

After NYT Challenge, BuzzFeed Drops 'All The News' Slogan

By **Bill Donahue**

Law360, New York (October 12, 2017, 7:38 PM EDT) -- BuzzFeed on Wednesday deleted a slogan that riffed on The New York Times' iconic "All the News That's Fit to Print" motto after the newspaper reached out with legal concerns, quietly avoiding a trademark fight that experts say the site was unlikely to win.

The paper's lawyers contacted BuzzFeed last week over its use of "All the news too lit for print" to promote "AM to DM," a daily morning show that debuted last month. The slogan — a millennial-tinged spoof of the 120-year old Times motto — was gone as of Wednesday.

"We can confirm that the Times did reach out about AM to DM's slogan," BuzzFeed spokesman Matt Mittenenthal said in an emailed statement. "We're glad they are following along with our new show, like the rest of our robust audience over the last few weeks."

Richard Samson, vice president and assistant general counsel at the Times, characterized the outreach as "a very friendly conversation" with an attorney at BuzzFeed that quickly led to an agreement to drop the slogan.



The New York Times has had its motto registered as a trademark for decades.

"It's an awesome responsibility protecting the seven most famous words in U.S. journalism," Samson told Law360. "From time to time, it's not surprising that people try to capitalize on the fame of that slogan."

The "All the News That's Fit to Print" motto, coined by former owner Adolph S. Ochs and used by the paper since 1896, has been registered as a federal trademark for selling newspapers since 1958. In 1998, two years after the Times launched its first website, the paper registered the slogan for "computer services" for "general news and information."

Over all those years, the paper has been unafraid to enforce its trademark rights on the phrase when it deems it necessary.

"Not too many people have a 120-year-old trademark to protect," Samson said. "And we take it

seriously.”

In 1999, for instance, it moved to block Build-A-Bear Workshop from registering “All the News That’s Brought to Bear” as its own trademark at the U.S. Patent and Trademark Office. Eventually, the toy company abandoned the application.

In 2009, it sent a cease-and-desist to food writer Josh Friedland over his use of “All the News That’s Fit to Eat” as a slogan for his blog. Though he said it was “obviously a parody,” Friedland wrote on his website that he had decided to “cave in” because “I have neither the resources, time or energy to defend myself against the risk of a lawsuit.”

Unlike Friedland, BuzzFeed certainly did have the resources and the time to defend itself, but experts who spoke with Law360 on Thursday say the company made the right call to simply ditch the slogan.

The most logical argument that BuzzFeed could have made was that it was parodying The New York Times and its famous slogan. Rooted in First Amendment protections for criticism, parody — when proven — is not subject to trademark law’s restrictions.

But the “too lit for print” slogan is not so much a parody of the Times as it is an allusion to the Times, a fun word play on a famous trademark that lacks the specific ridicule or criticism seen in most parody.

It’s also being used in the exact same manner as the Times has used it for decades — as a tagline for a media product — by a direct competitor in the news business.

“If BuzzFeed was a satiric or comedic news source, such as The Onion and some TV comedy news shows, I think a viable argument could have been made that it was a parodic use,” said Susan Neuberger Weller, the chair of the trademark law practice at Mintz Levin Cohn Ferris Glovsky and Popeo PC. “[But] BuzzFeed is a real news source, and thus arguably operates in the same field as does The New York Times.”

Without the defense of parody, it’s hard to argue that “too lit for print” doesn’t make a clear association with a slogan that consumers recognize and link to a competing company — the very thing trademark law is designed to prevent.

“The tag line, in my opinion, evokes The New York Times and, therefore, could confuse the public or suggest that BuzzFeed and The New York Times have some affiliation or association,” Neuberger Weller said.

For BuzzFeed’s attorneys, those substantive trademark law challenges were likely amplified by more pragmatic considerations. Chief among them: Is a brand-new throwaway phrase worth an uncertain and expensive legal fight with an industry rival?

“If nothing else, it’s the right call as a practical matter,” said Mark H. Jaffe, a trademark attorney and a partner at Tor Ekeland PC.

“How important is the slogan to BuzzFeed, compared to how much New York Times will invest to defend its trademark?” Jaffe asked. “When a company makes these decisions, it has to take into account how far a big company will dig into its pockets in defense of its brand.”

--Editing by Philip Shea and Aaron Pelc.