

Outline

Forward

Seth Godin, the preeminent Internet-marketing expert and author of best-selling books such as *Permission Marketing* and *Unleashing the Ideavirus*, has expressed interest in writing a forward to “*Taubman Sucks!*”. Godin wrote an article about the TaubmanSucks case in his popular blog; dozens of other bloggers followed Godin’s lead, resulting in more than half a million hits on the TaubmanSucks site in less than a week.

Chapter 1: The Legal-Sized Envelope (13 pages)

I get a threatening “cease-and-desist” (C&D) letter from Julie Greenberg, a lawyer representing the Taubman Company, the developer of The Shops at Willow Bend, a shopping mall being built near my home. A couple of years ago, I had created a website with information about the mall, and that’s the subject of Julie’s letter – she accuses me of trademark and cybersquatting violations and demands that I relinquish my ShopsAtWillowBend.com domain.

My girlfriend points out that I’m really not doing much of anything with the website, and she suggests that I should just give the domain to Taubman. I promise to think about it. However, when I do some research about trademarks, I begin to wonder if I’ve actually broken any laws – and if I haven’t, I’m uneasy about giving Taubman the domain name just because they’ve threatened to sue me if I don’t.

Chapter 2: We Can Work It Out (6 pages)

I respond to Julie’s C&D letter by asking for specific details of what provisions of what laws I’ve violated. Julie responds, but ignores my request and just feeds me more generalities, which only serves to increase my suspicions that I haven’t broken any laws.

Just to be safe, I write back to Julie and urge her to be specific with her allegations. I tell her that, if she’ll provide me with convincing evidence that I’ve broken the law, I’ll turn my domain over to her client, which would save us all a lot of time, trouble, and money.

Chapter 3: I Go to the Mall. I Get a Suit. (10 pages)

I attend the gala Grand Opening ceremonies at the very impressive (and very upscale) Shops at Willow Bend.

A few days later, Julie “responds” to my requests for information by filing a lawsuit.

I decide that, if Julie can threaten me, I can threaten her right back – and so, in retaliation, I register TaubmanSucks.com and several other “complaint” domain names. I tell Julie that I’ll use them to document and publicize the lawsuit should she proceed with it. Although I can’t stop her from trying to push me around, I can make sure that she can’t hide her nefarious activities from the millions of users of the World Wide Web.

Chapter 4: So, Why Did I Do It? (20 pages)

Interlude: This chapter explores my history of using electronic communication.

Topics include:

- I learn about the Net and tell my clients to take a hike so I can become a full-time web developer.
- My online webserver setup diary. (I become the first blogger?)
- Using the Web to create virtual communities and other service projects.
- The shopping mall: a finite space for an experimental virtual community.

Chapter 5: It's Over! (?) (8 pages)

Julie offers me \$1,000 to settle the lawsuit and relinquish the domain. Her offer strikes me as a graceful way for us to extricate ourselves from a silly squabble, so I accept.

At a family reunion, I regale everyone with the story of my cleverness in avoiding a lawsuit by threatening to tell the world that Taubman Sucks.

Gee, it was fun, but I'm sure glad it's over...

Chapter 6: They Refuse to Take “Yes” for an Answer (10 pages)

I return home from the reunion to discover that Julie has imposed several new conditions on our agreement. I angrily refuse the new conditions and insist that she honor our original agreement.

Julie calls me to say that she’s only fleshing out our agreement with details. I maintain that she’s adding entirely new conditions to an agreement that’s already been finalized. We appear to be at an impasse.

During our conversation, Julie asks if I’ll agree that I’ve accepted service of the lawsuit. She says that if I don’t do it voluntarily, she’ll have me formally served, and I’ll have to pay for the service. To my eventual chagrin, I believe her and accept service.

Taubman has one of their in-house lawyers call me to try to convince me to accept the new conditions. He’s clearly miffed that I won’t give in. “See you in court,” he says.

Chapter 7: Squatting in Cyberspace (20 pages)

Interlude: This chapter explores the history of cybersquatting and attempts at regulation. Topics include:

- My first exposure to cybersquatting (the McDonald’s caper).
- Domain names and trademarks.
- The Anticybersquatting Consumer Protection Act.
- The Internet Corporation for Assigned Names and Numbers (ICANN).
- The Uniform Domain-Name Dispute-Resolution Policy (UDRP).

Chapter 8: They Attack. I Fight Back. (15 pages)

Julie files for a temporary injunction that will force me to remove my site from the Web while the case progresses. She characterizes her settlement offer as attempted extortion on my part, which sends steam pouring out of my ears.

I have to figure out how to oppose her motion, and I have to do it quickly. After doing some research on the Web, I create and submit a response.

I notify Julie that, if she won't honor our contract, I'm going to withdraw my acceptance of her offer, as I don't want to devote hundreds of hours to fighting the lawsuit only to have her send me \$1,000 for the domain name. She feigns puzzlement. (“What agreement?”)

After weeks of non-stop work, I finally put TaubmanSucks.com online.

Chapter 9: I Complain, Therefore I Am (20 pages)

Interlude: This chapter explores the phenomenon of complaint websites. Topics include:

- The history of complaint sites, from WalMartSucks.com to the present.
- The disparate ways that cases involving complaint sites have been decided as a result of a dearth of case law and judges with little or no technical background.

Chapter 10: I’m a Loser (10 pages)

I get home from a weekend competing in my first triathlon to find a pleasant voicemail message from Julie. She tells me that the judge has issued an injunction, and that I have until 5PM to pull my ShopsAtWillowBend.com site offline or she’ll file a motion for contempt. There’s also a bullying message from her senior partner, Doug Sprinkle, to the same effect, but with a 4PM deadline.

I drive to my mailroom, and sure enough, there’s an injunction waiting for me – so I yank the site.

Chapter 11: The Visible Lawsuit (15 pages)

Interlude: When I add Doug’s and Julie’s messages to my TaubmanSucks site in text form (and later as voice files), it occurs to me that they never would have left those messages had they known that TaubmanSucks.com was online and that their messages would be heard by the entire world. The Net makes it possible to post the process of a lawsuit online, making its inner workings transparent to people all over the world as the lawsuit progresses, in a way that was not possible before the advent of the Net.

This chapter explores the new world faced by lawyers (and judges, for that matter): Now that every word they say may be revealed to the world, their tactics are being subjected to an unprecedented level of scrutiny.

Chapter 12: Don’t Talk Back (15 pages)

It doesn’t take long for Julie to discover that TaubmanSucks is online. She immediately files for an injunction to force me to remove that site as well.

Julie claims that I’ve violated something called the “safe distance rule,” which doesn’t seem to apply to this situation at all. She also claims that TaubmanSucks includes defamatory remarks and confidential information, neither of which is true.

It’s obvious to me that Julie’s problem with TaubmanSucks has nothing to do with trademark infringement, she just wants to shut me up. She doesn’t really think that the judge is going to buy all of her nonsense, does she?

Chapter 13: It’s Not My Default (15 pages)

Julie files a request for a default judgment, on the grounds that I never answered the original complaint. I didn’t even know that I was supposed to do that! Did I lose the case before it began? Now I see why everybody’s been advising me to get a lawyer.

I quickly fire off a desperate response. Then, with some timely help from an attorney I’ve met on the Net, I finally get around to formally answering the complaint.

Julie had mentioned that I was in default according to the Federal Rules of Civil Procedure, which I didn’t even know existed. When I find them on the Net, I discover that Julie had not had me served in accordance with the Rules. I file a motion to dismiss her complaint.

I also find the US Code on the Net, which leads me to move for a change of venue. Julie filed in Detroit, Taubman’s hometown – I think that she should have filed in Dallas, my hometown.

Feeling overwhelmed, I try to get help from the ACLU and the EFF (Electronic Freedom Foundation), but to no avail.

Finally, I learn that the court clerk has rejected Julie’s motion for a default judgment – in fact, he had rejected it even before I had generated this frantic flurry of filings! It seems that the anthrax scare is slowing mail from federal courthouses, and it took an incredibly long time for the ruling to reach me.

Chapter 14: Just Cause (15 pages)

I create and submit a response to Julie’s motion for a second injunction.

The judge issues an “order to show cause,” telling me to submit a response to Julie’s motion in a very specific format. The date of the order precedes the response I’ve just submitted, but the mailing delays have bitten me again, and I didn’t get the order until after I’d submitted the response.

To comply with the order, I first have to find out what “pinpoint citations” are; I’m able to find that information on the Net. Then I have to find the local court rules, which turns out to be a nightmare – most US District Courts have posted their rules on the Net, but not this one. I call the court, they refer me to a publisher who wants \$100 for a document that’s a few pages long. I’m about to shell out the bucks when I check once more, and the court has just posted its rules on the Web!

I create and submit my response, to which Julie subsequently submits a reply.

Chapter 15: The Scheduling Conference (20 pages)

I receive a notice that I have to fly to Detroit for something called a “scheduling conference.” I read the judge’s rules on the Web, and discover that they allow for telephone conferences in the case of out-of-town counsel. Hopefully, that applies to me.

I submit a request for a telephone conference. Shortly afterward, I get a cryptic voicemail message saying that I should contact the judge’s clerk. But when I call the next day, the clerk who left the message is on vacation and won’t return until the day of the conference! After some research, another clerk tells me that the telephone conference has been OK’d. (Whew!)

On the morning of the telephone conference, I learn that I have to set up the whole thing myself (something I’ve never done before), and that I have to do it quickly.

The conference itself is fairly uneventful, although the judge does order me to resubmit some motions that I’ve improperly submitted. He adds that he won’t cut me any slack next time. He follows up the conference with a “scheduling order.”

Julie opposes my motions for dismissal and a change of venue. She also accuses me of ignoring the judge’s instructions. I hastily draft a response to assure him that I haven’t.

Chapter 16: Public Citizen to the Rescue (15 pages)

During a discussion of my case on the Net, an “all-around trouble-maker” (his description) named Ron Riley asks me to call him. He talks my ear off with all kinds of suggestions, including one that gets my attention: He wants me to contact Paul Levy of Public Citizen, one of Ralph Nader’s public-interest groups.

I call Paul, who is immediately interested in the case. He points out that the clock is ticking on the time limit for me to appeal the injunction (which I’ve never even thought of doing). I find the appeal form online and submit it with literally no time to spare.

Paul decides that he’ll represent me, but only on the appeal – in the main case I’m still on my own. (He does, however, file a “friend of the court” brief on my behalf.)

Paul helps me write a motion challenging the jurisdiction of the court in Detroit. (I hadn’t even realized that jurisdiction and venue were different things.) Julie opposes my jurisdictional challenge. Paul and I reply to her response.

Chapter 17: Take It Off! (20 pages)

I’m on my way out the door to yet another family reunion (in NYC) when I learn that the judge has issued an injunction ordering me to take TaubmanSucks off the Web. I hurriedly kill the site.

I fax the decision to Paul from the airport, and I write some commentary for a new complaint website while I’m on the plane. When I get to NY, I send my proposed commentary to Paul for his review. Paul is aghast; he tells me that the judge will be incensed by my remarks. I point out that it doesn’t matter, that judging (so to speak) from his opinion, the judge couldn’t be any more hostile to me than he is already. And anyway, what does “free speech” mean if you can’t criticize a judge?

I post my critique under a domain name I’ve reserved for this eventuality: GiffordKrassGrohSprinkleSucks.com (thus immortalizing Julie’s law firm).

Chapter 18: Put It Back On! (15 pages)

I ask the judge for a stay of the new injunction. Taubman opposes the stay. The stay is denied.

In a strange interlude, Julie harasses my ISP because she mistakenly believes that my ShopsAtWillowBend.com website is still online. It isn't.

Ron Riley (remember him?) finds that TaubmanSucks still exists in web archives. To ensure that it doesn't disappear entirely, he registers Taubman-Sucks.com (note the hyphen) and reposts all the material that I was forced to remove. (Brave man.)

We ask the Court of Appeals for a stay of the injunction. Taubman opposes the appeal. We reply to their opposition.

The Court of Appeals grants our request for a stay! I put TaubmanSucks back online.

Chapter 19: Discover This! (10 pages)

I file my discovery requests and my witness list, which includes an impressive expert whom Paul has found.

Julie notifies me that she wants to depose me and that she wants to see pretty much every document that’s passed through my hands in my whole life. But even though the judge gave her 90 days (she said that she needed only 30), she’s waited until the last minute, and I don’t think I legally have to give her anything at all. She also subpoenas records from my girlfriend, who’s not happy about it.

Julie submits her witness list and “responds” to my discovery requests. I object because she actually provides little of the information (and none of the material) that I’ve asked for. (One lawyer calls it “the worst case of discovery abuse” he’s ever seen.)

Chapter 20: I’ve Been Deposed (15 pages)

Paul is concerned that the case is becoming too technical for me to handle by myself, so he agrees to represent me, just in time for the deposition. His first action is to tell Julie that I’m not going to produce any documents whatsoever. Just before the deposition, he and Julie negotiate a settlement – but once again, Julie reneges.

Paul flies into Dallas, and Julie deposes me by phone. Because I have nothing to hide and can answer all questions honestly, I feel that the deposition goes well for me.

After the deposition, we engage in a breathtaking flurry of summary judgment motions.

Chapter 21: My Expert’s Better Than Your Expert! (10 pages)

Julie’s expert witness submits a mildly interesting statement.

Our expert witness submits a statement that is one of the most thoughtful and fascinating documents I’ve ever read.

Chapter 22: Business and the Net (or How the Bull Came to Believe That It Owns the China Shop) (20 pages)

Interlude: This chapter explores the myriad problems caused by the explosion of commercial activity on the Net.

The Net was created as a virtual space where academicians and government scientists could freely share their thoughts. It survived and prospered for decades with little formal structure or oversight, largely because commercial activities were strictly prohibited.

When the government decided to stop funding the Net, a decision was made at the same time to allow business activity. At first, businesses entered into the new space cautiously, but then the timid advance suddenly turned into a headlong rush. Within ten years, most of the activity on the Net was business-related.

Because of its brilliant design, the Net continues to function well despite many serious problems, but spam and massive security issues continue to threaten its viability. And to the chagrin of the people who designed and built the Net, once businesses discovered how much money was to be made online, they began to act as though they owned the place.

Chapter 23: CopyWrongs (10 pages)

At the deposition, Julie had discovered that I downloaded a couple of graphics from Taubman’s website and used them on my website. She decides to add a copyright infringement charge to the original charge of trademark infringement. This opens up an entirely new front in the battle, like a trial within a trial.

Julie and I both file more discovery requests. I respond adequately, but once again she bobs and weaves. This time, we move to compel her to respond. Julie “supplements” her responses, but not by much. She opposes our motion to compel, and she moves for a summary judgment, which we oppose.

The discovery issue is referred to a magistrate. Paul flies to Detroit for a hearing. The magistrate rules largely in our favor, and Julie grudgingly submits a little more material.

Paul makes preparations to fly to Detroit again, this time to depose some witnesses. Suddenly, the judge is surprised (shocked!) to realize that we’re appealing the injunctions. He orders a hold in the case until the Court of Appeals has time to hear the case and to issue a decision.

Chapter 24: Victory is Sweet (20 pages)

Paul arranges for me to be a speaker at a conference in San Francisco, which my girlfriend and I turn into a fun vacation. At the conference, I notice that Paul is discussing the case with someone from the ACLU – and a couple of weeks later, the ACLU files a “friend-of-the-court” brief in my appeal.

Paul files his appeals brief, as does Julie.

At the appeals hearing, Julie’s senior partner, Doug Sprinkle, sits in for her.

After the hearing, Paul calls me to tell me that the hearing went so well that it’s not a matter of whether we’ll win, just how big we’ll win. But he’s puzzled: At the hearing, Doug insisted that I was the one who initiated the settlement discussions that resulted in Taubman offering me \$1,000. In other words, he’s maintaining that I tried to sell my domain name to Taubman. This is totally false. If the judges believe him, I might lose the appeal.

Paul contacts Doug to ask him to retract his statement. Doug aggressively and rudely refuses. But it turns out that I had nothing to worry about after all: The judges rule decisively in my favor, specifically noting that “although Taubman's counsel intimated at oral argument that Mishkoff had in fact initiated the negotiation process, correspondence in the record supports the opposite conclusion.”

The victory is so conclusive that Taubman has no choice but to move to dismiss the case, with prejudice (so they can’t re-file it later). The judge agrees – and suddenly, after nearly two years of hell, it’s over!

Chapter 25: Money, Money, Money (10 pages)

Well, it’s not quite over.

Amazingly, Julie spends the next three months fighting tooth and nail over our attempt to recover a little more than \$1,200 in court costs. The situation gets to be ludicrously confusing, involving two courts, two clerks, and a judge. Her point is that the losing party has to pay court costs – but she says that she didn’t lose, she moved for a dismissal. But finally, the judge says that she did lose after all, and that she needs to pay up.

We wait and we wait, but no check shows up. Paul follows up yet again – and Julie grudgingly sends the remaining funds, accompanied by a letter that gives a whole new depth of meaning to the phrase “sore loser.”

In the end, we wind up with nearly \$100 more of Taubman’s money than we had sought in the first place. And if they had paid the \$1,000 to which they originally agreed, Taubman would have saved themselves \$350 in court costs (not to mention several hundred thousand dollars in legal fees), and they would have owned the domain name!

Chapter 26: Legal Ethics (and Other Fantasies) (15 pages)

I’m told that state legal ethics boards exist largely to adjudicate fee disputes (and that they tend to sympathize with attorneys), but I decide to pursue ethics charges against Doug anyway. I simply can’t stand the idea of letting him get away with making outrageously false statements in court.

The state ethics board rejects my complaint. In their eagerness to get rid of me, they also reject my “request for reconsideration,” even though I haven’t submitted one yet. Predictably, when I finally do submit one, they reject it again. I appeal to the Michigan Supreme Court, but with no luck.

I investigate the possibility of countersuing Taubman (for malicious prosecution and/or abusive litigation), but I’m advised that my chances of success are slim. I try to file criminal charges against Doug for perjury, but I can’t attract the interest of a law-enforcement agency. But one of the agencies mentions that the Court of Appeals has its own ethics complaint-procedure, so I file a complaint there as well...

Chapter 27: Final Thoughts (15 pages)

Interlude: This chapter summarizes the lessons I learned from my experience.

Topics include:

- What should I have done differently?
- Is trying to represent yourself in court a good idea?
- Are the resources that the Net makes available really helpful when you're under legal attack?
- Would I do it again?

Epilogue: The Making of “Taubman Sucks” (the Movie) (10 pages)

Theo Lipfert, an award-winning filmmaker, contacts me to ask if I’d allow him make a short documentary about my legal ordeal. As far as I’m concerned, anything that will help publicize how shabbily I’ve been treated by Taubman and their hired guns is OK with me.

Theo flies into town, and we spend a few days shooting various scenes in various locations (the mall, my home, etc.). Later, he has to fly back into town – twice! – to rerecord several video and audio segments. All this for a six-minute film!

Finally, Theo completes the film, and my girlfriend and I fly to Seattle for the premiere. The film is incredibly well-received, and is one of the two films chosen by the project leader to be shown at a film festival that he coordinates.