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INTELLECTUAL PROPERTY • BUSINESS LITIGATION
Licensed in Nevada, California, and the District of Columbia

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December 18, 2020

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED) AND
VIA E-MAIL (matt@cleverleverage.com)

Mr. Matt Justice
Clever Leverage
www.cleverleverage.com
1705 Edgewater Dr., # 540111
Orlando, FL 32854

Re: False, Misleading, and Defamatory Statements on www.cleverleverage.com
Our Reference No.: FINNMRK.004L

Dear Mr. Justice,

Please be advised that our firm represents Finnmark Designs, LLC (“Finnmark”) in connection with its business and intellectual property legal matters.

As Finnmark has attempted to relate to you previously, your online statements and video dated December 5, 2019, which are posted at <https://cleverleverage.com/influence-saunas/#more-32357> contain certain false, misleading and defamatory statements. The purpose of this correspondence is to demand that you **immediately remove such false and defamatory content** from your website as well as from any other online platforms where such content may be posted (including, without limitation, the posting of the video on YouTube at https://www.youtube.com/watch?v=Cpi_bEIdMtI).

Finnmark has evaluated the above-referenced online written content and associated video and notes the following false and misleading statements about Finnmark and its sauna products.

The following list the false and misleading statements in the posted videos:

- At the 5:53 mark, you purport to test the sauna with a Trifield EMF Meter Model TF2 for ELF – However, you are holding the device in your hand, which creates a massive amount of body produced ELF, and you did not create a control where the sauna was off to obtain a baseline or starting point. Your corresponding measurement statements are therefore **false and misleading.**
- You also state “there is no proof to back up the claims being made ... without some real information regarding specifics like EMF levels, construction, etc.” – Finnmark has third party EMF testing from a NASA award winning company, which you can download from Finnmark’s website (<https://www.finnmarkdesigns.com/low-emf-heaters.html>) and review for yourself). Your statement that there is no proof is therefore **false and misleading.** In addition, the construction quality of the sauna can easily be determined by the sauna weight

- as well as the fact that the wood used is high-quality western red Canadian cedar, and so any suggestions otherwise relative to the sauna constructions is also false and misleading.
- You state “I can’t find a single person that’s saying how great it is, truly using one or sitting in one...” – Finnmark and Influence Sauna presently had well over 150 positive reviews combined across their respective websites for Finnmark’s sauna as of the date of your posted video (and even a greater amount as of the current date) of which you were certainly well aware of when you made this statement, making it **false and misleading**.
 - At the 1:20 mark, you suggest Finnmark has “nothing to back up their claims” – once again, Finnmark has a third-party EMF report and dozens of referenced medical journal citations. Your statement is outright **false and misleading**.
 - At the 1:50 mark, you suggest Finnmark is “making claims without proof” – once again, Finnmark has a third-party EMF report and dozens of referenced medical journal citations. Your statement is outright **false and misleading**.
 - At the 3:02 mark, you suggest that Finnmark has not had any conversations with Oram Miller – in fact, Oram Miller advised Finnmark representatives regarding its saunas on numerous phone conversations and emails. Your statement is outright **false and misleading**.
 - At the 3:21 mark, you suggest that magnetic testing needs to be done on live video – again, Finnmark has a third-party EMF report and dozens of referenced medical journal citations. Your statement is outright **false and misleading**.
 - At the 5:34 mark, you suggest “no one has contacted me” – but as you know well know, you actually spoke with Finnmark’s representatives prior to the date of your video, along with multiple phone and email conversations since that time, including conversations addressing the matters in this letter. Your statement is outright **false and misleading**.
 - At the 7:01 mark, you suggest Finnmark has not consulted a “single health care professional” – Finnmark has twelve doctors promoting its sauna. See attached list of doctors who have endorsed Finnmark’s sauna product. Your statement is outright **false and misleading**.
 - At the 7:19 mark, you chide Finnmark to “add proof to your claims you make” – again, Finnmark has a third-party EMF report and dozens of referenced medical journal citations to support its claim. Your statement suggesting otherwise is **false and misleading**.
 - At the 10:51 mark, you suggest that the Tri-Field meter is a waste of time and that you do not trust it, however, you go on to test the Influence Sauna a second time and made a second video (the more recent video you made) using a Tri-Field meter. To represent in your earlier video that the Tri-Field meter does not give accurate results, and then go on and use the same meter for your testing in a subsequent video underscores the **false and misleading** nature of your original statements that you “do not trust” the Tri-Field meter.

- At the 14:32 mark, you suggest that Finnmark does not have a third-party EMF report – once again, Finnmark has a third-party EMF report and dozens of referenced medical journal citations. Your statement is outright **false and misleading**.

The following are the false and misleading statements in the written comments on your website associated with the above video:

- “I love the idea behind this sauna, but there is literally no proof to back up the claims being made. It’s basically impossible to do a comparison for you guys without some real information regarding specifics like EMF levels, construction, etc...” As mentioned above, Finnmark has a third-party EMF report and dozens of referenced medical journal citations. Your statement is outright **false and misleading**.
- “I can’t find a single person that’s saying how great it is, truly using one or sitting in one... nor any of the naturopaths having them in their office. So I don’t know, this isn’t a proper review, just sick of being inundated with questions about it everyday when the company doesn’t provide enough details with the marketing material claims.” As mentioned above, Finnmark had well over 150 positive reviews combined across their respective websites for Finnmark’s sauna as of the date of your posted video (and even a greater amount now) of which you were certainly well aware of when you made this statement, making it **false and misleading**.

Notably, your own web page acknowledges that these statements and the video are “from last year” and “old stuff” and superseded by your newer videos reflecting your opinion of Influence Sauna (to which Finnmark has no objection). Nevertheless, by allowing this older video containing false and misleading statements (along with the written words associated with this older video) to remain online continue to cause irreparable harm to the reputation of Finnmark and its products, especially on those third-party sites (such as YouTube) where your “Update” notice may not otherwise be seen by viewers of the video.

All of the aforementioned false and misleading statements are further problematic by the fact that the Clever Leverage website only purports to be an independent reviewer, but you have not *adequately* disclosed your affiliation with both Clearlight and High Tech Health, both of whom are Finnmark competitors in the infra-red sauna industry. Pursuant to guidance issued by the Federal Trade Commission (the “FTC”) in 2009, “[w]hen there exists a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (i.e., the connection is not reasonably expected by the audience), such connection must be fully disclosed.” Casper Sleep, Inc. v. Mitcham, 204 F. Supp. 3d 632, 635 (S.D.N.Y. 2016). And “diversion of sales to a direct competitor” is the “paradigmatic direct injury from false advertising.” Lexmark Int’l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 134 S. Ct. 1377, 1393, 188 L. Ed. 2d 392 (2014).

You should be aware that the loosely related causes of action of false advertising, defamation, and commercial disparagement together have a significant impact on business communications, including online reviews and commentaries such as the ones you are engaged in creating. False advertising is advertising that is either literally false or is likely to mislead and confuse consumers, such as where you make false statements about Finnmark’s sauna products. See, e.g., Time Warner Cable, Inc. v. DIRECTV, Inc., 497 F.3d 144, 153 (2d Cir. 2007); Scotts Co. v. United Indus. Corp., 315

F.3d 264, 272-73 (4th Cir. 2002). Defamation encompasses the torts of libel (written defamation) and slander (spoken defamation). See, e.g., Keohane v. Stewart, 882 P.2d 1293, 1297 n.5 (Colo. 1994); Draghetti v. Chmielewski, 626 N.E.2d 862, 866 n.4 (Mass. 1994). And commercial disparagement, which is closely related to defamation, concerns false statements made with the intent to call into question the quality of a competitor's goods or services and to inflict pecuniary harm, such as when you make false statements and also fail to disclose your affiliation with Clearlight. See, e.g., Forbes Inc. v. Granada Biosciences, Inc., 124 S.W.3d 167, 170 (Tex. 2003) ("A business disparagement claim is similar in many respects to a defamation claim. The two torts differ in that defamation actions chiefly serve to protect the personal reputation of an injured party, while a business disparagement claim protects economic interests."); Allcare, Inc. v. Bork, 531 N.E.2d 1033, 1037 (Ill. App. Ct. 1988) ("Defamation and commercial disparagement are two distinct causes of action. Defamation lies when a person's integrity in his business or profession is attacked while commercial disparagement lies when the quality of his goods or services is attacked.").

False advertising is prohibited by Section 43(a)(1)(B) of Lanham Act, which provides: "(1) Any person who, on or **in connection with any goods or services**, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or **false or misleading representation of fact**, which . . . (B) **in commercial** advertising or **promotion, misrepresents the nature, characteristics, qualities**, or geographic origin of his or her or **another person's goods, services, or commercial activities**, . . . shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act." 15 U.S.C. § 1125(a)(1)(B) (emphasis added). Damages for false advertising include recovery of lost profits, disgorgement of the defendant's wrongful profits, compensation for injury to the plaintiff's reputation, and compensation for any corrective advertising necessary to counter the false statements in the marketplace. See, e.g., BASF Corp. v. Old World Trading Co. Inc., 41 F.3d 1081, 1092-95 (7th Cir. 1994) (affirming district court's award of \$2.5 million in lost profits based on market share analysis); U-Haul Int'l Inc. v. Jartran, Inc., 793 F.2d 1034, 1041 (9th Cir. 1986) (upholding district court's award for plaintiff's corrective advertising expenses); Castrol, Inc. v. Pennzoil Quaker State Co., 169 F. Supp. 2d 332, 343 (D.N.J. 2001) (finding that disgorgement of profits would be a permissible remedy for false advertising when defendant's conduct was intentional and willful). Moreover, injunctive relief is available without proof of specific harm. 15 U.S.C. § 1125(a)(1).

In addition, a party (for example, Finnmark) would have a claim for defamation if it can demonstrate that the prospective defendant (for example, you) has made a defamatory statement of fact of or concerning the complaining party that is false and causes economic harm. See, e.g., Smith v. Maldonado, 85 Cal. Rptr. 2d 397, 402 (Cal. Ct. App. 1999) ("Defamation is an invasion of the interest in reputation. The tort involves the intentional publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure or which causes special damage."); Dillon v. City of New York, 704 N.Y.S. 2d 1, 5 (N.Y. App. Div. 1999) ("The elements [of defamation] are a false statement, published without privilege or authorization to a third party, constituting fault as judged by, at a minimum, a negligence standard, and, it must either cause special harm or constitute defamation per se."). Notably, actionable defamation includes false statements that are injurious to business reputation, such as the type of false and misleading statements you are making in this case about Finnmark. For example, your statements that "there is no proof to back up the claims being made" and that Finnmark has not consulted a "single health care professional," along with other clear misrepresentations of fact about Finnmark's sauna and business operations, are clearly defamatory statements likely to harm Finnmark's pecuniary interests.

Similarly, commercial disparagement is a common law tort closely related to defamation. It has been defined as a false statement intended to call into question the quality of a competitor's goods or services in order to inflict pecuniary harm. The states have several designations for what is essentially the same tort – “Commercial disparagement” (see Pro Golf Mfg. Inc. v. Tribune Review Newspaper Co., 809 A.2d 243, 246 (Pa. 2002); Picker Int'l, Inc. v. Leavitt, 865 F. Supp. 951, 964 (D. Mass 1994)), “Business disparagement” (see Forbes Inc. v. Granada Biosciences, Inc., 124 S.W.2d 167, 170 (Tex. 2003)), “Product disparagement” (see Teilhafer Manu. Co. v. Unarco Materials Storage, 791 P.2d 1164 (Colo. App. 1989)), and/or “Trade libel” (see Border Collie Rescue, Inc. v. Ryan, 418 F. Supp. 2d 1330, 1348 (M.D. Fla. 2006)). Notably, corporate defamation (which injures the reputation of the company itself) is separate and distinct from commercial (or product) disparagement (which injures the reputation of the company's products or services). See, e.g., Forbes Inc. v. Granada Biosciences, Inc., 124 S.W.2d 167, 170 (Tex. 2003) (“A business disparagement claim is similar in many respects to a defamation action. The two torts differ in that defamation actions chiefly serve to protect the personal reputation of an injured party, while a business disparagement claim protects economic interests.”); Allcare, Inc. v. Bork, 531 N.E.2d 1033, 1037-38 (Ill. App. Ct. 1988) (defendant's statements that medical supply company's president was paying bribes and that medical supply company was under investigation for fraud might constitute corporate defamation but did not constitute commercial disparagement because the quality of the company's goods and services was not attacked). Under either theory, a plaintiff prevailing in a defamation or commercial disparagement case is entitled to actual or compensatory damages. See, e.g., Weller v. American Broadcasting Cos., Inc., 283 Cal. Rptr. 644, 658- 659 (Cal. Ct. App. 1991) (upholding jury damages for actual injury to business and to antique dealer's reputation when television broadcast suggested that antiques dealer had knowingly sold stolen property); GN Danavox, Inc. v. Starkey Labs., Inc., 476 N.W.2d 172 (Minn. Ct. App. 1991) (affirming compensatory damages for business defamation when competitor circulated advertisements falsely stating that plaintiff was going out of business).

Moreover, false or misleading statements in commercial speech may give rise to claims for interference with existing or prospective contractual relations pursuant to state law. See, e.g., Franklin v. Dynamic Details, Inc., 10 Cal. Rptr. 3d 429, 441 (Cal. Ct. App. 2004) (plaintiff alleged trade libel and interference with contractual and prospective economic relationships when defendant suggested in a series of emails that plaintiff had stolen copyrighted materials). Likewise, claims may also be brought under state statutes prohibiting unfair and deceptive trade practices and unfair competition. See, e.g., Border Collie Rescue, Inc. v. Ryan, 418 F. Supp. 2d 1330, 1338- 39 (M.D. Fla. 2006) (defendant dog trainer and military contractor brought counterclaim against former employee for, *inter alia*, defamation, trade libel, and misappropriation of trade secrets in violation of Florida law). And, of course, the Federal Trade Commission (FTC) prohibits “unfair or deceptive acts or practices in or affecting commerce” and specifically prohibits “any false advertisement... for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of foods, drugs, devices, services, or cosmetics.” 15 U.S.C. §§ 45(a)(1) & 52(a); 16 C.F.R. §§ 1.1, et seq. (enforceable by the FTC, either at its own initiative or at the request of a competitor or another aggrieved party).

In this case, your false and misleading statements about Finnmark and its products and services implicate one or more of the aforementioned business torts outlined above and give rise to multiple causes of action by Finnmark for, *inter alia*, false advertising, defamation, commercial disparagement, and deceptive trade practices.

Matt Justice
Clever Leverage
December 18, 2020

Accordingly, without waiving any of its rights in law or equity, all of which are hereby expressly reserved, Finnmark reiterates its demands above that you immediately **take down and remove your** online statements and video dated December 5, 2019, which are posted at <https://cleverleverage.com/influence-saunas/#more-32357> as well as on any other online platforms where the same content has been posted (including, without limitation, on YouTube at https://www.youtube.com/watch?v=Cpi_bEIdMtl).

To the extent you take such actions by *no later than* **December 22, 2020**, then Finnmark is prepared to forego pursuing any legal claims for damages and attorneys' fees against you and will consider this matter closed. However, if you choose to ignore this demand and continue making such false and misleading statements publicly in order to defame and commercially disparage Finnmark and its products and services, then Finnmark will be left with little choice but to commence a formal legal action against you without further notice in which case Finnmark will seek all available legal and equitable remedies under federal and state law, including, injunctive relief, monetary damages, court costs, attorney's fees, as well as all other relief available to Finnmark under applicable law.

Nothing contained in or omitted from this letter is or shall be deemed to be either a full statement of the facts or applicable law, an admission of any fact, or a waiver or limitation of any of my client's rights or remedies, equitable or otherwise, all of which are specifically retained and reserved.

We await your prompt response.

Sincerely,

A handwritten signature in blue ink that reads "Ryan Gile". The signature is written in a cursive, slightly slanted style.

Ryan Gile

Doctor and Health Expert Endorsements



Dr. Tom O'Bryan

Dr. O'Bryan is founder of TheDr.com and the visionary behind The Gluten Summit.



Dr. Trevor Cates

Dr. Trevor Cates is a nationally recognized naturopathic doctor. She is also known, as "The Spa Dr."



Dr. Eric Zielinski

Doctor of Chiropractic who specializes in public health research and aromatherapy.



Dr. Michelle Sands

#1 Best-selling Author, licensed Naturopathic Physician, Speaker, Female Hormone Expert, and Epigenetics coach.



Dr. Steven Masley

Steven Masley MD is a physician, nutritionist, trained-chef, author, and the creator of the #1 health program for Public Television, 30 Days to a Younger Heart.



Donna Gates, M.Ed

Donna Gates, M.Ed., ABAAHP, is the international best-selling author of The Body Ecology Diet.



Dr. Christine Schaffner

Dr. Schaffner combines both naturopathic, functional and conventional therapies to develop individualized treatment plans focusing on the underlying cause of complex chronic illness



Dr. Eliza Klearman

Dr. Eliza Klearman, an expert in natural and holistic medicine.

Doctor and Health Expert Endorsements



Erin Elizabeth

As a long time “health nut,” author and public speaker, Erin Elizabeth has had a passion for the healing arts for nearly 25 years.



Ocean Robbins

Author, speaker, facilitator, father, dancer, and movement builder. As co-founder and CEO of the 500,000+ member Food Revolution Network.



Ari Whitten Ph.D.

Energy and fatigue specialist who focuses on taking an evidence-based approach to energy enhancement, a nutrition, exercise and natural health expert, and #1 best-selling author.



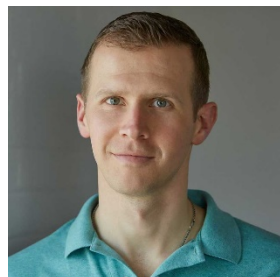
Dr. Mariza Snyder

Dr. Mariza Snyder is a functional practitioner, women's health expert, and the author of eight books.



Better Way Health

Better Way Health is an evidence based supplement company that only carries the highest quality supplements that are backed by scientific research.



Ryan Sternagel

Ryan Sternagel, along with his wife Teddy, is the founder of The Stern Method, a platform informing and inspiring families going through cancer to succeed on all fronts.



Robyn Oppenshaw

Former psychotherapist, Brigham Young University faculty, and single mother of four, is the original “Green Smoothie Girl” and the driving force behind GreenSmoothieGirl.com



Cancer Tutor

Since 2003 the Cancer Tutor website has been considered to be among the most important websites on the Internet on the subject of alternative cancer treatments.

Doctor and Health Expert Endorsements



Sauna Foundation

The Infrared Sauna Foundation has rated the Influence/Finnmark sauna it's number 1 pick for 2020. Safety, EMF's, quality and overall value.



Bill Cadwallader

Bill Cadwallader is the author of Exposed and an EMF expert. Quote: "one of the lowest EMF saunas I have ever tested".



Wendy Myers

Wendy Myers is founder of MyersDetox.com. She is a detox expert, functional diagnostic nutritionist and NES Bioenergetic Practitioner in Los Angeles, CA. She is the #1 bestselling author of Limitless Energy.



5-Star Reviews

Since our launch in 2018, we have received hundreds of 5-star reviews from real buyers. Shop confidently knowing we have exceeded hundreds of customer's expectations since opening.