

March 11, 2003

Tim Kelley  
Director of Center Management for  
Pyramid Management Group  
The Pyramid Companies  
4 Clinton Square  
Syracuse, NY 13202-1034

Dear Mr. Kelley:

We are writing with respect to the Crossgates Mall in the Albany area and the Palisades Mall in the Nyack area, as we are informed that the Pyramid Management Company is responsible for the management of both facilities. Our inquiry arises out of an incident occurring at the Crossgates Mall on Monday, March 3, 2003 and widely reported in the press. The incident involves the arrest of a patron of the Mall, Stephen Downs, for wearing a T-shirt bearing the words "Give Peace A Chance." We further understand, again from press reports, that the Mall will not be seeking to press charges against Mr. Downs. And if that news account is accurate, we are pleased by the decision that your management company has taken. But questions continue to arise as to what the future policy of the Crossgates Mall will be. We have also received questions about the Palisades Mall.

We take the position that, as a matter of both public policy and common sense, individuals must be permitted to wear clothing that expresses their aesthetic sensibilities as well as their artistic or athletic affinities and even their ideological views. We reach this conclusion for several reasons. First, we are a diverse society with diverse views. Such diversity is a strength of our culture not a liability and it ought to be encouraged not stifled. Second, many people choose to express their ideological or musical or athletic affiliations and affinities by wearing t-shirts, baseball caps, jackets and buttons. They wear clothing and accessories expressing support for baseball teams and rock groups and even to express views on public issues such as the environment or gun control or candidates for national and local office. Third, if officials from the Mall begin censoring the messages conveyed by individuals on their clothing, it would appear that there is no principled stopping point. If the Mall is located closer to Boston than to New York City will it choose to forbid baseball caps with the Yankee logo but not those with the Red Sox logo? If Nike has a store in the Mall, will Mall customers be barred for wearing the Adidas and Champion logos? Will the Mall take the position that commercial logos are acceptable but that political and religious expression is unacceptable? And if so, will a consumer be prohibited from wearing a crucifix; will a Sikh be prohibited from wearing a turban; will an orthodox Jew be prohibited from wearing a yarmulke? But, if religious symbols are permitted, by what logic will the Mall seek to exclude a political button supporting a candidate? And, if candidate buttons are permitted, will buttons supporting gun control or the N.R.A. or the United

Federation of Teachers be excluded? One can easily see the difficulties posed by any regime of censorship because these examples only begin to scratch the surface.

We can well appreciate that management may be concerned about speech that is provocative or offensive to other patrons of the Mall. But, the Supreme Court has provided an answer to this sort of concern in a case entitled Cohen v. California (1971). In Cohen, an individual was prosecuted for wearing, in the corridor of a county courthouse, a jacket bearing the plainly visible words: "Fuck the Draft." The message, conveyed during the height of the Vietnam War, was substantively offensive to many people. Moreover, apart from its substance, it employed language that many would regard as crude. The Supreme Court recognized that "Cohen's distasteful mode of expression was thrust upon unwilling or unsuspecting viewers." Nevertheless, the Court concluded that such speech when conveyed in the public space of a courthouse could not be curtailed.

We may collectively deplore the current coarsening of our language and our cultural aesthetics. But, the answer to such a concern should not – indeed, for the reasons suggested above, cannot – involve censorship in our public places whether such censorship is undertaken by police officers or security officers at a shopping mall.

We write, however, less to convey our views on this subject than to learn what your future policy will be. In this respect, we ask whether, in the aftermath of the Downs incident, you have developed a policy with respect to expressive messages on clothing or buttons and, if so, whether you can describe that policy to us. In a similar respect, we are interested in knowing whether you have developed any policy governing leafleting and similar expressive activities within either the Crossgates or Palisades Malls. For example, under current policies, are there areas set aside for such expressive activities. And, if such areas do not exist, do you envision the possibility of creating such areas?

In sum, we believe that there is no principled way that Mall officials can pick and choose for approval or disapproval the messages that are conveyed on the clothing of Mall customers. We therefore urge Pyramid Management to adopt a policy that refrains from attempting to restrict such expression. We also urge Pyramid to recognize a right to engage in ideological leafleting in ways and locations that do not obstruct the free movement of pedestrian traffic within the Mall.

We are anxious to understand your position on these matters and would be happy to explore such issues at a meeting. We would very much appreciate hearing from you by the close of business on Friday, March 14.

Sincerely,

Donna Lieberman  
Executive Director

Arthur Eisenberg  
Legal Director