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June 1, 2007

VIA FEDERAL EXPRESS

Mr. Christian M. Keiner
Kronic, Moskowitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814

Re: **Use of AWSNA's Service Marks**
Our File: 037768-2

Dear Mr. Keiner:

We are trademark counsel for the Association of Waldorf Schools of North America ("AWSNA").

We have been asked to respond to your March 26, 2007 letter to Keith Edmonds, Consultant to the California Department of Education. While we do not dispute much of the recitation of trademark law, some of the interpretations of the law are inaccurate and others are irrelevant to the facts relating to the controversy between our clients. This letter is limited to the most salient points of fact and law.

The first point is that AWSNA through its members began use of the WALDORF, RUDOLF STEINER, and STEINER service marks ("the Service Marks") in the United States for educational services in 1929 with the establishment of the first Rudolf Steiner School in New York. The use of the Service Marks has been continuous since that date and has expanded throughout the U.S.

To be protectable as trademarks, surnames must acquire secondary meaning. "Waldorf" and "Steiner" achieved secondary meaning in the U.S. once the public began to associate the names with education following the teachings of Rudolf Steiner. This probably occurred seventy or seventy five years ago.

The second point is that common law rights to trademarks in the U.S. are acquired by being the first to use a mark in a geographic area. A federal registration gives its owner nationwide rights to the mark. AWSNA has had strong common law rights in the Service Marks for decades. WALDORF has been federally registered for almost fifteen years. Applications to federally register STEINER and RUDOLF STEINER are pending.

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The most important point for the issues in dispute is that a trademark owner has the absolute right to control the use of its mark. In controlling the use of the Service Marks, AWSNA has established the criteria for teacher training and curriculum which qualify a school to use the Service Marks. Only those schools which follow the criteria are qualified to be members of AWSNA and AWSNA as the owner of the Service Marks in North America is the only entity entitled to authorize use of the Service Marks by others.

Our responses to the erroneous interpretations of law are as follows:

- The use of the Service Marks on school signs, brochures, mailers, advertisements and the like would be considered “use in commerce” to trigger jurisdiction under the Lanham Act for trademark infringement.
- The citation to the Supreme Court case of United States v. Lopez involving the “Gun-Free School Zones Act of 1990” is irrelevant to the power of Congress to regulate use of trademarks under the Commerce Clause. As you know, the case involved a criminal statute having nothing to do with the Commerce Clause.
- There is no “non-profit” defense to trademark infringement.

Finally, the alleged lack of competition between charter schools and AWSNA member schools is not germane to the analysis of infringement. The test in this case for determining likelihood of confusion and trademark infringement is whether parents and students considering attending a charter school advertising itself as a “Waldorf” school will believe that the school provides a genuine WALDORF education following the criteria and curriculum maintained by AWSNA, the owner of the Service Marks. If there is a likelihood of confusion, there will be trademark infringement.

AWSNA remains very concerned about misuse of its Service Marks. We have heard no credible defense for trademark infringement.

Notwithstanding the legal merits of our respective clients, I do not think it is in the best interests of AWSNA, the Alliance for Public Waldorf Education, or the children and parents of each groups’ schools for us to sharpen our litigators’ swords. Representatives of our clients will be meeting in San Francisco in mid June. Hopefully, they will be able to resolve the matter since both groups to some degree share the same objectives in educating children. Perhaps, you and I can also open a dialogue to help move the matter toward resolution.

Sincerely,



Veronica Colby Devitt

VCD/mjl

cc: Keith Edmonds

AWSNA

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