



SMALL VERSION

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Sue Me, Asshole

Original text by Brian Flemming

Naked Schwarzenegger photo origin unknown,
transformed by Brian Flemming per description labeled “About
Arnold’s Penis”

Threat letter by Martin D. Singer, Lavelly & Singer

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This book is dedicated to William Hubbs Rehnquist

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ABOUT THIS BOOK

This book's title is aimed at Arnold Schwarzenegger, as well as his attorney, Martin D. Singer. On April 29, 2004, Singer threatened to sue Todd Bosley, the maker of a bobble-head caricature of the governor, for infringing on Schwarzenegger's "publicity" rights. Yes, you read that right: Singer and Schwarzenegger feel that the California governor is the first politician in history to be immune from caricature.

Additionally, Martin Singer even claims a *copyright* on his letter to Bosley. In other words, not only can't the governor be criticized via caricature, but also one is not even allowed to expose the vicious tone of the threat letters Governor Schwarzenegger employs to enforce that moratorium.

In his letter, Singer claims that Bosley's creation of the bobble-head doll is "outrageous" and "malicious." We here at Fair Use Press think that Singer needs to learn what outrageous really is. In accordance with our mission to "ridicule, shame and attack those who attempt to subvert the First Amendment of the U.S. Constitution," we viciously offer our second book: *Sue Me, Asshole*. In addition to an appropriately shaming picture of Arnold on the cover, it contains all three pages of Singer's copyright-protected threat letter.

That letter is presented here in its entirety to expose the arrogance that powerful attorneys like Singer display toward those whom they feel are too weak to fight them. By claiming the right to keep a cease-and-desist letter secret, Singer perhaps reveals an awareness that it does not reflect well on the governor of California to be so crudely abusing intellectual property laws.

Singer, however, has no right to keep the nature of the Governor's intimidation tactics secret. His assertion that he does—as well as his threat of retribution—scream out for correction.

One of the purposes of this book is to assist Martin Singer in this learning process.

ABOUT ARNOLD'S PENIS

The smallness of Arnold Schwarzenegger's penis has been enhanced in the picture on the cover of this book, to better create a caricature that reveals the governor for what he really is: A big bully who flexes his muscles for show but actually possesses nothing where it counts.

That's an appropriate metaphor for Governor Schwarzenegger and others like him, who feel that because they possess a powerful attorney and lots of money, they can abuse intellectual property laws to control what is said about them. The *only* assets these bullies usually have on their side are power and money. But often that is enough for them to succeed in intimidating their critics into silence. It's an unfortunate reality: In litigation, money often speaks louder than right. Arrogant and litigious people like Arnold Schwarzenegger take advantage of this fact to control what is said about them in a way that no average citizen could dream of doing.

Fair Use Press uses the weapons of parody to strike back at these bullies. The goal is to subject them to so much ridicule that it becomes a losing proposition to attack a critic using copyright or trademark law as a cover.

But the formula only works if the bullies suffer *more* than they would have had they never intimidated their critics in the first place. Here's how you can help:

1. Buy a book or donate to Fair Use Press at www.fairusepress.com. 100% of the net proceeds go toward advertising and other efforts to disseminate Fair Use Press publications.
2. Copy and spread this book. We ask those who can afford it to buy it, but the goal is to spread its message far and wide.
3. Write a letter to Arnold Schwarzenegger and his attorney, letting them know what you have done to help subject them to ridicule, and why.
4. Write a letter to the editor, join the Electronic Frontier Foundation or otherwise become a part of the free culture movement. Join the fight. Promote fair use.

THREAT LETTER

The following threat letter was sent by attorney Martin D. Singer to Todd D. Bosley on April 29, 2004, on behalf of California Governor Arnold Schwarzenegger.

It is republished here without permission.

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April 29, 2004

VIA FACSIMILE - (425) 799-0070
and FEDERAL EXPRESS

Mr. Todd D. Bosley
Ohio Discount Merchandise, Inc.
Bosley Bobbing Head Doll Company
Toady Bose Fun Products
3407 Kucmerle Court, NE #B
Canton, Ohio 44705-5074

VIA FEDERAL EXPRESS

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Bosley Bobbing Head Doll Company
Toady Bose Fun Products
2690 Roberts Avenue, Suite C
Canton, Ohio 44709

VIA FEDERAL EXPRESS

Mr. Todd D. Bosley
Ohio Discount Merchandise, Inc.
Bosley Bobbing Head Doll Company
Toady Bose Fun Products
4465 Louisville Street, NE
Canton, Ohio 44705

VIA U.S. MAIL

Mr. Todd D. Bosley
Ohio Discount Merchandise, Inc.
Bosley Bobbing Head Doll Company
Toady Bose Fun Products
P.O. Box 9597
Canton, Ohio 44711

Re: Oak Productions, Inc. v. Ohio Discount Merchandise, Inc.; Todd D. Bosley;
Bosley Bobbing Head Doll Co.; Toady Bose Fun Products, et al.

Dear Mr. Bosley:

Our law firm is litigation counsel for Oak Productions, Inc., the owner of all publicity rights of Arnold Schwarzenegger, in connection with its substantial claims against Ohio Discount Merchandise, Inc., the Bosley Bobbing Head Doll Co., Toady Bose Fun Products, and all those associated with them (collectively herein, "you") for the unauthorized commercial exploitation of Mr. Schwarzenegger's name, photograph and likeness.

It has come to our attention that you are currently selling a bobbing head doll which features the name and likeness of Mr. Schwarzenegger, along with a "Collectors box" which features the name and numerous, prominent photographs of Mr. Schwarzenegger (collectively, the "Product"). Neither Oak Productions Inc., nor Mr. Schwarzenegger, have ever given you

Mr. Todd D. Bosley

April 29, 2004

Re: *Oak Productions - Ohio Discount Merchandiser, Inc., et al.*

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any consent to use his name, photograph or likeness on or in connection with the Product, or any other products or services. Accordingly your outrageous, malicious and tortious actions constitute an unauthorized commercial exploitation of my client's publicity rights, giving rise to numerous legal claims against you and exposing you to substantial liability.

Your actions constitute, among other violations, an unauthorized commercial exploitation of Mr. Schwarzenegger's name, photograph and likeness in violation of California Civil Code § 3344 and the common law right of publicity. My client is entitled to substantial damages equal to the value of his name, photograph and likeness for commercial purposes in the United States. In addition, my client is entitled to disgorgement of all profits in connection with the Product and reimbursement of his attorneys' fees and costs, pursuant to Civil Code § 3344(a). In addition, because your use of Mr. Schwarzenegger's publicity rights is so egregious and malicious, and because you knew you did not have consent to use his name and image on or in connection with the Product, but did so anyway, my client is entitled to an award of substantial punitive damages pursuant to Civil Code § 3294.

It is well known that Oak Productions does not permit the use of Mr. Schwarzenegger's publicity rights on commercial products in the United States, or on packaging or advertisements for such products, except in connection with his movies. The market value of Mr. Schwarzenegger's name, photograph and likeness for commercial purposes is worth millions of dollars. Therefore, Oak Productions has legal claims against you for compensatory damages in that amount. See *Bene Midler v. Ford Motor Co.*, 849 F.2d 460, 463 (9th Cir. 1988) ("What [defendants] sought was an attribute of [Bene] Midler's identity [when defendants used a sound-alike of her voice in an advertisement for a Ford automobile]. Its value is what the market would have paid for Midler to have sung the commercial in person.") (Emphasis added.)

Demand is hereby made that you contact me within 48 hours of your receipt of this letter confirm that you will (1) immediately cease and desist from any and all further production, advertising, marketing, promotion and sales of the Product, and any and all further use of Mr. Schwarzenegger's publicity rights, including his name, photograph and likeness; (2) deliver all remaining units of the Product to our office at the above address; and (3) make a substantial payment to my client as compensation for the damages you have caused.

Should we fail to resolve this matter within that time, my client has authorized our firm to commence litigation against you and all those associated with you, and you will be acting at your own peril.

Please govern yourselves accordingly.

Mr. Todd D. Bosley

April 29, 2004

Re: *Oak Productions - Ohio Discount Merchandise, Inc., et al.*

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This letter is not intended to constitute, nor shall it be deemed to constitute, a full statement of all facts, rights or claims relating to this matter, nor is it intended, nor should it be construed as a waiver, release or relinquishment of any rights or remedies available to my client, whether legal or equitable, all of which are hereby expressly reserved. This is a confidential legal notice and may not be published, in whole or in part. Any republishing or dissemination of same, including but not limited to the posting of the contents hereof on the Internet, shall constitute a copyright infringement and will subject the re-publisher(s) to civil liability for such actions.

Sincerely,



MARTIN D. SINGER

cc: Mr. Paul Wachter (via telecopier)
Charles J. Harder, Esq.

RELATED LINKS

Fair Use Press

<http://www.fairusepress.com/>

ON THIS STORY:

The Smoking Gun:

<http://www.thesmokinggun.com/archive/0430042arnold1.html>

Copyright:

<http://www.corante.com/copyfight/archives/003447.html>

Todd Bosley's company, Bosley Bobbers:

<http://www.bosleybobbers.com/>

GENERAL:

Chilling Effects:

<http://www.chillingeffects.org/>

Electronic Frontier Foundation

<http://www.eff.org/>

Creative Commons

<http://www.creativecommons.org/>

CASE:

Hustler Magazine v. Falwell

http://en.wikipedia.org/wiki/Hustler_Magazine_v._Falwell

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<http://www.slumdance.com/>