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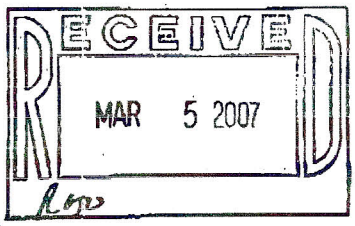


Ron H. Oberndorfer
Fischbeck & Oberndorfer
5464 Grossmont Center Drive, 3rd Floor
La Mesa, CA 91942

**Re: ragesd.com/ragesd.org**

Dear Mr. Oberndorfer :

As counsel to the Sycuan Band of the Kumeyaay Nation, we are writing in response to your demand on behalf of RAGE that Sycuan cease and desist from using the ragesd.com domain name. You contend that Sycuan's use of the **ragesd.com** domain violates your client's federal trademark rights in **ragesd.org**. Presumably, you have in mind the Lanham Act's prohibition of trademark uses that are likely to cause confusion about the source of a product or service, or to dilute a mark's quality. *See* 15 U.S.C. §§1114 (infringement), 1125 (false origin and dilution). However, as you undoubtedly know, the Lanham Act subjects claims to a commercial use requirement (among others), meaning that RAGE cannot raise a cognizable trademark claim unless it demonstrates that Sycuan used your client's mark in connection with the sale of goods and services. *See* 15 U.S.C. §§1114(a)(1), 1125(a)(1); 1125(c)(1); *Bosley Med. Inst., Inc. v. Kremer* (9th Cir. 2005) 403 F.3d 672, 676-80. Ragesd.com takes users to a site that provides facts about the Sycuan Tribal Gaming Compact; the domain is not used in connection with the sale or advertising of goods or services. *Compare Nissan Motor Co. v. Nissan Computer Corp.*, 378 F.3d 1002 1006-07 (9th Cir. 2004). Thus, we fail to see how Sycuan's use of ragesd.com violates your client's rights under the federal trademark laws. Any state common law claims likely would fail for similar reasons.

In any case, a court would dismiss your claims if you chose to litigate them. "As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe v. Mfg. Techs., Inc.* (1998) 523 U.S. 751, 754; *Trudgeon v. Fantasy Springs* (1999) 71 Cal.App.4th 632, 635-36. Tribal immunity "extends to individual tribal officials acting in their representative capacity and within the scope of their authority," *Stock West Corp. v. Taylor* (9th Cir. 1991) 942 F.2d 655, 664, and covers commercial

as well as governmental activities. *Kiowa*, 523 U.S. at 760. Waivers of immunity are construed narrowly and must be unequivocally expressed. *Santa Clara Pueblo v. Martinez* (1978) 436 U.S. 49, 58; *Trudgeon*, 71 Cal.App.4th at 636. As neither Sycuan nor any of its officials have waived immunity from suit by your client, any claims brought against them would immediately elicit a motion to dismiss; a court would grant that motion without hesitation.

In short, we see no legal basis for your client's trademark claims, and no reasonable prospect for pursuing them successfully in court. If you have any questions or wish to discuss these issues further, please contact the undersigned rather than any Sycuan tribal officers or employees.

Sincerely,

Jay B. Shapiro

cc: Daniel J. Tucker, Chairman
Adam Day
Diane Vitols