

THE FUTURE OF NEWCOMB COLLEGE, INC.

February 9, 2009

Dennis H. Tracey, III
Hogan & Hartson
875 Third Avenue
New York, NY 10022

Dear Mr. Tracey:

We are in receipt of your letter of January 29, 2009, and we strongly disagree with each assertion made therein, including that any use of the “Newcomb” mark by The Future of Newcomb College, Inc. (“TFoNC”) is likely to cause consumer confusion. We also take issue with your motivation behind sending such a letter, which was immediately published by your client on the Internet. We believe your letter has been issued and published by you or your client merely for purposes of harassment and embarrassment to TFoNC.

You state that the Administrators of the Tulane Educational Fund (“Tulane”) is the “owner of ... trademarks bearing the name and logo of Newcomb College.” You then list two trademark registration numbers which Tulane allegedly “owns,” and you list eight serial numbers of trademark applications for which you allege Tulane is the “owner.” You contend that certain products sold by TFoNC infringe Tulane’s rights to the mark “Newcomb.”

The claims stated in your letter are plainly without merit. In spite of the impressive list of registrations and applications you allege, we do not believe that Tulane has valid registrations to the “Newcomb” marks, nor are the applications for the serial numbers listed in your letter valid. Despite your contention to the contrary, we are absolutely unaware that Tulane sells merchandise “emblazoned with the Newcomb name and the oak tree and the acorn” as no such goods are sold on Tulane’s website or in the bookstore. We are thus led to believe that your client has committed fraud on the Patent and Trademark Office by filing Amendments to Allege Use. Before proceeding further, please provide us with the following information so that we may evaluate your claims:

1. Evidence of use of the “Newcomb” mark in commerce at the time you filed each Amendment to Allege Use;
2. Evidence of Tulane’s intent to use the “Newcomb” and “Newcomb College Seal” marks;

3. Evidence of any exclusive right granted to the Tulane Administrators by serial number 78/182,572;
4. Any evidence of consumer confusion.

It seems especially incredible that Tulane has filed intent-to-use applications for the Newcomb College Seal marks given that Tulane has improperly violated the intentions of Mrs. Newcomb and dissolved Newcomb College. There can be no question that Tulane had no intent to use these marks when it filed for such trademark applications. Please note that in view of Tulane's questionable ownership and intent to use these marks, we are considering cancellation and opposition proceedings to Tulane's trademark registrations and applications.

Finally, even if Tulane does have valid trademark rights in the Newcomb marks, which we vehemently dispute, TFoNC's use of such marks is a non-infringing use. Not only is there no likelihood of any consumer confusion, but TFoNC's use of the "Newcomb" mark is clearly fair use and/or protected by the First Amendment. Should you have evidence to the contrary, please advise.

We look forward to your forthcoming response.

Sincerely,

The Future of Newcomb College, Inc.

A handwritten signature in cursive script that reads "Renee Seblatnigg". The signature is written in dark ink and is positioned above the printed name.

Renee F. Seblatnigg, President

THE FUTURE OF NEWCOMB COLLEGE, INC.

February 25, 2009

Dennis H. Tracey, III
Hogan & Hartson
875 Third Avenue
New York, NY 10022

Dear Mr. Tracey:

We are in receipt of your e-mailed letter dated February 13, 2009, which completely ignores the issues raised in our correspondence of February 9, 2009. Your failure to address any of the questions posed in our February 9th letter is a clear indication that Tulane's claims against The Future of Newcomb College, Inc. ("TFoNC") are baseless.

Perhaps most glaring is your failure even to attempt to state a case for likelihood of confusion, undoubtedly because you cannot do so. First, the use by TFoNC of the alleged mark "Newcomb" (hereinafter " 'Newcomb' mark") on certain goods is part of the larger logo "Newcomb Lives." This expression alone should make clear to consumers that TFoNC's goods are not from or associated with Tulane, which has improperly dissolved Newcomb College. Moreover, no purchaser of TFoNC's merchandise could possibly be confused that there is an association between TFoNC and Tulane, or that TFoNC's merchandise is from or sponsored by Tulane, because goods offered by TFoNC are done so on a website that specifically describes TFoNC and states that the goods "are available only through TFoNC, and 100% of the revenue goes to support the donor intent lawsuit." Thus, there is no possibility that a consumer would be deceived by the sale of any merchandise by TFoNC.

While we understand that Tulane's registrations are *prima facie* evidence of the validity of such trademark registrations, we reiterate that we dispute a valid ownership of the "Newcomb" marks, as well as whether Tulane had an actual use of the mark when it alleged use before the Patent and Trademark Office ("PTO"). As you must know, fraud on the PTO would result in an invalidation of Tulane's trademark registrations.

Further, we take issue with your derogatory comments about our understanding of trademark law. Rather, it appears that you do not understand that trademark rights are dependent on use of the relevant mark in commerce. Despite prior use of the "Newcomb" mark in connection with some goods and services, we do not believe Tulane currently uses "Newcomb" in commerce for many of the goods on which it has alleged use. By dissolving Newcomb College, and failing to otherwise use the "Newcomb" mark in commerce, Tulane has abandoned its rights in the "Newcomb" marks.

You state that Tulane sells “jewelry, notecards and glassware emblazoned with the Newcomb name and the oak tree and acorn.” We have reviewed the website referenced in your letter and do not find any such goods “emblazoned with the Newcomb name.” Rather, it does not appear that the Newcomb mark is placed in any manner on the glassware or the jewelry. The glassware is “emblazoned” with designs of Louisiana iris, which have no known identification with Newcomb College or Tulane University, and the glassware and jewelry on the site are clearly sold under the name of Mignon Faget. The notecards are sold as a product created by Grace Jahncke Newburger, and it does not appear that the use of the name “Newcomb College” on the notecards inures to the benefit of Tulane. Furthermore, while those notecards may include the reference to “Newcomb College,” the notecards sold by TFoNC are merely a depiction of Newcomb Hall. In addition, your letter fails to mention any sale of clothing goods, tote bags, and other such products on which Tulane is claiming an exclusive right to use the “Newcomb” mark. Again, we request that you provide evidence that Tulane is in fact using the “Newcomb” mark on such goods.

Finally, we suggest that you review the case law related to the defenses of nominative fair use and the First Amendment, because they are clearly applicable to Tulane’s present claims. *See, e.g., Mattel, Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 809 (9th Cir. 2003). It should be obvious that TFoNC is using the “Newcomb” mark as part of the phrase “Newcomb Lives” for the purposes of criticism, commentary and as a point of reference, and such use is protected by the doctrine of nominative fair use and by the First Amendment. We do not believe any court would find Tulane’s attempts to chill the free expression of commentary and criticism to be well-taken.

Again, we look forward to your forthcoming response.

Sincerely,

The Future of Newcomb College, Inc.



Renée F. Seblatnigg
President