

publish

AND BE DAMNED!

By Amber Melville-Brown

Remember the halcyon days before the Human Rights Act? As Rupert Brooke didn't write, "Stands the clock at ten to three, and let's not worry about privacy..." Pre 1998, the publisher's most frightening foe was the defamation jury, with star struck jurors handing out damages like Smarties. But if a footballer could bag £750,000 for an article accusing him of being a "dirty rat", at least the publisher had the option of deciding to publish and take the risk of being damned in damages. If he thought he could stand up his story, there was no need to back down, unless of course the judge or jury eventually told him to.

But now, that ain't necessarily so. It's still nigh on impossible for the libel claimant to get a pre-publication injunction. But the "you'll publish that over my dead body" claimant has found another way to skin the publishing cat in the emerging law of privacy.

Privacy, or misuse of private information was born out of the grand old dame of breach of confidence, in existence since at least 1848 when it was used by Prince Albert to prevent a "sordid spying into private life" through the unauthorised disclosure of private etchings of him and the missus. And who's the daddy? The Human Rights Act 1998 which incorporated into UK law the sibling rights of freedom of expression in Article 10 and the right to respect for private and family life in Article 8.

Privacy has become a force to be reckoned with for publishers. Here, the pre-publication injunction is not only a possibility, but it is often the first weapon that the claimant reaches for when delving into his anti-media armoury. "Publish and be damned" will be his retort to the publisher.

The difference between defamation and privacy is that in the former, the



Amber Melville-Brown is a London based lawyer specialising in copyright law

courts are prepared to accept that money is an adequate way to compensate the claimant for damage to his reputation, but in the latter, not so. Confidential information has been likened to an ice cube, "give it to the party who has no refrigerator or will not agree to keep it in one, and by the time of the trial you just have a pool of water". Good enough reason for the courts to agree to

keep the status quo, and to keep that confidential genie firmly in his bottle.

It's hardly surprising then that the claimant will use whatever is in his power to get an adverse story stopped. Allegations about a footballer playing away from home may be false and defamatory. But it's equally likely that they include some kernel of truth or are illustrated with details about his relationships, his sexual peccadilloes, even the size and potency of his manhood. While a riveting read no doubt, a trifle on the embarrassing side for Mr Soccer Star.

A privacy injunction is no slam dunk for the claimant (basket ball player, pop star, celebrity, wannabe). But faced with the prospect of defending an expensive privacy injunction at 6.30 on a Friday night, it's at least arguable that some publishers - especially those without deep pockets - will think twice before fronting up for what may prove to be an expensive fight.

Is the injunction totting privacy law diluting one of the greatest and most vibrant media in the world? Or is it justifiably protecting the vulnerable and curbing wilder excesses? Where should the line be drawn between the two...?

I'll be damned if I know.

TEN THINGS ABOUT POLESTAR YOU PROBABLY DIDN'T KNOW

1) We help Virgin and Cross Country trains keep time - most of the time by regularly printing over a million timetables in fifteen different versions, that we distribute to 400 stations across the UK.

2) The *Radio Times* has been printed by Polestar since it was first launched in 1928 - that's over 4,000 issues.

3) Polestar processes more than 15,000 orders lines for the NHS each month covering 350 different products. All the forms we get from our doctors, hospitals, dentists and pharmacies are now supplied by Polestar.

4) We helped keep count at the last National Census in 2001 printing 32 million forms. We did such a good job they've asked to print at the next Census in 2011 - 34.5m information leaflets, 37.5m questionnaires and 64.5m envelopes.

5) We recently worked in partnership with Cadbury's to refurbish its Bourneville Place offices in Birmingham providing large scale manifestations, digimura wallpaper prints and a large format print to create a unique and creative working environment, including some 1.1 metre high Jelly Babies as decoration - try biting the head off one of those.



6) A pole star is a visible star, especially a prominent one that is approximately aligned with the Earth's axis of rotation; that is a star whose apparent position is close to one of the celestial poles. At Polestar we like to think of ourselves as *heavenly and divine*.

7) Polestar helps keep the nation on the move with our contract to print the country's iconic A-Z London Guides.

8) That bastion of the premium property market *Country Life* has been printed by Polestar for over 40 years with more than 2000 editions.

9) As the Tesco strap line says "Every little helps" and Polestar with its digital box of tricks at Polestar Direct, helps Tesco mail coupon goodies year round to millions of individual Clubcard holders.

10) This Christmas Polestar will print over 90% of the bumper editions of the TV listing guides.