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May 28, 2008

**VIA FACSIMILE:
EMAIL
& U.S. MAIL**

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10100 Santa Monica Blvd., Suite 2200
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Re: www.TheDirty.com/ Kobe Bryant

Dear Mr. Streisand:

As you know, this firm is intellectual property and litigation counsel to the operators of the website www.TheDirty.com (“The Dirty”). This letter is in response to a letter from you dated May 23, 2008 regarding your client Kobe Bryant (“Mr. Bryant”).

First, on a technical point, your letter contains a reference to a website called www.AZSportsHub.com. Please note that The Dirty does not operate this website and has no relationship of any kind with it. For that reason, all other issues aside, The Dirty could not comply with your demand to remove any material from that site even if it believed it was obligated to do so, which it does not.

Turning to the merits of your letter, The Dirty and its founder Nik Richie understand that Mr. Bryant disputes the accuracy of the story first reported on www.TheDirty.com concerning an affair between Mr. Bryant and a former Laker Girl named Vanessa Curry. Nevertheless, Mr. Richie is informed that the story is accurate and he therefore respectfully declines Mr. Bryant’s request for removal of the report.

I understand from your letter that without addressing specifics, Mr. Bryant denies the allegations and intends to “seek all relief available under the laws of the United States and the State of California” Please note that The Dirty and Mr. Richie are well-aware of the laws of defamation generally, as well as other celeb-specific statutes such as California Civil Code § 3344(a). Of course, Civil Code § 3344(d) expressly excludes matters of news, sports, and “public affairs” from the consent requirement of § 3344(a). All three of these categories apply to the news at issue here and therefore Mr. Bryant has no claim whatsoever under this section.

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With regard to other claims such as defamation, because you have only expressed Mr. Bryant's position in broad general terms, I am unable to provide a more specific response at this time except for the following points:

1.) The Dirty believes the story concerning the alleged affair between Mr. Bryant and Ms. Curry is true and therefore any reporting on this matter is non-actionable as a matter of law as an exercise of the First Amendment rights of Mr. Richie and The Dirty.

2.) Even if the story was subsequently proven to be untrue, because Mr. Bryant has previously publicly admitted to similar acts of infidelity (in the Katelyn Faber incident, for example) and because Mr. Richie had (and has) no reason to question the veracity of his source, it seems exceptionally unlikely that any jury would find "actual malice" as required in cases involving public figures like Mr. Bryant. *See, e.g., New York Times v. Sullivan*, 376 U.S. 254 (1964) (finding "actual malice" is a constitutional requirement in defamation cases relating to public figures).

3.) Even if the story was untrue, and even if actual malice could be shown, there is no reason to believe that any "incremental harm" has been caused to Mr. Bryant's already-mixed reputation. *See* <http://www.kobesucks.org>. Although I am aware that California has not yet warmed to the incremental harm doctrine, *see Masson v. New Yorker Magazine, Inc.*, 960 F.2d 896 (9th Cir. 1992), it is only a matter of time before this common-sense rule is accepted in California as it is elsewhere. *See* Kevin L. Kite, *Incremental Identities: Libel-Proof Plaintiffs, Substantial Truth, And The Future Of The Incremental Harm Doctrine*, 73 N.Y.U.L.Rev. 529 (1998) (setting forth compelling justification why all states should adopt the incremental harm rule). Just as the saying goes that "bad facts make bad law", the opposite is true—good facts provide opportunities to expand the law as needed. With this in mind, this case would present an ideal occasion for California to adopt the incremental harm doctrine.

4.) As you are no doubt aware, in the event that Mr. Bryant were to pursue litigation against The Dirty, the matter would be immediately subject to an Anti-SLAPP motion under C.C.P. § 425.16. Faced with such a motion, Mr. Bryant would be required to establish a likelihood of success on the merits. Again, due to his prior history of similar conduct, this may represent an impossible hurdle.

In closing, it should be noted that there is no small irony in the fact that Mr. Bryant's efforts to pursue claims against www.TheDirty.com only increases the likelihood that this story will receive more attention than it already has. This situation implicates the "Streisand effect" which should certainly be familiar to you: "The Streisand effect is a phenomenon on the Internet where an attempt to censor or remove a piece of information backfires, causing the information to be [more] widely publicized." http://en.wikipedia.org/wiki/Streisand_effect (visited May 28, 2008). As you know, this phenomenon is named for your cousin, Barbra, based on her famously unsuccessful attack upon the website www.californiacoastline.org.

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For each of these reasons and with all due respect to Mr. Bryant, I cannot advise The Dirty to comply with your client's demands. As you may have noticed, www.TheDirty.com allows viewers to post comments in response to stories such as this one, as several folks have already done. If he would like to do so, Mr. Bryant is welcome to post a comment in this section explaining that he is not pleased with the story and he is welcome to express his opinion that The Dirty is not a website he finds worthy of his endorsement.

If you have any questions, please feel free to contact me at (602) 248-1000 or via email at: ;

Very truly yours,

JABURG & WILK, P.C.



David S. Gingras

DSG:jas

cc: www.TheDirty.com & Nik Richie (via email)

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