



V A R D A G S

Telegraph Media Group Ltd  
111 Buckingham Palace Road  
London SW1W 0DT

Our ref: RL/RR – HAJ17

14 May 2020

Dear Sir/Madam

**OUR CLIENT: SIR STELIOS HAJI-IOANNOU  
INTENDED LIBEL AND DATA PROTECTION CLAIM AGAINST TELEGRAPH MEDIA GROUP LTD  
AND BEN MARLOW**

We represent Sir Stelios Haji-Ioannou (“**Sir Stelios**”). As you will be aware, Sir Stelios is a well-known entrepreneur, businessman and philanthropist and the founder and chairman of easyGroup Limited. He is the creator and owner of the easy family of brands ([www.easy.com](http://www.easy.com)) and he represents 34% of the shares in easyJet PLC (“**easyJet**”).

This is a pre-action letter sent in accordance with the Pre-action Protocol for Media and Communications Claims. The purpose of this letter is to notify you of Sir Stelios’s intention to issue proceedings against Telegraph Media Group Limited (“**TMGL**”) and Ben Marlow seeking substantial damages and other relief for libel and contraventions of Sir Stelios’s data protection rights under the General Data Protection Regulation (“**GDPR**”) and Data Protection Act 2018 (“**DPA 2018**”).

### **Article**

The intended claims concern an article by the Daily Telegraph’s Chief City Commentator, Mr Marlow, which was published online on the 7 May 2020 and in print on 8 May 2020 to a substantial but unknown number of readers in The Daily Telegraph and online at [Telegraph.co.uk](http://Telegraph.co.uk) (“the **Article**”).

The Article contained the following words about Sir Stelios:

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***“Has sun gone to SHI’s head?”***

*Surely there are better things to do on St Barts? How about a bite to eat at Le Select, the restaurant that supposedly inspired Jimmy Buffett’s smash hit Cheeseburger in Paradise?*

*Not if you’re Sir Stelios Haji-Ioannou, who has decamped to the Caribbean paradise to concentrate on an entire series of increasingly wild conspiracy theories, it seems.*

*His latest offering is a peach fit for his new sunny surrounds: apparently a trio of shareholders that have publicly backed easyJet in its looming showdown with SHI, as he is now fondly referred to by the airline, aren’t what they seem.*

*The tycoon has somehow convinced himself that the three are Airbus “strawmen”, sent to stop his campaign to force easyJet to cancel a £4.5bn order of planes. Still, at least he has some strong evidence to back up this wild allegation against a group of major shareholders accounting for 14pc of the shares: “They sound like the Airbus chief marketing officer.”*

*Not only that, but two of them – “Phoenix something” and “Ninety something” – are “newcomers out of nowhere”.*

*That would be Phoenix Asset Management and Ninety One, the South African investment giant formerly known as Investec, that have been investors since 2016 and 2017 respectively. The only thing that is made out of straw is his bizarre vendetta.”*

**Libel**

*Statement Complained of*

Complaint is made of the whole of the Article.

*Imputation Conveyed*

The words in the Article conveyed the imputation that:

Sir Stelios has made false and malicious claims that a group of major shareholders in easyJet have conspired with Airbus to prevent the cancellation of easyJet’s £4.5 billion order of planes.

*Factual Inaccuracies*

The Article contains a number of obvious inaccuracies and apparently deliberate omissions of relevant material. The background to Sir Stelios’s concerns relating to the onerous contract between easyJet and Airbus that could bankrupt easyJet has been fully documented and Mr Marlow is doubtless aware of the very substantial volume of supporting material produced by Sir Stelios. This is ignored in the Article, apparently to provide support for the allegation that Sir Stelios’s claims against Airbus and the three shareholders are false and malicious.

The Article itself appears to be in response to a statement made by Sir Stelios on 7 May 2020 at about 1500h BST, which was emailed by his head of communications Richard Shackleton to a number of journalists. It is of note that the Telegraph published the Article on its website approximately two hours later. Mr Marlow has chosen to deliberately distort and misrepresent that statement in order to mischaracterise Sir Stelios’s concerns and complaints. In particular:

1. Sir Stelios did not publish a “*wild conspiracy theory*” but, rather, based his statement on investigations he had undertaken. He spoke to two of three fund managers (Phoenix Asset Management and Ninety One) who indicated that they were supporting Airbus in their legal argument against easyJet that the £4.5 billion order for new aircraft could not be cancelled. It is extremely unusual for a major shareholder to be arguing in favour of a supplier and against the company in which they own shares. It appeared that the fund managers were repeating words given to them by an Airbus executive, rather than acting independently in the interests of easyJet. This is why Sir Stelios stated that they sounded like the chief marketing officer of Airbus. As to Invesco, Sir Stelios asked questions of his long standing contact there but – surprisingly and suspiciously – never received an answer.
2. Sir Stelios’s claim was also based on the fact that the three investors have refused to answer proper inquiries as to whether Airbus exercise any control or influence over them. None of the three denied that they managed money on behalf of Airbus.
3. Sir Stelios wrote a letter to easyJet as a more than 10% shareholder to ask the directors of easyJet to serve a notice on Airbus if they hold any shares in easyJet. This request was not complied with.
4. When Sir Stelios referred to Phoenix and Ninety One as “*two newcomers out of nowhere*”, this reflected his honest belief that he had never heard of them before they filed certain mandatory declarations that they hold shares in easyJet. This happened after the public battle between Sir Stelios and the directors of easyJet arose (i.e. recently).

### *Serious Harm*

The allegations made by Mr Marlow against Sir Stelios in the Article are untrue and seriously defamatory. The Article has inevitably already caused, and is likely to cause, serious reputational harm to Sir Stelios. In this regard:

1. The allegations about Sir Stelios contained in the Article are self-evidently serious and directly impugn his professional competence, judgement, intelligence and integrity. Indeed, the Article suggests that Sir Stelios has knowingly propagated false conspiracy theories about fellow shareholders and the directors of a listed company of which he is

a one-third owner (a stake that was worth £2 billion before the crisis and even now is worth about £700 million) – something that is the antithesis of what a reasonable and professional businessman would do whilst protecting his investment.

2. The Article was published in a national newspaper with a large daily circulation and online readership. (The last ABC circulation audit showed that the print edition of the Daily Telegraph had an average daily circulation of well over 300,000, while figures published by TMGL indicate that the Telegraph.co.uk website receives over 20 million views per month.)
3. The Article was written by the Daily Telegraph’s “*Chief City Commentator*” and was published on page 2 of the “*Business*” section. Its contents were therefore likely to be read and taken seriously by business people and professionals, including a large number of individuals in the airline and financial services sectors who have ongoing professional relationships and dealings with Sir Stelios.
4. The Article concerned the ongoing dispute between Sir Stelios and the directors of easyJet. That dispute has received widespread public attention and media coverage. Accordingly, the Article (and the allegations about Sir Stelios contained in it) were particularly likely to be read, discussed and republished by persons interested in that dispute (including, in particular, other easyJet shareholders who will shortly be required to vote on a proxy battle to cancel the Airbus contract due on 22 May 2020).

#### *Aggravation of Damage*

Despite the seriousness of the allegations, no attempt was made to contact Sir Stelios or his representative Richard Shackleton for comment. The allegation that Sir Stelios had made false and malicious claims against Airbus and the three fund managers was not put to him prior to the publication of the Article’s publication. This failure to comply with a basic precept of responsible journalism deprived Sir Stelios of the opportunity to explain why – contrary to the statements and allegations in the Article – his serious concerns regarding the conduct of easyJet’s management in respect of the contract with Airbus, and regarding the actions, intentions and motives of Airbus and the three fund managers are rational, well-founded and based on cogent evidence. Instead, the Article falsely states that those concerns are nothing more than “*wild conspiracy theories*” which are not backed up with any evidence

In contrast, it appears that Mr Marlow contacted both Phoenix and Ninety One prior to publication as the Article contains information as to the dates when they purchased their shares in easyJet. Despite such contact, the Article does not contain any denial of Sir Stelios’s allegations from Airbus, or the three fund managers. If such denials had been provided then Mr Marlow would have included them in the Article. He did not do so and did not comment on their absence. Sir Stelios infers that Mr Marlow knew that the fund managers were

controlled or influenced by Airbus but decided not to make this clear to his readers as it would undermine the false allegations about Sir Stelios in the Article. If this inference is incorrect, please provide us with full details of Mr Marlow's communications with the fund managers and/or easyJet's investor relations/PR team and of what they told him about their relationships with Airbus.

### *Liability*

In the circumstances, the matters above lead to a clear inference that the Article was intended to traduce Sir Stelios's reputation without regard to the true facts, or in the positive knowledge that the allegations about Sir Stelios were false. It is therefore clear that none of the defences in the Defamation Act 2013 are available to TMGL or Mr Marlow and that both proposed defendants are liable for libel.

### **Breach of the GDPR/DPA**

In addition, in light of the matters described above it is clear that the journalistic exemption contained in paragraph 26 of Schedule 2 to the DPA 2018 does not apply to the publication of the Article since the TMGL cannot reasonably have believed that the publication of the Article would be in the public interest (see para 26(2)(b) of Schedule 2) and, in any event, TMGL cannot reasonably have believed that it would be incompatible with any journalistic purpose to ensure that the personal data about Sir Stelios contained in the Article were accurate and processed fairly (see para 26(3) of Schedule 2).

The publication of false allegations about Sir Stelios involves the unfair and unlawful processing of inaccurate personal data about Sir Stelios. Accordingly, TMGL and Mr Marlow are liable for contravention of Sir Stelios's rights under Article 5(a) GDPR (duty to process data lawfully and fairly) and Article 5(d) GDPR (duty to process personal data accurately and to rectify or erase inaccurate personal data without delay).

### **Remedies our client is entitled to**

For the reasons set out above Sir Stelios is entitled to substantial damages (including aggravated damages) for libel and injunctive relief to prevent TMGL and Mr Marlow repeating the defamatory statements contained in the Article. In addition, he is entitled to compensation under Article 82(1) of the GDPR for the material and non-material damage caused by the infringements of his data protection rights and is entitled to rectification and erasure of the inaccurate data contained in the Article pursuant to Articles 16 and 17 of the GDPR.

As explained above, the Article has caused and is likely to cause Sir Stelios serious reputational damage. The financial impact of that damage is likely to be significant. In particular, as you are aware, a general meeting of easyJet's shareholders is due to take place on 22 May 2020. At that meeting, shareholders will vote on a resolution proposed by Sir Stelios to remove four

of the current directors whom he believes have committed serious failings in the discharge of their legal duties. The outcome of that vote will have existential implications for easyJet. In particular, if the motion proposed by Sir Stelios is rejected by the shareholder vote then the current board of directors has made it clear that it intends to proceed with an agreement to purchase more than 107 new aircraft from Airbus – a transaction which will almost certainly push easyJet into insolvency within a few months. The potential loss to Sir Stelios and his family is, therefore, £700 million.

The Article directly impugns Sir Stelios's judgement, rationality and integrity in the context of this very issue. It is highly likely that many of easyJet's shareholders who intended to participate in the general meeting will have seen and read the inaccurate and libellous allegations against Sir Stelios contained within it. Accordingly, the publication of the Article is likely to have a material (and entirely foreseeable) impact on the outcome of that crucial vote. In these circumstances, Sir Stelios will be entitled to recover damages arising from any loss of that vote caused by the Article.

### **Action required**

In light of the above, Sir Stelios has instructed specialist defamation and data protection counsel and intends to issue proceedings immediately unless TMGL and Mr Marlow agree to provide the following remedies:

1. Publication of a suitably prominent retraction and apology;
2. Payment of substantial damages for libel and breach of Sir Stelios's data protection rights;
3. An undertaking not to repeat the false allegations in the Article about Sir Stelios or any similar allegations; and
4. Payment of Sir Stelios's legal costs.

We also formally request that you (and your legal department as officers of the Court) take immediate steps to preserve all documents relevant to the Article. Such documents should include, without limitation, all telephone records, electronic documents and emails and, in particular, communications between Mr Marlow and easyJet, Airbus and the three fund managers referred to in the Article.

In the circumstances and given the urgency, a response to this letter is required by **no later than 4pm on Thursday 21 May 2020**.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'Vardags', with a long, sweeping flourish extending to the right.

**VARDAGS**