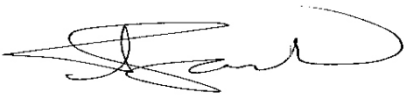


Dear Members:

As Chair of the NACA Board, I take the legal actions that have been pursued by APCA and Cameo Publishing very seriously. In response to recent claims made by the opposition, I feel it is important that our side of the story is available for our members and others. For too long, I feel we have ignored the opposition and allowed them to frame the disagreement with their own version of the story.

For the rest of my term, whenever the opposition posts or publishes anything related to the lawsuit that is not factual, I will respond with a "fact checking" document. This is not meant to be a "he said/she said" back and forth, but rather the truth as I know it. Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ahmed Samaha', with a stylized flourish at the end.

Ahmed Samaha
NACA Board of Directors Chair

The lawsuit brought against NACA by WC Kirby and Eric Lambert was filed in August 2008. Now, more than two years later, the case is still in the hands of the Trademark Trial and Appeal Board where decisions will be made regarding trademark rights before the case goes back to the federal civil court. The case has been painfully slow. Most of the delays have been due to extensions and suspensions requested, and deadlines missed, by the attorneys for Lambert and Kirby. In the meantime, they have distributed a considerable amount of misinformation to NACA's members and others regarding this case.

It has been NACA's position to allow the case to be tried in the appropriate legal arena following the judicial process, which is what Kirby and Lambert chose in the first place. NACA did not wish to try the case in the "court" of public opinion.

However, Kirby and Lambert have repeatedly issued missives about the case in the campus marketplace that include incorrect, false and misleading statements. Consequently, NACA is compelled to respond to set the public record straight regarding statements that cast a false light on NACA to its members, potential members and colleagues.

The leadership of NACA rightly believes that it would be a disservice to the association, the marketplace and its members if we did not defend the case vigorously. Taking that course of action through the legal system is necessary. Defending against the accusations being distributed to our members and others in the marketplace is just as difficult, if not more so, due to the amount of misinformation that is being disseminated by Kirby and Lambert.

The two most recent public statements from WC Kirby were his editorial in his publication *Campus Activities Magazine* and on a website he developed to post information about the lawsuit.

The purpose of this document is not to argue the case in the marketplace but to provide a "fact check" to clarify misrepresentations or inaccuracies in these two and any future public statements about the case that are issued by WC Kirby, Eric Lambert or their agents. Much of Kirby's commentary is slanted in the extreme and represents opinion rather than fact, so not every comment can be reasonably addressed other than to say, once again, that NACA must protect NACA's name and trademarks from dilution and confusion in the marketplace. That has always been NACA's ONLY intent.

The following are assertions in the two publications mentioned above, each followed by the truth and clarification:

Publication: Campus Activities Magazine, September 2010
Article: Who Owns "Campus Activities"
Author: WC Kirby

Kirby Assertion: In paragraph two, WC Kirby states: "...campuses close to NACA had been ill informed as to the actual circumstances around this suit."

FACT: Kirby does not indicate the source of the information to whom he is referring. However, the implication is that individuals representing NACA were spreading false information. All information regarding the lawsuit provided by NACA to its members and anyone else has been carefully vetted and reviewed by NACA's legal counsel to ensure its accuracy. NACA has not made any untruthful claims. Moreover, the legal proceedings are public record and NACA's filings can be reviewed by anyone.

Kirby Assertion: In paragraphs three through five Kirby implies incorrectly that by purchasing the domain names in question, NACA purposely and maliciously took steps to do harm to his company and to APCA.

FACT: There was never any intent on the part of NACA to cause harm to or impede the business of APCA or Cameo Publishing. In February 2008, prior to filing the lawsuit, rather than reaching out to NACA to resolve their concerns peaceably, Eric Lambert sent out a message to NACA members regarding the purchase of the domain names implying malice on NACA's part. Neither APCA (Lambert) nor Cameo (Kirby) made any attempt to contact a staff person or board member of NACA.

Alan Davis, Executive Director of NACA immediately sent a message to Eric Lambert letting him know that those domains were purchased as part of a block of domain names containing common characteristics and that NACA in no way intended to impede or cause harm to his business. He requested that Eric Lambert contact him. Instead of replying and seeking to resolve the matter directly with NACA, Lambert and Kirby filed the lawsuit in August 2008.

Kirby Assertion: In paragraph six Kirby states "While NACA has since sold off the domains relating to APCA. "

FACT: NACA **DID NOT** sell the domain names to anyone. As Alan Davis told Eric Lambert in his email referenced above, several domain names were due to expire in the weeks to follow the email and would not be renewed by NACA. Those domains expired. NACA did not renew them. A third party purchased one or more of the expired domains from a domain registrar. On this and at least two other occasions, Kirby and Lambert have publicly accused NACA of selling those domains. We are again reiterating that their assertion is utterly false. In fact, the Federal Court has been asked to sanction Cameo and APCA for continuing to spread this lie, even into the courtroom!

Kirby Assertion: In paragraph 10 Kirby claims that "All of a sudden NACA appears to claim they didn't know we existed and were completely surprised that we were using the name *Campus Activities Magazine*.

FACT: That assertion is false. NACA has not claimed to be unaware of the existence of Kirby's company or magazine. In any event, the underlying issue is not NACA's awareness of Kirby's magazine or Kirby's awareness of NACA's magazine; it is whether the public is likely to be

confused between Kirby's and NACA's *Campus Activities* magazines and who has the right to federally register their magazine name.

Kirby Assertion: In paragraph 11, Kirby states that NACA says it should own the term "campus activities. Never mind that campus activities boards pre-date the existence of NACA,..."

FACT: Kirby is implying that NACA wishes to prevent the use of the term "campus activities" on campuses and by campus activities offices. Applying for the trademark for "campus activities" as a mark for NACA's goods and services in the campus market does not mean we wish to own the generic term or prevent others from using it in generic contexts. Either Kirby does not understand the reason for and use of a trademark or he is attempting to mislead the marketplace regarding NACA's motive.

Note: In addition to Kirby and Lambert opposing NACA's application for "campus activities," they are also opposing the application, which NACA filed to register *Campus Activities Programming™* for its magazine. If Kirby feels he has a viable claim to the registration for *Campus Activities Magazine*, what rationale could he possibly have for objecting to NACA registering the name of its magazine, which was in existence long before his? In other words, using Kirby's own misguided logic, shouldn't campus activities boards that pre-date the existence of Cameo prevent Cameo's use of the phrase *Campus Activities Magazine*?

Kirby Assertion: In paragraph 12, Kirby presumes to know the trademark board's opinion and potential ruling.

FACT: The case is still in the hands of the Trademark Board. There has been no decision as yet. NACA will wait until a decision is rendered to move to the next level of the case, which will be in the Federal Civil Court. In the meantime, we urge Kirby and Lambert to leave the case in the legal forums and stop their disparaging publicity stunts.

Kirby Assertion: In paragraph 13 Kirby indicates that NACA board members say they never claimed to own "campus activities."

FACT: Kirby uses the term "allegedly" regarding the board members' claims of not owning "campus activities." Once again, he does not indicate what the source of this information is. He attempts to distort what NACA actually claims, which is that its application for the mark "campus activities" is specifically for NACA's goods and services provided in the student activities marketplace. NACA's trademark application does not include general campus use of the phrase. The use to which Kirby attributes "campus activities" has nothing to do with trademark law.

Kirby Assertion: In paragraph 13 Kirby also implies that NACA did not approach their legal counsel to discuss settling the lawsuit.

FACT: Again, Kirby does not identify who the sources are for the things he “heard” some folks “claim” they were “told.” He does not deny that NACA attempted to open up dialogue regarding a settlement because, in fact, NACA attempted to do. His comments are intended to leave the reader to infer that NACA did not.

Website: whoownscampusactivities.com

Author: WC Kirby

Kirby Assertion: Kirby cites the article written by Ahmed Samaha in *Campus Activities Programming*[™] magazine. In his effort to refute the statements made by Samaha, he uses quotations around phrases to imply that they are statements from representatives of NACA. He also implies that NACA’s purchase of the domains were for the purpose of causing injury to APCA and Cameo.

FACT: The items in quotation marks are not statements of anyone from NACA. Typical, Kirby never identifies who supposedly said certain things, which makes it impossible to verify the truth of a supposed statement with an alleged speaker. As stated in responses above to Kirby’s magazine editorial, NACA’s purchase of the domain names were based on a common characteristic for the protection of NACA’s marks (*which trademark law requires a trademark owner to do to protect the public from confusion*) and was not an effort to cause injury to anyone.

Kirby Assertion: Kirby claims that APCA and Cameo do not wish to cause NACA to close. They claim they are only attempting to stop NACA from drawing traffic to the NACA website by using the domains in question.

FACT: The lawsuit was filed against not only NACA and its employees and one of its former chairmen, but also against TRP Sports Marketing, SonicBids, Campus Entertainment and Mark Hall. If the sole purpose of the suit was to have NACA relinquish its ownership of domains, the lawsuit would have included only NACA. Moreover, APCA and Cameo could have simply asked the domain name authorities to transfer ownership of domain names rather than sue anyone. Additionally, there were several other complaints in the lawsuit they filed including conspiracy on the part of all of all those sued by APCA and Cameo.

Kirby Assertion: APCA and Cameo claim the lawsuit was, in part, to prevent NACA from being granted trademark registrations for which NACA has applied.

FACT: Those applications did not exist until after the lawsuit was filed. Also, as an aside, why are Cameo and APCA, according to them, entitled to trademark registrations but NACA is not, even though NACA’s marks were used before Cameo and APCA even existed?

Kirby Assertion: Kirby is once again claiming that if NACA is successful in obtaining the trademark for “campus activities” for use in its goods and services offered to student activities professionals and students, it would prevent those schools from using the phrase.

FACT: Once again, either Kirby is attempting to mislead his readers or he does not understand trademark law. NACA will not, and cannot, prevent schools from using “campus activities” in generic contexts. NACA will register its 25 year old marks to protect itself from infringers who attempt to use the marks on the same or similar goods and services.

Kirby Assertion: Kirby claims that neither he nor APCA wish to destroy NACA and that they wish to have NACA “pay a reasonable restitution.”

FACT: Their demands for damages are for \$10,000 to \$100,000 per domain name and they claim there are 61 such domain names. Calculation = \$610,000 to \$6,100,000.

Kirby Assertion: Kirby claims that legal fees have contributed to membership dues increases to NACA members.

FACT: This is false.

Kirby Assertion: Kirby claims that APCA and Cameo are willing to discuss a settlement.

FACT: Attempts to discuss that subject have been made by NACA’s attorney to APCA and Cameo’s attorney to no avail.

Kirby Assertion: Again, Kirby claims if NACA acquires the trademark “campus activities” it would impact the ability of schools to use that term.

FACT: Again, he is deliberately attempting to mislead or does not understand trademark law.

Kirby Assertion: NACA interfered with APCA’s attempts to develop relationships with HBCUs.

FACT: NACA has never interfered with APCA’s activities in this or any other way. NACA’s records show programs for HBCUs were in development long before APCA’s efforts in 2008 which they point to as being hindered by NACA’s development of an HBCU Connection. What also is going on is that APCA is confusing competition by calling it interference.

Kirby Assertion: APCA and Cameo say they invite NACA to “come to the table...”

FACT: Neither Kirby, Lambert nor their agents have even hinted that they would be willing to talk to NACA about settling this case. Their comments and responses to the article written by Ahmed Samaha, Chair of the Board of NACA, which is posted on the website referenced above, is the first indication of any kind that they are willing to discuss anything related to this case with NACA. Their attorney’s responses to NACA’s attorney have indicated anything but a willingness to do so. If they truly wish to settle the case, phone lines are now open.