

The Art of the Cease and Desist

Sarah Sawyer: Welcome to this week's OK at Work with myself, Sarah Sawyer, my colleague Russell Berger goes, attorneys at Offit Kurman, and today we are talking about cease and desist letters and why they're used and what you can do with them, but also the practical realities of using a cease and desist letter sometimes it makes sense to use one, sometimes it doesn't. It's a very kind of fact specific situation. When we talk about cease and desist letters, we're talking about a letter from, usually from a lawyer saying stop what you're doing and here's why.

So what are some things that people should be considering when considering a cease and desist, Russell?

Russell Berger: I think it's really important to zoom out and not just reflexively send a letter like that out and understand what your overall strategy is. If you're setting something up for litigation or you need to send this letter out so a third party can act when [00:01:00] it gets ignored, okay, great. Easy enough. Write the right letter and get it out. But oftentimes, when clients are asking for cease and desist, there's this threshold question of, , will this actually stop the behavior or is it going to make the behavior worse? And if our goal is not to set up the next thing or prepare for litigation, but rather we want this behavior to stop now, that's all we're looking for. You have to decide are we going to agitate and instigate greater response by sending a cease and desist letter, or are we going to be able to compel what we're looking for here by sending this cease and desist letter with, whatever requisite threats and, potential legal actions that can be taken.

And it really does become a case specific type of analysis. There isn't a one size fits all question 'cause we're talking about, how is some other person going to react? That's inherently individualized. What are our facts? What are our arguments? And again, what is our real goal here?

How do we get there? And so I think those are really important things for anybody to [00:02:00] think about before they just kinda reflexively, push that launch button on a cease and desist.

Sarah Sawyer: Yeah. And a lot of it's timing also, so something might have happened that you want to stop let's say obviously in the employment contract we see it a lot with clients or taking certain information or doing something repetitive or, in that context, sometimes the damage has been done in what someone's already done. To your point, Russell are we setting this up for future litigation when we're gonna actually do something and act on what we're putting on this letter? If not, and the damage has already even done.

Because it is a little bit of a shot across the bow, right? It's a little bit of a hey it's a very direct and slightly aggressive way to communicate with someone about something usually. And so it's really trying to be thoughtful.

Well, am I gonna actually do something about this? Does this, to your point, further antagonize someone? Has the damage already been done, am I gonna actually take any action as a result of this cease and desist letter? And if not, am I just gonna antagonize them to wanna take action against me? 'cause that can also happen, right?

Anytime you're doing something [00:03:00] proactive towards someone that can come back in your direction as well.

Russell Berger: And to your point, you might say, you know what, a cease and assistant is a waste of time. I should just file suit. I should just dive right in because, I might seed some strategic advantage.

I don't really need to send this letter. What I should do is go get a TRO or a preliminary injunction, or gear this up for a lawsuit. This is a waste of time. You could be more aggressive than a cease and desist. You could be less aggressive than the cease and desist, it might be the Goldilocks just right approach for your situation.

And again, think about it holistically, think about where you're going and how this fits in , it's not the strategy, it's a tactic. And make sure that you understand what your strategy and your goals are, and then whether this is the right tactic to help get you there.

Sarah Sawyer: Yeah. Well, thanks Russell, and we'll see you next time.

Russell Berger: Thanks, Sarah.

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