

# Nelson Mullins

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February 16, 2015

### Via Email and Federal Express

Vince Taylor, Esq.  
4975 NSR 37 Business  
Bloomington, IN 47404

Re: Post-Petition Claims by Shoney's North America LLC ("Shoney's") and David Davoudpour ("Davoudpour") Against Edward Bay ("Bay") for Defamation, Tortious Interference, and Related Causes of Action

Dear Mr. Taylor:

As you know, I and this law firm represent Shoney's as a creditor in your client's Chapter 7 bankruptcy case pending in the Southern District of Indiana, Petition No. 14-92409-BHL-7. I and this firm also represent Shoney's and its Chief Executive Officer, Davoudpour, in connection with claims they have against your client, Bay, for defamation, tortious interference with business relationships, and related torts, arising from the numerous false and defamatory videos and comments that Bay now has admitted posting on YouTube and Facebook under the misrepresented identity of Raymond Danner (former Chairman and CEO of Shoney's). I write to demand that Bay delete these postings from YouTube and Facebook, so as to stop the ongoing injury that these postings are causing to Shoney's and Davoudpour.

Attached is a more detailed summary of the facts giving rise to Shoney's and Davoudpour's defamation and related tort claims against Bay. As discussed therein, since the termination of his Shoney's franchise agreements in March 2014, Bay has made it his personal vendetta to attack, harass, disparage, and defame Shoney's and Davoudpour through a pattern of dozens of false, misleading, and defamatory Internet posts and comments made through multiple forums and using multiple identities – including, most significantly, on a YouTube channel and Facebook page that Bay created and maintains under the false and misrepresented identity of Raymond Danner. The content of the videos and comments Bay created and posted under Danner's identity expressly confirm his specific and malicious intent to damage the reputations of Shoney's, Davoudpour, and the SHONEY'S® brand, and to interfere with and harm Shoney's efforts to sell franchises for new Shoney's restaurants. Bay's defamatory postings are causing ongoing damage to Shoney's and Davoudpour, and to the businesses of hardworking independent Shoney's franchisees who are harmed by Bay's attacks on the SHONEY'S brand.

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Accordingly, I hereby demand that Bay take immediate action, to be completed by February 26, 2015, to (1) remove all videos, comments, and content posted on the YouTube pages located at the following URLs under the misrepresented identity of Raymond Danner:

<https://www.youtube.com/watch?v=7GhJUfpq4no>;  
<https://www.youtube.com/watch?v=OvhGfEUyEs>;  
<https://www.youtube.com/watch?v=YWweeJxgIYvY>;  
<https://www.youtube.com/watch?v=rMzO4bFBuYI>;  
<https://www.youtube.com/watch?v=dMz8KGtvSWU>; and  
<https://www.youtube.com/watch?v=hFCT69qsluA>.

and (2) remove all videos and comments about Shoney's on the Facebook page located at the following URL under the misrepresented identity of Raymond Danner:

[https://www.facebook.com/raymond.danner.12?fref=ts&ref=br\\_tf](https://www.facebook.com/raymond.danner.12?fref=ts&ref=br_tf).

Shoney's and Davoudpour further demand that Bay refrain from reposting on the Internet these materials or any similar content that defames and disparages Shoney's or Davoudpour.

Please understand that this letter is not an attempt to collect a pre-petition claim against Bay. To the extent that our clients' tort claims are pre-petition claims, we are planning to file an adversary proceeding seeking to have those claims determined to be nondischargeable under 11 U.S.C. § 523(a)(6), but we will not pursue those claims outside of the adversary proceeding, until the adversary proceeding is resolved. Accordingly, the purpose of this letter is to address our clients' post-petition claims, and to seek to stop the ongoing injury and damages that are continuing to flow to Shoney's and Davoudpour (whether their claims are pre-petition, post-petition or both) as a result of Bay's continuing derogatory Internet postings.

Bay claims that Raymond Danner was his mentor and business associate. Mr. Danner surely would not be pleased with Bay's misleading and deceptive use of Danner's name and identity to seek to harm the brand that Danner was instrumental in creating and building. Again, Bay's removal of his defamatory and derogatory postings from YouTube and Facebook will stop further damage to Shoney's and Davoudpour. If Bay refuses to remove this content from the Internet by February 26, 2015, Shoney's and Davoudpour will be even more resolute in their determination to take all legal actions necessary to protect their brand and reputation and to seek redress and remedies for Bay's deceptive and intentional misconduct.

Nothing said in or omitted from this letter shall amount to a waiver of any of Shoney's or Davoudpour's rights, claims, and remedies resulting from Bay's conduct, all of which are expressly reserved.

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PLEASE BE GOVERNED ACCORDINGLY.

Sincerely,



Mark S. VanderBroek

MSV: sreid

cc: Catherine Hite, Esq.  
Greg Taube, Esq.  
Andrew Stosberg, Esq.  
Joseph Ross, Esq.  
Michael J. Walro, Esq.



**Attachment to February 16, 2015 Letter From Mark VanderBroek to  
Edward Bay's Attorney Vince Taylor Regarding Post-Petition Tort Claims**

**Summary of Shoney's North America LLC ("Shoney's") and David Davoudpour  
("Davoudpour") Claims against Ed Bay For Intentional Torts Including Defamation and  
Tortious Interference with Prospective Business Relationships**

Ed Bay ("Bay") is a former Shoney's franchisee, through his company SOMA Hospitality. SOMA's franchise agreements to operate two SHONEY'S® restaurants were terminated by Shoney's in March 2014, due to SOMA's landlord's termination of the leases for those restaurants for failure to pay rent.

Since the termination of his franchise agreements, Bay has made it his personal vendetta to attack, harass, disparage, and defame Shoney's and its CEO, Davoudpour, through a pattern of dozens of false, misleading, and defamatory Internet posts and comments made through multiple forums (Facebook, YouTube, online news articles, Shoney's Facebook page, unhappyfranchisee.com website, and by email to Shoney's current and former franchisees) and using multiple identities (his own, and by falsely impersonating former Shoney's CEOs Raymond Danner and Mitch Boyd). Bay's postings expressly confirm his wrongful intent to damage the reputations of Shoney's, Davoudpour, and the SHONEY'S® brand, to interfere with and harm Shoney's relationship with current and prospective franchisees and its efforts to sell franchises for new SHONEY'S® restaurants. The postings are continuing and are causing ongoing damage to Shoney's and Davoudpour.

**A. Background of Defamatory Internet Postings**

Bay's defamatory conduct on the Internet started on June 4, when he posted the following false and defamatory comment on Shoney's Facebook page: "I wouldn't deal with David Davoudpour again if franchises were free. *Shoney's is a dead brand. He is a crook and a liar.* Run from this guy as fast as you can." (Emphasis added).

From June 4 to June 17, 2014, Bay posted five separate negative and derogatory comments on a page of the unhappyfranchisee.com website, at <http://www.unhappyfranchisee.com/shoneys-worst-franchise/>. Bay's first comment was posted under his own name, and the rest of them were posted under the designation of "Former Franchisee." (The unhappyfranchisee.com website later changed all of Bay's posted comments to the "Former Franchisee" designation). These false, misleading and defamatory statements included the following:

- that Davoudpour was responsible for more than 100 Shoney's restaurants closing since 2007;
- that since Davoudpour's tenure began Shoney's has been sued by multiple vendors, landlords, and franchisees;

- that "Shoney's is a dead brand;"
- that "He [Davoudpour] is a crook and a liar;"
- that Davoudpour is a "'snake oil' salesman;"
- that no one but a "'snake oil' salesman" would not want to sell franchises in all states;
- that Shoney's does or did not have a VP of Operations, a VP of Training, a VP of Human Resources, or a VP or Director of Purchasing; and
- that Shoney's has not built a single new company-owned prototype SHONEY'S restaurant.

On June 22, 2014, Bay posted a comment on Shoney's Facebook page under the false and misrepresented identity of Raymond Danner, who was the co-founder and former Chairman and CEO of the SHONEY'S® restaurant chain. The comment contained a link to the [unhappyfranchisee.com](http://unhappyfranchisee.com) website page about Shoney's that included Bay's false and defamatory comments. During the rest of June, Bay posted at least four additional defamatory postings on the Shoney's Facebook page under the misrepresented identity of Danner, some of which also linked to the same [unhappyfranchisee.com](http://unhappyfranchisee.com) webpage.

Bay's wrongful and malicious conduct has accelerated since August, when he set up both a YouTube channel and a Facebook page under the false and impersonated identity of Raymond Danner. Bay is using this YouTube channel (located at <https://www.youtube.com/channel/UCZsDbDtQWqqz14BoOgLwDTg>) and Facebook page (located at [https://www.facebook.com/raymond.danner.12?fref=ts&ref=br\\_tf](https://www.facebook.com/raymond.danner.12?fref=ts&ref=br_tf)) to create and post numerous videos and comments, falsely attributed to Danner, that make false and misleading statements and representations to attack, harass, disparage and defame Shoney's and Davoudpour, all with the specific and expressed intent to discourage current or prospective franchisees from franchising additional SHONEY'S® restaurants and the public from patronizing SHONEY'S® restaurants.

As of the date of this letter, Bay has created and posted on his Raymond Danner YouTube channel six different defamatory videos about Shoney's and Davoudpour. Below some of these videos Bay has posted additional derogatory comments, also falsely attributed to Danner, some of which include links to Bay's defamatory postings about Shoney's and Davoudpour made on [unhappyfranchisee.com](http://unhappyfranchisee.com). In addition, Bay is using his Raymond Danner Facebook page to repost some of the same defamatory videos that he created and posted on his Danner YouTube channel, along with other defamatory comments.

The following is a partial summary of the defamatory information included in Bay's postings on his Danner YouTube channel and Facebook page under the false and misrepresented identity of Raymond Danner:



1. Bay's Raymond Danner YouTube Channel located at <https://www.youtube.com/channel/UCZsDbDtQWqqz14BoOgLwDTg>

(a) **"Franchise Shoney's" Video.** Created by Bay and posted on August 22, 2014, and located on a page of the Danner YouTube channel at <https://www.youtube.com/watch?v=7GhJUfpq4no>. The title of this video – "Franchise Shoney's" – like the title of some of the other videos on the channel, misuses the SHONEY'S® trademark to falsely and misleadingly suggest that it is a Shoney's produced or authorized video promoting the franchising of SHONEY'S® restaurants. In fact, the content of the video consists entirely of photos and messages that are false, misleading, disparaging and/or defamatory, including the following:

(i) The video starts with a screen shot which spells out in large letters "Franchise Shoney's (Never!!)" – directly expressing Bay's specific intent to interfere with and harm Shoney's attempts to sell new franchises for SHONEY'S® restaurants.

(ii) The video post a series of photographs that are alleged to have been taken at or obtained from SHONEY'S® restaurants, that show food or conditions that Bay falsely suggests are representative of SHONEY'S® restaurants but which are not.

(iii) The video closes with a screen shot which contains a number of false or misleading representations, including (a) that Shoney's is being or has been sued by multiple franchisees, vendors and landlords; (b) that Shoney's Senior Vice President of Franchising has no background in franchising; (c) that Shoney's does not have a franchise association; and (d) that Shoney's has only opened two corporate restaurants in 7 years.

(b) **"Shoney's David Davoudpour Video".** Created by Bay and posted on his Danner YouTube channel on September 8, 2014, at <https://www.youtube.com/watch?v=0vhGfEUyEs>. The false, misleading, and defamatory photos and representations on this video include but are not limited to the following:

(i) that Shoney's is being or has been sued by multiple franchisees, vendors and landlords;

(ii) that the purported "actual" hamburger photo shown at 0:14 is representative of a Shoney's hamburger;

(iii) that the Shoney's menu misrepresents the steaks it sells (in fact, the "menu" steak on the left at 1:39 is Shoney's dinner filet, and the photograph on the right is Shoney's breakfast steak which is a different cut);

(iv) that most Shoney's look like the photos shown in the video (these photos are not representative and are atypical of Shoney's restaurants – e.g., the Kissimmee FL store with a remodeling sign is in the process of being remodeled to be reopened, and

the store with the torn up parking lot is one where the City of Nashville was working on a sewer line);

(v) that more than 100 Shoney's restaurants have closed due to Mr. Davoudpour's leadership;

(vi) that Shoney's has no active franchise association (in fact it has an active franchise advisory council); and

(vii) that half of Shoney's franchisees have left the system since Davoudpour acquired Shoney's.

Underneath this video and on the same Danner YouTube Channel page, Bay has posted four comments that he also misrepresents as being posted by Danner. They include a link to the [unhappyfranchisee.com](http://unhappyfranchisee.com) webpage about Shoney's that include Bay's derogatory and defamatory posted comments under the "Former Franchisee" designation, which include those falsely representing that "Shoney's is a dead brand;" that Mr. Davoudpour "is a crook and a liar" and a "snake oil salesman;" and that no new company owned prototype SHONEY'S® restaurants have been built.

On September 11, 2014, Bay sent an email from his email account to a number of Shoney's franchisees which linked to this defamatory page of his Danner YouTube channel. Bay has also sent other emails to Shoney's franchisees containing false and defamatory statements about Shoney's and Davoudpour.

**(c) "Shoney's David Davoudpour Video 2".**

Created by Bay and posted on September 23, 2014, and located on a page of the Danner YouTube Channel at <https://www.youtube.com/watch?v=YWweeJxgIYvY>. This video identifies certain lawsuits filed by Shoney's against defaulting franchisees, and falsely represents, among other things:

(i) that more people have been sued by Shoney's since Davoudpour purchased Shoney's in 2007 then were sued by all prior owners of Shoney's in the prior 50 years; and

(ii) the percentage of Shoney's franchisees who have been sued or bankrupted since 2007.

**(d) "Where are all the Shoney's" Video.**

Created and posted by Bay on October 6, 2014, and located on a page of the Danner YouTube Channel at <https://www.youtube.com/watch?v=rMzO4bFBuYI>. The description of this video on the channel page - "Just a small portion of the more than 100 closed down Shoney's restaurants. If you are thinking about a franchise this is one you will want to stay away from" - expressly confirms Bay's specific intent to interfere with and harm Shoney's efforts to sell new franchises by discouraging current or prospective franchisees of Shoney's from becoming



franchisees of additional SHONEY'S® restaurants. The false, misleading, and defamatory photos and representations on this video include but are not limited to the following:

(i) that 50% of SHONEY'S® restaurants have closed since Davoudpour purchased Shoney's;

(ii) that SHONEY'S® restaurants that are temporarily closed for remodeling do not reopen; and

(iii) misleading photos that do not depict closed SHONEY'S® restaurants.

**(e) "Shoney's Management Team" Video.**

Created and posted by Bay on October 20, 2014, and located at the page of the Danner YouTube Channel at <https://www.youtube.com/watch?v=dMz8KGtvSWU>. The false, misleading, and/or defamatory statements on this video include but are not limited to the following:

(i) that Shoney's has had no positive results in seven years and is an "absolute failure;"

(ii) that Davoudpour is a part-time CEO who does not spend time in Shoney's offices or in SHONEY'S® restaurants;

(iii) misrepresentations about the background and duties of Shoney's executives;  
and

(iv) that investing in a Shoney's franchise "is a mistake by any standard."

**2. Bay's Raymond Danner Facebook Page:** located at [https://www.facebook.com/raymond.danner.12?fref=ts&ref=br\\_tf](https://www.facebook.com/raymond.danner.12?fref=ts&ref=br_tf).

(a) This Facebook page previously included a link to the two pages of Bay's Raymond Danner YouTube Channel which include the defamatory "Franchise Shoney's" and "Shoney's David Davoudpour Video" videos and comments posted by Bay under the false identity of Danner, and links to the [unhappyfranchisee.com](http://unhappyfranchisee.com) webpage about Shoney's that includes Bay's false, derogatory and defamatory comments about Shoney's and Davoudpour.

(b) As of the date of this letter, this Facebook page includes a link to the page of Bay's Danner YouTube page that contains the defamatory "Shoney's Management Team" video, and at least two links to the [unhappyfranchisee.com](http://unhappyfranchisee.com) webpage about Shoney's that includes Bay's false, derogatory and defamatory comments.



**B. Shoney's and Davoudpour's Legal Claims Resulting From Bay's Misconduct.**

Bay's intentional, malicious, and continuing posting of false and defamatory statements and representations on his Raymond Danner YouTube page, his Raymond Danner Facebook page, the [unhappyfranchisee.com](http://unhappyfranchisee.com) website, in other places on the Internet, and in emails sent to Shoney's franchisees, including those made under the false and deceptive identity of Raymond Danner, give Shoney's and Davoudpour legal claims against Bay for defamation, trade libel and injurious falsehood, false light invasion of privacy, tortious interference with prospective business relationships, trademark dilution, and other related causes of action.

Shoney's and Davoudpour have suffered and are continuing to suffer significant damages due to Bay's ongoing conduct, including but not limited to damages in the form of harm to their reputations and standing in the community, to the goodwill and reputation of the SHONEY'S® brand, to Shoney's efforts to sell new Shoney's restaurant franchises to current and prospective Shoney's franchisees, and to Shoney's business generally. In fact, many of Bay's statements expressly confirm his specific and wrongful intent to interfere with Shoney's attempts to sell franchises for SHONEY'S® restaurants. Furthermore, the harassing and defamatory postings are continuing, such that the damages to Shoney's and Davoudpour continue to accrue.

Bay's harassing and defamatory postings are also damaging the businesses of hard working independent Shoney's franchisees, who are harmed by Bay's attacks on the SHONEY'S® brand.