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An Intellectual Property and Business Law Firm

“Gripe Sites” Do Not Constitute Trademark Infringement

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4th Circuit rules “Gripe” site OK (at least under trademark law anyway)

The 4th Circuit Court of Appeals has joined the cause of free speech supporters by refusing to order the shut down of the website <http://www.fallwell.com/>, which posts material which is critical of the Rev. Jerry Falwell and his views on homosexuality. Falwell claimed that the website domain, which is a deliberate misspelling of his name constituted trademark infringement under the Lanham Act and violated the federal Anticybersquatting Consumer Protection Act. In an opinion written by Circuit Judge Dianna Gribbon Motz, the panel stated that “No one would believe that Reverend Falwell sponsored a site criticizing himself, his positions and his interpretations of the Bible”. Therefore, there was not a likelihood of confusion with the opinions expressed on the “gripe” site and those expressed by Rev. Falwell. Additionally, Falwell could not prevail on an Anticybersquatting claim because he cannot show that the operators acted in “bad faith” when they registered the domain fallwell.com as their site constituted a legitimate use, they did not register multiple domains with the intent of preventing Falwell from registering them, and the owners had never contacted Falwell and attempted to sell the domain to him.

So just a hint to business owners, major corporations or others who do not wish to have “gripe” sites out there with highly visible domains – **register common misspellings and the classic “*Insert your domain here*” sucks.com yourself!** If you own them – your enemies cannot. While you are at it, grab the .net .org .biz .us versions also. For a few hundred dollars you can help protect yourself from embarrassment and lost sales that can occur when people misspell your domain name and wind up on of these “gripe” sites.

About the Author -

Mr. Lemire is a Founding Member of the law firm of Leyendecker Lemire LLC, specializing in business and intellectual property law. Previously, Mr. Lemire served as in house counsel to various companies in the Denver Metro area in industries ranging from high tech “.com’s” to strategic investment firms specializing in the purchase and sale of distressed commercial debt. Mr. Lemire has advised companies on issues such as

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general corporate and business law, employment law, mergers and acquisitions, contract drafting and negotiation, software licensing, strategic relationships, copyright, trademark and cyberlaw. He is a Member of the Colorado Bar Association, the American Bar Association's (ABA) Business Law section, the ABA Cyberspace Law and Internet Law Committees as well as the ABA's subcommittee on Electronic Commerce, as well as the Secretary of State's Legislative Drafting Committee on Trademarks.

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