

***ATTN: Legal departments of firms involved***

***Introduction***

This is a formal response to letters from a “Mark Staver” dated November 15 and 30, 2016. Note: Mr. Staver's actual name is believed to be Markus Staver. He goes by the alias “Moonchild” or “Moon Child”.

You should have received this document in PDF format. There should be a total of six numbered pages. This copy supersedes any copy dated before December 01, 2016.

First, there are three people involved on Staver's side: Markus Staver and two other individuals named Matt A. Tobin and Peter O'Hanlon. Staver himself raises issues related to Tobin and, from a legal perspective, all three people play a role.

This letter should cover all significant points. If any points have been missed, indicate them and they will be addressed.

Thank you for your time. Your willingness to review the facts and to allow due process to proceed is appreciated.

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***1. Claims are contested.***

Staver's claims are contested. It is requested that due process be allowed to proceed.

Site owner has offered repeatedly to speak with Staver's attorneys and expects Staver to provide contact information for the attorneys in question. To date, Staver has declined to do so. He's attempting to do an end run around due process.

Staver is invited to initiate such formal legal actions as he feels are appropriate. Your company is not significantly involved as no terms and conditions related to your company have been violated. Statements by Staver to the contrary are false.

***2. Prosecutable crimes, including felonies.***

Markus Staver's primary goal is to prevent disclosure, and discussion, of inappropriate acts, including prosecutable crimes, committed by Pale Moon associates. In some cases, the prosecutable crimes rise to the level of felonies.

A partial list of such acts is provided below:

- \* Weeks of sexual harassment, including sexually-oriented attacks in front of children as young as 9 years of age.
- \* Detailed, credible, and unambiguous death threats. Such threats are felonies punishable by 20 years in prison.
- \* The creation of "malware". This word is used by the Staver group itself. Pale Moon associates boast that they've used "malware" to harm people. "Malware" is, depending on specifics, a violation of Computer Fraud and Abuse Act (CFAA) and a felony.
- \* Suggestions that Pale Moon associates will use "malware" to harm site owner if he does not comply with demands. The threats, in this case, are a prosecutable crime and, depending on jurisdiction and other factors, a separate felony.
- \* Conspiracy to make the "malware" threats cited above and/or to carry out the threats. The conspiracy, depending on jurisdiction and other factors, is another felony.

It isn't a violation of the terms and conditions of your company, or any company, to disclose the commission of such crimes.

### ***3. Domain names.***

Staver refers to domain names. Domain names are a registrar-level issue. The registrar for the domain names cited, Namecheap, has already agreed that Staver needs to hire a trademark attorney and that due process needs to take place.

As a technical note, the context for domain names will be trademark law and not DMCA. Site owner is entitled to use the domains in question under the Nominative Use doctrine and is prepared to demonstrate this in Court.

Staver contests the applicability of the Nominative Use doctrine. However, it isn't the role of your company to assess the merits of his arguments.

Namecheap, the company that has responsibility for management of the domain names, has already stated its decision.

If Staver doesn't like the decision of the company that has responsibility for the domain names, he needs to go through due process. In short, he needs to initiate trademark actions in the appropriate venues and jurisdictions.

### ***4. Death threat by Staver's staff.***

Staver states, “*claiming (by name) threats would have been made by a person involved in our project to the creator of these sites, which is both untrue and unsubstantiated.*”

Site owner asserts, without equivocation, that detailed and credible death threats were made, on November 12, 2016, by a member of Staver's staff. Site owner adds that the staff member characterized himself as “*mentally ill*” and a “*razor's edge from suicide for years*”.

Site owner is prepared to repeat the assertion under oath. The point will be clear to attorneys. Site owner has no fear of a defamation action as the assertion is entirely true.

Site owner notes that he spent over six hours talking to the staff member in question. The staff member, Matt A. Tobin of Kokomo, Indiana, seemed to be asking for help. He provided site owner with his residence address, his phone number, and detailed family information. He talked about being alone in the world and how he wanted to die and how close he was to killing himself. Site owner did not ask for any of this.

Tobin also threatened to hunt down and kill site owner. He stated that there would be nowhere for site owner to hide and that site owner would not escape death.

Then Tobin wanted to talk further and seemed to be asking for help. Most recently, Tobin has been demanding that site owner phone Tobin's father.

In short, Matt Tobin is a mentally-ill person who needs help. Markus Staver's responses to comments on the matter have been counter-productive.

Staver protests statements of fact to the effect that death threats were made. If he feels that he can demonstrate defamation, he is free to initiate a defamation action in the appropriate venue and jurisdiction.

Technical note: Staver has used the term “slander”. However, this would be a “defamation” case as opposed to a “slander” case.

It isn't your company's role to assess the truth or falsity of claims made by either side. This part is up to the Court.

### ***5. Fork of Open Source project.***

Staver states, “*the project "is now forked" under the same name and with the same copyrighted and trademarked graphics, which is a direct violation of our rights.*”

Staver runs a FOSS, or “Free and Open Source Project”, named “PaleMoon” (also known as “Pale Moon”). Staver has zero legal rights -- none whatsoever -- in regard to permitting or not permitting “forks” except in regards to the use of “copyrighted and trademarked graphics” that he alludes to and FOSS license issues that he has not commented on.

In particular, site owner is legally entitled to describe a “fork” that he has created as “*a fork of Pale Moon*” or possibly as “*a fork of Pale Moon (tm)*”. Staver has no legal rights or means by which to prevent this.

The contested site had one, and only one, “graphic” to which the term “copyrighted and trademarked” might have applied with Staver as the rights-holder. As a gesture of good will, the single graphic in question has been taken down temporarily while legal issues are assessed.

Site owner is entitled to use that graphic under Fair Use, on the copyright side, and under Nominative Use, on the trademark side. Therefore, pending legal research, there is no commitment to refrain from such use in the future.

## **6. Sexual harassment by PaleMoon associate.**

Staver alludes to clauses in terms and conditions related to “*a nuisance, attack, or harassment (including sexual)*”.

In fact, Staver's primary goal in the current complaint is to prevent public discussion of death threats and sexual harassment by Pale Moon staff and associates.

The only sexual content on the contested site consists of quotes of remarks by a Pale Moon associate who has come to online venues where he speaks sexually in front of boys and girls as young as 9 years old.

Less significantly, the associate in question posted remarks on his Twitter related to sexual acts between site owner and “*dinosaurs*”. This was mockery related to site owner's age, which Pale Moon staff and associates viewed as elderly.

For purposes of identification, the person in question is a minor British “rock star” and/or TV star named Peter O'Hanlon. His stage name is “Tongara”. Peter O'Hanlon has made numerous statements similar to “*sup, faggot*” and “*hi, c\*nt*” in site owner's online worlds. The worlds in question are populated primarily by minors.

Markus Staver is attempting to take down the contested site, in part, to prevent disclosure that this person has been harassing site owner and saying “*hi, c\*nt*” in front of children.

Attempts have been made to ensure that statements of fact on the contested site are as accurate as possible. Corrections have been made voluntarily upon request by the other side; Staver has neglected to mention this part in his complaint.

Discussions, or protests, of ongoing harassment by stalkers, up to and including sexual talk by stalkers in front of children as young as 9 years old, are not a violation of terms and conditions of your firm or of any firm.

## **7. New and contested copyright claim.**

Staver notes that the contested sites use “personal imagery” of Matt Tobin. He implies that either he or Matt Tobin hold copyright to the “personal imagery”.

Staver does not hold copyright to the imagery in question. He has no legal right to speak in a peremptory manner on the matter.

Additionally, site owner contests Matt Tobin's ownership of any such copyright. Site owner believes that copyright is held by an entity known as "Neowin". Site owner adds that use of an avatar-size image of a stalker who has made death threats and who boasts of using "malware" to harm people is pretty much a perfect example of Fair Use.

The imagery in question will not be voluntarily removed until due process is followed and a DMCA notice filed by an actual rights holder is received. Note: Filing of a DMCA notice by a party who does not hold copyright may be a prosecutable crime.

Upon receipt of such notice, a DMCA counter-notice will be filed.

It is one thing for a firm such as yours to take action, itself, in connection with intellectual property issues that are clear and uncontested. In this case, the intellectual property rights are contested. It is expected that your firm will allow due process to take place.

### ***8. Staver's demands for proof.***

Staver seems to be offering your company the legal opinion that your company can be required to show him proof, for example, "*references to a verifiable open criminal case*", that assertions by site owner are factually correct.

If this document has reached an attorney, site owner would like to offer a legal opinion of his own. Staver is stating, essentially, that there is no such thing as due process and that anybody in the world can demand the take-down of a website hosted anywhere in the world -- without Court actions -- based on disagreement with stated facts.

The appropriate legal term for this position is, site owner believes, "bullsh\*t".

### ***9. Suggested resolution and summary.***

\* Site owner has offered, repeatedly, to speak with Staver's attorneys. The suggested resolution to this matter is that Staver provide the names of the attorneys and that appropriate discussions with the attorneys take place.

\* Staver has made two copyright-related claims. Site owner has responded to each claim, separately, above. In one case, he has taken down an image. In other, he contests claimed rights and expects due process to be followed.

\* Site owner is entitled to use contested domain names under the provision made, in trademark law, for Nominative Use. Domain names are the responsibility, regardless, of the registrar involved (Namecheap) and not of your company. Namecheap has already agreed with site owner's position as far as the issue of due process goes.

\* Staver has contested claims of death threats made by his staff. Site owner firmly reiterates that the death threats were made and will do so under oath. If Staver feels that disclosure of the death threats has defamed his project, he has the option of initiating a defamation action. This is an issue for the Court and not one that your company needs to play a role in.

*Response to Staver letters and analysis of issues - updated December 01, 2016*

\* Staver's staff and associates have engaged in stalking, death threats, and harassment, for weeks, of a sexual nature. Harassment has including speaking in front of children as young as 9 years old in a sexual manner.

These people have also boasted that they create “malware” and use it to harm people. They've suggested that they'll use malware to harm site owner if he doesn't comply with their demands.

It isn't a violation of terms and conditions to state what has happened and to ask, publicly, for harassment by Staver's staff and associates to come to an end.

*(end of document)*