

July 27, 2005

BY CERTIFIED MAIL &
EMAIL (dns@[REDACTED].com)

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**Re: Use of Marks Owned by Burger King Brands, Inc.
Our Ref. No. 027610.03633**

Dear Mr. [REDACTED]:

We represent Burger King Brands, Inc. ("BKB") in matters pertaining to intellectual property. It has come to our attention that [REDACTED], Inc. is selling t-shirts featuring a modified version of BKB's famous, federally registered crescent design mark on its website located at <beaverking.net> and various other gag and prank related sites. Depictions of BKB's mark (left) and your modified version (right) follow:



Your t-shirts also feature the phrase HAVE IT OUR WAY, which is a modified version of BKB's famous, federally registered mark HAVE IT YOUR WAY. Screenshots from your website are attached. A screenshot from your site located at [REDACTED].com listing your gag and prank related sites is also attached.

BKB owns all right, title, and interest in and to its famous crescent design mark. It owns many federal registrations for this mark, including, for example, U.S. Reg. No. 2,445,009, which covers t-shirts and other articles of clothing. BKB also owns several federal registrations for the mark HAVE IT YOUR WAY, including, for example, U.S. Reg. No. 961,016.

The deceptive and misleading use of another party's marks, or confusingly similar marks, in a manner likely to confuse consumers violates Sections 32 and 43(a) of the Federal Lanham Act, as well as state trademark laws. Diluting a famous mark by placing it on goods that could tarnish the mark owner's reputation violates Section 43(c) of the Federal Lanham Act and state dilution laws. Penalties for these violations can include all profits resulting from the unauthorized uses,

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all damages to the mark owner, and all court costs and attorneys' fees. Courts may also treble the damages. In addition, copying and distributing another party's copyrighted work (such as BKB's crescent design) may violate the Federal Copyright Act. Courts may award statutory damages for copyright infringement of up to \$150,000, in addition to attorneys' fees and costs.

Without prejudicing or waiving BKB's right to seek further remedies or relief, this letter constitutes a formal demand by BKB upon ██████████, Inc. and upon any associated or affiliated persons or entities (collectively, "you") to:

1. immediately cease and desist and refrain from manufacturing, importing, displaying advertising, offering for sale, selling, or otherwise distributing any further materials incorporating or bearing BKB's crescent design or HAVE IT YOUR WAY marks or any marks confusingly similar thereto, including the BEAVER KING crescent design and HAVE IT OUR WAY marks referenced above (collectively referred to herein as the "Modified Marks");
2. deliver to the undersigned no later than 5:00 p.m. (EST), **August 10, 2005**, a letter from you confirming that you have complied with the demand in Item 1, above, and setting forth the following:
 - i. a complete list of all items on which you have used either of the Modified Marks, including, without limitation, (a) all types of clothing; (b) advertisements; (c) stationery, business cards, and the like; (d) promotional materials such as websites, brochures, fliers, press releases, and the like; and (e) and any other merchandise used for promotional or sale purposes;
 - ii. in detail, how you have complied with the demand in Item 1 above;
 - iii. whether each item bearing either of the Modified Marks was created by you or by a third party for you to your specifications (and, if the latter case applies, the identity of that designer or vendor, including its name, address, and telephone number and the name, address, and telephone number of such manufacturer's or vendor's domestic representative, if any);
 - iv. (a) the number of t-shirts or any other items featuring either of the Modified Marks that you manufactured, purchased, or otherwise acquired; (b) the amount of money or other consideration paid by you for these items; and (c) the number of these items that remain in your inventory as of the date of your receipt of this letter and as of the date of your written response;
 - v. (a) the number of t-shirts or any other items featuring either of the Modified Marks that you have sold; and (b) the amount of money or other consideration received by you for the sale of these items as of the date of your receipt of this letter and as of the date of your written response; and

██████████, Inc.

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- vi. an affirmation as to the completeness and accuracy of the statements made by you to these demands; and
3. deliver to the undersigned for destruction, no later than **Wednesday, August 10, 2005**, all items or materials bearing either of the Modified Marks in your possession or under your control.

In complying with the demand in Item 2 above, you should include copies of all evidence relating to the manufacture, importation, sale, and/or distribution of items featuring either of the Modified Marks, including, without limitation, invoices, sales receipts, order forms, requests for proposals, bid sheets, sales summaries, and all internal accounting forms.

Upon receipt of the above information, BKB will determine the amount of monetary damages necessary to compensate it for your violation of its rights. The forthrightness and cooperation that you display in complying with BKB's demands will be an important consideration to BKB in assessing the appropriate compensation and other relief.

If we do not receive a satisfactory response from you by **Wednesday, August 10, 2005**, we will have no alternative but to advise BKB to consider pursuing all available remedies against ██████████, Inc. and any of its officers, directors, owners, employees, and agents who have materially participated in the unlawful activities described herein.

Please note that BKB aggressively defends against the misuse and infringement of its intellectual property and has vigilantly prosecuted such misappropriations in the past. If you have any questions or comments regarding this matter, you or your counsel may contact me at (202) 715-8411.

Sincerely,



N. Christopher Norton

cc: Burger King Brands, Inc.

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We currently offer Large and Extra Large sizes.

Size

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