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LAW SCHOOL

Blogs and IP

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What is a Blog?

- ◆ “A web-based publication consisting primarily of periodic articles” (Wikipedia)
- ◆ Key attributes:
 - Postings in reverse chronological order
 - No third party editors
 - RSS feed

Eric Goldman

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Technology & Marketing Law Blog

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Yahoo "Syndication Fraud" Lawsuits--Crafts by Veronica v. Yahoo and Draucker Development v. Yahoo

By Eric Goldman

Crafts by Veronica v. Yahoo, Inc., No. 2:06-cv-01985-JCL-MF (D. N.J. [complaint](#) filed May 1, 2006)

Draucker Development v. Yahoo, Inc., No. CV06-2737 (C.D. Cal. [complaint](#) filed May 4, 2006)

Two companion lawsuits against Yahoo for what the plaintiffs characterize as "syndication fraud." These complaints allege that Yahoo made false promises about where it would put advertisers' pay-per-click (PPC) ads. Specifically, Yahoo ran the plaintiffs' ads via adware and on typosquatting pages when advertisers believed that their ads would not appear in such formats (and presumably paid a premium to avoid such placement).

However, despite the serious-sounding use of the term "fraud," this is actually a fairly garden-variety breach of contract action, and a weak one at that.

The Complaint and Its Deficiencies

The complaint levels three principal charges against Yahoo: Yahoo promised that (1) advertisements would be "highly targeted," (2) Yahoo would run ads on "popular" and "high-

Ads by Google

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- Posting
 - NEW ENTRY
 - ENTRIES
 - UPLOAD FILE
- Community
 - COMMENTS
 - COMMENTERS
 - TRACKBACKS
- NOTIFICATIONS
- Configure
 - TEMPLATES
 - CATEGORIES
 - SETTINGS
- Utilities
 - SEARCH
 - ACTIVITY LOG
 - IMPORT / EXPORT
 - REBUILD SITE
 - VIEW SITE >>

Create New Entry

Search Entries

Title ?

Primary Category ?

[Assign Multiple Categories](#)

Entry Body ?

B *I* U

Extended Entry ?

B *I* U



Blogging Phenomenon

- ◆ Almost 40 million blogs (Technorati)
 - 75,000 new blogs every day (Clickz Stats)
 - 1.2 million new posts every day (Clickz Stats)
- ◆ Boing Boing claims 1.7 million unique readers/day (Open and Shut?)
- ◆ RSS merges content into single interface
 - Bloglines (web service)
 - SharpReader (client software)
 - Firefox (web browser)



Blog Law

- ◆ Blog law = publishing law
- ◆ Major blogger liability concerns
 - Defamation
 - Copyright
 - Trade secrets
 - Invasion of privacy rights
 - Retaliation (employment, student)
- ◆ 47 USC 230 eliminates most third party claims (other than IP)
- ◆ Blog-specific issues
 - Will bloggers get treated like journalists/media?
 - FEC regulation of blogs
 - Unmasking anonymous bloggers



Blogs and Copyright

◆ Blogger as defendant

- Republication
 - ◆ Full article
 - ◆ Quoting
 - ◆ Photos
- Liability for guest/joint blogger postings
 - ◆ 512 safe harbor registration



Blogs and Copyright

◆ Blogger as plaintiff

- Potential republishers
 - ◆ Aggregators
 - ◆ “Splogs”
- Limits
 - ◆ Registration
 - ◆ Creative commons licenses



Blogs and Trademark

- ◆ Blogger as defendant
 - Use in commerce?
 - Likelihood of confusion/initial interest confusion?
 - Nominative/descriptive fair use; parody
- ◆ Blogger as plaintiff
 - Inherent/acquired distinctiveness
 - Use in commerce



Blogs and Other IP Claims

- ◆ Trade secrets

- ◆ Publicity/privacy rights

- Personality appropriation
- Public disclosure of private facts
- False light
- Third party liability may be preempted by 230



Group/Guest Blogging

◆ Copyright

- Partnership
- Employment
- Contribution to collective work
- Joint work

◆ Trademark/domain name