**Dear Internet Service Provider:**

This letter is written in response to your notification to me of a complaint received about my client’s (Rick Tamargo) web page(s). The pages in question are:

http://www.hauteornotpets.com

My response to this complaint is as follows:

**Allegations of Copyright Violation / Digital Millennium Copyright Act**

The claims of copyright violation should be rejected because:

The complainant is not the owner of copyright in the material in question and the protectable content of the two websites in question are not the same. The allegation of copyright violation is therefore in dispute, and at present unsupported. The creator of the Haute or Not concept is Rick Tamargo and I have nothing to do with the use of the phrase “Haute or Not.” Further short phrases such as “Haute or Not” are not protectable by copyright. The owner of hauteornotpets.com is not me, it is Rick Tamargo. I was hired by Rick Tamargo to create a website (design and programming).

The complainant hired me to create a design as an independent contractor. While I did sign an NDA, as the web designer for the complaintant, I did not assign any copyright in my work to PetMD. I was never an employee of PetMD and I did not sign a Work for Hire agreement. I retained all rights to the work I prepared in connection with PetMD which makes me the copyright owner of all designs I made for PetMD. I simply granted PetMD a non-exclusive license to use them. Furthermore, the design of the two sites are not the same in look or in layout. The logo is completely different as is the content. While there are similarities in the color scheme and general style this is due to the site having the same purpose and function and to the fact that I have a style and many of my designs look like I designed them. A simple review of the following two screenshots illustrate that the design elements and content of the two websites are in fact different:



Layout wise, there are only so many ways to setup a blog style website that serves advertisements. Having content tile vertically with ads showing alongside is very common throughout the internet for blog type sites. Having said that, the PetMD Haute or Not site is a two column layout, while Rick’s version of Haute or Not is a three column layout. PetMD Haute or Not has ads in between each listing, Rick’s has them to the side. Both have certain non-protectable elements that I use in almost all of my designs, which is my usual style. I use a certain portfolio of fonts in my designs. I tend to use a palette of bright colors, and I often mix font weights. For example I often set up opening paragraphs with a bolder font and have the rest of the entry a lighter weight. This is also very common in magazines.

The code and backend of the both sites are completely different.

The complainant states that, *“The designer copied the original designs and re-sold them to the infringing party with only minor layout changes.”*

This is untrue, the second Haute or Not website was created from scratch and as you can see in comparing the sites above, contain more than just minor layout changes. Some items that appear similar are design elements that I use on many websites and are not protectable. This includes the use of dotted lines as a separation device or overly large bullet points and common geometric shapes. No original material was directly copied by me from the PetMD site and/or re-sold.

I declare, under penalty of perjury, that I have a good faith belief that the complaint of copyright violation is based on mistaken information, misidentification of the material in question, or deliberate misreading of the law.

My name, address, and telephone number are as follows:

Katherine Brown

8880 Old Kings Rd S

16W

Jacksonville, FL 32257

I hereby consent to the jurisdiction of Federal District Court for the judicial district in which I reside (or, if my address is outside the United States, any judicial district in which you, the ISP, may be found).

I agree to accept service of process from the complainant.

My actual or electronic signature follows:

Katie Brown

Having received this counter notification, you are now obligated under [17 USC 512(g)(2)(B)](http://www.loc.gov/copyright/title17/92chap5.html#512) to advise the complainant of this notice, and to restore the material in dispute (or not take the material down in the first place), unless the complainant files suit against me within 10 days. 