



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

IN REPLY REFER TO:

December 13, 2019

## VIA E-MAIL AND EXPRESS MAIL

Mr. Tom Collier, CEO  
Pebble Limited Partnership  
3201 C Street, Suite 505  
Anchorage AK 99503  
[info@pebblepartnership.com](mailto:info@pebblepartnership.com)

Re: Unauthorized Use of Department of the Interior Insignia

Dear Mr. Collier:

The Department of the Interior (DOI or the Department) is aware of the Pebble Limited Partnership's (PLP) advertising campaign in support of its proposed Pebble Mine Project. Some of the advertisements sent by mail and published in Alaska newspapers (collectively, advertisements) include reproductions of Department insignia. PLP's unauthorized use of Department insignia implies that your organization receives assistance or is somehow affiliated with the Bureau of Safety and Environmental Enforcement (BSEE), Fish & Wildlife Service (FWS), and National Park Service (NPS). One mailer distributed by PLP promotes the quality and sufficiency of the proposed Pebble Mine Project Draft Environmental Impact Statement (DEIS). The DEIS was published solely by the U.S. Army Corps of Engineers (USACE) in February 2019; however, the mailer states, *Who Produced the Draft EIS?* Under this statement, it incorrectly shows logos of 16 federal, state, and tribal entities including the three DOI bureaus, noted above. Copies of the mailer and advertisement from the Anchorage Daily News newspaper are enclosed.

As a preliminary matter, the USACE is the "lead agency" for purposes of the National Environmental Policy Act (NEPA) review process for the proposed Pebble Mine Project,<sup>1</sup> while BSEE, FWS, and NPS are "cooperating agencies."<sup>2</sup> As such, the DOI bureaus participated in the scoping of the DEIS, provided commentary on the DEIS, and continue to provide expertise and input to the review. As the lead agency, USACE has targeted early 2020 for the release of a Final EIS (FEIS) for the proposed Pebble Mine Project.

It is misleading for PLP's advertisements to attribute "production" of the DEIS to the bureaus, thereby suggesting that the Department or other federal agencies endorse the DEIS. The bureaus

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<sup>1</sup> See 40 C.F.R. § 1501.5.

<sup>2</sup> See 40 C.F.R. § 1501.6.

have participated and will continue to participate in the NEPA review of the proposed Pebble Mine Project in their respective roles as cooperating agencies. But their participation does not rise to the level of producing or controlling the documents released by the USACE, and their involvement in the environmental review of the proposed Pebble Mine Project does not represent the bureaus' endorsement of the DEIS or any future FEIS.

The PLP's advertisements are likely to cause consumer confusion or to cause mistake or to deceive as to PLP's implied affiliation, connection, or association with the Department, FWS, NPS, and BSEE, in violation of 15 U.S.C. §§ 1114 and 1125(a). Pursuant to 15 U.S.C. § 1117 (a), the trademark owner may be able to recover your company's profits, any damages incurred by the trademark owner, and costs of the action, as well as injunctive relief. Your company is trading on the goodwill of the Department, BSEE, FWS, and NPS by using the NPS Arrowhead trademark and other Departmental insignia. The mailer along with PLP's advertisements show the FWS, NPS, and BSEE insignia and an alleged connection between PLP and DOI. This misuse of DOI insignia could also imply a false connection under Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a).

Section 2(a) provides, *in part*, that a trademark may not be registered if it "(a) consists of or comprises . . . matter which may . . . falsely suggest a connection with persons living or dead, institutions, beliefs, or national symbols." The following is required for a false suggestion of a connection under Section 2(a):

- 1) The mark is the same or a close approximation of name or identity previously used by another person or institution;
- 2) The mark would be recognized as such;
- 3) The person or institution identified in the mark is not connected with the activities performed by the infringer under the mark; and
- 4) The fame or reputation of the named person or institution is of such a nature that a connection with such person or institution, that when the mark is used on the goods or services, a connection with the person or institution would be presumed.

It is evident that these false suggestion factors apply to this situation. The PLP has used several Department names and insignia in advertising and promoting PLP's brand. This in connection with the National Park System, for example, creates an association with famous National Park System marks, which impairs the distinctiveness of those marks as identifying and distinguishing services offered by the NPS. Notably, the NPS Arrowhead has acquired sufficient public recognition and renown to be famous for purposes of the likelihood of confusion.<sup>3</sup> Consumers will presume a false suggestion of a connection when confronted with PLP's identical mark.

Similarly, the FWS logo represents its mission to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. The FWS logo is used on official signs, publications, vehicles, uniforms, and employee badges. Use is restricted to the FWS unless there is prior written approval by the Director or her designee.

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<sup>3</sup> One of the most revered and famous marks of NPS and part of its overall identity is the NPS Arrowhead symbol, a registered trademark of the United States Patent and Trademark Office with the registration number, U.S. Reg. No. 4706627.

In Alaska, BSEE oversees more than one billion acres on the Outer Continental Shelf and more than 6,000 miles of coastline -- more coastline than in the rest of the United States combined. BSEE has been instrumental in this nation's successful offshore oil and gas programs. The BSEE, FWS, and NPS insignia are famous and firmly associated with the Department and the United States Government. Any unauthorized use weakens the uniqueness of DOI's insignia and can tarnish DOI's brand and image.

The Department of the Interior also alleges that PLP's use of its insignia is prohibited under 5 C.F.R. § 2635, which prevents federal endorsement of businesses, products, or services.

Accordingly, the Department requests that the PLP remove the insignia of BSEE, FWS, and NPS, including the Arrowhead or any confusingly similar variations, from all of your advertisements, publications, and websites, social media accounts, and any associated materials. These include in particular, but are not limited to:

<https://pebblepartnership.com>

<https://www.facebook.com/PebbleProject/>

<https://vimeo.com/pebblepartnership>

[https://www.youtube.com/channel/UCJIIdFS\\_UeTdUJVYWbWX3Y\\_Q](https://www.youtube.com/channel/UCJIIdFS_UeTdUJVYWbWX3Y_Q)

At this time, the Department does not have full knowledge of the breadth of PLP's advertising campaign and the resulting extent of PLP's unauthorized use of Department insignia. This letter is thus not an exhaustive statement of the facts regarding this matter or the Department's legal position on PLP's unauthorized use of its insignia. The Department reserves all of its rights to proceed with enforcement of those penalties available under federal law for PLP's unauthorized use of Department insignia.

Please confirm in writing by December 27, 2019, that PLP has taken the requested action and agrees not to use DOI's, BSEE's, FWS, or NPS's name, trademarks (registered and common law), and logos. We also reserve the right to require that your business prominently display a disclaimer that PLP has no affiliation with the Department, BSEE, FWS, or NPS. Please feel free to contact me if you require additional information.

Sincerely,



Lisa A. Kilday

Attorney-Advisor, Branch of Acquisitions & Intellectual Property

Enclosures (2)

cc: Mark Fesmire, Director, Alaska Region BSEE  
Greg Siekaniec, Director, Alaska Region USFWS  
Jessica Spuhler-Popiel, Attorney-Advisor, Office of the Solicitor Alaska Region  
Donald Striker, Director, Alaska Region NPS  
Reeves Amodio Corporate Services, Inc. (via mail only)