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September 28, 2023

VIA EXPRESS MAIL AND EMAIL

Bard College
30 Campus Road
P.O. Box 5000
Annandale-on-Hudson, NY 12504-5000

Attn: Leon Botstein, President
Jonathan Becker, Exec. Vice President

Re: Trademark Infringement – “NEW COLLEGE” / “ALT NEW COLLEGE”
M&M Ref.: 9719.70983

Dear Messrs. Botstein and Becker:

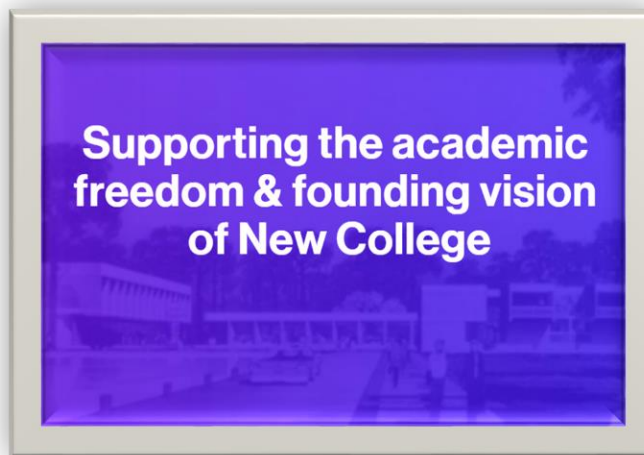
This law firm represents New College of Florida (“New College”) in connection with its intellectual property and unfair competition matters. As you are no doubt aware, our client’s educational institution was founded over six decades ago. Since that time, our client has developed an excellent reputation for educational services offered under its various marks. As but one example, New College is ranked #6 by U.S. News & World Report for Public National Liberal Arts Colleges in the United States.

New College’s educational services are offered under its “NEW COLLEGE” marks and variations thereof. Our client owns all rights in the marks. This includes, without limitation, incontestable U.S. Trademark Registration No. 2,874,703 for “NOVUM COLLEGIUM FLORIDAE MCMLX & Design” (which translates directly to “NEW COLLEGE OF FLORIDA 1960”), as well as U.S. Trademark Application Serial Nos. 98/202,339 for “NEW COLLEGE” and 98/202,348 for “NEW COLLEGE OF FLORIDA.”

New College uses its marks in connection with a broad range of higher educational services and related goods and services. Our client views its intellectual property rights as one of its most vital assets which must be vigorously protected. Unless we receive complete and immediate compliance with the demands set forth herein, we have been instructed to take all necessary steps to enforce New College’s rights.

It has recently been brought to our attention that your organization is making, or inducing others to make, unauthorized use of our client’s “NEW COLLEGE” mark in commerce, and that you are also offering educational services under the confusingly similar “ALT NEW COLLEGE” mark. It is this law firm’s considered opinion that the unauthorized use of the “NEW COLLEGE” mark and the confusingly similar “ALT NEW COLLEGE” mark constitute trademark infringement and unfair competition in violation of federal and state laws, including 15 U.S.C. § 1125(a) of the federal Lanham Act.

The use of the infringing marks is also likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association with New College, or as to New College's sponsorship or approval of the involved services or commercial activities, all in violation of 15 U.S.C. § 1125(a) of the Federal Lanham Act. These actions have caused and will cause damage and irreparable harm to New College. A few examples of the misleading and infringing uses are depicted below:



Fall 2023 Offerings

[\[UPCOMING\]](#) | [\[PAST EVENTS\]](#)

ALT NEW COLLEGE courses and lectures are being developed in partnership with the New College community and with support from Bard and OSUN (the Open Society University Network). More offerings, including accredited courses, will be added over time.

There can be no dispute that these actions have been willful, and were carried out in an effort to trade off the goodwill associated with New College's marks and/or to cause confusion. Therefore, statutory damages, triple damages, punitive damages, a disgorgement of profits, and attorneys' fees are inescapable under these circumstances.

If it becomes necessary to institute legal action to protect our client's rights, all persons responsible for the above-referenced activities will be sued. Personal liability will be imposed against those persons who have the ability to supervise the infringing activity and have a direct financial interest in such activities. *See Tobacco, L.P. v. Novelties, 2023 U.S. App. LEXIS 22073, 2023 WL 5372541* (11th Cir. 2023) (citing *Chanel, Inc. v. Italian Activewear of Florida, Inc.*, 931 F.2d 1472 (11th Cir. 1991)).

Please note that the demands set forth below are not an offer that can be accepted, because any resolution will have to be on the basis of a separate written document that can form the basis of a settlement, such as a written Settlement Agreement. In addition, that Settlement Agreement will need to be reviewed, approved, and signed by our client before any settlement is reached. With that said, if you wish to resolve this matter amicably, you should respond promptly to confirm that you are amenable to a resolution along the lines of the following points, so that we can turn towards drafting a document that can form the basis for a settlement.

Accordingly, until a resolution of the matter is reached, demand is hereby made that you, your organization, its affiliates, its partners, its agents, any persons supervising the day-to-day activities of the organization, and all those in active concert or participation with any of the foregoing:

1. Preserve all documents and electronically stored information related to this matter, including without limitation documents and electronically stored information pertaining to the activities that are the subject of this letter;
2. After preserving all documents, electronically stored information, and all other evidence related to this dispute:
 - a. Refrain from using the "NEW COLLEGE" mark, the infringing "ALT NEW COLLEGE" mark, or any other confusingly similar variations of our client's marks, whether as a trademark, service mark, trade name, business name, corporate name, fictitious name, domain name, product name, web page title, social media handle, storefront name, title tag, meta tag, advertising keyword, description, or in any manner whatsoever in connection with the manufacture, production, purchase, sale, offering for sale, distribution, advertising, publicizing, or identifying of any goods or services or businesses;
 - b. Take all steps to remove/withdraw any and all printed or electronic materials, advertisements, website displays, and any other items bearing the "NEW COLLEGE" mark, the infringing "ALT NEW COLLEGE" mark, or any other confusingly similar variations of our client's marks,

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including without limitation all internet websites, social media posts/pages, and printed media;

- c. Take all steps to remove/withdraw any and all printed or electronic materials, advertisements, website displays, and any other items or content that use any of our client's marks or belong or relate to New College, including without limitation all images, text, and printed media;
 - d. Immediately contact your agents, partners, or any other applicable third party and request that they immediately comply with the demands set forth in this letter;
3. Agree to, in connection with the resolution of this matter, take all steps necessary to transfer any confusingly similar domain names and social media handles to our client, including, but not limited to: www.altnewcollege.org and @altnewcollege;
 4. Reimburse our client for the attorneys' fees incurred in connection with this matter, which will continue to accrue absent strict compliance with the demands in this letter; and
 5. Provide your written agreement to the above terms, and details concerning your compliance with the demands contained in this letter.

What further action to be taken will depend upon the nature of your reply, which we expect **on or before October 6, 2023**.

This letter is not intended to be a complete statement of facts and is written without prejudice to any of our client's rights or remedies, all of which are expressly reserved.

Sincerely,



John Cyril Malloy, III

Partner

jcmalloy@malloylaw.com

Reply to: Miami Office

JCM/oar/kmm