

Procter & Gamble

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The Procter & Gamble Company
Legal Division
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Phone: (513) 983-4374
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Barbara A. Bunning-Stevens
Senior Counsel

May 15, 1997

Deaver Brown
President
CD Titles, Inc.
411 Waverley Oaks Road
Waltham, MA 02154-8414

Dear Mr. Brown,

I received a facsimile response from your secretary, Karen Uminski, on February 28, 1997, regarding my facsimile to you of February 24. She had indicated that you would respond more fully to my inquiries when you returned from vacation the next week. As I have not received any correspondence from you since then, I am taking this opportunity to raise some additional issues Procter & Gamble has discovered and discussed with others during this interim period.

Specifically, since my last facsimile to you, P&G became cognizant of another CD-ROM your company publishes entitled *TV Commercials of the 60s and 70s*, and we ordered a copy of this title over the Internet. Similar to your *TV Commercials of the 50s and 60s*, this CD-ROM also contains ten Procter & Gamble commercials, including at least one which clearly demonstrates a copyright notice within the first few seconds of its playing time. As you no doubt realize, this particular commercial cannot be classified as public domain material. Moreover, we believe the other commercials included on both of your *TV Commercials* CD-ROMs are insulated by copyright law from public domain status; i.e. they are proprietary works of Procter & Gamble and/or its advertising agencies.

Procter & Gamble has also been in touch with Budget Films, Inc., from whom you told us you had obtained a license agreement to utilize these P&G commercials. According to a contact at Budget Films, CD Titles, as successor to the Wrightwood Company, has failed to pay any royalties due to Budget Films pursuant to the parties' licensing agreement. As you are in breach of this agreement, the indemnification provisions included within it (on which your company might be relying) may not apply. (Budget Films has also assured us that they will no longer license Procter & Gamble commercials in this manner without P&G's consent.)

Similarly, Procter & Gamble has maintained contact with several other companies whose advertisements appear on your CD-ROM. No one we have spoken to has given permission to either CD Titles/Wrightwood Co. or Budget Films for this type of use. Typically, consent is not granted unless certain issues have first been resolved through a formal, written agreement. For example, the licensing companies (the owners of these works) must ensure that the residual payments due to talent for each viewing of an advertisement will be paid by the commercial licensee(s).

Deaver Brown, President
May 15, 1997
Page 2

Please note that Procter & Gamble has given consent to various parties in the past to use its commercials. However, this consent follows only after the formulation of a written agreement which covers the many issues involved in licensing such footage, including the indemnification of P&G for any residuals owed to the featured actors or actresses.

Finally, from a legal perspective, Procter & Gamble continues to believe, along with our colleagues at the companies we contacted, that this material is not public domain. Although copyright notices were not placed on some of these commercials, the manner in which we originally broadcast and distributed these works shields them from falling into common ownership. These broadcasts were performances or limited publications under copyright law and thus remain proprietary to P&G and its advertising agencies.

Thus, Procter & Gamble reiterates that CD Titles is infringing its copyright rights in these works and demands that CD Titles cease continued production and/or distribution of these two CD-ROMs. If your company refuses to cease production/distribution of these items, we will consider all legal means available to us to resolve this issue.

I look forward to receiving your response.

Sincerely,



Barb Bunning-Stevens

BBS/SMS/lh
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cc: D. Beausejour
M. F. Schar
S. E. Abrams
K. A. Hall