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August 31, 2010

VIA E-MAIL

Christine Baker
christine@trado.info/christine@bayhouse.com

Re: GRO-WELL's Organic Soil Compost

Dear Ms. Baker:

This law firm represents GRO-WELL Brands, Inc. ("GRO-WELL"). It has come to our attention that you have made false, defamatory statements regarding GRO-WELL and its organic and natural soil compost (the "compost") on the Internet weblog "High Desert Permaculture" (the "Blog"). You have no right to disparage GRO-WELL or mislead GRO-WELL's customers regarding the quality and contents of GRO-WELL's compost. On GRO-WELL's behalf, we demand that you immediately cease and desist from these improper and unlawful activities and remove the posts made regarding GRO-WELL on the Blog.

You have stated that GRO-WELL is committing fraud on the consuming public three times on your blog post entitled "Toxic sewage sludge (biosolids) sold with garden soil by Gro-Well and Organic Gardening test gardener Leslie Doyle," at <http://trado.info/permaculture/2010/08/23/toxic-sewage-sludge-biosolids-sold-with-garden-soil-by-gro-well-and-organic-gardening-test-gardener-leslie-doyle/> (the "Defamatory Blog Post"). You also state that GRO-WELL's compost is dangerous and unhealthy.

Your statements online are defamatory and are deliberately intended to mislead and inflame the public and disrupt GRO-WELL's business. See *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 14, 18-19 (U.S. 1990) (discussing actionable defamatory statements and noting that even statements of opinion are actionable when they imply a false assertion of fact); *Sullivan v. Warner Bros. Theatres, Inc.*, 42 Cal. App. 2d 660, 662 (1941) (defamation is determined by the "natural and popular construction [of the language] of the average reader, not the critical analysis of a mind trained in technicalities"). You must cease and desist from making any further defamatory statements and disrupting and harming GRO-WELL's business.

GRO-WELL's compost is natural and organic; it conforms to industry standards and in no way is it unhealthy or unsafe for consumer use. Indeed, biosolids are the definition of an organic product – *i.e.*, products that are not created with the use of chemicals or synthetic materials. The United States Environmental Protection Agency has endorsed and supported the use of biosolid compost and has found that compost-enriched soil can "suppress diseases and ward off pests," and has many other benefits. See Biosolids Technology Fact Sheet, available at <http://www.epa.gov/owm/mtb/combioman.pdf>.

GRO-WELL's compost is not "sewage sludge," as you allege, and is quite different from the compost found in San Francisco and which is referenced in the Defamatory Blog Post. Independent tests performed by the Food Rights Network identified multiple toxins in San Francisco's compost, causing concern. None of these toxins have been found in or are used to create GRO-WELL's compost and such toxins are not normally found in or used to create any biosolids compost. Your statements otherwise on the Blog and attempt to create a similarity between GRO-WELL's compost and the toxic compost found in San



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Francisco is in error. *Phoenix Newspapers v. Church*, 103 Ariz. 582, 589 (1968) ("Where readers would understand a defamatory meaning liability cannot be avoided merely because the publication is cast in the form of an opinion, belief, insinuation or even question. A statement about one's attitude is defamatory if it tends to lower him in the esteem of the community.") (citations and quotations omitted); *Arizona Pub. Co. v. Harris*, 20 Ariz. 446, 451-452 (1919) ("To maintain an action for libel or slander it is not necessary that the charge should be direct and positive; the imputation may be inferred from an indirect communication; as where defendant expresses a suspicion, or institutes a comparison, or delivers the words as matter of hearsay or answer, or exclamation, or uses disjunctive or adjective words, or speaks ironically. Insinuations may be as defamatory as direct assertions, since the effect and tendency of the language used, and not the form, is the criterion.") (citations and quotations omitted); see also *Empire Printing Co. v. Roden*, 247 F.2d 8, 14 (9th Cir. Alaska 1957) ("Defamation can be accomplished in a multitude of ways," including "deliberate defamation by indirection, insinuations and associations, even if a direct and categorical charge were lacking. The jury could well infer that the readers of that newspaper were given to understand by what they read that these appellees had been guilty not merely of a violation of statute but of embezzlement under circumstances of extreme infamy and depravity.").

GRO-WELL cannot allow your defamatory statements to remain in the public domain. We thus demand that all defamatory statements regarding GRO-WELL and its compost cease immediately. We further demand that within three (3) business days you remove any Internet posts you have made defaming GRO-WELL and, in particular, remove the Defamatory Blog Post. Within five (5) business days, please provide us with written confirmation that you have removed the Defamatory Blog Post and do not intend to make any further false, misleading statements regarding GRO-WELL and its compost.

If we do not hear from you, we will assume that you do not intend to cease and desist from your unlawful and improper activities outlined herein. Please be advised that if you refuse to cease and desist from your unlawful and improper activities, GRO-WELL has authorized us to take any and all actions needed to protect its rights. Please be further advised that this letter is not intended to suggest that GRO-WELL does not intend to pursue you for the unlawful and improper conduct that occurred prior to the date of this letter. We look forward to hearing from you.

Very truly yours,

A handwritten signature in cursive script that reads "Allison L. Kierman".

Allison L. Kierman