



Jeremy Blum

Bristows

Bristows

Through

inquisitive

minds



David v Goliath: PR
Considerations when
taking legal action



Jeremy Blum
Partner

Why is PR an issue ?

- Litigation or the threat of litigation has the potential to have **reputational impact**, for some it can be positive, for others it can be negative
- **Public perception** – not always based on fact
- Your actions **have the potential to convey** a lot about your brand.
- The **standard news cycle** now:
 - News – updated **24/7**
 - Comment / reaction
 - Social media comment/reaction
- The **media's priority**:
 - Tends to look for an angle e.g. David v Goliath / big corporate bully
 - Will run a story that attracts clicks, particularly like well-known / recognisable names



Key pre-action considerations

1

What is your brand and what do you stand for?

What is your brand philosophy and are you being consistent with it

Ensure all departments are on the same page

2

Do not underestimate the potential impact of the activist on social media - be careful who you pick a fight with

3

Do not send anything that you are not willing to become a public issue

Potential approaches for Goliath

- The *'nice'* approach might be appropriate in some cases– “treat David well”
- The *'serious consequences'* approach might be appropriate and justified when you stand up for something meaningful:
 - product / consumer safety or a cause the public will get behind





July 12, 2012

VIA EMAIL ONLY

Mr. Patrick Wensink
Louisville, KY
patrickwensink@gmail.com

Re: Mark: JACK DANIEL'S
Subject: Use of Trademarks

Dear Mr. Wensink:

I am an attorney at Jack Daniel's Properties, Inc. ("JDPI") in California. JDPI is the owner of the JACK DANIEL'S trademarks (the "Marks") which have been used extensively and for many years in connection with our well-known Tennessee whiskey product and a wide variety of consumer merchandise.

It has recently come to our attention that the cover of your book *Broken Piano for President*, bears a design that closely mimics the style and distinctive elements of the JACK DANIEL'S trademarks. An image of the cover is set forth below for ease of reference.

We are certainly flattered by your affection for the brand, but while we can appreciate the pop culture appeal of Jack Daniel's, we also have to be diligent to ensure that the Jack Daniel's trademarks are used correctly. Given the brand's popularity, it will probably come as no surprise that we come across designs like this on a regular basis. What may not be so apparent, however, is that if we allow uses like this one, we run the very real risk that our trademark will be weakened. As a fan of the brand, I'm sure that is not something you intended or would want to see happen.

As an author, you can certainly understand our position and the need to contact you. You may even have run into similar problems with your own intellectual property.

In order to resolve this matter, because you are both a Louisville "neighbor" and a fan of the brand, we simply request that you change the cover design when the book is re-printed. If you would be willing to change the design sooner than that (including on the digital version), we would be willing to contribute a reasonable amount towards the costs of doing so. By taking this step, you will help us to ensure that the Jack Daniel's brand will mean as much to future generations as it does today.

We wish you continued success with your writing and we look forward to hearing from you at your earliest convenience. A response by **July 23, 2012** would be appreciated, if possible. In the meantime, if you have any questions or concerns, please do not hesitate to contact me.

Sincerely,


Christy Susman
Senior Attorney - Trademarks

JACK DANIEL'S PROPERTIES, INC.

4040 CIVIC CENTER DRIVE • SUITE 528 • SAN RAFAEL, CALIFORNIA 94903
TELEPHONE: (415) 446-5225 • FAX (415) 446-5230

Taking the 'nice' approach – Jack Daniels

- Consider the outcome you want to achieve - you do not have to go 'nuclear'
- Do not be unreasonable in what you are requesting
- You do not have to demand money, in fact Jack Daniels offered to pay towards the rebrand of the book.



Forbes

LEADERSHIP • CMO NETWORK

The World's Nicest Cease-And-Desist Letter Ever Goes Viral, Sells Books

Avi Dan Contributor ©
Advertising and Marketing

[Follow](#)

In contrast.... BrewDog v LoneWolf

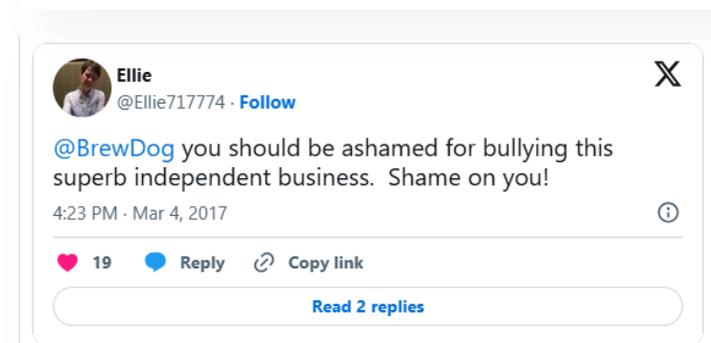
- BrewDog threatened legal action against a pub in Birmingham, UK which opened under the name LoneWolf, which is the same name as BrewDog's brand of vodka.
- BrewDog backtracked to try and repair the damage by blaming lawyers
- Eventually BrewDog released a statement on its website:

"...hands up, we made a mistake here in how we acted. Almost all companies always look to enforce trademarks, whereas at BrewDog we should take the view to only enforce if something really detrimental to our business is happening. And here, I do not think that was the case. As soon as I found out, I reversed the decision and offered to cover all of the costs of the bar. I also invited them up to Ellon to make their own gin with us. This is a mistake that hurt a lot; but like all mistakes, it made us better. This will not happen again.



Shame we had to spend money rebranding because of 'lawyers' [#independent](#) [#CraftBeer](#) <https://t.co/xlyEbbnAP3>

– The Wolf Birmingham (@TheWolfBham) [March 27, 2017](#)



Have decided there'll be no more [@brewdog](#) now for me after its shitty corporate attitude towards an independent [@TheWolfBham](#) [#whoneeds punk](#)

– Mr4Stringz (@mr4stringz) [March 3, 2017](#)

Negative Headlines



BBC
<https://www.bbc.co.uk/news/uk-england-birmingham>

[BrewDog 'hypocritical' in Birmingham Lone Wolf pub name ...](#)

27 Mar 2017 — Joshua and Sallie McFadyen were threatened with legal action a week after opening Lone Wolf because its name was the same as a BrewDog vodka.



The Guardian
<https://www.theguardian.com/lifeandstyle/mar/bre>

[BrewDog backs down over Lone Wolf pub trademark dispute](#)

27 Mar 2017 — Brewer withdraws action after Guardian report sparks backlash accusing firm of being 'multinational corporate machine'



The Caterer
<https://www.thecaterer.com/indepth/brewdog-retreats->

[BrewDog retreats over pub trademark dispute - InDepth](#)

Brewer and bar firm BrewDog has withdrawn from a legal row over the name of a family-run pub, blaming "trigger-happy" lawyers for the action.



Womble Bond Dickinson
<https://www.womblebonddickinson.com/insights/all->

[All bark and no bite: guidance on trade mark disputes](#)

5 Jul 2017 — Merely days after the dust was settling following BrewDog's apology in relation to the 'Lone Wolf' dispute, the beer company were again the ...



The Guardian
<https://www.theguardian.com/business/mar/brewdo>

[BrewDog accused of hypocrisy after forcing pub to change ...](#)

26 Mar 2017 — Brewers and beer-lovers denounced BrewDog on social media for threatening an independent pub with legal action over the Lone Wolf name: @ ...

Specific issues for pharma brands

The tone of the C&D letter

- Consider on a case by case basis- there is no standard approach. **The nature of the infringing act and the potential business detriment is determinative.**
- For some infringers (e.g. counterfeits and illegal sales of medicine online) there will be **zero tolerance** so the “nice” approach will never be viable.
- The tone of a complaint would need to be measured against a small business infringing trade marks for different goods i.e not selling medicine, but attempting to be playful.
- Parallel importers: the legal position is clear with specific rules to follow so the C&D letters are formulaic and not controversial, so less risk of negative publicity.

Specific issues for pharma brands

The tone of the C&D letter and fact of making a complaint

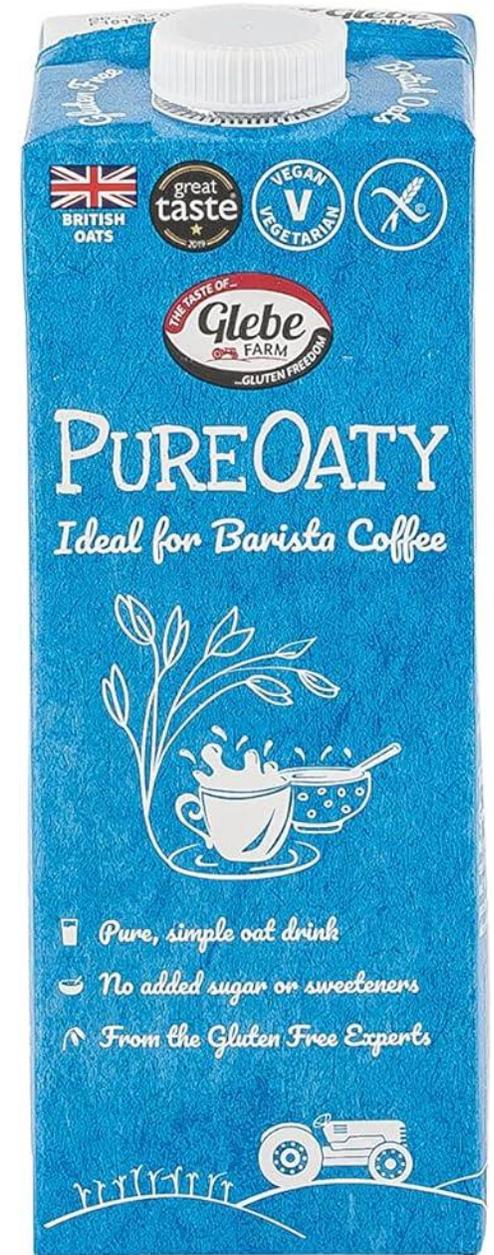
- Originator v Generic/Biosimilar and the defendant taking a position that emphasises its positive impact for accessibility and affordability. Less of a PR risk from previous issues arising though this is always an important consideration.
- Trade dress claims between originator companies leading to public perception of the claimant trying to delay a new medicine.

When

When PR
goes right for
David and
wrong for
Goliath

Oatly v Glebe Farm [2021] EWHC 2189 (IPEC)

Oat milk giant **Oatly** sued my client a small company called **Glebe Farm**, for trade mark infringement and passing off in relation to their oat milk product called 'PureOaty'.



Example headlines pre-trial:

Oatly accused of 'bullying' British family farm in trademark row

Oatly takes Cambridgeshire family farm to court in trademark dispute

Oatly sues UK oat milk maker over trademark

Oatly takes UK family farm to court over trade mark infringement claims

Meet the Cambridgeshire family farmers being sued by Oatly



The internet grows outraged over Oatly's lawsuit against Glebe Farm, makers of PureOatly

The public became mobilised

- A **change.org** petition was set up by two people in Cambridge unknown to Glebe Farm.
- The petition was for Oatly 'to renege its injunction on Glebe Farms'
- The petition created a large following and collected **131,528** signatures.

change.org

change.org

Petition details Comments

1 Response

let glebe farms
SOW THEIR OATS"



We would like Oatly to renege its injunction on Glebe Farms immediately.
#FreePureOatly

Reasons for signing

Andrew Aldis · 3 years ago
A lot of oat milk is consumed in our house - not one single carton of Oatly will cross the threshold again. I don't like bullies.
10 · Report

Jenny Morbey · 3 years ago
This is corporate bullying of the worst kind. I love Oatly products, but I won't be buying them again and I shall recommend friends to boycott them also.
10 · Report

[View all reasons for signing](#)

Hundreds of messages like these on Oatly's socials....

 Shocked to find out that you're taking #pureoaty to court because you think they sound like Oatly. I always thought you were an ethical company but now I know you're playing a real life version of #monolpoly I'm out 😞

18v 3 gilla-markeringar Svava

 oatly   Hi there, sorry to see you leave, but if you have a few minutes on your way out, you're welcome to have a look at the court documents: <https://www.oatly.com/uk/oatly-vs-glebe-farm>. Due to the fact that this is ongoing, we can't discuss much, but it is not unethical to protect a trademark, this is something every company has to do and is common practise in all industries. We're happy about other companies joining us in making the world more sustainable, but everybody should do so in their own unique way. So, yes, we want Glebe Farm to keep producing their range of plant-based drinks, but we do think Oaty is a little to close to Oatly.

18v Svava

 As if Oatly, a brand I support as I believed it to be ethical, have taken a small brand to court over a similar name. Shameful to see the same corporate bullying and crippling of other businesses even from Oatly. This feels so confusing to me as Oatly felt more independent... maybe a boycott and new alternative is already necessary as growth corrupts yet again.

19v 17 gilla-markeringar Svava

 oatly   Hi! It is great to hear, that you have been supporting us so far and of course sad to see you leaving. Our values and our goals always remain the same and our intention is not to harm anyone. We have not become a different company through this process. We are just trying to protect our trademark, something we have always done and which is our duty as a public. If you want to know more about it, you can have a look here: <https://www.oatly.com/uk/oatly-vs-glebe-farm>

18v Svava

Judgment: Glebe Farm wins. Lots of Headlines!

Alt-milk maker Oatly loses trademark case against family-run UK firm

Oatly loses trademark fight against British family firm selling 'PureOaty' drink

Why Oatly's lawsuit loss is a Goliath wake-up call

Oat milk giant Oatly loses controversial trademark battle

No crying over spilled milk - High Court hands down decision in trade mark dispute and Oatly confirm they will not appeal

Hundreds of messages like these on Glebe's socials....

Jack Benjamin Cox
Well done! Oatly won't ever get my money again. Keep doing what you do! 1

Like Reply 30w

Donna Taylor
Woo hoo!! It was a ridiculous lawsuit in the first place, well done for seeing it through and beating the big guys! 🍌🍌🍌🍌 5

Like Reply 30w

Glebe Farm Foods Author
Thank you so much Donna! We're delighted with the result 1

Like Reply 30w

Jane Thomas
The right result 🍌🍌 What a waste of money! Big well done 😊 4

Like Reply 30w

Saul Parry
Surprised the Judge didnt fine them for waisting the courts time. Hope you got legal fees paid too. I won't be buying Oatly ever again. 16

Like Reply 30w

↳ 1 Reply

Karen Nash
Fantastic news well done they are nothing like each other so the Judge was fair... I will never touch oatly they are not gluten free so nothing 'pure' about them.... 1

Like Reply 30w

Margot James
Congratulations, had not heard of your product before will def try it now 7

3y Like Reply

Earthling Kev replied · 1 Reply

Joan Risley
Excellent. I wouldn't have heard of you if it were not for the court case. I have now switch from the other brand to yours. 🍌🍌🍌 5

3y Like Reply

Jen Wiles
I've been buying Oatly for years and had never heard of [Glebe Farm Foods](#) and PureOatly. I'm switching! Well done 🍌 3

3y Like Reply

Peter Spencer
Good for you ! It was a no-brainer really 🍌 1

3y Like Reply

Jonathan Myers
Fantastic result. Glad that the judge came down on the side of common sense, never any doubt in our minds that there could be no confusion between the two brands. Having seen the number of people ditching Oatly over this, they have really shot themselves in the foot with this ill advised action. Keep up the good work and enjoy your victory, you fully deserve it. 3

3y Like Reply

Tube status

Line	Platform	Time	Status
Central	9	09:50	Minor Delays
Jubilee	14	09:54	Minor Delays
All other lines			Good service

OATLY SUED US.
WE WON. NOW
 HELP US PAY OFF
 OUR LAWYERS.



JCDecaux

EXPRESS

Direct to Gatwick Airport

13

14

Upper Crust

Upper Crust

famously fresh baguettes



Toni Petersson, CEO Oatly



When it
goes wrong for
David

Match Group v Muzmatch [2023] All E.R. 190

The logo for Match, featuring the word "match" in a blue, lowercase, sans-serif font, with a blue heart icon positioned above the letter "h".

match

- **Match** brought proceedings against Muzmatch.
- \$8.5 billion company.

VS

The logo for Muzmatch, featuring a pink butterfly icon above the word "muzmatch" in a dark grey, lowercase, sans-serif font.

muzmatch

- **Muzmatch** was created in 2011 to provide online matchmaking services to the Muslim community.

Draft judgements are confidential to the parties and under "embargo" before they are made public

IN CONFIDENCE

- 1. This is a judgment to which the Practice Direction supplementing CPR Part 40 applies.**
- 2. This draft is confidential to the parties and their legal representatives and accordingly neither the draft itself nor its substance may be disclosed to any other person or used in the public domain.**
- 3. The parties must take all reasonable steps to ensure that the confidentiality of this draft is preserved. No action is to be taken (other than internally) in response to the draft before judgment has been formally pronounced. A breach of any of these obligations may be treated as a contempt of court.**
- 4. The court will hand down its judgment in an approved final form. Counsel should therefore submit any list of typing corrections and other obvious errors in writing as a separate Word document or by a separate email. (Nil returns are required) to the clerk to Nicholas Caddick Q.C. by via email at [omitted], by 4pm on 19 April 2022 so that changes can be incorporated, if the judge accepts them, in the handed down judgment.**
- 5. The formal hand down of the judgment will take place on 20th April 2022.**

Not your average day in the office...

The judge had circulated the draft judgment to the parties. Muzmatch had lost but that was not yet known to the public.

- The formal judgment was to be handed down on 20 April 2023 at 10:30 am.
- The claimant's lawyers called me on 20 April 2023 at 9.30 am:
 - the Claimant had been asked by a major newspaper to comment on the outcome of the case and the fact the Claimant had won.
 - the Claimant's lawyers called to say they had to tell the judge there had been a suspected breach of the embargo
- I called my client. He explained he had told the media.

A very busy 24 hours...

The following direction was made by the Judge:

*“I am grateful to the parties for drawing this matter to my attention so promptly... it would be helpful if Mr Blum could ensure that the court is **provided with a full written explanation from those involved in the release to the press of information concerning the result of this case. It would also be useful to have an explanation of the steps taken to draw the clients' attention to the confidential nature of the draft judgment and its contents**”*

We had to prepare:

1. A witness statement (evidence) from my client with a full explanation about what he did and who he told.
2. A witness statement (evidence) from me personally with an explanation of how I discharged my duties to ensure the client knew their obligations.
3. Written submissions explaining the position

Match.com also got an opportunity to respond and unsurprisingly their position was that Muzmatch breached the embargo and was in contempt.

What had Muzmatch done before the public hand down?



Sent press release to 10 journalists who agreed to comply with embargo, in advance of hand-down



Email exchanges and telephone calls with 6 journalists in advance of hand-down



Prepared press release



Confirmed to press Muzmatch intended to appeal decision



Told six employees:

Head of marketing, Chief Technical Officer, Head of Mobile, Designer and two to help record a video statement to be published after hand-down

The Second Judgment said...

[35] “Whilst the breach was a serious one... I have decided that it is appropriate to accept Mr Younas' apology as resolving the matter... it is sufficient for me to express in this judgment my view that what happened was a serious breach of the embargo.... I do not see the need for the court to do so of its own initiative whether to punish Mr Younas for his past actions”

[36] “In reaching this decision, I bear in mind that, whilst I was surprised by Mr Younas' mistake, I accept that it was a genuine mistake... Mr Younas went to some lengths to emphasise that the journalists should respect the embargo and should not publicise the story until after the handing down of the judgment...”

[19] “I accept Mr Blum's statement that he took robust steps to ensure that his clients were aware of the obligations of confidentiality surrounding the draft judgment and that they should not take any steps until after the formal hand down. In my judgment, no blame attaches to Mr Blum or to Bristows in relation to what has occurred”

Why take the risk?

In the words of...



The Judge

“Muzmatch was clearly seeking to manage the publicity that the judgment might attract when handed down.”



Match LLC

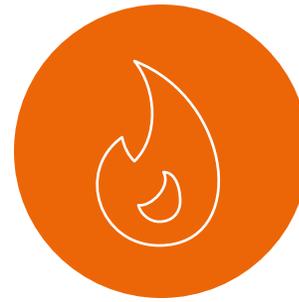
“Muzmatch has stolen a march in putting its spin on events”

Match LLC would need to put out its own press release insofar as it feels matters misrepresented to correct the position.

The need for speed and to influence the PR narrative



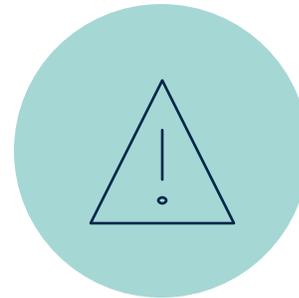
First mover advantage – if you can get the press interested before the other side you might benefit from being first.



Ensure you comply with all court rules when pursuing PR goals



In trying to generate interest from the press and to 'manage the publicity', Muzmatch inadvertently and mistakenly crossed the line.



This is one of the risks of courting publicity from litigation.

Considerations for “David”

- Litigation can be used as an effective PR tool to win support
- Lean heavily into being the ‘David’ in a David vs. Goliath battle to get the press and public on their side.
- Communicate with a sense of fun- poke fun at the situation
- Let the public be outraged, you do not have to convey that you are the victim
- Potential to gain new customers as a result of becoming recognised in the media and building rapport with the public.
- Follow the relevant rules!

The Grocer

A man with grey hair and a beard, wearing a light blue button-down shirt, is sitting at a wooden desk in a lush green field. He is smiling and looking towards the camera. On the desk in front of him is a laptop, a glass of milk, and two cartons of Oatly oat milk. The background is a vast field of tall green grass under a bright sky.

‘Oatly misjudged me. I wasn’t having it’: Glebe Farm’s Philip Rayner on legal battles, publicity and climate

By Grace Duncan | 22 July 2022 | 7 min read

Glebe Farm’s Philip Rayner has only just emerged from a David vs Goliath lawsuit with Oatly, but now the Swedish giant is moving in next door

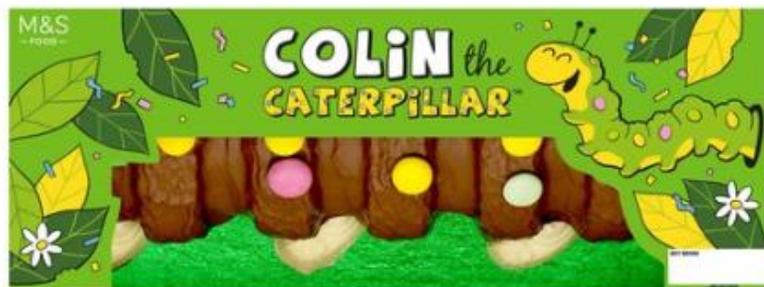
Considerations for “Goliath”

‘Nothing personal’: Oatly responds to backlash over Glebe Farm lawsuit

Key considerations:

- Beware the ‘David’ who might easily build rapport with, and empathy from, the public. It is always personal for the public.
- Beware coming across as a cold-hearted corporate machine not in touch with public sentiment
- Beware justifying your position based on technical legal points. A strong case does not mean public opinion is on your side.
- Beware how your audience perceives you.
- **Key point:** Is it always worth enforcing your rights?
- Follow the relevant rules!

Colin v Cuthbert: Turning a problem into a PR win



VS



Became

Turning a problem into a PR win

Aldi Stores UK @AldiUK · Follow

Packaging update. #FreeCuthbert



5:06 PM · Apr 16, 2021

94.1K Likes · Reply · Copy link

Read 689 replies



We've seen the latest news about Colin's 35th birthday party.

Firstly we'd just like to point out that Cuthbert was barely out of nappies when your GROWN CATERPILLAR put our poor boy in juvie. Anyway, every bug deserves a birthday party, so we're glad to see he's being celebrated.

However, it's come to our attention that you've neglected to invite us (and presumably Wiggles, Curly, Cecil, Clyde & Letty) to his big bash.

As the whole nation knows, it's not a proper party until Cuthbert arrives. So we have no choice but to issue you a cease and desist order for false representation of the event.

Soz x

Aldi Stores UK received a reply

Aldi Stores UK @AldiUK · 4h
Cecil, Wiggles, Curly, Clyde. We got you. @Waitrose @Sainsburys @Tesco @Asda #FreeCuthbert

299 Comments · 2,610 Retweets · 28.8K Likes

Morrisons @Morrisons · 1h
When you find out your friends have a group chat without you 💔 #whataboutMorris

56 Comments · 253 Retweets · 4,735 Likes

Aldi Stores UK @AldiUK

Cuthbert has been found GUILTY...

..of being delicious.

#FreeCuthbert

7:51 PM · Apr 16, 2021

Aldi Stores UK @AldiUK · Follow

Marks & Snitches more like. #FreeCuthbert

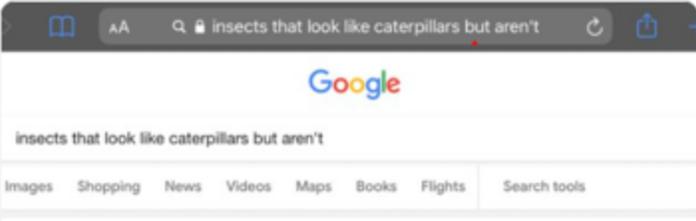
5:46 PM · Apr 16, 2021

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Lidl Ireland @lidl_ireland

Our legal team's search history right now



Thank you

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