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ADVERTISING LAW

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

IN THIS ISSUE

- **FTC Announces Record Telemarketing Fraud Sweep**
- **Craigslist and eBay in Court Over Online Classified Ad Sites**
- **Study Finds Comcast and Cox Obstruct File-Sharing**
- **MySpace Wins \$230 Million Award Against "Spam King"**
- **Court Tosses Most of Suit Over Red Cross Logo**

FTC Announces Record Telemarketing Fraud Sweep

On May 20, 2008, the Federal Trade Commission announced the largest telemarketing fraud sweep it has ever organized, encompassing more than 180 cases in the United States and Canada.

The initiative, dubbed "Operation Tele-PHONEY," involved 13 allegedly fraudulent telemarketing scams. Also included are more than 80 state law enforcement actions, more than 90 criminal actions, and eight cross-border actions brought by Canada's Competition Bureau and the British Columbia Business Practices and Consumer Protection Authority.

The 13 alleged scams announced on May 20 involved more than 500,000 consumers defrauded of more than \$100 million, according to the FTC. The cases involved a variety of alleged telemarketing scams, as described below. Each federal district court complaint can be found on the FTC's Web site.

- **Med Provisions:** A Canadian operation that allegedly got U.S. consumers to pay \$389 for a worthless medical discount package.
- **Union Consumer Benefits:** Another Canadian scam in which the defendants debited \$399 from consumers' bank accounts in exchange for a worthless prescription discount card.
- **Steven Breitling/ICS Financial Firm:** Consumers

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

[For more information](#)

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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

paid a \$75 fee for a "guaranteed" loan which they never received.

■ **American Financial Card, Inc., Integrity Financial Enterprises, and Financial Advisors & Associates:**

In three separate advance-fee scams, consumers paid several hundred dollars for a general use credit card. Consumers never received the promised card. Instead, they received a card that could be used only to buy items from the defendants' catalog.

■ **Handicapped & Disabled Workshops, Inc., and Helping Hands of Hope:**

In two separate scams, elderly consumers were charged for unordered household products or were fraudulently told that their purchases would help handicapped or disabled workers employed by the defendants.

■ **U.S. Magazine Services:**

Consumers were misled about monthly subscription charges for various publications.

■ **Publishers Business Services:**

Consumers were billed several hundred dollars for magazine subscriptions that they were initially told were "free" or low-cost. Defendants then tried to extort payment by harassing the consumers at work, threatening to initiate collection actions, or threatening to submit derogatory information about them to the major credit bureaus.

■ **NHS Systems, Inc.:**

Defendants deceived consumers into providing bank account information, then charged them \$29.95, \$299.95, or both, for a "discount health care program" to which they never agreed.

■ **City West Advantage, Inc. d/b/a Unified Services:**

Defendants fraudulently informed consumers that they had won a \$1,000 shopping spree, then persuaded consumers to provide bank account information to pay \$1.95 for shipping and handling. Instead, consumers were charged \$149 for a worthless "gift."

■ **Direct Connection Consulting, Inc./Suretouch**

LLP: Using a variety of fraudulent promises and pitches, the defendants charged consumers' credit cards or debited their bank accounts. In exchange, consumers received nothing.

[back to top](#)

[Craigslis and eBay in Court Over Online](#)

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](#)

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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](#)

[Practice Group Overview](#)

Classified Ad Sites

eBay and Craigslist are battling for dominance in the online classified ad space with competing lawsuits in San Francisco and Delaware.

Last month, eBay, the online auctioneer giant, sued Craigslist, charging the popular Internet classified ad site with unfairly and surreptitiously attempting to dilute the value of eBay's minority investment in the company by more than 10 percent and take away its board seat.

Last week, Craigslist countersued in California state court in San Francisco, accusing eBay of unfair competition, false advertising, trademark infringement, and diluting the value of the Craigslist trademark.

The dispute centers around eBay's purchase of a 28.4 percent interest in Craigslist in 2004. eBay claims the relationship was cordial; Craigslist, which is well known for its anticorporate philosophy, counters that eBay has always been pushing for control.

Things came to a head last July after eBay launched a U.S. version of Kijiji, its own online classified ad site. Just a week after the launch, Craigslist CEO Jim Buckmaster wrote to former eBay CEO Meg Whitman, "We are no longer comfortable having eBay as a shareholder and wish to explore options for our repurchase, or for otherwise finding a new home for these shares."

Whitman rejected Buckmaster's offer, writing back, "We are so happy with our relationship that we could neither imagine doing anything to disturb our personal rapport with you . . . nor parting with our shareholding under any foreseeable circumstances. Quite the contrary, we would welcome the opportunity to acquire the remainder of (the company) we do not already own."

In its complaint, Craigslist contends that "under the guise of shareholder requests for information, eBay has hounded Craigslist with improper demands for confidential Craigslist information, which could be used for anticompetitive purposes."

Craigslist also charged eBay with diluting the value of the Craigslist trademark by placing misleading advertising on Google.com intended to direct users to Kijiji. Inside eBay, the complaint contends, Kijiji is known as the "Craigslist killer."

In a statement, an eBay spokesperson said Craigslist's complaint was a ploy to direct attention away from eBay's claims. "eBay has, and will continue to be, a minority

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shareholder who believes in Craigslist, shares its values and acts with openness, honesty and integrity in its dealings with Craigslist's board and the online community. We strongly refute any suggestion to the contrary."

[back to top](#)

Study Finds Comcast and Cox Obstruct File-Sharing

Cox Communications appears to be interfering with file-sharing by online users in the same way that Comcast Corporation was found to have been doing last fall.

A study by the Max Planck Institute for Software Systems in Saarbruecken, Germany, based on the participation of 8,175 Internet users around the world, found evidence of obstructed file-sharing links at only three Internet service providers: Comcast and Cox in the United States and StarHub in Singapore.

At Comcast, 62 percent of subscribers, or 491 of 788, had their connections blocked. Out of 151 Cox subscribers, 82 were blocked, or 54 percent. Comcast is the second-largest ISP in the United States and Cox is the fourth-largest.

Last October, an investigation by the Associated Press confirmed that Comcast was surreptitiously hindering file-sharing traffic. Following criticism that allowing an ISP to selectively block connections turns it into a gatekeeper to the Internet, the Federal Communications Commission launched an investigation, which is ongoing.

Initially, Comcast contended that its practice helped prevent heavy users of BitTorrent and other file-sharing programs from hampering non-file-sharing traffic. But in February, it announced it would end the practice later this year. BitTorrent is commonly used to illegally share copyright material, but a few companies are starting to use it and similar technologies as a cheap way to distribute legal files.

The FCC has focused largely on Comcast's secrecy. Until the AP report, Comcast had only admitted in general terms that it managed traffic.

At least since 2006, Cox has noted in its subscriber agreement that it engages in "protocol filtering," treating different types of Internet traffic, like Web surfing, e-mail, and file-sharing, differently.

"To ensure the best possible online experience for our

customers, Cox actively manages network traffic through a variety of methods including traffic prioritization and protocol filtering,” the company said in a written statement.

The blocking seen in the German study happens when a subscriber has downloaded a file using BitTorrent and tries to upload it or share it with others over the Internet connection. Repeated tries by file-sharing software to get through may succeed after several minutes, as seen in last year’s AP test. Comcast has said that it is “delaying” file transfers rather than blocking them.

In addition to Comcast and Cox, the German study found signs of interference at seven other U.S. ISPs, all of them cable companies. The number of blocked connections was too low to conclusively say their subscribers are being targeted, and the names of the ISPs were not revealed. No signs of interference by phone companies were found.

[back to top](#)

MySpace Wins \$230 Million Award Against “Spam King”

MySpace, the popular online social network, has won a \$230 million award against Sanford Wallace and his partner, Walter Rines.

The judgment against Wallace, who is known as the Spam King, is believed to be the largest anti-spam award ever. The ruling by a Los Angeles federal judge was made after the two defendants failed to appear at a scheduled court hearing.

In the 1990s, Wallace ran Cyber Promotions, a company that sent as many as 30 million junk e-mails a day. After lawsuits from AOL and other ISPs, Wallace disappeared, but he turned up again in a spyware case that ultimately resulted in a \$4 million judgment against him in 2006.

Rines and Wallace created their own MySpace accounts or commandeered existing ones by stealing passwords through “phishing” scams. They then e-mailed other MySpace members, asking them to take a look at a cool video or site. But when a member clicked on the e-mailed link, it took them to a site where the pair would try to sell them products or ring tones, or earn money from hits. MySpace said the pair sent more than 730,000 messages to its members, many made to look like they were coming from friends. Under CAN-SPAM, the 2003 federal anti-spam law, each violation gives MySpace the right to \$100 in damages, tripled when conducted

“willfully and knowingly.”

Although the default judgment is a big win for MySpace, it may prove more symbolic than anything else, since it is notoriously difficult to track down spammers.

[back to top](#)

Court Tosses Most of Suit Over Red Cross Logo

A New York federal judge has thrown out the majority of a case brought by Johnson & Johnson against the American Red Cross for licensing its red and white symbol to other companies.

The ruling is a major defeat for Johnson & Johnson in a trademark fight started last August over the use of the red cross logo, which the two groups have both used for more than a hundred years.

Initially, Johnson & Johnson insisted that the Red Cross cease using its logo on health care products sold to the public.

In November, the court dismissed much of the lawsuit, but Johnson & Johnson continued to contend that by licensing its insignia to third parties, the Red Cross violated a federal law making it a crime for anyone to use the logo “for the fraudulent purpose of inducing the belief that he is a member of or an agent for the American National Red Cross.”

In its latest ruling, the court also dismissed that claim, finding that when Congress chartered the Red Cross and gave it the almost exclusive authority to use the red cross symbol, it also gave the group latitude to use the logo to promote itself and raise money for its charitable works. Since then, the Red Cross has licensed the logo many times, to companies such as first aid supply kit makers, watchmakers, and Tiffany & Co.

The court wrote that Johnson & Johnson’s reading of the law “would criminalize not only the licensing agreements that, as noted above, ARC has been entering into for more than a century, but also a host of other familiar and traditional ARC activities.”

Only a small part of the suit remains: a claim that the Red Cross intentionally interfered with Johnson & Johnson’s business relationship with two health care supply companies, Water-Jel Technologies Inc. and First Aid Only Inc.

Johnson & Johnson began using the logo in 1887, six years after the American Red Cross was created, but prior to the

1900 formation of the group's federal charter. Johnson & Johnson's use of the trademark was grandfathered under a 1905 law.

back to top

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