

New Media Requires Greater Diligence In Brand Protection

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Video sharing sites, blogs, keyword searches and even traditional websites offer a variety of innovative marketing opportunities. These media also allow others to misuse your organization's trademarks and service marks in new ways. The need to police your brand identifiers on all forms of electronic media was highlighted by a recent federal decision in California.

Plaintiff Partners for Health and Home (PHH) filed a lawsuit against two of its competitors, Seung Wee Yang dba Pearl Life Cookware and STP America, Inc. In its complaint, PHH alleged that the two defendants infringed plaintiff's federally registered trademark "PERMA LIFE" for stainless steel cookware by using PHH's trademark in various media to promote its competing cookware. Among the ways in which PHH alleged that the defendants misused PHH's mark were in Internet domain names, as search engine keywords, as "metatags" or hidden text on Internet websites and as video tags for videos posted on YouTube.com. PHH asked the court to issue a preliminary injunction to prevent the defendants' alleged infringement of PHH's mark.

The court undertook a traditional analysis under the federal Lanham Act, finding that the factors balanced in PHH's favor. The court found that PHH and the defendants were direct competitors. Among the court's many conclusions were that defendants' use of PHH's mark could result in "initial interest confusion" among consumers, particularly because web surfers are more likely to be confused as to the ownership of a website than traditional brick and mortar patrons.

New media offers fantastic promotional opportunities. At the same time, greater diligence is required to protect your valuable brands and source identifiers, including, among other things, registering your trademarks in the U.S. and the foreign countries in which you sell or distribute your products and services and policing third-party misuse of your marks on all forms of electronic media.

For more information about legislation or litigation involving technology, intellectual property protection of information technology assets or any other Information Technology law issue, contact your Miller Canfield attorney.