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May 10, 2019

Amer Zahr

VIA FEDERAL EXPRESS AND FACEBOOK MESSENGER

Re: Your Defamatory Statements About Burgerim Group USA

Dear Mr. Zahr:

This office represents Burgerim Group USA, Inc. (“Burgerim”), the franchisor of Burgerim restaurants in the United States and elsewhere. Our client has notified us of recent posts you have published to, *inter alia*, various social media outlets such as Facebook and Instagram which contain libelous and defamatory remarks about Burgerim. The purpose of this communication is to demand you immediately **REMOVE** the defamatory remarks and further **CEASE AND DESIST** from making any further libelous or defamatory remarks, or otherwise risk serious and severe legal action, both to enjoin your continued unlawful actions and for monetary damages which will quickly eclipse and moot any minimal gratification your brazen online posting has earned you.

For example, on May 8, 2019, you published what can only be considered a call to arms against Burgerim based upon false and derogatory information. Your post falsely conflates a business from Israel with Burgerim in the United States of America, which has no connection to Israel. The two entities are wholly distinct and have no relation. You post, verbatim: “Burgerim is an Israeli-founded franchise that has marketed itself as ‘Halal’ to Arab and Muslim communities and franchisees. The first Burgerim franchises in Israel were built on the ruins on Palestinian villages demolished and depopulated in 1948.” You then go on to post some supposed locations of these Burgerim stores. These statements are false and are materially detrimental to Burgerim and its franchisees. Moreover, the statement “DO NOT SUPPORT companies that have built their wealth in stolen Arab and Palestinian lands and lives” is hateful and also false in that Burgerim has never done anything to target or harm any person, much less one who identifies as Muslim or Arab.

The truth is that Burgerim is not involved with Israel or any Israeli company whatsoever. It is an American company with a great number of Arab-American franchisees. Indeed, as many as 50% of our franchisees are Arab-American. Your false words hurt not only an American corporation, but hundreds of Arab-American businesses across the United States.

Libel is defined as a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation. (Cal. Civ. Code, § 45.) Clearly, your false statements about Burgerim and its franchisee, including the call to boycott the franchise based upon such false information exposes them to hatred, contempt, etc. This much is evidenced by the comments from third parties in relation to your postings.

There is no doubt that upon trial of the matter, you will have been found to have defamed both Burgerim and its franchisee, and thus, are liable for the damages arising therefrom. Your resulting liability will be severe and crushing. Restatement of the Law of Torts, section 621, provides as follows: "One who is liable for a libel or for a slander actionable per se is liable for harm caused thereby to the reputation of the person defamed or in the absence of proof of such harm, for the harm which normally results from such a defamation." This can include general damages, compensatory damages, special damages, hurt feelings/emotions, and punitive damages. (See, e.g., *Gomes v. Fried* (1982) 136 Cal.App.3d 924, 939; *Brown v. Kelly Broadcasting Company* (1989) 48 Cal.3d 711, 749; *Melaleuca, Inc. v. Clark* (1998) 66 Cal.App.4th 1344, 1359.)

You should have no illusions that your statements are "protected by free speech" or the First Amendment. They are not. As stated by the U.S. Supreme Court:

"[I]t is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, **the libelous, and the insulting or 'fighting' words**- those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. **It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.**" (*Chaplinsky v. State of New Hampshire* (1942) 315 U.S. 568, 571-572; see also *Ashcroft v. Free Speech Coalition* (2002) 535 U.S. 234, 245-246 [freedom of speech "has its limits; it does not embrace certain categories of speech, **including defamation**, incitement, obscenity, and pornography produced with real children"]; *Beauharnais v. People of State of Ill.* (1952) 343 U.S. 250, 266 ["libelous utterances" are not constitutionally protected speech].)

Burgerim is giving you one opportunity to avoid what will be a costly legal battle. Please immediately remove all posts, publications, reviews, etc., regarding Burgerim in their entirety and agree to *never* post any such statements about Burgerim or its employees or franchisees ever again and we will forego the lawsuit. You have until May 17, 2019 at 5:00 p.m. to remove the posts. Your failure to do this will result in action being filed against you on May 20, 2019, and after that, there will be no settlement, no relinquishment, and no cessation to our legal efforts to hold you responsible for your actions and the harm resulting therefrom.

Further, your disingenuous words have incited others into action, resulting in damage to Burgerim's reputation and in people contacting Burgerim's franchisees to encourage them to break their contracts with Burgerim, which is an interference with Burgerim's business relationships, and which may result in liability to Burgerim.

Were I in your shoes, I would take opportunity to avoid a truly costly legal action in California. You ignore these warnings at your peril.

Please e-mail proof that the post has been removed to niv@davkauf.com in a timely fashion.

Very truly yours,

DAVIDOVICH KAUFMAN LEGAL GROUP, APA



Niv V. Davidovich, Esq.

cc: Client