

May 14, 2024

Brian Carlidge  
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Kaplan North America, LLC

Sent via email to [brian.carlidge@kaplan.com](mailto:brian.carlidge@kaplan.com)

Dear Mr. Carlidge,

We have recently learned that Kaplan North America, LLC (“Kaplan”) has made a proposal to the State Bar of California to develop and provide multiple-choice questions for use as part of a proposed new California bar exam. The State Bar has described the questions that Kaplan would develop as “MBE-equivalent multiple-choice questions.”

As you know, Kaplan has licensed copyrighted MBE test preparation materials from NCBE since 2009. Kaplan’s current license includes all of the MBE study aids offered by NCBE (“the NCBE materials”), which include hundreds of actual, retired MBE questions. The licensed NCBE materials are listed at the end of this letter.

We are writing to remind you that none of the NCBE materials should be used as -- or to create -- multiple-choice questions for any jurisdiction. While such a reminder is presumably unnecessary, we are concerned about recent statements by the State Bar describing its plan.

In a May 16, 2024, memo to the members of the Board of Trustees, Audrey Ching, Program Director, Office of Admissions for the State Bar, wrote (at page 2) that:

The format and content [of the multiple-choice questions created by Kaplan] will not change, and the new questions will be equivalent to the current questions as far as their alignment with content areas, writing style, and validity for assessing minimum competency.

The same memo (at page 3) also stated that “the form and content of the exam will be the same as the MBE....”

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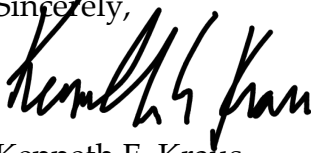
Similarly, an April 19, 2024, memo from Ms. Ching to the members of the Committee of Bar Examiners stated (at page 5) that “[a]ny contract with a new vendor would require the vendor to replicate MBE multiple-choice questions currently in use.”

Kaplan’s MBE license agreement with NCBE authorizes Kaplan to “reproduce in copies, to distribute copies of, and to display the publicly disclosed MBE questions” in connection with Kaplan’s bar preparation programs. “Absent prior written authorization from NCBE, Licensee may not (1) reprint or otherwise use or distribute any other NCBE materials in any way, or (2) ... sub-license, assign, or otherwise transfer this Agreement or any rights granted hereunder to any person or entity.” (Emphasis added.)

Given the statements by the California State Bar in its recent memos, we want to make sure that Kaplan will not use NCBE’s copyrighted MBE materials to create multiple-choice questions for California in violation of the license agreement and NCBE’s intellectual property rights, including its rights under the Copyright Act.

Thank you.

Sincerely,



Kenneth E. Kraus  
Corporate Counsel

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