

Brian Berley

22 August 2013

Email

Ninapj@olswang.com

**BY EMAIL: brianberley@att.net**

Our Ref PAS\KFS\24142-3

Your Ref

Dear Brian

## **Ian Fleming's James Bond: The Illustrated 007**

We act for Ian Fleming Publications Limited ("IFPL") and Danjaq LLC ("Danjaq"). IFPL owns the literary copyright in Ian Fleming's Bond novels (the "Bond Novels"). This includes the right in copyright to publish the Bond Novels in graphic novel format. Together with Metro Goldwyn Mayer Studios Inc, Danjaq owns the non-literary copyright in the Bond Novels and this includes the right in copyright to create animated sequences of images from the Bond Novels.

Danjaq also owns certain registered trade mark rights relating to the Bond Novels within the UK and the European Union. It licenses these trade marks rights to IFPL. Included in their portfolio of registered trade mark rights is a trade mark for 007, with Community trade mark number 1204882, effective from 14 June 1999, and registered in respect of electronic books, electronic comic books and electronic publishing (the "Trade Mark"). We enclose full details of this registration.

It has recently been drawn to our clients' attention that in 2010 you made available on YouTube a sequence of images (including illustration stills and animated sequences) depicting scenes from the Bond Novels entitled "The Illustrated 007". We also understand from YouTube and your website at [www.brianberley/007](http://www.brianberley/007) ("Domain Name") that you intend to post an updated "Illustrated 007" in the summer of 2013 (all versions together "Your Work").

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Our clients object to Your Work because:

1. By creating illustrations which depict scenes from a number of Bond Novels without IFPL's consent, you are adapting a substantial part of a number of Bond Novels. This infringes IFPL's literary copyright in the Bond Novels. Also, by creating animated sequences which depict scenes from a number of Bond Novels without Danjaq's consent, you are adapting a substantial part of a number of Bond Novels. This infringes Danjaq's non-literary copyright in the Bond Novels. This is the case notwithstanding the fact that at the end of the 2010 YouTube video, there is a statement that "The producer of this work respectfully acknowledges IFPL in regards to all literary source material".
2. We have advised our client that (i) the application by you of the sign 007 to Your Work and (ii) the supply of services under the Domain Name which incorporates the Trade Mark infringes Danjaq's registered trade mark rights. The sign you are using is identical or similar to Danjaq's registered trade mark and is being applied to goods and/or services identical or similar to those covered by Danjaq's trade mark registration. As a result there is a likelihood of confusion on the part of the public which includes a likelihood of association with the Trade Mark. This is contrary to section 10(1) and/or 10 (2) of the Trade Marks Act 1994.
3. In addition, because the Trade Mark has a reputation in the UK, the use by you of the Trade Mark takes unfair advantage of, or is detrimental to, the distinctive character of our clients' trade mark rights, contrary to section 10(3) of the Trade Marks Act 1994. This activity is known as "passing off".

We request that you sign the attached undertakings and return them to us by **Thursday 29 August 2013**.

Our clients also require your proposals for financial compensation for this infringement and passing off. Such proposals should include a reasonable payment towards damages suffered by our clients. In the meantime, our clients reserve all their rights generally.

If it should become necessary for our clients to institute proceedings (which may be without further notice to you), the remedies available to our clients include an immediate injunction,

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damages or an account of profits, legal costs and interest.

This is a complex area of English law and we recommend that you refer this letter to your lawyers immediately. Please note that many of the principles of English law outlined in this letter are mirrored under US law.

We await hearing from you.

Yours faithfully

**Olswang LLP**

**Enc. Registration details and Undertakings**

To: Ian Fleming Publications Limited and Danjaq LLC  
c/o Olswang LLP  
90 High Holborn  
London  
WC1V 6XX

Date: [ ] August 2013

Dear Sirs

**Ian Fleming's James Bond: The Illustrated 007**

I refer to the letter from your solicitors, Messrs Olswang, to us dated 22 August 2013 ("the Letter").

In consideration of your not commencing proceedings against me for infringing your copyright and your rights under your trade mark registration by virtue of (i) my application of 007 to my YouTube videos entitled "The Illustrated 007" ("My Work") and (ii) my supply of services under the domain name [www.brianberley.com/007](http://www.brianberley.com/007) ("Domain Name") which incorporates Community trade mark number 1204882 (the "Trade Mark") and for passing off to date, I hereby undertake, whether directly or indirectly, that I shall:-

- a. not make available to the public any versions of My Work, including the full version which I have publicised as being released in summer 2013;
- b. immediately shut down the website available at [www.brianberley.com/007](http://www.brianberley.com/007) and immediately remove from youtube the videos available at the following links:  
  
<http://www.youtube.com/watch?v=sL0ufg9-WAI> and  
<http://www.youtube.com/watch?v=SpmBrEzdq5s>
- c. undertake not to make available My Work on any other website or through any other online or off line route;
- d. neither now or at any time in the future apply 007 or any mark confusingly similar thereto to any book or e-book or to the promotion of any book or e-book or the supply of any related service which would amount to an infringement of the Trade Mark;
- e. neither now or at any time in the future pass off myself or any business or any products or services of my own or with which I am associated as being that of, or in any way connected with or endorsed by Ian Fleming Publications Limited or Danjaq LLC;

- f. pay such damages or profits relating to my infringement of your copyright and my infringement of your registered and unregistered rights in the Trade Mark by the application of the sign 007 to My Work and the supply of services under the Domain Name as may be agreed, or in default of agreement, determined by the Court.

Yours faithfully

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Brian Berley

Date: