d 1865, 1871 n.3 (C.D. Cal. 1997); Lockheed Martin Corp. v. Network Solutions, Inc., 43 USPQ2d 1056, 1058 (C.D. Cal. 1997).

[3] Registration of a domain name in and of itself does not satisfy the "commercial use" requirement of the Dilution Statute. Panavision Int'l, LP v. Toeppen, 41 USPQ2d 1310, 1314 (C.D. Cal. 1996).

Of course, even if I had established a web server in conjunction with the domain name **savinsucks.com**, only the "in commerce" requirement of the Lanham Act and the "commercial use" requirement of the Dilution Act would be satisfied. The remaining requirements of both Acts would not.

Under the Lanham Act, your client must show that my use of **www.savinsucks.com** is "likely to cause confusion among consumers." Lone Star Steakhouse & Saloon v. Alpha of Va., 43 F.3d 922, 930 (4th Cir. 1995). Thus, your client would have to show that there is likelihood that consumers would be confused between the web server name **www.savinsucks.com** and the web server name **www.savin.com**. Is your client prepared to argue that its potential consumers would likely look for Savin products on the world wide web by typing **www.savinsucks.com** into their web browser? They would essentially be arguing that **Savin does, in fact, suck** and that would surely be quite an amusing argument.

Under the Dilution Act, your client must show, inter alia, that my use of **www.savinsucks.com** is "sufficiently similar" to your client's use of **www.savin.com** so as to evoke an "instinctive mental association" of the two. Ringling Bros.-Barnum & Bailey Combined Shows v. Utah Div. of Travel Dev., 170 F.3d 449 (4th Cir. 1999). Is your client prepared to contend that there is an "instinctive mental association" between the two names? In other words, do consumers instinctively associate the word **Savin** with the notion that **it sucks**?

Therefore, to prevail under either the Lanham Act or the Dilution Act, your client is in the absurd position of having to prove that it does, in fact, suck. So the question becomes **does Savin suck**? I believe it does. That is my opinion and I may express it in any legal way I see fit, whether it be through verbal, written or electronic means. As your letter stated, whether my actions are protected under the First Amendment is a "distinctly different" question from whether it is a violation of the Lanham or Dilution Acts. I agree. In fact, the First Amendment question is the only question left.

It is my absolute right to opine that Savin sucks. It is also my absolute right to register and own the domain name **savinsucks.com** to reflect that opinion. There is nothing that you or your client can do about it. However, if you disagree, please proceed with an action against me. It will be my pleasure to argue on your client's behalf that **Savin must, in fact, suck**.

I would expect a response from you, in one form or the other, within the same period of time that you gave me to respond to your March 23, 2000 letter.

Sincerely,

Peter W. Sachs, Esq.