

To,
Mr. Ashish Verma,
K. Datta & Associates,
B-4/66, Lower Ground Floor,
Safdarjung Enclave,
New Delhi - 110029, India.

Dear Mr Verma

By way of introduction, I am a professor of law and the founder of SpicyIP, a leading Indian IP (intellectual property) blog.

We are in receipt of your letter dated April 30th, 2012 to our blogger Ms. Aparajita Lath, a law student at the National University of Juridical Sciences (NUJS), Kolkata. In this letter, you claim that this 22 year old law student had the temerity to defame one of the finest media houses, renowned worldwide for its advocacy of free speech and for embodying the best values of journalistic integrity and ethics, namely the Times Publishing House Ltd. On behalf of the blog, let me respond to you as under:

Firstly, we strongly object to the vile language and the highly aggressive tone used in the notice. We can respond in kind, but we chose to be a bit more civil with you.

SpicyIP aims at promoting transparency within the Indian IP ecosystem by engaging in an honest and objective reporting/analysis of important Indian IP cases and events. It counts as one among the leading IP blogs and has received several accolades including being named one of the 50 most influential IP personalities by Managing IP, a leading IP magazine. The blog is an open platform for discussion and we encourage our readers to participate, clarify, contest and debate our various articles through the comments section, as also through guest posts.

If you wished to clarify some aspect of this unfortunate trademark dispute, you ought to have engaged with us either in the comments section or by sending us an email or a

guest post. Yet you chose to issue this highly malevolent letter, hoping to intimidate us into a meek apology. Unfortunately, while the meek may inherit the earth, they are bound to be shown no favour by corporate powerhouses such as your client.

So, let's cut right to the chase and explore your alleged grievances articulated rather flatulently in over 7 pages of a highly intemperate legal notice.

To begin with, we'll focus only on the "legal wrongs" outlined in your notice, and not so much on statements that "shocked" your client or offended their moral sensibilities in any way. After all, if we go down that path, we could send you stacks of material originating from your client that cause the same effect on us, particularly the numerous page 3 images that continue to assault us on an almost daily basis. More importantly, we're certain that your clients are not paying you for any determination of "shock" value.

So if one were to separate out the wheat from the chaff of your rather tedious legal notice, you've effectively alleged only one legal wrong, namely that of defamation. And it is on this alleged wrong that we focus our reply upon.

Firstly, as any law student in a decent law school will inform you, in order to constitute the legal wrong of defamation, you need to prove that the statements made by us necessarily lowered the reputation of your client in the eyes of a "reasonable" public. Secondly, even if the said statements lowered the reputation of your esteemed client, they are exempt from legal liability, if it can be shown that they encapsulate the truth or amount to a fair comment/opinion. Thirdly, the public interest factor plays an important role in all of this and any fair reportage on matters of public interest are generally exempt.

You take issue with our statement that the Supreme Court appears to have stayed the Bangalore proceedings in view of the pending Delhi high court proceedings dealing with the validity of the trademark. You state that the Supreme Court stay of the proceedings did not expressly state anything relating to the Delhi proceedings. This may be so, but we fail to understand how a technical error in this regard amounts to the legal wrong of "defamation" in that the said statement lowered the reputation of your client in the eyes of a reasonable public? If the law has changed in this regard, please do intimate us, so that we may notify our readers of this sea change, which has gone unnoticed, without so much as a whisper.

On the other hand, if this is indeed a mere technicality that causes no legal harm to anyone, least of all a leading media house, we are prepared to issue a clarification. However, we will do so only upon your sending us a more polite letter seeking this clarification. "Please" and "thank you" are words that have unfortunately become relics in this fast paced world of ours, and even more so with fast paced lawyers such as yourselves.

You go on to note that that our statement above on the Supreme Court stay "*...creates a false impression that the final relief sought by Financial Times Ltd. (FTL) has in effect been allowed by the Supreme Court*". Here again, we fail to understand how any reasonable reader would have arrived at such a fanciful conclusion. And those that do are in dire need of a serious IQ check. We believe there are several robust online tests floating around these days, should you wish to take one of them.

Most important of all however, Aparajita's post was based almost entirely on news stories published in *Mint*, a leading business paper, as you yourself admit in your notice. We've queried the folks at Mint, and apparently you've not sent them any legal notice as yet. We can only guess that you're averse to picking people your own size.

You also object to Aparajita's statement that "*this trademark saga throws light on the problems and obstacles foreign companies have to face when trying to enter the Indian market.*" Again, we assume that as a qualified lawyer, you are well aware of the distinction between an opinion and a fact. This is a fair comment/opinion expressed by Aparajita predicated on sound facts i.e. the fact that a dispute that prolonged for more than 20 years would certainly qualify as a "problem" and an "obstacle" for any sane person, least of all a business entity that relies on some level of legal certainty for its investments.

If your client has a different take on this, we welcome it. In fact, we'd be more than happy to run it on our blog. We're great fans of the inimitable Voltaire who reputedly quipped: "I strongly disagree with what you say, but will defend to your death your right to say it."

The allegations of bias and false reporting made in point (c) of your legal notice are preposterous, to say the least. If you had the patience to read the post carefully, you would have noticed that Aparajita merely restated factual aspects of the legal proceedings pertaining to FT's application for its facsimile editions. Your notice, in fact, acknowledges the sequence of events stated in her post. One fails to understand as to how such a narration amounts to false reporting and bias. Clearly the man on the

Clapham omnibus must have knocked his head hard, if this were to qualify as a “reasonable” construction!

Your allegations made in point (d) of the notice are again misplaced. Aparajita’s remarks on the delay in the lawsuit are based on the comments of leading senior counsel, Mr. Harish Salve, as reported in the *Mint*. Mr. Salve has been quoted as saying “While I would like to add a caveat that I have been appearing for FT, with all the objectivity at my command, it is my perception that the litigation is contrived and yet another example of how clever “lawyering” can use Indian courts with their attendant delays to great advantage.” Here again, we’re guessing that you’ve shied away from sending a legal notice to Mr Salve, widely acknowledged as a leading legal luminary and heavyweight.

You chose instead to vent your animosity and target an innocent student who penned her piece in good faith and backed it up with very credible sources, including the views of legal stalwarts. We are particularly amused at your allegation that a 22-year-old law student caused “irreparable injury” and “loss of reputation” to a powerful media house by highlighting a highly technical trademark dispute of public importance and reflecting on the protracted nature of the litigation. Continue to amuse us, and we may begin to reciprocate.

With regard to point (e) in your legal notice, the post nowhere portrays FTL as a hapless victim. It is surprising how you’ve twisted simple sentences to reach this fanciful conclusion. We belong to the land of Yoga no doubt, but this is simply too much of a stretch! Clearly, neither your client nor FTL are ‘hapless’ when both have been spending crores of rupees in fighting this protracted legal battle for more than 20 odd years!

Your averments in point (h) of the notice are again baseless. The line quoted – “*This also sets a bad precedent for foreign media companies wanting to operate in India.*” is not “defamatory” of you. The line is directed to the case as a whole to refer to the protracted nature of the legal battle that lasted more than 20 years without resolution. It has nothing to do with your client, omnipotent and omnipresent as they maybe. Given the sheer time and money spent on litigation, any reasonable person would have opined the same way. But here again, the qualifier is “reasonable”.

To conclude, we strongly and staunchly deny all your puerile claims. We take strong exception to your imputation of bad faith to Aparajita whose writings on the blog have always reflected the highest values of journalistic integrity and passion. If you continue

with this character assassination and threaten us any further, we will be constrained to initiate legal proceedings against you. This will needlessly fill the coffers of two sets of lawyers, but perhaps that's what you really want. In the sincere hope that your client is smarter than you, we remain:

Most unapologetically yours,

Shamnad Basheer

Founder, SpicyIP

Ministry of HRD Chair Professor of IP Law

WB NUJS, Salt Lake, Kolkata