



UNITED STATES  
**SECURITIES AND EXCHANGE COMMISSION**

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Mr. Lyle W. Cayce  
Clerk  
United States Court of Appeals for the Fifth Circuit  
600 S. Maestri Place  
New Orleans, LA 70130-3408

Re: *SEC v. Cuban*, No. 09-10996 (argued August 2, 2010)

Dear Mr. Cayce:

Appellant Securities and Exchange Commission respectfully writes to respond to an incorrect impression that may be created by a post-argument letter submitted by Appellee Mark Cuban on August 4, and to point out that the letter improperly contains further argument on the merits.

Appellee's letter states that appellant's counsel "consented to counsel for Mr. Cuban filing a letter with the Court." This may leave the incorrect impression that appellant's counsel consented to the entire contents of appellee's letter, which was not provided to appellant's counsel in advance. Rather, appellant's counsel agreed, immediately after the oral argument, that if an inaccurate statement about the record had been made, appellee could submit a letter to the court correcting the statement. Appellant acknowledges that the portion of an e-mail referenced in appellee's letter, although not quoted in the complaint, is in the record. Therefore, a letter limited to correcting the statement would have been within the scope of the consent.

Instead, appellee's letter improperly contains further argument on the merits of the appeal. This further argument should be disregarded, and in any event lacks merit. The letter argues (pages 2-3) that Mamma.com may have had an improper motive when it called Mr. Cuban because, as the letter further argues, the company's securities offering was oversubscribed. These arguments improperly ask the court to draw factual inferences in the defendant's favor on a motion to dismiss. Moreover, it is at least a reasonable inference from the complaint that even if the offering were oversubscribed, Mamma.com would have accommodated Cuban, its largest known shareholder, if he wanted to participate in the offering.

Respectfully submitted,  
/s/  
Randall W. Quinn