

By Chris E. Wittstruck, Esq.



Chris
Wittstruck
America in Lexington, Kentucky. During the speech, he purportedly made the following statement:

The old adage, “things often come in threes” was certainly in effect during the month of December.

First, in mid-December, Thoroughbred trainer Patrick Biancone filed suit in Los Angeles Superior Court seeking damages for alleged defamatory statements made by George Strawbridge, Jr., a noted Thoroughbred owner/breeder. Strawbridge, grandson of the founder of the Campbell Soup Company and a longtime shareholder of the NHL’s Buffalo Sabres,

delivered a speech in October to a gathering of The Thoroughbred Club of America in Lexington, Kentucky. During the speech, he purportedly made the following statement:

We all know the story of the trainer caught with enough snake venom to poison a small country, and he is still training in the U.S. By the way, this trainer is banned in the rest of the world.

Interestingly, the statement never mentioned Biancone by name and, in any event, the offended trainer did serve a suspension in 2007 for the incident referenced. So, where’s the basis for slander, the type of defamation alleged when words are spoken as opposed to libel, which is written? The suit contends that despite Strawbridge’s comments, Mr. Biancone is eligible to train racehorses anywhere in the world. Moreover, it is claimed that the banned substance attributed to Mr. Biancone was found in a refrigerator, not on his person and that, in any event, the amount was certainly not enough to ‘poison a small country.’

Then, just a few days before Christmas, Mike Pegram, chairman of the board of the Thoroughbred Owners of California (TOC) filed suit in state court in Nevada against prominent California Thoroughbred owner Jerry Jamgotchian, alleging that the latter defamed him in a malicious smear campaign.

Mr. Jamgotchian is a vocal activist for reform in the horseracing industry. He successfully challenged the California Thoroughbred “in jail” rule that required horses to remain at the racetrack from which they were claimed for several weeks before they could be removed. He is also challenging the methods by which stallion syndications are managed in Kentucky. Mr. Pegram, a significant owner in his own right who also operates Nevada casinos, charges that Mr. Jamgotchian distributed e-mails alleging that Pegram and other board members are “criminals” based upon his belief that they had stolen TOC assets through a slush fund. For his part, it is reported that Jamgotchian believes that the lawsuit will have some beneficial effect, as it will force the TOC to open its books and records to investigation.

While the above allegations were widely reported in industry media, a third set of charges were not. In between the two lawsuit filings mentioned above, I received a telephone call from a veteran horseman. His demeanor could aptly be described as being filled with both rage and disgust. He related to me what I already knew; that he was one of the countless targets of one of several industry blogging sites.

Admittedly, these message boards serve the very legitimate function of giving interested and concerned folks a forum for their opinions regarding important issues facing our industry. The problem is that not everyone chooses to utilize these sites to engage in

meaningful, businesslike dialogue. There are a slew of posters who, mostly without revealing their true identities, use the message boards solely for the purpose of engaging in vindictive, salacious and usually vulgar shout-outs about everyone and everything that “troubles” them, including sometimes each other. The nasty comments go far beyond the injection of mere bathroom humor. Vile graphics often complement the already vile comments, doubtlessly so that an illiterate reader can still get the message.

The veteran horseman on the phone had long been a target. Why call now? As he related, his children are now coming of age and, as such, the oldest one has already been polluted with some of the most recent postings lodged against him. He’s had no problem simply ignoring garbage written about him; but that attitude has necessarily changed. I will not share my advice to him, but rest assured he has been apprised of his rights, as well as his legal options.

I don’t know if Mr. Strawbridge illegally slandered Mr. Biancone. I don’t know if Mr. Jamgotchian illegally libeled Mr. Pegram. Defamation has many elements, and there are defenses to all claims. Those determinations are rightfully the province of the courts, and any singular opinion without the benefit of all the facts would be ill-given.

Still, there is something I do know and share; it is a new year, and possibly a good New Year’s resolution for some of you would be this: Your interest in our sport, its groups and participants is extremely important. No one who cares about this sport should be silent, and that includes those who many may not agree with on any particular issue. State your reasoned position, and provide the facts to support it. If you do that, you will both persuade folks that you’re right and receive evocative comments that may have you reflect upon, and possibly reconsider your original opinion.

If, however, you feel the need to spew bigoted, discriminatory and profane attacks at people, many of whom you have probably never met, then do yourself and everyone else a favor and close your computer. The favor to us is that we don’t need to be exposed to comments about someone’s unsubstantiated penchant for drugging, race fixing or general cheating; race; color; creed; supposed sexual predilections; bodily functions or those of their spouses. The favor to you is that, when you write filth like this, nobody other than the innocent person you seek to unfairly harm cares what you say anyway.

Do you object to actions taken by the U.S.T.A. or your local horsemen’s association? Beautiful! Run to be a director, file rule change proposals, show up at meetings, demand answers and take the responsibility to fully understand all sides of an issue; better yet, write something intelligent that will get other members to think... that’s how an effective advocate influences others.

Do you know of a horseman, racing official or track operator who cheats? If you have evidence, real evidence, then call the U.S.T.A.’s Integrity Hotline at 1-(800) 887-USTA (8782). Think that’s useless? Fine, then go to your state’s racing commission or local district attorney’s office. Think that’s useless as well? Well, since you really don’t want to get involved, then live with your silence and get over it. Don’t write that you think the offender’s spouse is awfully ugly, or that his children are on drugs. Those are simply the words of a coward and can subject you to an embarrassing and expensive civil lawsuit.

As a lawyer for clients, it’s important that I write with passion. I’m promoting a position, and if I appear disinterested or vague, it’s going to show. If, however, what I put forth is filled with strong emotion but lacks any semblance of facts, that’s going to show, too.

Have an opinion? Explain it in plain terms detailed with verifiable information and, most importantly, keep it out of the gutter.

Barrel Racing Update:

There have been notable developments since we explained last month the threat pari-mutuel barrel racing in Gretna, Florida poses to our industry.

A Florida appeals court has turned down a request by Quarter Horse interests and other associated organizations to temporarily halt pari-mutuel barrel racing pending decisions in legal proceedings challenging the validity of the activity. An administrative hearing is presently set to begin on February 2 regarding the allegation that Florida regulators acted unlawfully when they permitted barrel racing wagering to commence without rules in place. There is also an overall challenge to the validity of the regulators' authority to issue a license to conduct pari-mutuel barrel racing in the first place.

Meanwhile, on December 21 Florida Governor Rick Scott indicated to a state newspaper that it is incumbent upon the Florida legislature to clarify what is described as a gray area in the state's pari-mutuel laws. He indicated that he doesn't believe it was the intent of the legislature to include barrel racing as a permissible pari-mutuel activity. Scott was quoted as saying, "They need to clear it up."

We also reported last month that in December 2009, investor Eric Spector attempted to persuade the regulators in Wyoming to approve his application for team steer roping as a substitute for the live racing requirement of his company's simulcast license. While we indicated that the attempt was rejected by a small margin, shortly after the rejection the state's attorney general's office became involved. Subsequently, the administrative ruling was reversed, a simulcast license was issued and a pari-mutuel steer roping event took place in 2010.

In Wyoming, there is specific authorization for pari-mutuel roping events, as well as extensive rules governing the events including provisions mandating publication of past performances, blind position draws, event rules, stewards and judges, humane treatment of animals and prohibitions against corrupt practices. In effect, pari-mutuel steer roping was, and is, explicitly sanctioned, and Mr. Spector operated within the letter of the law.

Therein lies the point. In Florida, there are no such rules, much less statutory authority for pari-mutuel barrel racing. Unlike Wyoming, regulators in Florida acted solely upon the premise that, since Gretna was using Quarter Horses for barrel racing, the events automatically fit into the definition of Quarter Horse racing. That rather convoluted premise might justify wagering on Quarter Horses jumping off a steel pier in Atlantic City.

As we said last month, and as Governor Scott agrees, it's up to the 2012 Florida legislature to set forth their intention regarding horseracing legislation in clear, unambiguous fashion.

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