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November 25, 2008

VIA FACSIMILE 972-673-7980 AND
CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Larry D. Young, President & CEO
Dr. Pepper Snapple Group, Inc.
5301 Legacy Drive
Plano, TX 75024

Re: Guns N' Roses

This office is litigation counsel for W. Axl Rose ("Axl") and Guns N' Roses ("GNR"). As we all now know, Dr. Pepper created an expansive and highly-publicized advertising campaign based solely on the exploitation of my clients' legendary reputation and their eagerly awaited album *Chinese Democracy*. In and of itself this campaign brazenly violated our clients' rights in numerous respects. Unfortunately, Dr. Pepper has now magnified the damage this campaign has caused through its appalling failure to make good on a promise it made to the American public. Dr. Pepper offered to provide free soda to every person in America in the event our clients' album was released in 2008. The redemption scheme your company clumsily implemented for this offer was an unmitigated disaster which defrauded consumers and, in the eyes of vocal fans, "ruined" the day of *Chinese Democracy's* release. Now it is time to clean up the mess.

To begin with, our clients are outraged at your treatment of their fans and the American public in general. After it became clear that *Chinese Democracy* would be released in 2008, Dr. Pepper executive Tony Jacobs proudly proclaimed that Dr. Pepper would make good on its promise to give a free soda to everyone in America. It turned out that Dr. Pepper did not define "everyone in America" the same way as "everyone in America" defined "everyone in America." In a cynical attempt to mitigate its exposure, Dr. Pepper quickly erected numerous barriers to redemption: to get a free soda, everyone had 24 hours to go to drpepper.com on Sunday, November 23, which meant that the soda was only free to those Americans who heard about the redemption plan in time and had access to a computer on November 23. Further, what happened on November 23 was a complete fiasco. In what could only be characterized as reckless indifference or complete stupidity, Dr. Pepper was completely unprepared for the traffic to its site. Most visitors were greeted with error messages. Some people who got

through to Dr. Pepper's servers were told to call a toll free number, few of whom got through. Many walked away angry as Dr. Pepper once again abused our clients' image and soured the momentous musical event that was *Chinese Democracy's* release.

It should be no surprise to Dr. Pepper that aside from defrauding consumers, this stunt caused substantial harm to our clients. The entire point of your campaign has been to use public interest in Axl Rose and Guns N' Roses as a lure to increase consumer awareness of Dr. Pepper. Your involved and extensive creation of content (see <http://chinesedemocracywhen.blogspot.com/>) containing Axl's likeness, discussing our clients (sometimes with mocking undertones) and tying your actions to those of our clients represent a raw and damaging commercial exploitation of our clients' rights. Dr. Pepper's promotional materials easily mislead the average consumer into misapprehending a copromotional relationship between Dr. Pepper, on the one hand, and Axl Rose and Guns N' Roses, on the other hand, when in fact there is no affiliation. This association is even more damaging in light of your shoddy execution of your disingenuous giveaway offer.

It is essential that Dr. Pepper work to repair the harm this campaign has done and make good on its promise to the American people.

First, we insist that Dr. Pepper run a full page ad, the text of which must be approved by our clients in advance, in *The New York Times*, *Los Angeles Times*, *USA Today*, and *The Wall Street Journal* apologizing to the American public and Guns N' Roses fans for its failure to make good on its promise to deliver free soda to every American.

Secondly, Dr. Pepper must expand the redemption window for its offer in a manner that will allow greater public access to the promised soda, and the apology ads must clearly advise consumers of the method by which they may avail themselves of this expanded redemption process. As you brace yourself for the wave of consumer litigation that may already be underway for your first botched attempt at promotional soda distribution this month, we would implore you on behalf of the once-burned public to be mindful of all applicable state and federal consumer protection laws and requirements in the implementation of these corrective redemption arrangements.

Finally, please contact us to discuss an appropriate payment to our clients for the unauthorized use and abuse of their publicity and intellectual property rights. According to AdAge.com, a prominent trade publication: "Others say that the

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association with Axl Rose, especially when Dr Pepper is increasingly relying on music to market its brand, could prove invaluable...the brand association with Guns N' Roses and Axl Rose might be something that they would have had to pay infinitely more for than they ever could have afforded." Had you wished to engage in a commercial tie-in with our clients, you should have negotiated a legitimate arrangement instead of hijacking their rights without payment. Instead, all prior contact between our clients' management and Dr. Pepper foundered as a result of inflexibility on Dr. Pepper's part as you attempted to gain the last bit of mileage from this disgusting campaign. Rest assured, this misappropriation will not be free. Failure to make an acceptable offer may necessitate our client's pursuit of available remedies, all of which are expressly reserved.

Govern yourself accordingly.

Very truly yours,
LAW OFFICES OF ALAN S. GUTMAN

By: 

Alan S. Gutman

ASG:tmf

cc: Beta Lebeis
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