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August 23, 2001

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Via Facsimile (540-231-6474) and UPS Next Day Air®

Jerry D. Cain, General Counsel
Office of the General Counsel
VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY
219 Burruss Hall
Blacksburg, Virginia 24061

Re: *Media Credentialing by Virginia Tech for TechSideline.com*

My Client: *SportsWar, L.L.C.*
My File No.: *14783*

Dear Mr. Cain:

You may recall from a FOIA request to which you responded earlier this year that I serve as General Counsel to SportsWar, L.L.C. ("SportsWar"), which, through a wholly owned subsidiary, operates TechSideline.com ("TSL"). You may also be aware that over the past year, SportsWar's Chairman and Founder, Mark Massey, and its President, Matt Welsh, have attempted with varied success to correspond with Jim Weaver and Dr. Charles Steger, respectively, regarding the denial of media access and credentialing by the Virginia Tech Athletic Department for TSL. Regretfully, the baseless and, frankly, unconstitutional, denial of media credentials to TSL by Virginia Tech is placing TSL at a significant competitive disadvantage and, thus, damaging its ability to effectively operate its business. Moreover, in light of comments attributed to Mr. Weaver indicating that TSL will never be afforded a "fair shake" by the Virginia Tech Athletic Department so long as he is the Athletic Director, SportsWar has really been left with no alternative but to pursue a legal course of action. I am writing to you with the hope that leveler heads (yours and mine) may prevail here, thereby obviating the need for SportsWar to seek judicial relief. Unfortunately, time is of the essence, as SportsWar's management, having understandably grown increasingly frustrated with Mr. Weaver's obstructionist tactics, has instructed me to file suit by this month end if the matter is not otherwise resolved before this time.

As was set forth in TSL's most recent request for media credentialing as forwarded by TSL's General Manager, Will Stewart, to the Virginia Tech Sports Information Department on August 13, 2001, TSL is merely asking to be treated like any other newsgathering organization credentialed by Virginia Tech, most of which have a smaller audience and invest far less in covering Virginia Tech athletics than TSL. Specifically, just as TSL's competitors, TSL must have access to players, coaches and press conferences. As I probably do not need to point out

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to you, legally, Virginia Tech has no obligation to provide media access or make media facilities available for athletic events. Once it has chosen to do so, however, the First and Fourteenth Amendment require that Virginia Tech provide that access equally to all persons similarly situated and not arbitrarily restrict speech. Certainly, under some circumstances, access to media facilities, such as the press box at Lane Stadium, can be restricted due to a practical problem like space limitations. Even in these situations, though, all members of the media must otherwise be given equal access. Put simply, TSL is media by any objectively applied definition. In fact, it is reasonable to argue that TSL is more deserving of media access than many of the news gathering organizations currently afforded access by the Athletic Department. Rather than developing and articulating a specific, narrowly tailored criteria for evaluating web-only media, Virginia Tech has, instead, employed a blanket prohibition on web-only media which is legally unacceptable. By doing so, Virginia Tech has violated SportsWar's constitutional right to equal protection under the law as other media has access to the same information denied TSL. Furthermore, the arbitrary denial of media access to Virginia Tech athletic events is an unconstitutional infringement on free speech. The loss of SportsWar's constitutional right to equally access newsworthy information constitutes an irreparable injury and places SportsWar at a competitive disadvantage. It is abundantly clear from the case law on this issue that Virginia Tech, as a public institution, cannot arbitrarily discriminate among who in the media is afforded access and who is not.

What remains most remarkable about this entire situation is that, other than some unfortunate comments which have been attributed to Mr. Weaver, we are aware of no one at Virginia Tech, including within the athletic department and, most notably, the football program, which views TSL in a negative light. TSL has a verifiable audience of more than 250,000 readers hailing every single state and numerous foreign countries - a reach significantly greater than most of the media currently granted access by Virginia Tech. Of equal importance is that many of the fans and followers of TSL are those who give generously to Virginia Tech. Additionally, TSL works closely with the Virginia Tech Licensing Department. In fact, the recent Michael Vick limited edition print was sold exclusively through the Virginia Tech Bookstore and TSL's online store, TechLocker.com. During this one promotion, which took place over a sixty-day period, TSL generated over \$31,000 for Virginia Tech's general scholarship fund. Clearly, Virginia Tech's Licensing Department views TSL as a valued resource to reach fans of Virginia Tech. Why the athletic department deems it desirable or necessary to unfairly damage our competitive position by denying TSL access is truly puzzling. By any objective measure or criteria, TSL is media and deserving of media access and credentialing. Granting media access to TSL will not open any "Pandora's box" for Virginia Tech. Indeed, SportsWar is not asking for anything that could be considered harmful to Virginia Tech by any standard. Giving TSL access to Virginia Tech athletes, coaches and athletic administrators will occasion no harm to Virginia

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Tech and will not in any way compromise the operation of the athletic department. In fact, TSL only enhances Virginia Tech's exposure.¹

Mr. Cain, I will follow this letter with a call to you tomorrow in effort to bring this matter to some conclusion. If you prefer, I would welcome the chance to meet with you to personally. Frankly, I find it unbelievable that we are even at this point. Is Virginia Tech really willing not only to stand behind, but also defend in the courts of law and public opinion, the unconstitutional non-policy regarding web-only media as put forth by Mr. Weaver? This policy will not stand in court nor will Virginia Tech's current position reflect well upon those entrusted with the stewardship of a great university.

As I look forward to and thank you for your further word, I am,

Very truly yours,

Pender & Coward, P.C.

Douglas J. Glenn

pc: SportsWar, L.L.C.

p.s. I am enclosing with the hard copy hereof last month's edition of *TSL Extra*, TSL's monthly subscription based online publication, which I have printed out for your enjoyment.

¹ By granting TSL media access, Virginia Tech can also help resolve the public juxtaposition of Virginia Tech's implicit sponsorship, or at the very least, acquiescence, of BeamerBall.com at the same time it is preventing TSL access to the very same information (which information, I might add, is being **sold** to Virginia Tech's fans by Mr. Beamer and his coaches who are, as you know, employees of Virginia Tech, i.e. state employees – can a state employee sell the state's information?).