

## IP Dispatches from the Political Front: Mitt Slings Copyrighted Mud at Newt

January 30, 2012 by [David Kluff](#)



Along with January's hot activity in the race for the Republican Presidential nomination, we also saw the emergence of two more stories about the intersection of intellectual property and political ads.

One issue is "déjà vu all over again": political fair use. We are once again confronted with the question of to what extent the fair use doctrine (<http://www.copyright.gov/fls/fl102.html>) allows for the use of copyrighted news clips in political advertisements. We've previously written about this issue [here](#), [here](#), and [here](#).

This time, it's Mitt v. NBC. On-again off-again front runner Mitt Romney has issued an attack ad against latest rival Newt Gingrich. The ad, entitled "[History Lesson](#)", is little more than a short clip of a 1997 episode of NBC's Nightly News, reporting that Gingrich was found guilty of ethics violations. Along the bottom, just under Tom Brokaw's tie, are the words "**Paid for by Romney for President, Inc. Approved by Mitt Romney.**"

Upon seeing the ad, NBC's vice president of media law, David N. Sternlicht, shot off [a missive to the Romney campaign](#), demanding that NBC's copyrighted material be taken out of the ad. The Romney campaign says that it intends to keep running the ad (unlike the [last time](#), when it backed down after a similar demand from CNN of an anti-Perry ad).

This time, the story also has a twist. NBC is claiming that, in addition to the copyright violations, the add falsely implies that NBC or Tom Brokaw have endorsed its content. Mr. Sternlicht wrote that "[a]side from the obvious copyright issues, this use of the voice of Mr. Brokaw and the NBC News

name exploits him and the journalistic credibility of NBC News.” Tom Brokaw issued a similar statement, [reported in the Washington Post](#): “I am extremely uncomfortable with the extended use of my personal image in this political ad.” In other words, NBC and Brokaw are asserting that, in addition to infringing on their copyright, the ad is also a violation of their “[Right of Publicity](#)” or perhaps a [False Designation of Origin under the Lanham Act](#).

Neither NBC nor Brokaw have filed suit yet but, in a similar case, candidate Ron Paul has done just that. On January 4, 2012, an anonymous YouTube user named “NHLiberty4Paul” uploaded a vicious advertisement, subtitled “[The Manchurian Candidate](#),” which alleged that then-candidate

John Huntsman was beholden to Chinese interests. The ad ends with the text “**VOTE RON PAUL.**”



Within less than 10 days, Paul [initiated a lawsuit](#) in the Northern District of California against the anonymous makers of the ad. Paul claims include False Designation of Origin under the Lanham act and common law defamation.

So far, things haven’t been going well for the Paul lawsuit. Paul sought immediate discovery from YouTube in order to discover the identity of NHLiberty4Paul, but Magistrate Judge Maria-Elena James [denied the request without prejudice](#) on the grounds that Paul’s motion had failed to address the legal

standard for expedited discovery. Otherwise, the case appears to be proceeding in the normal course. We’ll keep you posted.

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