HOW TO AVOID BAD PRESS

Don’t be fooled by the press – they’re not invincible

There is a common misconception carefully fostered by the media – especially the press – that there is nothing that you can do when it hits you with misleading and damaging material. This kind of story can be generated by a business rival, a disgruntled employee, or merely the jaundiced imagination of a journalist. Bad press sells newspapers which want to trade the reputation of your brand or corporation, or key individuals, for money. The purpose of this article is to enable you to make it much more difficult for them to do so.

The truth is that in an age of shrinking budgets in the media, especially in the cash-strapped print press, the prospects of either preventing or correcting damaging media coverage are better now than they have been for some years. It is not true that you are helpless if the media threatens to wreck your corporate reputation, brand or standing of your key individuals. There are many successes against the media achieved by leading brands and celebrities which are achieved merely by the astute threat of legal proceedings. I have, in recent years, succeeded in obtaining no less than three front page apologies on behalf of clients without even issuing proceedings – which demonstrates that the myth that there is no effective way of defending yourself against the media is just that.

The Things they don’t tell you in PR Conferences

The press gets away with a great deal because of people’s ignorance about their rights and the techniques available to protect them. Remarkably, most PR conferences that deal with crisis management completely omit the essential stick element of effective PR. Many PR people are ex journalists who see media lawyers as the enemy. But sometimes gentle persuasion is not enough to set against the commercial value to the media of bad news, and something more robust is needed. That can only come from an expert media lawyer who can both inform you of your rights and enforce them for you. By the end of this article you should be empowered to curb press excesses should you ever become their victim.

So what are the Tools of the Trade?

The only “regulation” of the media in this country kicks in when an individual (or corporation) takes action themselves to seek the protection which the law or the various regulatory bodies provide. There are a number of legal actions that can be threatened and/or deployed. The regulatory protection available depends on which media constitutes the problem. The key media management skill is to know which of the various tools to deploy and when.

The key regulatory bodies are OFCOM (covering the broadcast media excluding the BBC) and the Press Complaints Commission (covering the print media). OFCOM has a code which covers (for example) fairness and privacy. The Press Complaints Commission also has a detailed Code of Practice. But you need to use the Codes to make a formal complaint in a way which will obtain you the advantage of such protection.
The Regulatory Bodies

OFCOM will accept complaints concerning the fairness of programmes or programmes that infringe the privacy of an individual or corporation. It publishes Codes which, on the whole, broadcasters comply with, but against which programmes can be judged when a complaint is made. Its principal remedy, so far as the complainant is concerned, is to order the broadcaster to broadcast the adjudication of the complaint.

There is a degree of independence on the part of OFCOM despite the fact that it is funded at least in part by the media itself. It also has the power to fine and even withdraw licences, giving it some real teeth. Unfortunately the same cannot be said about the PCC, which by its constitution and funding is not independent, and exhibits a clear bias in favour of the press. Both the Commission itself and its Code can however be of some use and can also be deployed alongside legal remedies to good effect.

The Regulation of the Media by the Courts

The Courts provide more effective and deterrent remedies and can also (unlike the regulatory bodies) require a publisher or broadcaster to pay both damages and legal fees. It is this commercial pressure which is often decisive. The Courts can also prevent media corporations from republishing defamatory or confidential material on pain of criminal penalties. The Courts also (unlike OFCOM and the PCC) also have the power to stop publication of material in certain circumstances by issuing an injunction.

It is far more viable in the UK to obtain an injunction to prevent publication of confidential, private material than it is of defamatory material. However, a credible threat of legal action can often prevent the publication of defamatory material. I have many times successfully succeeded in dissuading newspapers from publishing objectionable copy by means of the straightforward commercial threat that if they do so it will cost them money.

So far as such reputation management is concerned, there are various legal remedies available. Not only is there defamation, but also malicious falsehood, breach of confidence, breach of copyright and the developing law of privacy. The right choice of threatened legal claim will depend on the circumstances, but the key principle common to all steps to restrain damaging publications by the media is to move quickly. Swift action on the part of one high profile client of mine brought about a full front page apology the day after (the front page) publication of a libel in a national newspaper.

Media Management works

In order to understand the way that the media make decisions concerning publication, or after publication has taken place, you need to act for both large media corporations and against them – which I have been fortunate enough to do. You then know what issues govern these key decisions, which are the most/least robust media defendants, who will be making the decisions etc.

The reluctance on the part of high profile brands/individuals (or those representing them) to take steps to protect themselves and clients from the media is often based on poor legal advice, either an incomplete knowledge of the law and/or the media industry. It seems this is usually the
result of not seeking advice from lawyers who really know how the media works. I was once told how one large corporation was advised by its city lawyer in the midst of a media crisis that a corporation cannot sue for libel!

The good news is that in the ever more competitive world of the commercial media, publishers and broadcasters are increasingly reluctant to fight potentially expensive legal battles. If you pick the right issue and take on the media defendant with sufficient determination, then normally you will receive an offer of settlement long before a trial for straightforward commercial reasons.

**The Long Term Benefits of having a Media Management Strategy**

One of the key benefits of standing up to the media when it is appropriate to do so is that it will gain for your brand or corporation, a reputation amongst the key decision makers in the media for not allowing privacy or reputation to be stolen for profit. These editorial decisions are always made in consultation with lawyers because every word and image published by the media is “legalled”. During that process two key questions are addressed. The first is whether there is a legal issue. If the answer to that question is yes, then the next and key question is, will they sue?

This means that if you have established on behalf of your client that the answer to that second question is yes, then editorial decisions which affect your client’s reputation or privacy will be made with an eye to the likely commercial cost of so doing. The result is that much less negative or intrusive copy is published.

**Where is the best place to do Media Management?**

For constitutional reasons, the US is a very difficult place to challenge the press. The First Amendment means that where publication has taken place both in the US and the UK (even when the UK publication is modest) the best place to solve the problem is in the UK. I have (for example) recovered a six figure sum from the *National Enquirer* for publication of a story about a client where only a few hundred copies were sold in the UK. Europe is also not such an easy place to deal with reputation issues, with damages in particular set at a much lower level. Although this country is not as claimant-friendly as it used to be on reputation issues because of recent changes in the law of libel, it is still a much more level playing field between the victim and the press than the US or Europe, which means that if you have an international reputation or privacy problem (as for most celebrities there will be no such thing as a local one), it is best to remedy it in the UK, and then, via astute PR, transmit the remedy out to the US and Europe once it has been achieved.

The broadcast and print media is a powerful ally, but can also be a powerful foe. There is, however, no need to feel impotent when it is. You just need to know your rights and find the right source of expert advice to enforce them.

For expert advice and guidance in this field or a free media management seminar please contact Jonathan Coad on +44 (0) 20 70748115, email (jonathan.coad@lewissilkin.com).