



February 21, 2011

**VIA EMAIL (dervaes@dervaesinstitute.org) and FAX (626-844-4586)**

Jules Dervaes  
The Dervaes Institute  
631 Cypress Avenue  
Pasadena, CA  
91103-2905

Dear Mr. Dervaes:

I am writing to you on behalf of my clients, Kelly Coyne, Erik Knutzen, and Process Media, regarding the Dervaes Institute's assertions that my clients have violated your purported trademark rights in "urban homestead" and "urban homesteading." As you know, these assertions have resulted in Facebook disabling public access to information about my client's book, *The Urban Homestead*, including simple links regarding public commentary on the book. The Dervaes Institute's assertions are plainly meritless and have caused significant harm to my clients as well as other urban homesteaders. They must be withdrawn immediately.

First, as you must be aware, "urban homesteading" is a term that has long since been widely adopted to describe a social movement and a set of practices that promote self-sufficient, sustainable living in cities. In the 1970s, the term "urban homesteading" referred to strategies undertaken to revitalize blighted urban areas,<sup>1</sup> as well as projects that promoted and modeled various forms of "urban farming."<sup>2</sup> In the past several years, as the movement has grown exponentially, the term (and its obvious variations) have entered mainstream parlance, used by leading newspapers, bloggers, meet-up groups, nonprofits dedicated to promoting sustainable living, and so on.<sup>3</sup>

Thus, "urban homesteading" is popularly understood to refer not to the Institute's goods and services, but rather to a way of life that is common to many and owned by none. The term has an established original, descriptive, primary meaning and my clients are free to use it in that sense. *See, e.g., KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 125 S. Ct. 542, 550 (2004) (trademark law should not be used to "deprive commercial speakers of the ordinary utility of descriptive words."). That is precisely what they have done in the title and contents of their book, as well as related commentary.

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<sup>1</sup> *See generally*, M. Chandler, *Urban Homesteading: Programs and Policies* (New York: Greenwood Press, 1988).

<sup>2</sup> *See, e.g.* J. Reynolds, "The Integral Urban House: A Victorian mansion in Berkeley California is converted into an urban homestead," *Mother Earth News*, Jan. 11, 1976 (<http://www.motherearthnews.com/Nature-Community/1976-11-01/The-Integral-Urban-House.aspx>).

<sup>3</sup> *See, e.g.*, K. Coyne and E. Knutzen, "How to Become an Urban Homesteader," Reality Sandwich, <http://www.realitysandwich.com/node/443>; Leda's Urban Homestead, <http://ledameredith.net/wordpress/>; Petaluma Urban Homestead, <http://petalumaurbanhomestead.blogspot.com/>; The Sustainable Urban Homestead, <http://sustainableurbanhomestead.com>; Institute of Urban Homesteading, <http://www.iuhoakland.com/>; Schell Urban Homestead, <http://anisaschell.wordpress.com>; San Diego Urban Homesteaders Meetup Group, <http://www.meetup.com/homesteaders-50/>; Urban Homestead, <http://www.oldvaapples.com/index.htm>; C. Muhlke, "Home Sweet (Urban) Homestead," *The New York Times*, July 5, 2009, MM20; J. Gross, "That Big Farm Called San Francisco," *The New York Times*, Apr. 23, 2010, A21B ("Today in the Bay Area and beyond, urban homesteaders like Ms. Stone and her roommates are raising their own food in their backyards, in community gardens and on derelict and undeveloped spaces in the city.").

Second, I was surprised to discover that you declared to the Trademark Office that the mark had become distinctive of your goods and services through your substantially exclusive use from 2005 through 2010. As an active member of the urban homestead movement, you should have been aware of at least some of the projects identified above, as well as my clients' 2008 book, and therefore should have known that the Institute's use in connection with "educational services" was hardly exclusive. In light of these facts, and the highly descriptive nature of the terms in question, your registration of "urban homestead" and "urban homesteading" may be subject to cancellation. *See generally Star-Kist Foods, Inc. v. P.J. Rhodes & Co.*, 735 F.2d 346, 348 (9th Cir 1984); *Arrow Fastener Co., Inc. v. Stanley Works*, 59 F.3d 384, 393 (2d Cir. 1995).

Third, I understand that you also sent a Digital Millennium Copyright Act (DMCA) takedown notice to Google, again targeting my client's content. This notice was unquestionably improper. The DMCA's notice and takedown provisions are designed exclusively to address allegations of copyright infringement; using them to target alleged trademark infringement is a misuse and may subject you to liability for all resulting damages (including attorneys' fees). *See* 17 U.S.C. 512(f); *Online Policy Group v. Diebold*, 337 F. Supp. 2d 1195 (N.D. Cal. 2004) (knowing improper use of DMCA takedown provision resulted in defendant's liability for damages and attorneys fees pursuant to 17 U.S.C. § 512(f)).

As your asserted legal position and subsequent actions are not grounded in law, you must immediately cease and desist from submitting complaints against my clients based on their uses of "urban homestead" or "urban homesteading." In addition, please confirm in writing that you will immediately withdraw the improper takedown requests you have already submitted. This should include, at a minimum, contacting every service to which you have directed a complaint regarding my clients, in order to inform them that your takedown requests were in error. Please provide me with copies of all such communications, as well as any other communications you have had with any service provider relating my clients.

In addition, I strongly urge you to take similar steps with regard to the myriad other organizations and persons who have also been the targets of this misguided campaign.

Please be aware that while we are hopeful that this issue can be resolved promptly and amicably, we reserve the right to pursue all legal remedies as necessary.

If you have any questions, please contact me: 415-436-9333 x122 or [corynne@eff.org](mailto:corynne@eff.org). Otherwise, I will expect the requested confirmation and information by **Friday, February 25**.

Sincerely,



Corynne McSherry  
Intellectual Property Director