

FENNEMORE CRAIG

I - Law

INTELLECTUAL PROPERTY LAW ALERT

Fennemore Craig I-Law, a bi-weekly e-mail from Fennemore Craig's Intellectual Property Group, provides an update on e-commerce, Internet, trademark, patent, licensing and copyright news.

Fennemore Craig counsels clients on Internet, branding and e-commerce issues and protection and commercial exploitation of patents, copyrights, trademarks, and trade secrets. Clients include a range of domestic and international businesses from Internet start-ups to large multi-nationals in industries ranging from computer software and hardware to pharmaceuticals, toys, games, optics, and electronics.

If you think other people would benefit from this communiqué, please let them know that they can subscribe by sending an e-mail to Cheryl Martin-DeVries at cdevries@fclaw.com. Back issues of *Fennemore Craig I-Law* can be found at the Issues & Answers section of our web site at www.fennemorecraig.com.

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FENNEMORE CRAIG NEWS

- It is no longer going, and going and going. Eveready has settled a trademark lawsuit against some Arizona racetracks that used the company's famous Energizer Bunny trademark without permission last fall in some advertisements opposing Arizona Proposition 202, a gambling proposition. Fennemore Craig attorney, Steve Winkelman, represented Eveready in this litigation. The terms of the settlement are confidential. <http://phoenix.bizjournals.com/phoenix/stories/2003/03/17/daily43.html>

- States are rushing to pass spam laws, but such laws may not help stop the ever-growing amount of spam. The article quotes Fennemore Craig Attorney, Steve Winkelman.
<http://www.computerworld.com/softwaretopics/software/groupware/story/0,10801,79180,00.html>

TRADEMARKS

- USPTO proposes rules for implementing Madrid Protocol.
http://www.uspto.gov/web/trademarks/fr_madrid.htm
- Another MyTrademark MyLawsuit has been MyFiled in the MYSIMON case. The owner of the SIMON trademark for real estate services is again suing the owner of MYSIMON. SIMON originally won \$26 million, which was reduced by the judge to \$50,000. But new evidence suggesting that SIMON was not really harmed has caused the judge to throw out the original verdict. Undaunted, the SIMON folks plan to pursue another trial.
<http://www.indystar.com/print/articles/2/033135-8532-031.html>
<http://www.siliconvalley.com/mld/siliconvalley/5542485.htm>
- McTrouble. McDonald's has sent a cease and desist letter to a website that uses "McLawsuit" as well as the Golden Arches and other McDonald's trademarks. Apparently, the website was not aware of the restaurant's previous legal victory over the guy who called himself McLawyer.
<http://www.chillingeffects.org/trademark/notice.cgi?NoticeID=592>
- Taxes.com's use of a competitor's name on its website and in its metatags to truthfully criticize the competitor does not constitute trademark infringement, even though the repeated use of the competitor's name improved Taxes.com's placement in search engine rankings.
http://www.eff.org/IP/20030328_taxes-com_pr.php
- Florida Governor Jeb Bush's emails evidencing his support for Bacardi in a trademark dispute in the US Trademark Office (the one run by his brother, the President) have been filed with the U.S. Trademark Office.
<http://www.law.com/servlet/ContentServer?pagename=OpenMarket/Xcelerate/View&c=LawArticle&cid=1046833592973&t=LawArticle>

PRIVACY ISSUES

- California Supreme Court to decide whether former Intel employee's scathing emails to his former Intel colleagues were in fact illegal trespass. As ILAW readers will recall, the lower court found for Intel.
<http://www.wired.com/news/business/0,1367,58330,00.html>
- California has put up a website, which its citizens can use to register for the FTC do-not-call list.
http://news.com.com/2100-1024-995025.html?tag=cd_mh

- More identity theft. Hacker obtains credit card and other patron information from 57,000 supporters of Georgia Tech's art and theater program.
<http://news.com.com/2100-1002-994821.html>
- ID thefts are costing banks \$1 billion per year.
<http://www.msnbc.com/news/891186.asp?0cv=TA01>

COPYRIGHTS

- Online music royalty deal finally reached between recording industry and Internet music broadcasters.
<http://www.washingtonpost.com/wp-dyn/articles/A25404-2003Apr4.html>
- Entertainment industries are pushing for state versions of the Digital Millennium Copyright Act; critics are not pleased.
http://news.com.com/2100-1028-994667.html?tag=cd_mh
- Yeah, it was merely a coincidence. That's the ticket. Huawei Technologies is being sued by Cisco for copying Cisco's source code in Huawei's routers. The problem for Huawei is that straight copies of lines of Cisco's source code have been found on Huawei's routers. Huawei claims it was inadvertent and involved less code than claimed by Cisco.
http://news.com.com/2100-1035-994081.html?tag=fd_top
- The Copyright Office is going to hold a series of public hearings on the Digital Millennium Copyright Act.
http://news.com.com/2100-1028-993495.html?tag=cd_mh

ONLINE & E-COMMERCE ISSUES

- Federal Circuit decides that junk faxes not protected by constitution. Spam is probably not either.
http://news.com.com/2100-1028-993749.html?tag=fd_top
<http://www.ecommercetimes.com/perl/story/21077.html>
http://news.com.com/2100-1028-994076.html?tag=fd_lede2_hed
- Remember the USA Patriot Act? It was passed shortly after 9/11 to help fight terrorism. The U.S. Attorney's office has alleged that PayPal, the online payment service now owned by eBay, violated laws regarding the processing of online gambling payments.
<http://news.com.com/2100-1018-994810.html>
- Pennsylvania's Attorney General is using a state law to force ISPs to block hundreds of pornography sites. However, the AG refuses to provide a list of the blocked sites to critics (who are trying to prove the law is overbroad), because the AG claims that doing so would be distribution of pornography in violation of the very same law.
<http://www.wired.com/news/politics/0,1283,58336,00.html>

- ILAW has been saying this for a long time. Media analysts are now saying that peer-to-peer file-swapping is fundamentally unstoppable. By the way, the free file-swapping industry is now larger than the recording industry.
<http://www.sfgate.com/cgi-bin/article.cgi?f=/news/archive/2003/03/27/financial2101EST0174.DTL>
- Speaking of unstoppable. The UK government is attempting to crack down on spam.
<http://news.bbc.co.uk/1/hi/technology/2891845.stm>
- In an attempt to decrease spam, Microsoft is prohibiting free hotmail account subscribers from sending more than 100 emails per day.
http://story.news.yahoo.com/news?tmpl=story2&cid=575&ncid=738&e=4&u=/nm/20030325/wr_nm/tech_microsoft_spam_dc
<http://www.internetnews.com/bus-news/article.php/2169241>
- But can he collect? Company exec wins \$551 in spam suit.
<http://www.kansascity.com/mld/kansascity/business/5473532.htm>
- Study shows states are failing to beef up security for databases.
<http://www.washingtonpost.com/wp-dyn/articles/A28828-2003Mar25.html>
- 300 computer scientists have signed a letter saying that computerized voting is less secure from fraud and less reliable than the machines that are being replaced.
<http://www.washingtonpost.com/wp-dyn/articles/A39241-2003Mar27.html>
- An examination of email flow patterns can reveal ringleaders and corporate power structures.
http://news.com.com/2100-1032-993897.html?tag=cd_mh
<http://www.newscientist.com/news/news.jsp?id=ns99993550>
- Email substance matters too. Here are more examples of why you should be careful about what you put in emails: Accidentally sending your nude photo to a business associate rather than to your significant other does not always improve customer relationships. Similarly, accidentally copying an email to the person you are criticizing using many vulgarities should be avoided.
<http://www.wired.com/news/business/0,1367,58290,00.html>
- Numerous websites have been hacked and anti-war messages put up.
<http://www.washingtonpost.com/wp-dyn/articles/A62865-2003Mar20.html>
- Want an example? Anti-war hackers graffiti South Carolina government website.
<http://www.thestate.com/mld/thestate/news/local/5474425.htm>
- Not all hacking is anti-war. Al-Jazeera, the Arab news network, has had its website hacked, diverting web surfers to either pornography sites or images of the American Flag. Interesting choice.
<http://www.washingtonpost.com/wp-dyn/articles/A39929-2003Mar27.html>

- Also, a Florida web hosting company threatened to shut down a website if pictures of war were not removed. When the site refused this attempt at censorship, the hosting company shut down the site.
<http://www.salon.com/news/feature/2003/03/25/yellowtimes/index.html>
- Some of the hacking hasn't happened yet. US Department of Homeland Security (DHS) accidentally revealed that Chinese hackers plan to protest the US's war against Iraq by hacking US and UK websites. DHS accidentally posted and then removed an alert about this on its website. Makes you feel safer already, doesn't it?
<http://www.washingtonpost.com/wp-dyn/articles/A63550-2003Mar31.html>
- Dozens of people go to an "Astroturf" website, type in their name and address and the website emails a letter to the editor of the person's local newspaper, all in the hopes of creating the false impression of a strongly supported political position. Newspapers are beginning to figure it out as they receive many letters with identical wording.
<http://www.gainesvillesun.com/apps/pbcs.dll/article?Site=GS&Date=20030323&Category=COLUMNS16&ArtNo=303220020&Ref=AR&SectionCat=EDITORIALS>
- "I can't come to the phone right now...." "Away messages" (those messages left via instant messaging that indicate that your online buddy is away) are becoming a mode of personal expression, as college folks entertain their friends with their clever messages.
<http://www.nytimes.com/2003/03/20/technology/circuits/20away.html> (archive fee required to view entire article)

BIOTECH ISSUES

- 38% of the corn planted in the US this year will be genetically engineered.
<http://www.washingtonpost.com/wp-dyn/articles/A58652-2003Mar31.html>

DOMAIN NAMES

- Put up porn site; go to jail. The US House has passed legislation making it a criminal violation to use a "misleading" domain name for a website that contains pornography and to put virtual child pornography on the net.
<http://news.com.com/2100-1028-994460.html>
- ICANN says non-English language domain names should soon be available.
<http://www.nandotimes.com/technology/story/828337p-5843883c.html> (free registration required)
- New ICANN proposal may make transfers of domain names easier.
<http://www.pcadvisor.co.uk/index.cfm?go=news.view&news=3165>

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