Saturday, October 4, 2014

To All Chapters & Outposts  E Clampus Vitus® Inc.,

In the past few weeks there has been much activity concerning the ongoing lawsuit that E Clampus Vitus® has been involved with over the last few years. I will now summarize the lawsuit and direction the Board of Proctors has decided to take.

In the beginning, a lawsuit was filed to protect the good of the order from those that encroached on the signs and symbols of our trademarked intellectual property, as well as to stop groups or individuals from misleading the public by using the same identity as our beloved organization. This lawsuit of 2 ½ years, however, addresses only four specific individuals and a non-recognized Chapter named Joseph Zumwalt #169.

But other unrecognized offshoots of ECV® and revoked ECV® Chapters that are emulating ECV® in a negative way continue to use ECV®’s trademarked names and symbols, harming our beloved society, and causing confusion to both the public and ECV®’s membership. Most notably, these groups include Downieville and New Helvetia. Indeed, these groups may very well be the primary source of ECV®’s current problems.

However, these groups are not defendants to the current lawsuit, and any judgment against Joseph Zumwalt #169 and the four individuals will likely not put an end to the unfair practices of New Helvetia and Downieville. Given their history and past affiliation with ECV®, we had sincerely hoped that these groups would express willingness to conform to ECV®’s rules and policies, and seek charter reinstatement. We have given them several opportunities to do so.

Rather than accepting our invitations, these groups have instead openly disparaged ECV® and its Noble Grand Council of Venerable Clampatriarchs. Recently, they have even begun to grant purported ECV® charters to other non-recognized groups. These actions pose a serious, immediate threat to very existence of ECV® and its core principles, and cannot be tolerated. **Plainly, the revoked Chapters of New Helvetia and Downieville are unwilling to rebuild within our framework, regardless of the many opportunities that have been offered.**

It is beyond dispute that Carl I. Wheat was the founder of E Clampus Vitus® as a revived order. It is also beyond dispute that Carl I. Wheat was the principal architect and driving force behind the establishment of those bodies that currently govern E Clampus Vitus® today. This includes the corporation, E Clampus Vitus®, Inc., and the Noble Grand Council of Venerable...
Clampatriarchs. Consistent with Mr. Wheat’s expressed intent, only ECV® is empowered to grant or revoke charters to any particular group.

In Mr. Wheat’s own words:

“The chief function of the corporation of E Clampus Vitus is to preserve inviolate and unsullied the name and style of the order, protecting it from all and sundry unauthorized, unsuitable, inappropriate, unbecoming, or unprivileged use, whether by non-Clampers or by ill-advised or imprudent brethren. The corporation is the legal holder of the name E Clampus Vitus and may lawfully prevent any unauthorized use of these words.”

The word marks “E Clampus Vitus®,” “ECV®”, and “Clampers®”, meanwhile, operate as trade names for the E Clampus Vitus® fraternal historical society, and enjoy trademark protection under common law principles. Only chapters that are chartered and in good standing with ECV® are authorized and licensed to use the aforementioned trademarks, or the trade name “E Clampus Vitus®” in their names and/or activities. Indeed, this is a privilege bestowed only to those operating under the registered “E Clampus Vitus®” collective membership mark (Reg. No. 3180076).

With that in mind, we strongly believe that it is necessary to commence litigation against both Downieville and New Helvetia in the event these groups do not comply with cease and desist demands which were recently sent. To that end, a decision has been made by the Board of Proctors to complete the march for fairness in a direct fashion. In the interests of economy, this will be accomplished by dropping the current lawsuit which, as noted, targets only four specific individuals and the Joseph Zumwalt Group.

We believe that this is the best, most economic course of action for ECV® to protect unsullied ECV®’s good name and reputation. Even if ECV® were to win its current lawsuit, it very well might have to relitigate all of these issues again against New Helvetia and Downieville, doubling ECV®’s litigation costs. Meanwhile, we anticipate that the new lawsuit will be prosecuted at little additional costs since much of the legal work and documentation that was generated in the current lawsuit might and will be used in the new lawsuit.

In short, we believe it best to “kill four birds with one stone” so to speak, and put an end to these common problems via a single lawsuit, rather than several lawsuits.

Finally, it should be noted that ECV® does not object to other organizations of a benevolent society. Indeed, ECV® encourages charitable causes. But only so long as the benevolent society does not use ECV®’s trade name and registered collective membership mark, “E Clampus Vitus®”, or any of ECV®’s other registered trademarks, or any confusingly similar marks.

The representatives of Downeville or New Helvetia could choose to create a benevolent society such as described above to foster a new organization aligned with their current philosophies. A separate identity would resolve continued confusion by the public, hopefully
ending our differences and eliminate costly litigation that both parties will incur by going to trial. I would welcome dialogue between both parties at any time to resolve the continuing violations by others to the ECV® identity, signs, symbols, and trademarks. These things must always remain unsullied and inviolate forever.

In Vitus service,

Ken Berry/Dorsal
Sublime Noble Grand Humbug
E Clampus Vitus Inc.