

ADVERTISING LAW

NEWSLETTER OF THE ADVERTISING, MARKETING & MEDIA PRACTICE GROUP OF MANATT, PHELPS & PHILLIPS, LLP

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Not Easy Being Green

The Washington Legal Foundation has just published "Green Marketing: Avoiding Unwanted Attention From Regulators and Lawyers" by Manatt partner, Christopher Cole. In it, Cole writes: "According to a recent Gallup poll, more than 8 out of 10 Americans believe that a company's environmental record is an important factor in deciding whether to buy its products. Environmental marketing claims are hot, and they continue to attract consumer attention. There are steps marketers can take to ensure their claims are not attracting the wrong kind of attention—from regulators and competitors." The full story is available [here](#).

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TorrentSpy Must Pay Studios \$111 Million for Piracy

In a significant victory for the movie industry, a Los Angeles federal court has ordered TorrentSpy to pay damages of close to \$111 million for violating the copyright of thousands of movies and television shows through its BitTorrent search engine.

The judge ordered TorrentSpy to pay \$30,000 per copyright infringement for 3,699 films and shows, or a total of \$110,970,000. The site was also permanently enjoined from engaging in any activity that "encourages, promotes or

UPCOMING EVENTS

October 21, 2008

ACI: Sports Sponsorship Advertising and IP

Topic:

"When Retired Players Sue: From Coscarart v. Major League Baseball to Parrish v. NFLPA"

Ronald S. Katz

"Morality and an Agreement's Mortality--Taking Appropriate Measures to Avoid the Termination of an Endorsement Deal"

Linda Goldstein

The Carlton Hotel
New York, NY

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October 22, 2008

D.C. Bar CLE Seminar

Topic:

"Copyright Law and Litigation"

Kenneth M. Kaufman

D.C. Bar Conference Center
Washington, D.C.

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November 20-21, 2008

**PMA's 30th Annual
Promotion Marketing Law
Conference**

Topic:

"Navigating the Potholes: The Evolving Landscape for

solicits, or knowingly facilitates, enables or assists, copyright infringement.”

Before it ended operations in March, TorrentSpy had been one of the top indexes of BitTorrent files. The site had been fighting a copyright lawsuit by the Motion Picture Association of America, since the studios sued it in February 2006 for promoting and contributing to online copyright infringement by helping users find illegally copied films and television shows online. Last December, a federal judge found that TorrentSpy had destroyed evidence, thus preventing the possibility of a fair trial.

According to the court, TorrentSpy operators intentionally modified or deleted directory headings naming copyrighted titles and forum posts that explained how to find specific copyrighted works, hid user IP addresses, and withheld names and addresses of forum moderators. The court had previously fined the site \$30,000 for violating discovery orders and warned that it would be subject to severe sanctions if it continued to ignore the orders.

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Uma Thurman Sues Lancome for Using Her Face in Ads

Actress Uma Thurman has sued L’Oreal SA’s Lancome for \$5 million, charging that the French cosmetics company is continuing to use her likeness to market its products years after the expiration of a licensing agreement.

The lawsuit, filed on May 9 in Manhattan federal court, claims Lancome Parfums et Beaute & Cie has breached its contract with Thurman by impermissibly using her likeness and failing to notify third parties that they must cease doing so as well.

According to the complaint, a company owned by Thurman entered into a contract with Lancome in April 2000 to use Thurman’s name and likeness to advertise and promote its products for a specified period of time. The complaint alleges that the licensing agreement expired in September 2004 in Europe and in December 2004 for the rest of the world.

Lancome countersued Thurman in Manhattan state court, saying she had threatened to sue over the use of her image on Canadian billboards and Asian Web sites after the contract expired. Lancome claims the licensing agreement excuses it from liability if third parties continue to use Thurman’s image after the expiration of the contract.

Sweepstakes, Games & Contests”

Linda Goldstein

Topic:

"Consumer Product Safety: Hear from the Regulators How the New Laws Affect Your Promotion"

Kerrie L. Campbell

Marriott Downtown Magnificent Mile
Chicago, IL

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December 4-5, 2008 Film & Television Law

Topic:

"Product and Music Placement, Branded Entertainment: Issues and Litigation"

Linda Goldstein

Topic:

"The Value of Fame: Understanding the Right of Publicity"

Mark S. Lee

Century Plaza Hyatt Regency
Los Angeles, CA

[For more information](#)

NEWSLETTER EDITORS

Jeffrey S. Edelstein

Partner

jedelstein@manatt.com

212.790.4533

Linda A. Goldstein

Partner

lgoldstein@manatt.com

212.790.4544

OUR PRACTICE

Whether you’re a multi-national corporation, an ad agency, a broadcast or cable company, an e-commerce business, or a retailer with Internet-driven promotional strategies, you want a law firm that understands ... [more](#)

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FTC Approves New CAN-SPAM Provisions

The Federal Trade Commission (FTC) has approved four new provisions under CAN-SPAM, the 2003 law aimed at curtailing unwanted commercial e-mails.

The FTC said the new rules, which are intended to clarify the Act's requirements, will be published in the Federal Register shortly. Then rules address the following four issues:

(1) A clarification that an e-mail recipient cannot be required to pay a fee, provide information other than an e-mail address and opt-out preferences, or take any steps other than sending a reply e-mail message or visiting a single Web page to opt out of receiving future e-mail from a sender.

(2) The modification of the definition of "sender," to make it easier to determine which of multiple parties advertising in a single e-mail message is responsible for complying with the Act's opt-out requirements.

(3) A clarification that a "sender" of commercial e-mail can include an accurately registered post office box or private mailbox established under United States Postal Service regulations to satisfy the Act's "valid physical postal address" requirement.

(4) A modification of the term "person" to clarify that CAN-SPAM's obligations are not limited to natural persons.

In addition, text accompanying the final rule addresses a number of topics that are not the subject of any new rule provisions. These include CAN-SPAM's definition of "transactional or relationship message"; the agency's decision not to alter the length of time a "sender" of commercial e-mail has to honor an opt-out request; the agency's determination not to designate additional "aggravated violations" under the Act; and the agency's views on how CAN-SPAM applies to "forward-to-a-friend" e-mail marketing campaigns, in which someone either receives a commercial e-mail message and forwards the e-mail to another person, or uses an Internet-based mechanism to forward a link or copy of a Web page to another person. The FTC explains that, as a general matter, if the seller offers something of value in exchange for forwarding a commercial message, the seller must comply with the Act's requirements, such as honoring opt-out requests.

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Dr. Bronner's Sues Competitors Over Organic Claims

The company that makes Dr. Bronner's Magic Soaps has sued 10 rivals over the truthfulness of their organic claims.

The complaint filed in California state court in San Francisco accused 10 companies and two industry groups of marketing personal care products as organic even though they are made with conventionally grown crops or petroleum-derived chemicals. It alleges false advertising and unfair business practices pursuant to California's "personal attorney general" statute.

Dr. Bronner's claims it is misleading to tout such products as organic. It is requesting an injunction banning Hain Celestial Group Inc., Estee Lauder Inc. (which owns Aveda), and the other companies named in the complaint from doing so.

Unlike the food industry, the personal care industry is not subject to formal organic labeling rules.

Company president David Bronner said earlier settlement talks broke down over some of the companies' refusal to eliminate petrochemicals from organic-labeled products.

Last week, Ecocert Inc., one of the two industry groups, filed a preemptive lawsuit against All One God Faith Inc., the company that makes Dr. Bronner's, asking the court to throw out Dr. Bronner's lawsuit. Ecocert certifies cosmetics and other products as "organic" according to European Union standards. In its complaint, also filed in San Francisco, Ecocert claims that Bronner threatened to drag the company through "the proverbial mud and to engage in widespread and negative publicity aimed at sullyng" Ecocert if it refused to adopt stricter standards for certification.

Petroleum-based chemicals are commonly used to produce foamier soap and shampoo. Bronner said the same suds can be gained without the chemicals, but the manufacturing is more expensive and time consuming.

Dr. Bronner's lawsuit is backed by the Organic Consumers Association. Last month, the association announced the results of a study finding that 48 "natural" and "organic" soaps, shampoos, and other products tested positive for a petrochemical.

Dr. Bronner's Soap is well known for its idiosyncratic labels that are covered with musings in tiny print from the likes of Karl Marx and Mao Tse Tung, Oprah Winfrey and Carl Sagan.

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Copyright Pirate Gets 30 Months in the Brig

A man who ran Web sites allowing users to illegally download copyrighted movies, music, and software has been sentenced to 30 months in prison, the U.S. Department of Justice (DOJ) announced earlier this month.

David M. Fish, 26, pleaded guilty in February 2006 to criminal copyright infringement and circumvention in federal court in San Jose. Fish was accused of operating so-called warez sites providing downloads of thousands of copyrighted works. In addition to serving time, Fish received three years of probation after his prison term ends and must give up computer and other equipment used in the criminal scheme.

The charges against Fish included four counts for conspiracy to commit criminal copyright infringement; distribution of technology primarily designed to circumvent encryption technology protecting a right of a copyright owner and aiding and abetting; circumventing a technological measure that protects a copyright work and aiding and abetting; and copyright infringement by electronic means and aiding and abetting. Fish also pleaded guilty to one count of criminal copyright infringement on charges brought in the Southern District of Iowa, the Justice Department said.

From about August 2004 to July 2005, Fish served as the operator, equipment supplier and scripter for warez sites, according to the Justice Department. Fish also defeated technology measures designed to protect copyrighted DVDs. From January 2003 to April 2004, Fish participated in a separate warez site, whose server contained about 13,000 pirated works, including movies, games, utility software, and music. Transfer logs revealed that Fish helped upload 131 software titles and download 373 software titles to and from the warez FTP (File Transfer Protocol) server between August 2003 and March 2004, the DOJ said.

The California case is part of Operation Copycat, an investigation by the U.S. Federal Bureau of Investigation and the U.S. Attorney's Office targeting online warez groups. So far, the probe, which has been ongoing for more than two years, has resulted in 40 convictions.

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Our Practice Group

[Danny Andrews](#)
310.312.4206
[Lauren Reiter Brody](#)
212.790.4518
[Aydin S. Caginalp](#)
212.790.4610
[Christopher A. Cole](#)
202.585.6524
[Jennifer Deitch Lavie](#)
212.790.4595
[Gene R. Elerding](#)
310.312.4158
[Seth A. Gold](#)
310.312.4371
[Susan E. Hollander](#)
650.812.1344
[Felix H. Kent](#)
212.790.4588
[Kimo Peluso](#)
212.790.4570
[Brad W. Seiling](#)
310.312.4234
[Svetlana Walker](#)
202.585.6533
[Ivan Wasserman](#)
202.585.6529

[Michael Barkow](#)
212.790.4590
[Kim S. Brown](#)
212.790.4503
[Kerrie Campbell](#)
202.585.6526
[George A. Cooke](#)
212.790.4538
[R. Bruce Dickson](#)
202.585.6522
[Tamar Feder](#)
310.312.4161
[Linda A. Goldstein](#)
212.790.4544
[Angela C. Hurdle](#)
212.790.4574
[Christopher T. Koegel](#)
202.585.6563
[Jill M. Pietrini](#)
310.312.4325
[Amy Terry Sheehan](#)
212.790.4548
[Kathrin A. Wanner](#)
310.312.4178
[Jordan K. Yospe](#)
310.312.4121

[Renée Brissette](#)
212.790.4620
[Alan M. Brunswick](#)
310.312.4213
[Gregory A. Clarick](#)
212.790.4525
[Elise Dang](#)
202.585.6507
[Jeffrey S. Edelstein](#)
212.790.4533
[Clayton S. Friedman](#)
714.338.2704
[William M. Heberer](#)
212.790.4566
[Kenneth M. Kaufman](#)
202.585.6532
[Charulata B. Pagar](#)
310.312.4155
[Lindsay M. Schoen](#)
212.790.4504
[Lauren Tang](#)
714.338.2706
[Charles E. Washburn, Jr.](#)
310.312.4372

ATTORNEY ADVERTISING pursuant to New York DR 2-101(f)

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