

A Winthrop & Weinstine blog dedicated to bridging the gap between legal & marketing types.

How To Respond To Demand Letters

By Derek R. Allen on February 28th, 2012

When I first started working in the legal profession, I was struck by the tone many lawyers used in their correspondence. While many fighters claim that they're going to let their fists do the talking, lawyers tend to let angry-sounding adverbs do the heavy lifting.

If you're doing something our client doesn't like, you better cease-and-desist. When? Always "immediately." And if you don't? You better believe that our client is ready to defend her rights. Maybe the reader doubts this, so we make it clear that our client is prepared to do so "vigorously." On the off chance that our reader is still standing after the well-placed immediately-vigorously combo, we land a haymaker – demanding that you respond "promptly."

My initial reaction to receiving this type of letter often involved the words "immediately," "vigorously," and "promptly," but those words usually described what I thought the writer could do with the letter (I'll leave it to the reader to figure out the verb and noun). Recently, however, I've come across two better responses to those ubiquitous demand letters. Dare I say, they are a perfect blending of creativity and the law. (Warning: contains some slightly NSFW language):



CLETUS G. ROETZEL (1889-1973)
SAMUEL C. ANDRESS
JOHN M. ULMAN
GEORGE W. ROONEY
RICHARD E. GUSTER
DUANE L. ISHAM
KENNETH R. MILLISOR
K. RICHARD AUGHENBAUGH
TIMOTHY G. IRELAND
MICHAEL L. STARK
WILLIAM K. RICE

Roetzel and Andress
Counsellors at Law
20th Floor
One Cascade Plaza
Akron, Ohio 44308

AREA CODE 216 376-2700

RUTH I. MOORE
JOSEPH L. LAWSON
DALE O. COX
THOMAS G. KNOLL
GEORGE A. CLARK
EDWARD G. KEMP
GEORGE A. DIETRICH
TIMOTHY V. DIX
ALBERT J. HENRY
GARY B. PEARCH
TIMOTHY J. OCHSENHIRT
ROBERT A. BOARDMAN
STEVEN M. NOBIL
JAMES M. STEPHENS
JAMES L. RENCH

November 18, 1974

RECEIVED

NOV 19 1974

Cleveland Browns

The Cleveland Browns
Cleveland Stadium
Cleveland, OH


Gentlemen:

I am one of your season ticket holders who attends or tries to attend every game. It appears that one of the pastimes of several fans has become the sailing of paper airplanes generally made out of the game program. As you know, there is the risk of serious eye injury and perhaps an ear injury as a result of such airplanes. I am sure that this has been called to your attention and that several of your ushers and policemen witnessed the same.

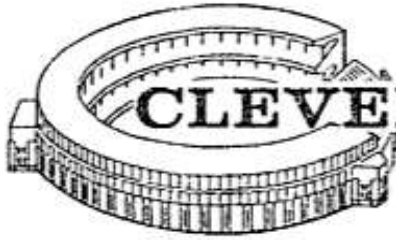
Please be advised that since you are in a position to control or terminate such action on the part of fans, I will hold you responsible for any injury sustained by any person in my party attending one of your sporting events. It is hoped that this disrespectful and possibly dangerous activity will be terminated.

Very truly yours,

ROETZEL & ANDRESS

By 
Dale O. Cox





CLEVELAND STADIUM, CORP.

CLEVELAND STADIUM • CLEVELAND, OHIO 44114

Phone: 781-5600

November 21, 1974

Dale O. Cox, Esquire
Roetzel and Andress
20th Floor
One Cascade Plaza
Akron, Ohio 44308

Dear Mr. Cox:

Attached is a letter that we received on November 19, 1974. I feel that you should be aware that some asshole is signing your name to stupid letters.

Very truly yours,

CLEVELAND STADIUM CORP.

James N. Bailey,
General Counsel

JNB:bjn

cc: Arthur B. Modell



WINTHROP WEINSTINE

ATTORNEYS AND COUNSELORS AT LAW



Freetail Brewing Co. 210.395.4974 fax 210.395.4978
4035 N Loop 1604 W Suite 105, San Antonio, TX 78257
www.freetailbrewing.com

January 10, 2012

[REDACTED]

RE: *Hopasaurus Rex* mark

Dear Mr. [REDACTED]

Thanks for your letter! I love hearing from and meeting people from all around the country. Since you are from [REDACTED], under normal circumstances I would assume you have a beard... I do too! But, since you are a lawyer, you probably just have some expensive suits instead. Way less cool, but whatever works for you man.

Anyway, about the issue of the HOPASAURUS REX name (the Mark). We indeed have made a beer under that name in the past. Actually, we haven't... HOPASAURUS REX is a name we give to a process upon which we apply to a beer and not the beer itself. Normally I would tell you what this process is, but I really don't feel like it anymore since your first introduction to me wasn't very nice. Furthermore, I don't want you to try to trademark it and sue me later.

In your Cease and Desist letter (C&D) you reference the Lanham Act as the basis for your client, [REDACTED] having exclusive right to use the Mark nationwide in connection with the sale of beer. However, the Lanham Act *requires* a "likelihood of confusion" for infringement to exist. Therefore, to the extent that Freetail Brewing Co. (Freetail) uses the Mark, it would only represent an infringement if someone had a hazy enough of a recollection to confuse drinking beer from a brewpub or bar in [REDACTED] or [REDACTED] with drinking beer from a brewpub in San Antonio, Texas. I admit to having consumed too many beers on a few occasions in the past, but never have I been drunk enough to make that confusion!

In any event, we don't use HOPASAURUS REX enough to care about what we call it, so you may consider this letter to be our complete and total acquiescence to your demand that we cease and desist the use of the mark immediately. When you






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4035 N Loop 1604 W Suite 105, San Antonio, TX 78257
www.freetailbrewing.com

are informing your client of such, I request (but not demand) that you please tell them they could have just asked us nicely and saved the legal fee. I also request (but not demand) you please tell them that I *will not* be giving them a hug if I ever meet them, but I'd love to try their beer at the next Great American Beer Festival and I would still give them a high five.

Word to Yo' Mamma,



Scott Metzger

PS: Please enjoy this drawing of a T-Rex waiving white flags, which was suggested for inclusion by my attorney. Actually, he's just my friend, I can't afford his legal fees.

SRM/nerd
Cc: Flying Spaghetti Monster

