

ANDERSON KILL & OLICK, P.C.

Attorneys and Counsellors at Law

1251 AVENUE OF THE AMERICAS ■ NEW YORK, NY 10020-1182
TELEPHONE: 212-278-1000 ■ FAX: 212-278-1733
www.andersonkill.com

David A. Einhorn, Esq.
(212)278-1359
deinhorn@andersonkill.com

April 27, 2000

VIA FACSIMILE & MAIL

Peter Sachs, Esq.
76 Hawley Avenue
Milford, CT 06460

Re: www.savinsucks.com

Dear Mr. Sachs:

This letter is written in response to your letter dated April 8, 2000 and on behalf of our client Savin Corporation ("Savin"). We understand that you believe that your registration of the domain name "savinsucks.com" does not violate the Lanham Act or otherwise dilute Savin's well-known marks (previously described in our letters of December 21, 1999 and March 23, 2000).

Particularly, you stated that under Planned Parenthood Fed'n of America, Inc. v. Bucci, No. 97 Civ. 0629, 1997 WL 133313 (S.D.N.Y. Mar. 24, 1997), you believe that your registration of a domain name, and not a host name, containing Savin's registered SAVIN mark, is not a commercial use of that mark. As you have not created a webpage linked with that domain name, it is likely that a court in the Second Circuit could find that you have not yet used Savin's mark in commerce.

However, it is our client's concern that you will, at some point in the future, begin to use the savinsucks.com domain name on the World Wide Web, or as another type of host name. Therefore, we propose that you and Savin enter into a written agreement whereby you agree that you will not use the domain name "savinsucks.com" as part of any host name at any time in the future. As you conceded in your April 8, 2000 letter, such use of savinsucks.com would constitute use in commerce under the Lanham Act. Further, such use could result in liability under the newly enacted Anti-Cyberpiracy Act.

You also state in your letter of April 8, 2000 that even if you were to use the domain name as a host name, Savin could only demonstrate dilution by arguing that the term "sucks" is related to the mark SAVIN. However, this argument revolves around the wrong term. The relevant association is between your domain name and Savin's mark. Your domain name

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includes the term "savin", which is meant to and does cause a direct association with Savin's mark SAVIN by misappropriating Savin's exact mark. Your domain name then juxtaposes Savin's mark with the term "sucks." Thus, Savin only would need to demonstrate the association between "savin" and SAVIN.

As determined, if you choose not to accept our above-mentioned proposal and use the "savinsucks.com" domain name as part of a host name, your use will be in commerce. In that situation, we would not likely have great difficulty in demonstrating that consumers could associate the term "savin" in your domain name with Savin's mark SAVIN.

Additionally, your domain name is meant to tarnish the reputation of Savin by misappropriating the SAVIN mark and associating it with "sucks." Upon this intentional association, a claim for tarnishment can be established. America Online, Inc. v. LCGM, Inc., 46 F. Supp.2d 444, 450 (E.D. Va. 1998) (stating that "[t]he *sine qua non* of tarnishment is a finding that plaintiff's mark will suffer negative associations through defendant's use") (quoting Hormel Foods Corp. v. Jim Henson Prod., Inc., 73 F.3d 497 (2d Cir. 1996)). As stated in the Restatement (Third) of Unfair Competition, § 25, comment g (195), "To prove a case of tarnishment, the prior user must demonstrate that the subsequent use is likely to come to the attention of the prior user's prospective customers and that the use is likely to undermine or damage the positive associations evoked by the mark". Surely, as you intended, your coupling of Savin's mark with the term "sucks" in order to describe Savin, causes Savin's mark to suffer negative associations or to undermine its positive associations. If your use did not cause such negative associations or damage, you would not be accomplishing your purpose of attacking and defaming Savin Corporation.

In the likelihood that you will use your domain name as a host name, it would draw consumers away from www.savin.com. Consumers searching the trademark SAVIN on the Internet would be presented with the savinsucks.com website. Such a host name and pages linked thereto would be "classically competitive" to Savin and tarnish the SAVIN mark. Jews for Jesus v. Brodsky, 993 F. Supp. 282, 308 (D.N.J. 1998) (quoting at length from Planned Parenthood, supra). The host name itself would tarnish and harm Savin's reputation. Similarly, information on pages linked to that host name likely would contain information comparable in content to your domain name. The pages that you have proposed for use in connection with a future host name certainly tarnish Savin's mark.

Based on the foregoing, we renew our request that you withdraw registration of the domain name "savinsucks.com" immediately. In the alternative, we request that you agree in

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writing not to use that domain name as a host name. Please respond to this letter by June 23, 2000.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. A. Einhorn". The signature is written in a cursive, slightly slanted style.

David A. Einhorn

DAE:ads