Govern Yourself Accordingly: Crafting Effective Demand Letters

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A well-crafted demand letter not only ethically maximizes the potential of resolution but also minimizes the potential of creating a public relations fiasco.

Conducting due diligence

In the zeal to resolve disputes, attorneys need to investigate the nature of the dispute and their client’s claims. Put simply, a poorly conceived demand letter can beget a public relations disaster or at least reveal a lack of due diligence or even thoughtfulness by the authoring counsel.

On a recent April 1, ThinkGeek.com marketed a fake product called “Canned Unicorn Meat” with the tag line: “Pâté is passé. Unicorn, the new white meat.” Reflexively, lawyers representing the National Pork Board responded to this joking riff on its trademark “The Other White Meat” with twelve page acerbic demand letter.

ThinkGeek published this comically serious demand letter and apologized on its Website: “We’d like to publicly apologize ... for the confusion over unicorn and pork—and for their awkward extended pause on the phone after we explained our unicorn meat doesn’t actually exist.”

In the end, outside counsel looked foolish, its client heavy-handed, and a mildly funny April Fools’ Day prank went viral. But far worse public relations disasters can loom when attorneys fail to consider how a wider audience might receive the demand letter.

Keeping track of the big picture

Attorneys also must consider the potential that the tone of a demand letter could generate publicity regarding the dispute. Particularly in disputes involving intellectual property rights, the authors of effective demand letters must keep in mind the potential that the letter could reach wider audiences. And in that broader audience of fickle public opinion, a demand letter could beget a public relations disaster or provide a marketing coup for the client.

For example, Specialized Bicycle Components, Inc. markets a bicycle called the Roubaix. In 2013, Specialized send a demand letter to an Afghanistan war veteran turned bicycle shop owner named Dan Richter regarding the name of his “Café Roubaix Bicycle Studio” in Cochrane, Alberta. Richter named his shop after Paris-Roubaix, a famous bike race. An article about the dispute in a local paper went viral on social media. Within days, the dispute gained international attention with a public radio segment called “Why would Specialized Bicycle go after an Afghan war veteran’s bike shop?” that noted “Specialized had a global PR nightmare on its hands: Goliath picks on its war vet.”

As the public relations crisis worsened and questions arose about the legitimacy of Specialized’s trademark emerged, the corporation backtracked and both apologized to Richter and agreed let him keep
the name of his bike shop. Specialized’s CEO even traveled to Alberta to meet with Richter. Afterwards, the CEO noted: “When I went up there and met Dan Richter, I realized what a mistake we had made. He’s the kind of guy that I would have as a friend and ride with.” The Roubaix dispute illustrates both the importance of investigating the client’s claims and considering the potential media optics of a dispute, before sending a demand letter.

In contrast to Specialized’s public relations debacle, attorneys for Jack Daniel’s took a different approach. Faced with potential infringement of its iconic whiskey bottle label, Jack Daniel’s generated positive publicity for a concise and polite demand letter. Directed to the author of a book bearing a cover mimicking the iconic Jack Daniel’s label, the letter explained in straightforward terms why Jack Daniel’s must protect its trademark: “Given the brand’s popularity, it will probably come as no surprise that we come across designs like this on a regular basis. What may not be so apparent, however, is that if we allow uses like this one, we run the very real risk that our trademark will be weakened.”

Jack Daniel’s attorneys proposed the author revise the design when reprinting the book. Jack Daniel’s also offered to contribute toward the cost to change the cover. The Atlantic dubbed the letter “as what may well go down as the most polite, encouraging, and empathetic cease-and-desist letter ever to be sent in the history of lawyers and humanity.” Recently, Netflix scored a similar public relations coup with a creative cease-and-desist letter described as “quite adorable” directed to the owners of an unauthorized Stranger Things theme bar.

### Conclusion

Of course not every demand letter will evoke such praise, but you can hone the tone and content of demand letters needs for both the intended recipient and the foreseeable audience. An effective demand letter also tells a straightforward story designed to evoke incredulity at thought of noncompliance. Beyond telling your client’s story, crafting an effective demand letter requires some due diligence regarding the legal claims and consideration of how the public might view the dispute.

### Endnotes

1. Idaho State Bar, Standards for Civility in Professional Conduct, Attorneys’ Responsibilities to Other Counsel, https://isb.idaho.gov/wp-content/uploads/standards_for_civility.pdf (Last visited September 19, 2017) (“We will treat all other counsel, parties and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications.”)


7. Why would Specialized Bicycle Company have to change Bike Shop’s Name After Threat from U.S. Bike Giant Specialized? (http://www.pri.org/stories/2013-12-10/why-would-specialized-bicycle-company-have-to-change-bike-shop’s-name after threat from u-s-bike-giant-specialized last visited September 19, 2017).

8. Id.


11. Id.

12. Id.

13. Id.

14. Id.


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THE ADVOCATE • NOVEMBER/DECEMBER 2017 53
Charles R. Brown  
1945 – 2017

SALT LAKE CITY – Charles R. Brown passed away at his home on Oct. 8, of causes related to Parkinson’s disease. He was an attorney of unflinching honesty and integrity. Born in Twin Falls, his heart was always in Idaho and its majestic mountains and streams. Although he lived in Salt Lake City for the last 43 years, he was, and always will be, an Idahoan. As a young man he served on a “hot shot” firefighting crew, which instilled in him a healthy respect and love for the outdoors and the responsibility to be caretakers.

Charles attended Northwestern, University of Oregon, Georgetown University, and the University of Utah law school. He was a member of both the Utah State Bar and Idaho State Bar. Throughout his legal career, Charles received accolades too numerous to list here. Those included President of the Utah State Bar & Utah State Bar’s Distinguished Lawyer of the Year.

Charles was especially proud that he spent the last 40 years battling what he called “Darth Vader and the evil empire of the IRS.”

Charles had an ardent love for music and especially opera which grew into a passion as he and his sister, Diana, shared performances together. Charles sought adventure by skiing, white water rafting, and riding his motorcycle. He loved the arts; especially music, film, and literature, watching movies with his grandchildren, and attending rock concerts with his daughters.

Charles genuinely respected and delighted in his colleagues at the law firm. He loved going to work and felt so very comfortable there. He was widely admired and loved not only for his intelligence and generosity, but also for his quirkiness and wit. As his law firm stated when he retired, “Mr. Brown’s sage advice, salty personality, fierce loyalty, and warm friendship will be sorely missed. He was among the finest of human beings.”

Charles is survived by his wife Elke, daughters Andrea Brown-Christensen (Kent) and Sydney Jones (Kyle), three grandchildren, sister Diana Belka (Wayne), and brother Michael Brown (Vivian).

Terence James Yamada  
1950 - 2017

PORTLAND – Terry Yamada passed away in his home in the presence of his family due to complications caused by cancer. He was dedicated to both personal and professional integrity, lifelong education, and helping others. He is survived by his adult children, mother, and siblings.

Terry was born in Ontario, Ore., and grew up on his family’s farm in Parma, Idaho. There he pursued judo, wrestling, football, and drumming. Terry graduated from the University of Oregon in 1972 and from the Lewis and Clark Law School in 1975. He was a respected member of the Oregon, Idaho, and Washington State Bars, practicing for more than 40 years primarily at Anderson and Yamada, P.C.

Terry served with the Japanese American Citizens League and was instrumental in the redress for families who were interned during WWII. He served as legal counsel to the Japanese Ancestral Society, assisting with the Nikkei Community Project and Rose City Cemetery. He founded the holiday assistance program at Epworth United Methodist Church, and assisted with their Worship Council and annual bazaar.

ZoeAnn Shaub  
1934 - 2017

TWIN FALLS – ZoeAnn Shaub died on Sept.13, from injuries sustained in an automobile accident.

ZoeAnn was born March 1, 1934 in Twin Falls to George & Ethel Warberg. She grew up in Twin Falls and graduated from Twin Falls High School in 1952. That same year she was crowned the first Miss Twin Falls. She went on to win the title of Miss Idaho and participated in the Miss America pageant, where she won a scholarship in the talent portion for her speech.

With an interest in law, ZoeAnn worked for an attorney while in high school with the dream of becoming a lawyer. She used scholarship money from the pageants to earn her degree, attending junior college at the College of Idaho and finishing her degree at Linfield College. ZoeAnn

Charles R. Brown  
Terence James Yamada  
ZoeAnn Shaub
went on to law school at Stanford University. She was one of 6 women in her class and became the first female probate judge in Twin Falls County at the age of 26.

She met her husband, Dr. Roy O. Shaub, while skiing in Sun Valley, and they married in 1962. They had three children, Timothy, Suzanne, and Jill. After 8 years on the bench, she decided to stay home and raise her children. The family enjoyed camping, fishing, hunting, and skiing. ZoeAnn and Roy also enjoyed hosting friends at the Sun Valley Jazz Festival. She loved to cook and collect antiques.

ZoeAnn was actively involved in the community over the years, serving on the board of United Way, YMCA and various other organizations. She loved music, especially classical and spent hours on end playing the piano all throughout her lifetime.

ZoeAnn was very accomplished and played so many roles throughout her lifetime; devoted daughter, sister, wife, mother, judge, mentor, neighbor and friend. She touched many lives as a judge and when she volunteered for the pageants.

ZoeAnn was preceded in death by her parents, husband Roy Shaub and brother William Warberg. She is survived by her sisters SaraLee Warberg and Willetta Warberg; children Timothy Shaub, Suzanne (Brian) Cavanagh and Jill (Dave) Elam; and seven grandchildren.

James W. Givens
1921 - 2017

LEWISTON - James W. Givens died July 23, 2017 at a local care center. James Givens followed in his father Ray’s footsteps to become an attorney. Givens’ son, Eric, said, “all he ever wanted to do was to be an attorney.”

Givens loved being a trial attorney and accepted all kinds of cases. He loved helping people and practiced as a city attorney. Givens served in World War II and the Korean War as a pilot for the Army Air Corps and continued to fly after the military. He loved the outdoors and often took his three boys and one daughter camping, hunting and fishing. Givens served on the Board of Directors for the Lewiston Roundup Association and was involved with many service clubs. He lost his wife Patricia this spring.

Keeping track

Despite our best efforts, there are times when a member’s death remains undocumented. So upon learning of a fellow attorney’s death, please feel free to contact Dan Black with the information at dblack@isb.idaho.gov. This will allow us to honor the individual with details “In Memoriam.”

County attorney takes city job

POCATELLO - Bannock County attorney Jared Johnson has traded jurisdictions to take the reins of the City of Pocatello Legal Department. Pocatello City Council members confirmed Mr. Johnson to the position of City Attorney. He most recently served as the Chief Civil Deputy Attorney at the Bannock County Prosecutor’s Office.

“With his experience working for Bannock County, Jared brings a new perspective to the position,” said Mayor Brian Blad, who nominated Mr. Johnson for the post. “He’s also spent most of his life here and understands our community.”

Johnson received a Bachelor of Science in Communication and Rhetorical Studies from Idaho State University and obtained his Juris Doctor from University of Idaho College of Law. He is admitted to practice in state and federal courts. Johnson and his wife have five children and enjoy camping, sports, boating and skiing.

Spink Butler LLP welcomes McGee

BOISE - Attorney Matthew J. McGee has joined the law firm of Spink Butler LLP. Mr. McGee will focus his practice at Spink Butler on water law, natural resources and environmental law, business law, real estate and land use. He is a 2008 graduate of Willamette University College of Law.