

LAVELY & SINGER

PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

SUITE 2400

2049 CENTURY PARK EAST

LOS ANGELES, CALIFORNIA 90067-2906

TELEPHONE (310) 556-3501

TELECOPIER (310) 556-3615

www.LAVELYSINGER.com

JOHN H. LAVELY, JR.
MARTIN D. SINGER
BRIAN G. WOLF
LYNDA B. GOLDMAN
MICHAEL D. HOLTZ
WILLIAM J. BRIGGS, II
PAUL N. SORRELL
MICHAEL E. WEINSTEN

EVAN N. SPIEGEL
TODD STANFORD EAGAN
HENRY L. SELF, III
MATTHEW E. PANAGIOTIS
JESSICA G. BABRICK
ANDREW B. BRETTLER

ALLISON S. HART
KEVIN JAMES
OF COUNSEL

April 12, 2011

VIA FAX: [REDACTED]

VIA EMAIL: [REDACTED]

Mr. Joseph M. Maddalena
President & CEO
Profiles In History
[REDACTED]

Re: Sylvester Stallone / Profiles In History, et al.

Our File No.: 327-1

Dear Mr. Maddalena:

We are litigation counsel to Sylvester Stallone. It has come to our attention that Profiles In History has been widely promoting an upcoming auction of items which it is falsely describing as "Sylvester Stallone's boxing gloves from the first *Rocky*." Be advised that **these items are not "Sylvester Stallone's boxing gloves from the first *Rocky*" and they are not authentic.** We therefore demand that you immediately cease and desist from marketing and promoting them as genuine, and from falsely passing off these items as authentic boxing gloves used or worn by my client during the first iconic *Rocky* film. We demand that the gloves be pulled from the auction.

Profiles In History has disseminated numerous materials falsely describing the auction items as boxing gloves worn by my client during the *Rocky* film. We are aware, for example, of your Press Release for the upcoming auction on May 14 and 15 stating: **"Other items you can expect to see up for auction include ... Sylvester Stallone's boxing gloves from the first *Rocky* ... amongst many other classic and memorable items."** <<http://profilesinhistory.com/press-releases/hollywood-auction-44-press-release>> This has been repeated extensively throughout the media, which was obviously Profiles In History's intent in publicizing the items for auction. We are also aware that, according to your website, an auction catalog is "Coming Soon," in which we presume you plan to include the false description of the boxing gloves as having been worn by my client in *Rocky*.

As you are no doubt aware, the unauthorized commercial exploitation of my client's name by falsely passing off purported memorabilia as having been used by Mr. Stallone during his classic film *Rocky* gives rise to substantial liability, including claims for common law and statutory

Mr. Joseph M. Maddalena

Profiles In History

Re: Sylvester Stallone / Profiles In History, et al.

April 12, 2011

Page 2

violation of my client's right of publicity, for violation of California's Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*) prohibiting "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising," and for violations of the Lanham Act (15 U.S.C. § 1125(a)) prohibiting the false designations of origin, false descriptions, and false representations in the advertising and sale of goods and services. These claims support the imposition of substantial compensatory damages (including treble damages with respect to Lanham Act violations), as well as injunctive relief, punitive damages and recovery of attorneys' fees. *See, e.g., Waits v. Frito-Lay, Inc.*, 978 F.2d 1093 (9th Cir. 1992) (Lanham Act claim resulting in \$ 2.6 million in compensatory damages, punitive damages and attorneys' fees)

Falsely marketing, promotion or advertising of the inauthentic items as "**Sylvester Stallone's boxing gloves from the first Rocky**," whether contained in press releases, auction catalogs, or otherwise, gives rise to substantial liability since there is no First Amendment protection for brazen commercial exploitation of a celebrity's name for false advertising purposes. *See, e.g., Downing v. Abercrombie & Fitch*, 265 F.3d 994, 1002 (9th Cir. 2001) (holding retail catalogue exploiting plaintiff's persona was "commercial in nature" and therefore not entitled to First Amendment protection). Accordingly, we demand that your upcoming auction catalog and related materials omit any statement or implication inaccurately characterizing the items as authentic boxing gloves worn by my client in the first *Rocky* film. We also demand that you promptly inform all third parties to whom you have disseminated inaccurate information about the items and their alleged association with my client that the items are *not* authentic.

To the extent that your characterization of the items as my client's boxing gloves from *Rocky* is based on false information supplied to you by third parties about the provenance and origin of the boxing gloves, please provide us with the information they supplied concerning the purported authenticity of the items, as well as identifying the sources of that information and providing us with their contact information so that appropriate steps may be taken against all those involved in attempting to profit from the commercial exploitation of inauthentic items falsely being passed off as having been used by my client during *Rocky*.

Presumably you have no desire to mislead consumers and you will therefore comply with our request to refrain from further promotion or sale of the boxing gloves as having been used by my client during *Rocky*. Please confirm your compliance with the demands contained in this letter within five (5) business days of this letter's date. Be advised that if you continue to commercially exploit my client's highly recognizable name in order to attract attention to your business and your upcoming auction, you do so at your peril, leaving my client with no alternative but to pursue his legal rights and remedies in litigation. We hope that will not become necessary.

Please govern yourselves accordingly.

Mr. Joseph M. Maddalena
Profiles In History
Re: Sylvester Stallone / Profiles In History, et al.
April 12, 2011
Page 3

This does not constitute a complete or exhaustive statement of all of my client's rights or claims. Nothing stated herein is intended as, nor should it be deemed to constitute, a waiver or relinquishment of any of my client's rights or remedies, whether legal or equitable, all of which are hereby expressly reserved.

Sincerely,


MARTIN D. SINGER

MDS/lg

cc: Mr. Sylvester Stallone
Mr. Kevin King (*via email*)
Lynda B. Goldman, Esq.

K:\327-1\LET\MDS-MADDALENA 041211.wpd