

Letters to Dr. Witt

July 1, 2003

Dr. Robert E. Witt, President
The University of Alabama
Box 870100
Tuscaloosa, AL 35487-0100

Dear Dr. Witt:

As a form of introduction, I am sending under separate cover one of my books, *Crimson & White and Other Colors*. I would hope that you will enjoy and keep the book. Within the book's preface, I write:

“True art speaks a universal language that transcends cultural bounds. It documents history; it predicts the future. It soothes; it irritates. It celebrates; it mourns. It is real; it is abstract. It is loud; it is quiet. It provokes questions; it shouts answers. And on and on it goes. But above all, art communicates. . .”

Furthermore, Webster's Unabridged Dictionary defines “journalism” in part as:

4. The presentation of events or ideas (as in a painting or play) in a manner regarded as similar to that of journalism.

For more than 22 years I have been journalizing The University of Alabama's football tradition through my original paintings which are produced as limited edition fine art prints. These prints are hung proudly by their owners on walls in homes, offices and other business establishments throughout Alabama and beyond. As such, the prints receive millions of “viewings” each year. In each viewing, I believe the image of the University is represented in a positive light in two regards: 1) The artwork reflects well on the University of Alabama Athletics Department, and, (2) If I may be so bold to say—because the artist himself is a product of the University of Alabama, the artwork speaks well for our Art Department and of the University in general.

In 1982, Coach Bryant personally shook my hand and said “Thank you for what you do for the University.” Well, I was only twenty-eight years old at the time and I did not feel like I had done that much. This encounter took place well before I licensed my first print with the University in 1990 and well before I had paid hundreds of thousands of dollars to the University in the form of licensing fees and joint projects. Coach Bryant's act of appreciation helped motivate me to keep “doing” that which I was doing for the University.

To this end and to assist me in those efforts, the Sports Information Department, headed by Wayne Atcheson, supplied me with media and sideline passes for our football games. This allowed me not only the opportunity to garner necessary photographic references that aided me in the painting process, but it also supplied me with insight and empathy for the emotions, strategies and physical prowess of the game from an “on-field” perspective. As an artist, I seek to convey all of these aspects in my work.

My good working relationship with Media Relations continued up until last year. Larry White fulfilled my requisitions for media and sideline photographer's passes up until Finus Gaston informed me that the University would no longer facilitate me in obtaining photographic reference materials for my work unless I licensed each one of my (Constitutionally-protected-under-the-First-Amendment)

artworks that was related to Alabama Athletics. This communiqué took place during a lengthy meeting I had with Mr. Gaston in his office.

In short, I explained to Mr. Gaston that my position regarding licensing is as follows: When a trademark (such as BAMA) appears within the parameters of my original artwork merely as the incidental byproduct of accurately documenting and/or rendering an historic event, then, such usage would have the same protection that newspapers, magazines, television and other journalistic media are afforded under the Freedom of the Press clause of the First Amendment. Consistent with this position, I believe that any use of a trademark *outside* the parameters of the artwork itself, i.e., in the margin of an art print, on its packaging, or in the brochures/advertisements for sales of the prints are subject to a licensing fee—and as such, I am willing to pay.

Mr. Gaston conveyed that the University's position is that by merely depicting an Alabama sports uniform in the painting, it is subject to licensing—even if I did not include a depiction of the mark itself. Shortly after my meeting with Mr. Gaston I proposed two “licensable” projects to the University. The combined projects could have easily raised over \$100,000 for the University. Sadly, as an exclamation point to my “persona non grata” standing with the Athletic Department, and in keeping with the mentality of the suspension of my sideline passes, the University declined to participate in my projects and would not grant me licensing for such, citing that I was trying to “pick and choose” the products that I wanted to be licensed.

Dr. Witt, I believe that my position, as an artist/journalist, is constitutionally sound. I truly believe it would be in the best interest of my alma mater for its President to look into this matter and be convinced that the University's policy/position/attitude is a sound one. Perhaps you could talk to Dean Clark or Ed Mullins in the Department of Journalism to gain some expert insight regarding the validity of my journalistic role as artist.

Thank you for your time. I look forward to hearing from you soon. You can call me at my studio telephone number: 205-979-5088.

Respectfully submitted,

Daniel A. Moore, President
New Life Art, Inc.

Second Letter to Dr. Witt

December 19, 2003

Dr. Robert E. Witt, President
The University of Alabama
Box 870100
Tuscaloosa, AL 35487-0100

Dear Dr. Witt:

I wrote to you on July 1, 2003 concerning the University's position that requires artists, such as myself, to license its trademarks when shown within the context of original works of art (my original letter is enclosed). I pointed out that Mr. Finus Gaston insisted that the even the football team's uniforms are protected marks—which clearly they are not. In an attempt to "strong arm" me, he told me that if I did not pay the University licensing fees on my artwork depicting Alabama sports, that he would have my sideline photographer's pass revoked—which he did, indeed. After this occurrence, I tried to work with him on two different projects. We were both in agreement that these two projects were "licensable." But, because I still refused to license my constitutionally protected original works of art, he denied me licensing for the two projects.

In a recent landmark lawsuit, Tiger Woods claimed that his likeness shown in an art print by Tuscaloosa artist and University of Alabama graduate Rick Rush, was a trademark and that Mr. Rush infringed upon such when he did not license it for usage in an art print by the artist. Tiger Woods lost the original suit (as well the appeal) because the judge ruled that: 1) Tiger's likeness was not a trademark; and, 2) even if it was, works of art are "protected speech" under the First Amendment.

It appears now that other universities are modifying their positions on the licensing of artwork so that they are Constitutionally sound. To verify this, I am enclosing an e-mail copy from another artist, Demming Bass, who posed the licensing issue to NC State.

Sadly the University of Alabama, my University, has found itself blocking the doorway of Constitutional Rights in the past. I hope that it will soon find itself on the right side of this one very soon. Thank you for looking into this serious matter. Please let me know when your review is complete.

Sincerely,

Daniel A. Moore, President
New Life Art, Inc.