

Exhibit C

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

RICHARD MINSKY, an individual, d/b/a
SLART ENTERPRISES,

Plaintiff,

v.

LINDEN RESEARCH, INC., d/b/a LINDEN LAB, a
Delaware corporation, JOHN DOE (a/k/a VICTOR VEZINA), an
individual, PHILIP ROSEDALE, an individual, MITCHELL
KAPOR, an individual, other DOES, presently unknown to
Plaintiff,

Defendants.

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LEK-DRH

**RESPONSE TO DEFENDANT'S
[PROPOSED] TEMPORARY RESTRAINING ORDER BY CONSENT**

1. The procedure proposed by Defendants in paragraph 1. is generally acceptable. In addition to the factors to be included in the notice as outlined by the Defendants, the notice would also contain "cease and desist" (c&d) language and return information such as that outlined in Exhibit A.

2. I would eliminate the exception in the beginning of Paragraph 2, and further require Defendants to provide me with certification of receipt of the notice by the infringing user. Without proof of service a notice has no significance. If a reply confirming agreement to the c&d notice is not received from the infringing party within seven days following service of the notice, I will notify Defendants' attorneys of my intention to seek an expedited order to disclose the user's identifying information, given the immediate and irrevocable harm that infringement causes, and the indication that an infringer who will not agree to cease and desist from the infringing acts is likely to continue to infringe. If it is within the law for the Court to define a procedure for an

expedited process to obtain the identities of anonymous users when trademark infringement is recognized by the Court, similar to the expedited procedure for Copyright infringement provided by the Digital Millenium Copyright Act (DMCA), then I respectfully request that such procedure be defined in the Order. If language regarding the present action such as Defendants describe is to be transmitted with the notice is permitted by the Court, that language should be subject to the regulation of the Court, and submitted to the Court for approval. The time frames proposed by the Defendants in paragraph 2 are acceptable.

3. Defendants' proposed TRO paragraph 3. is designed to encourage infringement and dilution of my SLART trademark and is unacceptable. We discussed this yesterday and understood there was no agreement on this point. The very instance of infringement that was illustrated in my Show Cause Order requesting the TRO and preliminary injunction is excluded from Defendants' proposed order, rendering it worse than meaningless as a Restraining Order. Defendants' proposal is an Encouraging Order.

I have used and will in the future use various combinations of upper and lower case letters, in various fonts and colors, to spell Slart. Any use of the contiguous letters "slart" in any font, style, size or color is disallowed by law.

For Defendants to specify that the letters must be "as one word with all letters depicted in a uniform size, font and color" constitutes Unfair Competition and extends the Tortious Interference that was the basis of my original complaint. It is an attempt to turn the TRO around and use it as an aggressive competitive weapon, encouraging others to present their goods and services with lightly veiled false designations of origin, further infringing my trademark in violation of the substance of the TRO.

To create an Order such as the one the Defendants desire would encourage those in similar businesses to my own who wish to capitalize on my fame (or infamy) to get listed in a search for me, and possibly ahead of me in the search if they pay the Defendants more than I do, simply by changing the size, the color or the font of one or more letters. This also violates the meaning of a Word Mark. The infringing use I provided in my Show Cause Order used "SLart" as a keyword in a classified advertisement for an art gallery. That caused the infringing party's ad to appear when searching SL classifieds for "slart." It appeared above my Gallery in the search because they paid Defendants more than I did. Under the Defendants' version of an Order that would be a use that requires me to seek a judicial decision, and would place undue burden on the court as well as me if infringers were encouraged by a Judicial Order to do just that. There is a perfectly good and much-used term that those same users can employ as a keyword, "sl art" or "SL Art" or any other combination with a space in it that will bring their listing up with all the other artists and galleries.

This continues to be part of the Defendants' strategy to control the use of any word that has "SL" in it, despite the rulings of the USPTO or this court, and should be stopped. During yesterday's hearing Defendants' were asked by the Court: who should decide what is an infringing use? The Defendants replied that the Court should decide. I agree, and therefore I ask the Court for a decision that the SLART mark is infringed when an infringing use uses the mark in any font, style, size or color, which may include letters of different color, size, case, or other elements of font or style as are often used in typography.

I am a well known proponent of experimental typography, have been a typographer for over 40 years, am the Founder of The Center for Book Arts, and intend to keep experimenting graphically with my logos and brand identification as time goes on. My specimen to the USPTO showed the letters SL in one color and ART in another. I have also had the mark animated on my website, with all the letters changing.

4. I am in agreement with Defendants' desire to preserve materials. However, the TRO should also include a provision requiring defendants' preservation of the communications between them and the alleged infringers. It should be clarified that all materials includes evidence of data such as time stamps, and locations.

5. I respectfully request, as outlined in 2. above, an expedited procedure for identity verification in situations where the court agrees that infringement has occurred and the perpetrator fails to return a c&d agreement within 7 days. This goes to the immediate and irreparable harm of consumer confusion. If administrative challenges take weeks of time, the damage is done. With infringement in SL, in particular, a week is a long time. A classified ad may be placed for just a week, then disappear, and be placed again a week or a month later. A more substantial problem exists in SL, called "alts." An individual may hold several or many accounts, each with a different avatar name. This is where the cooperation of the Defendants' in identifying a perpetrator of multiple infringements is requisite. Someone can easily infringe for a week in one name, then place a slightly different ad that also infringes using another name. I would suggest that the TRO stipulate that if two or more instances of infringement are perpetrated by the same user under different avatar or resident names, that the Defendants' be compelled to identify that user. If there is disagreement as to whether the incident is in fact

infringement, subject to whatever guidelines are imposed by the court, an expedited order will be sought. In such a case Defendants' would be responsible for identifying the fact that multiple incidents were perpetrated by someone using "alts," or different character names, and to identify the "resident" names. It would then be up to the court to order the identifying information to be provided.

6. When notified by me that there is an infringing use, if it is not obvious to Defendants and there is any question about whether the use should be removed, they shall place a notice at the location of the filing of the notice described in 1. indicating that a report of trademark infringement was filed by ArtWorld Market, owner of the trademark SLART, and is being investigated.

7. I respectfully request the Court consider retaining those elements of the original order not mentioned herein that it considers appropriate, with whatever modifications or specifications the Court deems necessary to preserve the rights of affected parties.

The short time available to draft this response precludes my researching all the reasons that granting some of the terms in the Defendants' proposed Order would be immediately harmful, but I believe the above covers exposes some significant issues.

EXHIBIT A

PROPOSED CEASE AND DESIST ORDER

Dear _____:

I am owner of the federally registered trademark "SLART", Registration No. 3399258. I have protected and own the mark "SLART" and use it in connection with my business activities in international class 041. The mark, as you must appreciate, is of great value and importance to my business and my continued efforts to maintain a connection between the mark and my commercial activities.

Recently, I have become aware of your use of the mark in connection with your activities, including _____.

This letter is being sent to protest your continued (unauthorized use of a mark confusingly similar to) OR (misuse of) "SLART" in connection with your activities .

Your use of "SLART" unfairly capitalizes on the goodwill and reputation embodied in association with my activities. This misappropriation of the mark misleads the public into believing that I have authorized or sponsored or affiliated myself with your activities.

(You can use "SL art" to describe art made in-world, but not the combined mark "slart". The use of the mark "slart" (or SLart or SLArt or any variant) is only for activities, products and services that I own or license. If you are not familiar with Slart Gallery, the Slart Academy or SLART Magazine, please do visit <http://SlartMagazine.com>)

[... insert the above when appropriate....]

The following legal cease and desist notice is a requirement of trademark enforcement. Please read it, and certify that you understand and will comply with it by either sending it as a notecard to ArtWorld Market within the Second Life[®] virtual world, or copying it and sending it as an e-mail to ArtWorld@SlartMagazine.com :

This type of deceptive trade practice constitutes trademark infringement under Section 32(1) of the Lanham Act, 15 U.S.C. 1125(a), and violates trademark and dilution statutes as well as principles of unfair competition and misappropriation.

To ensure that you cease and desist of all unauthorized use of the mark "SLART" or any mark confusingly similar we must require that you certify that:

1. you, or any entity you are affiliated with or an agent of, will immediately cease all use of the mark "SLART"

2. you, or any entity you are affiliated with or an agent of, agree to rescind and refrain from any further advertising bearing the mark "SLART" or any mark confusingly similar

3. you will communicate your agreement to desist from infringement of our rights by return note and or email to my attention. The note or email should contain the following statement: "I agree to all requirements, and to comply with all terms, of the cease and desist note forwarded to my attention on __[insert date]__ by (Richard Minsky) or (ArtWorld Market) ".

Your return note and or email to my attention will constitute your signature for the purposes of this document indicating that you agree to and have fully complied with these requirements.

In the event that we do not receive an affirmative response from you within 7 days, we will not have any alternative but to take further action against you, your company (if any, and its liable persons) in order to protect and vindicate our valuable rights.

Very truly yours,

(ArtWorld Market) or (Richard Minsky)