

FENNEMORE CRAIG

I - Law

INTELLECTUAL PROPERTY LAW ALERT

As a friend of Fennemore Craig, we thought you might be interested in *Fennemore Craig I-Law*, a bi-weekly e-mail from Fennemore Craig's Intellectual Property Group that provides an update on e-commerce, Internet, trademark, patent, licensing and copyright news. Each issue will contain a sentence or two about the latest story with a link for those who want additional information. Periodically, on particularly important news, a more in-depth analysis will be provided.

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 may subscribe by sending an e-mail to Cheryl Martin-DeVries at cdevries@fclaw.com. If you would like to obtain back issues of *Fennemore Craig I-Law*, please refer to the Issues & Answers section of our web site at www.fennemorecraig.com.

You may unsubscribe to Fennemore Craig I-Law at any time by sending an e-mail message to cdevries@fclaw.com with "UNSUBSCRIBE FC I-LAW" (without the quotation marks) in the subject line of the e-mail.

If you have any questions or comments, please contact Steve Winkelman, author of *Fennemore Craig I-Law*, at swinkelm@fclaw.com or 602.916.5407.

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FENNEMORE CRAIG NEWS

- You are invited to attend the **Fennemore Craig I-Opener Breakfast**, a roundtable on current IP issues facing businesses, on May 14, 7:30 a.m. - 9:30 a.m. Possible topics include: Auditing your website to determine whether there is proper trademark use, proper privacy policies, and terms of usage; and how to handle online critics that establish a website or anonymous bulletin board posters that slander your company, your project, or your product. Please let us know about any topics that you would like discussed. If you are interested in attending, please contact Cheryl DeVries at cdevries@fclaw.com or 602.916.5292.

ONLINE & E-COMMERCE ISSUES

- The U.S. Supreme Court rules that prohibition against online virtual child pornography is unconstitutional.
<http://www.newsbytes.com/news/02/175914.html>
<http://www.msnbc.com/news/739373.asp>
<http://www.wired.com/news/politics/0,1283,51877,00.html>
<http://www.newsbytes.com/news/02/175915.html>
<http://www.wired.com/news/politics/0,1283,51856,00.html>
<http://news.com.com/2100-1023-884085.html>
- Another court prohibits excessive use of competitor's name in metatags in order to manipulate search engine results.
<http://www.law.com/cgi-bin/gx.cgi/AppLogic+FTContentServer?pagename=law/View&c=Article&cid=ZZZ9IVP8UZC&live=true&cst=1&pc=3&pa=0&s=News&Explgnore=true&showsummary=0>
- And now, a story on some old technology. A federal ban on unsolicited fax spam violates First Amendment, according to a court in Missouri.
[http://ipcenter.bna.com/PIC/ippic.nsf/\(Index\)/517E6B72572944A485256B9700596466?OpenDocument](http://ipcenter.bna.com/PIC/ippic.nsf/(Index)/517E6B72572944A485256B9700596466?OpenDocument)
- Speaking of old technology, here is an article suggesting that the beeper is an item on its way out of circulation.
<http://www.nytimes.com/2002/04/11/technology/circuits/11BEEP.html>
- Deep linking (hyperlinking directly to a page of a website while avoiding the home page) is again an issue in a case involving a Danish newspaper.
<http://www.wired.com/news/politics/0,1283,51887,00.html>
- The public still prefers "wet" signatures to electronic signatures despite a federal law making them legally equivalent.
<http://news.com.com/2100-1017-884544.html>
- Virtually all employees (94%) are unconcerned about employers invading their privacy, according to a recent survey.
<http://www.newsbytes.com/news/02/175953.html>
- As file-swapping cases begin to trickle out from courts all over the world, they emphasize the conflict between local laws and a worldwide Internet.
<http://news.com.com/2100-1023-885233.html>
- A contestant on the reality game show "Who Wants to Marry a Multimillionaire?" has lost a defamation lawsuit against two radio talk show hosts who said she was a "chicken butt." Such commentary is protected free speech.
<http://www.law.com/cgi-bin/gx.cgi/AppLogic+FTContentServer?pagename=law/View&c=Article&cid=ZZZU9S2T50D&live=true&cst=1&pc=3&pa=0&s=News&Explgnore=true&showsummary=0>

- *Penthouse Magazine* may go out of business because so much pornography is available online.
<http://www.nytimes.com/2002/04/08/business/media/08PENT.html>
- Senator Ernest Hollings has introduced legislation requiring websites to protect consumer privacy by requiring users to opt-in before their information is shared with third-parties.
http://dc.internet.com/news/article/0,1934,2101_1012611,00.html
<http://news.com.com/2100-1023-886679.html>

TRADEMARKS

- The U.S. Supreme Court to evaluate Victoria's "Secret." The Court will use a trademark dispute between the famous lingerie company and a little known sex toy store in Kentucky to decide whether one must prove actual dilution or likelihood of dilution in order to be successful in a trademark dilution case.
<http://www.law.com/cgi-bin/gx.cgi/AppLogic+FTContentServer?pagename=law/View&c=Article&cid=ZZZHQTU20D&live=true&cst=1&pc=3&pa=0&s=News&Explgnore=true&showsummary=0>
- Fortera and Futura, automobile tire lines of two manufacturers, are not confusingly similar.
<http://www.law.com/cgi-bin/gx.cgi/AppLogic+FTContentServer?pagename=law/View&c=Article&cid=ZZZ0Q41BXZC&live=true&cst=1&pc=0&pa=0&s=News&Explgnore=true&showsummary=0>

DOMAIN NAMES

- A UDRP dispute arose over the domain name johnnyblaze.com between an Elvis impersonator who used the moniker as his stage name and a clothing company that used the name as a trademark. The Elvis impersonator was allowed to keep the domain name because his use of "Johnny Blaze" as a stage name gave him a legitimate interest in the domain name. Query: Wouldn't the Elvis impersonator's stage name be Elvis?
<http://www.newsbytes.com/news/02/175758.html>
- A UDRP claim goes up in smoke. A tobacco company cannot obtain kool.com in a UDRP proceeding.
<http://www.newsbytes.com/news/02/175751.html>
- An arbitrator discusses the difference between UDRPs and the .biz initial registration's Start-up Trademark Opposition Policy (STOP).
<http://www.arbforum.com/domains/decisions/103042.htm>
- The architecture of The New York, New York Hotel in Las Vegas mimics the New York skyline. However, the hotel has run into problems because one of the buildings copied is the facade of the New York Stock Exchange. The NYSE has sued claiming that use of the facade as well as use of "NYSE" and "New York \$lot Exchange" infringe and dilute NYSE's trademark rights.
[http://ipcenter.bna.com/PIC/ippic.nsf/\(Index\)/32D1E68B9106C3AF85256B960053586E?OpenDocument](http://ipcenter.bna.com/PIC/ippic.nsf/(Index)/32D1E68B9106C3AF85256B960053586E?OpenDocument)

COPYRIGHTS

- Remember, make sure the release(s) you obtain from those creative people who assist you with your business and advertising are adequate. Yahoo! apparently forgot this rule when it paid the

yodeler who does Yahoo's signature yodel. According to the lawsuit filed by the yodeler, Yahoo! only paid him for use of the yodel in a single commercial, not for all the subsequent commercials and other uses made by Yahoo!. The yodeler now seeks \$5 million.
<http://news.com.com/2100-1023-886738.html>

- Arizona's own Integrated Information Systems has settled a dispute with the recording industry. The recording industry alleged that IIS allowed its employees to use the company's server to swap copyrighted MP3 files. Ironically, IIS makes software designed to secure digital material.
<http://news.com.com/2100-1023-879308.html>
- Was the extension of copyrights by 20 years constitutional? The U.S. Supreme Court will decide. In the meantime, here is an article that suggests that the extension is constitutional.
http://www.salon.com/tech/feature/2002/04/15/copyright_defense/index.html

PATENTS

- Huh? The patent office recently issued a patent for a method of swinging on a swing.
http://news.com.com/2100-1023-885552.html?tag=cd_mh

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