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Friday, May 21, 2010

Via Email & U.S. Mail

Jason D. Bane
Colorado Pols, LLC

webmaster@coloradopols.com

**Re: Infringement/misappropriation of news content by
ColoradoPols.com**

Dear Mr. Bane:

This law firm represents, among others, Media News Group, Freedom Communications, Inc., and Swift Communications Corp., publishers of the majority, and the largest, of the daily newspapers in Colorado, among them *The Denver Post*, *The Gazette*, *Boulder Daily Camera*, *Greeley Tribune*, and a host of related publications.

We are writing today to lodge notice with you of our clients' objection, and their intent to seek relief if no corrective action is taken, to your firm's flagrant and persistent theft of our clients' intellectual property by the Colorado Pols website at www.coloradopols.com.

Your publication's wholesale, and unjustified, use of the news content published by our clients, which is produced at significant expense by them and from which your firm is deriving advertising revenue everyday without our clients' permission and without any compensation to our clients by your firm, constitutes multiple violations of our clients' rights under the federal Copyright Act and the common law doctrine of hot news misappropriation.

Some recent examples of your website's repeated pattern of unauthorized copying from the website versions of our clients' news reports are reflected in the following instances, all of them appearing on the Colorado Pols website in just the current month:

- ✓ May 20, 2010: 8 paragraphs copied from Michael Booth's story for *The Denver Post*: "Primary upsets outside Colorado don't ruffle Dem Senate candidates."
- ✓ May 19, 2010: 8 paragraphs copied from Allison Sherry's story for *The Denver Post*: "Norton brings the fight to GOP primary contest."

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- ✓ May 18, 2010: 3 paragraphs (out of a total of 5) from Wayne Heilman’s story for *The Gazette*: “Sales tax collections rise for a sixth straight month from '09.”
- ✓ May 18, 2010: 4 paragraphs from Caitlin Row’s story for the *Summit Daily News*: “Frisco finally reports growth for sales tax collection in March.”
- ✓ May 18, 2010: 3 paragraphs from Caitlin Row and Julie Sotor’s story for the *Summit Daily News*: “Sales tax collection in March way up for Dillon.”
- ✓ May 18, 2010: 5 paragraphs (out of a total of 8) from Allison Sherry’s story for *The Denver Post*: “GOP Senate rivals trade shots over Sarah Palin's visit to Denver.”
- ✓ May 12, 2010: 5 paragraphs from a staff-written story for *The Denver Post*: “Tenure bill nears passage.”
- ✓ May 10, 2010: 8 paragraphs from Tom Roeder’s story for *The Gazette*: “County GOP chief jumps ship in mid-Senate race.”
- ✓ May 10, 2010: 4 paragraphs from Lynn Bartel’s story for *The Denver Post*: “Aurora councilman's attendance record draws attention in congressional primary.”
- ✓ May 9, 2010: 8 paragraphs from Lola Shrimplin’s story for the *Lamar Ledger*: “Jane Norton makes campaign stop in Lamar.”
- ✓ May 7, 2010: 4 paragraphs (out of a total of 8) from a staff-written story for the *Greeley Tribune*: “Ken Buck brings on state GOP leader as campaign manager.”
- ✓ May 5, 2010: 3 paragraphs (out of a total of 5) from Michael Riley’s story for *The Denver Post*: “Polis lands seat on Judiciary panel.”

Indeed, these examples reflect only those instances involving the three clients on whose behalf we write today. It appears that the entire business model of the Colorado Pols website is built upon flagrant copying of the hard work of all manner of news media organizations, including not just our clients listed above but others of this firm’s clients, including the *New York Times*, Associated Press, and CNN.

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Each of the instances of infringing copying listed above involved the unauthorized appropriation of the heart of a breaking or highly newsworthy story, taking the lead and the principal substance of the underlying reporting. Moreover, because none of the postings by Colorado Pols generated any appreciable traffic at the websites of the underlying publishers, it is beyond dispute that this copying by Colorado Pols harmed the market value and revenue-generating potential of the infringed works. Indeed, MediaNews Group has been monitoring the traffic to its sites from ColoradoPols during the listed time period, and the links inserted by Colorado Pols in the infringing excerpts of MediaNews Group's stories are generating no more than zero to five clicks to the underlying stories at *The Denver Post's* website.¹ This pattern of a lack of any appreciable traffic from Colorado Pols is the same for Swift and Freedom. The explanation for this lack of traffic is quite obvious: Colorado Pols is taking so much of our clients' reporting that no reader need ever click through to the underlying story that Colorado Pols has copied; Colorado Pols has taken anything, and everything, of value in the reporting by our clients.

In light of these considerations, Colorado Pols has no legal basis for invoking the Fair Use Defense, or the First Amendment, to justify its unfair competition with our clients. This kind of misappropriation simply has no defense under the law. *See, e.g., Barclays Capital Inc. v. Theflyonthewall.com*, --- F.Supp.2d ----, 2010 WL 1005160 (S.D.N.Y. Mar.18, 2010); *Associated Press v. All Headline News Corp.*, 608 F. Supp. 2d 454 (S.D.N.Y. 2009).

Please be advised that our clients hereby demand that Colorado Pols cease and desist from any and all unauthorized literal copying from our clients' newspapers or websites, *i.e.*, from any of the publications operated by MediaNews Group, Freedom Communications, and Swift.

Our clients reserve all their rights with respect to this matter, including their right to seek injunctive relief to halt your website's unlawful conduct.

If you would like to discuss this matter, please feel free to contact me.

¹ And even these numbers are overstated because they include my own click-through's to monitor Colorado Pols' activities.

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Very truly yours,

LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.



By

Christopher P. Beall

cc: Jeanette Chavez, *The Denver Post*
Jeff Thomas, *The Gazette*
Randy Bangert, *Greeley Tribune*