MARX BROS. V. WARNER BROS. - AN AMUSING LESSON IN THE DANGERS OF TRADEMARK BULLYING

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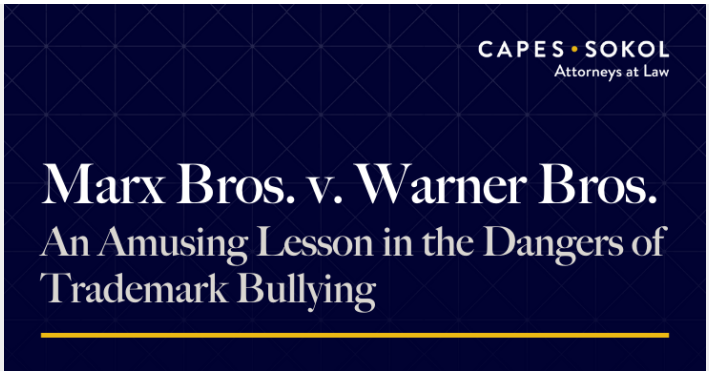

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A few months ago, the *Journal of the Missouri Bar* published a superb article by a Capes Sokol attorney, the title of which captures its essence: "Avoid Becoming a Trademark Bully: The Art of Writing Cease and Desist Letters."

As Drey explains, an over-the-top demand letter, especially when aimed at a small business, creates the risk of damaging blow-back in the form of what he labels "social shaming" via the Internet—and in particular the publicity landmines of Facebook, Twitter, YouTube, and blogs. He offers some vivid examples of how this blow-back can go viral. Too often, that "scary" demand letter results in the author's online humiliation or vilification.

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One recent example was triggered by the cease-and-desist letter Katy Perry's international law firm sent to a little company it accused of infringing the pop star's alleged copyright in the so-called Left Shark from her Super Bowl Halftime Performance. That demand letter caught the attention of an NYU law professor, who wrote a devastating response on behalf of the little company. That response, of course, went viral.

My favorite example of social shaming, however, went viral more than a 6 decades before the invention of the Internet. It remains to this day a prime example of the risks of trademark bullying.

Trademark Bully: Warner Bros.

The year was 1945. The Warner Bros. legal department learned that the Marx Brothers were planning to release a feature-length spoof of the Warner Bros. motion picture, *Casablanca*. The spoof would be entitled *A Night in Casablanca* and feature a lead character named "Humphrey Bogus." The legal department requested further information about the movie from the Marx Brothers. Groucho, seizing on a terrific opportunity for free publicity, wrote an open letter to the studio that he leaked to the press.

According to the Letters of Note website, the legal department's further requests for information "proved fruitless for the studio and they eventually gave up; by which time the public were fully on the side of the Marx Brothers and geared up to see their widely-discussed movie."

Here, in its entirety, is that famous (and hilarious) "social shaming" letter from Groucho Marx to Warner Bros. Enjoy—and let it be a lesson to all would-be trademark bullies:

> *Dear Warner Brothers:*
>
> *Apparently there is more than one way of conquering a city and holding it as your own. For example, up to the time that we contemplated making a picture, I had no idea that the City of Casablanca belonged exclusively to Warner Brothers.*

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However, it was only a few days after our announcement appeared that we received a long, ominous legal document, warning us not to use the name "Casablanca".

It seems that in 1471, Ferdinand Balboa Warner, the great-great grandfather of Harry and Jack, while looking for a short cut to the city of Burbank, had stumbled on the shores of Africa and, raising his alpenstock, which he later turned in for a hundred shares of common, named it Casablanca.

I just don't understand your attitude. Even if they plan on re-releasing the picture, I am sure that the average movie fan could learn to distinguish between Ingrid Bergman and Harpo. I don't know whether I could, but I certainly would like to try.

You claim you own Casablanca and that no one else can use that name without their permission. What about Warner Brothers -- do you own that, too? You probably have the right to use the name Warner, but what about Brothers? Professionally, we were brothers long before you were. When Vitaphone was still a gleam in the inventor's eye, we were touring the sticks as the Marx Brothers and even before us, there had been other brothers -- the Smith Brothers; the Brothers Karamazoff; Dan Brouthers, an outfielder with Detroit; and "Brother, can you spare a dime?" This was originally "Brothers, can you spare a dime" but this was spreading a dime pretty thin so they threw out one brother, gave all the money to the other brother and whittled it down to "Brother, can you spare a dime?"

The younger Warner Brother calls himself Jack. Does he claim that, too? It's not an original name -- it was used long before he was born. Offhand, I can think of two Jacks -- there was Jack of "Jack and the Beanstalk", and Jack, the Ripper, who cut quite a figure in his day. As for Harry, the older brother, he probably signs his checks, sure in the belief that he is the first Harry of all time and that all other Harrys are impostors. Offhand, I can think of two Harrys that preceded him. There was Lighthorse Harry of Revolutionary fame and a Harry Appelbaum who lived on the corner of Ninety-third Street and Lexington Avenue. Appelbaum wasn't very well known -- I've almost forgotten what he looked like -- the last I heard of him, he was selling neckties at Weber and Heilbroner; but I'll never forget his mother, she made the best apple strudle in Yorkville.

We now come to the Burbank studio. This is what the Warner Brothers call their place. Old man Burbank is gone. Perhaps you remember him -- he was a great man in a garden, he was the wizard who crossed all those fruits and vegetables until he had the poor plants in such a confused and nervous state, that they never were sure whether they were supposed to come in on the meat platter or the dessert dish.

This is just conjecture, of course, but, who knows -- perhaps Burbank survivors aren't too happy over the fact that a plant that grinds out pictures settled in their town, appropriated Burbank's name and uses it as a front for their films.

It is even possible that the Burbank family is prouder of the potato produced by the old man

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than they are of the fact that from this town emerged "Casablanca" or even "Gold Diggers of 1931".

This all seems to add up to a pretty bitter tirade but I don't mean it to. I love Warners -- some of my best friends are Warner Brothers. It is even possible that I am doing them an injustice and that they themselves know nothing at all about this dog-in-the-Wanger attitude. It wouldn't surprise me at all to discover that the heads of Warners' legal department know nothing about this dispute for I am acquainted with many of them and they are fine fellows with curly black hair, double-breasted suits and a love of their fellow man that out-Saroyans "Dr. Gillespie". I have a hunch that his attempt to prevent us from using the title is the scheme of some ferret-faced shyster serving an apprenticeship in their legal department. I know the type -- hot out of law school, hungry for success and too ambitious to follow the natural laws of promotion, this bar sinister probably needled Warners' attorneys, most of whom are fine fellows with curly black hair, double-breasted suits, etc., in attempting to enjoin us.

Well, he won't get away with it! We'll fight him to the highest court! No pasty-faced legal adventurer is going to cause bad blood between the Warners and the Marxes. We are all brothers under the skin and we'll remain friends till the last reel of "A Night in Casablanca" goes tumbling over the spool

Grouch Marx

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