

K. DATTA & ASSOCIATES
Advocates

BY COURIER/SPEED POST/EMAIL

April 23, 2013

To,

Ms. Aparajita Lath,
Associate Member
NUJS Law Review
National University of Juridical Sciences
NUJS Bhavan, 12 LB BLOCK
Salt Lake City, Sector III
Calcutta - 700098, India

spicyipblog@gmail.com

**Reg.: Notice of Defamation in respect of the news Article titled
"The 19 year war- Financial Times Ltd. v Times Publishing
House: Before the Supreme Court" authored by you and
published on the website <http://spicyipindia.blogspot.in> on
February 12, 2013 ("the impugned article").**

Dear Madam,

We, acting on the instructions of and for and on behalf of "our Client", "Times Publishing House Limited" (TPHL), having its Registered Office at S&B Towers, 2nd Floor, 40/1, Mahatma Gandhi Road, Bangalore-560 001 state that the contents of the impugned article are ex-facie defamatory of our Client. Hence, we issue this notice and call upon you as stated hereinafter.

1. Our Client is shocked and surprised to read the said article as the same contains several false, and baseless averments and is a result of incorrect and grossly irresponsible reporting.
2. The impugned article, which refers to certain news articles published in the newspaper "The Mint" on various dates, which articles are also per-se incorrect, false, and defamatory. Consequently, any reporting based on the said Mint article would inevitably be an incorrect and defamatory publication.
3. The impugned article is not only a glaring case of incorrect reporting of Court proceedings, the same has also been published with a malafide intent to adversely affect and impact the free and

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fair adjudication of the matter and the administration of justice. Infact, false and incorrect averments have been published by you the Noticee knowing fully well that they were false to your own knowledge. No efforts to ascertain the true and correct facts and/or to verify the contents/averments in the impugned article, ever appear to have been made by you.

4. Upon perusal of the impugned article, the following glaring factual infirmities, amongst others, can be noticed:

(a) It has been incorrectly report by you that *"...and until the validity of each party's trade mark was determined, any related trademark appeal before the Karnataka High Court is to be stayed"*. You Noticee vide the impugned article have attempted to create a false and incorrect impression that the Hon'ble Supreme Court has passed an order that till such time the validity of each party's trade mark was determined the appeal pending before the Hon'ble Karnataka High Court has been directed to be adjourned by the Hon'ble Supreme Court. The said incorrect reporting further creates a false impression that the final relief sought by Financial Times Limited (FTL) has in effect been allowed by the Hon'ble Supreme Court. We wish to state that the Hon'ble Supreme Court vide its order, dated 05.02.2013 has been pleased to only issue notice in the matter and during the pendency of the SLP, stay the hearing of the appeal filed by FTL before the Hon'ble Karnataka High Court. No direction staying the hearing in the appeal before the Hon'ble Karnataka High Court, pending the adjudication of the writ petitions before the Hon'ble High Court of Delhi, as has been wrongly reported by you, has been passed.

(b) The article further incorrectly states that *"This trademark saga throws light on the problems and obstacles foreign companies have to face when trying to enter Indian market"*. Your said averment is false, incorrect, defamatory and infact contrary to the facts of the case. A false and incorrect impression, that the litigations between FTL and our Client have infact acted as a *"problem and obstacle"* for FTL to enter India, has been sought to be created in your article. Your said averment is infact far from truth and even contrary to FTL's alleged stand before various Courts. Simply because the competitor is a foreign company it does not mean that the Indian company has no rights in its titles/marks. No one except our Client has the right to print and publish a newspaper with the Title "Financial Times" in India. The Ld. Trial Court. City Civil Court, Bangalore on

24.09.2002 vide its judgment, which runs into more than 200 pages, considered, analyzed and dismissed every contention, document in evidence produced by FTL in order to prove its alleged reputation, goodwill and alleged distinctiveness of its mark "FINANCIAL TIMES". The Trial Court has pleased to hold and we quote:

"Plaintiff, (vis. FTL) has failed to establish that the mark "FINANCIAL TIMES" has acquired goodwill and reputation in India.

Plaintiff, (vis. FTL) has failed to establish that the mark "FINANCIAL TIMES" has acquired distinctiveness so as to be associated with the Plaintiff exclusively in India.

*Plaintiff, (vis. FTL) has no right to publish its newspaper in India without complying with the **rigorous/recourse** of the PRB Act.*

The Defendant (vis. TPHL) has the right to print and publish its newspaper under the title "FINANCIAL TIMES" in India in consonance with the PRB Act."

- (c) Your reference to the litigation pertaining to the "facsimile edition" in an attempt to portray our Client's alleged manipulation of the Indian legal system by filing multiple legal actions is based on an incorrect appreciation of the facts, and is yet another example of biased and/or false reporting. If you would have examined these litigations with an independent mind (and which you obviously have omitted to do), you would have observed that our Client has only been seeking to protect its own rights, which have been recognized time and again by the Indian judiciary, against the repeated attempts by FTL to defeat those rights by even subverting the declared Government Policies. It is also pertinent that FTL's application for title verification was contrary not only to the law but also to the facsimile guidelines themselves, as the title of the original publication was admittedly different from the proposed title of the facsimile publication, which fact you have deliberately chosen to overlook in the impugned article. You would be aware that the Indian judiciary does not grant stay orders just for nothing. The Stay in the instant case was granted by the Hon'ble High Court of Karnataka at Bangalore purely on merits. Instead of contesting the case on merits, FTL raised

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a frivolous plea of lack of jurisdiction in the Hon'ble Karnataka High Court which, although allowed by the Single Judge, was dismissed by the Division Bench. FTL has filed an SLP in the Hon'ble Supreme Court with a view to simply dragging the case, instead of arguing the same on merits. This is yet another example of causing deliberate delays by a litigant (FTL), but blaming the Indian legal system for the same. You have chosen to omit this fact in the impugned article.

- (d) You have further stated that Mr. Harish Salve has replied to certain questions reported by Mint, and also provided a link to the article published by The Mint containing Mr. Salve's comments. You have also published the various allegations levied by Mr. Salve at the behest of FTL against our Client. While you thought it fit to include this in the impugned article, you Noticee have very conveniently held back the fact that the appeal filed by FTL before the Hon'ble High Court of Karnataka at Bangalore against the City Civil Court's Judgment and Order dated 24.09.2002, dismissing their 1993 suit against TPH, has remained pending (since 2003) on account of FTL refusing to argue the same and seeking repeated adjournments whenever the said appeal came up for hearing. When recently the High Court of Karnataka at Bangalore finally refused to grant any further adjournment to them, and dismissed FTL's Memorandum seeking 'sine die' adjournment of the said appeal, FTL ran to the Hon'ble Supreme Court and filed an SLP seeking a stay on the hearing of the said appeal. And yet any reference to these facts has been deliberately and maliciously omitted by you from the impugned article so as to prevent the common reader from knowing the truth and forming the correct impression that the delay in adjudication of the respective rights of the Parties is at the instance of FTL and FTL alone, and not on account of any alleged attendant delays in the Indian Courts or getting caught in the Indian legal system. This is an example of how the foreign vested interests misrepresent and deride the Indian judiciary, and the journalists like your goodself give credence to the same.
- (e) On a proper appreciation of the facts pertaining to the ongoing litigations between FTL and our Client and which you have failed to do, it is apparent that FTL can in no manner be portrayed as a helpless or hapless victim of the Indian judicial system.



- (f) You have falsely and maliciously stated that "TPH's preoccupation with the UK Company's newspaper title is obsessive and defies explanation and is almost "obsessive" since circulation is and will be much wider than that proposed by FTL.". Please note that our Client's right in law to protect its newspaper title (which is protected by a special legislation, the Press and Registration of Books Act) from being encroached upon by a foreign media house, who has no regard for Indian laws can neither be termed as obsessive nor as something that defies explanation. In fact, obsession, if any, is on the part of FTL whose sales in India, on their own admission and as found as a matter of fact, is not more than 500 copies per issues, as against a handsome circulation of two lakh copies per issue of our Client's publication.
- (g) You have in your article categorically stated that the dispute (relating to the litigation between FTL and TPHL) is expected to figure in the discussions that are scheduled to take place between the Indian and the British Prime Minister. It is apparent that before including this in your impugned article you did not seek a confirmation to this effect from the Government of India, which was legitimately expected from an independent journalist of your stature. One fails to understand how a dispute between two private parties could embarrass the Government of India.
- (h) You have further incorrectly stated that *"This also sets a bad precedent for foreign media companies wanting to operate in India."* Your said statement is not only false and incorrect, but the same has been made with a deliberate intent to defame our Client and project it in bad light. Till date not a single instance of the litigations between FTL and our Client, acting as a deterrent and/or having prevented any foreign media company wanting to operate in India from doing so has been reported by you.
- (i) The entire impugned article further attempts to present a biased view as if our Client is seeking to block FTL's entry into India. It obviously and deliberately ignores FTL's own statement on oath before the City Civil Court at Bangalore that ***they are not governed by Indian Law or the Press Council of India*** and that ***they have no intention to print and publish their newspaper in India.***
- (j) Your reference to the IKEA and Wal-Mart trademark disputes is also misplaced and out of context. The facts in

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the instant case have no comparison and/or are parallel to those in IKEA and Wal-Mart trademark disputes. A false and incorrect impression that our Client, like certain other person(s) who have been alleged of infringing IKEA's and Wal-Mart's trademarks respectively, is infringing FTL's trademark. For your knowledge we wish to specifically state that in the instant matter FTL's allegations of infringement and passing off of their so called global trade mark and associated reputation have been adjudicated upon and rejected by the City Civil Court Bangalore vide its judgment dated 24.09.2002, dismissing the suit filed by FTL in 1993. The said Judgment, which runs into more than 200 pages, was delivered after extensive trial and examining witnesses and analyzing voluminous documentary evidence on both sides. It considers, analyses and dismisses every contention and document in evidence produced by FTL in support of its alleged reputation and goodwill and the alleged distinctiveness of its mark "*Financial Times*". It is also pertinent to state that, on a challenge by FTL, even the Hon'ble Supreme Court did not interfere with TPHL's right to continued publication of its newspaper under the title "*Financial Times*". We shall also like to state that our Client was granted Trade Mark registration of the mark "*Financial Times*" without any opposition at all from any one including FTL, and that TPHL's application for registration of this Trade Mark "*Financial Times*" had been filed almost 12 months prior to the filing of the Bangalore suit by FTL in the year 1993 against our Client. It is thus evident that a false and incorrect impression of our Client, as being an infringer of FTL's mark, has been sought to be, and indeed has been, created by the impugned article in the public's mind.

5. From a perusal of the aforestated, it is evident that a patently false and baseless article, which is divorced from true and correct facts, has been published by you the Noticee. Our Client has reasons to believe and apprehend that the said article has been published by you at the behest of some third party, with malicious and malafide intent to harm our Client's legal interest, reputation and goodwill. The impugned article seeks to portray and does in fact portray a false and incorrect impression about our Client in the minds of the readers, advertisers and others in the industry.
6. The publication of the impugned article has caused an irreparable injury and loss of reputation to our Client. Pursuant to the publication of the impugned article our Client has been contacted by several persons, inquiring about the same. Our

client has been questioned and subjected to contempt and ridicule and has suffered immense prejudice and loss of goodwill, reputation, standing and goodwill in the industry.

7. You the Noticee, are hereby called upon to immediately tender an unconditional apology in writing to our Client and also to publish the true and correct facts on your website with the same prominence with which you had published the impugned article. You are also called upon to immediately remove the said article from your website. You the Noticee are further called upon to stop any further/recirculation of the impugned article. In the event of your failure to do so, our Client shall be constrained to initiate appropriate proceedings, both civil and criminal, including seeking monetary damages which Our Client is in the process of quantifying, against you the Noticee and all concerned behind the impugned publication. Needless to mention that any such proceeding, if initiated, shall be solely at your risk, cost and consequence.

A copy of the instant notice has been retained in our office for further necessary action, if required.

Regards,

For K. DATTA & ASSOCIATES



(ASHISH VERMA)
Advocate