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Information Superhighway Robbery: The Tortious Misuse of Links, Frames, Metatags, and Domain Names

By Robert L. Tucker[1]

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I. Introduction

1 Time marches on, and the internet ends up[2] in the law: numerous matters in the law of cyberspace have arisen, and courts have begun to rule on them. This Spotlight focuses on the tortious misuse of links, frames, metatags, and domain names, and the tortious misuse of trademarks in metatags and domain names.

2 The United States Supreme Court recently commented on the unlimited, technical and economic change that has occurred since the internet's inception, and on the need for the law to adapt to such change: "[t]echnology changes rapidly and in unexpected ways. Times change, and patterns of commerce change, and the law must adapt to these developments as they occur. . . . Different forms of speech and expression are subsumed into digital bits and transmitted through the Internet. . . . Technology . . . [is] . . . [a] . . . [ever-] . . . []changing[ ] . . . [ ]and[ ] . . . [ ]unpredictable[ ] . . . [ ]phenomenon[ ]. . . ." Brown v. Entertainment Merchants Ass'n, 131 S. Ct. 2729, 2733 (2011). Indeed, the internet has created a new, virtual, cyberspace world, and has created a new, virtual, cyberspace economy, and has created a new, virtual, cyberspace commerce, and has created a new, virtual, cyberspace marketplace, and has created a new, virtual, cyberspace trademark world, and has created a new, virtual, cyberspace trademark marketplace, and has created a new, virtual, cyberspace trademark commerce, and has created a new, virtual, cyberspace trademark economy, and has created a new, virtual, cyberspace trademark law. Indeed, the internet has created an example of a "reasonable" and "reasonable" trademark law, and has created an example of a "reasonable" and "reasonable" trademark law, and has created an example of a "reasonable" and "reasonable" trademark law, and

4. Disaggregation Of Patents From Its "Categories"

Patents are not "property" in the sense that land is property. Patents are a "grant" of a set of rights "within the scope of the claims" of the patent, which are "[a]ll of the rights and powers" of the patentee, "including the sole and exclusive right to make, use, and vend the invention or discovery throughout the United States, and the territories thereof, for a term of seventeen years." 35 U.S.C. § 154(a)(1). Patents are "property" in the same way that a "bundle of sticks" is property. See, e.g., Dawson Chemical Co. v. Rohm & Haas Co., 448 U.S. 176, 215 n.18 (1980).

5. Liability For Incorporating Other's Trade Names Or Trademarks In Web Site Domain Names

a. Disaggregation Of Domain Names As "Categories"

Domain names are not "property" in the sense that land is property. Domain names are a set of rights "within the scope of the contract." Domain names are "property" in the same way that a "bundle of sticks" is property. See, e.g., Dawson Chemical Co. v. Rohm & Haas Co., 448 U.S. 176, 215 n.18 (1980).

Beginning in 1995, Internet domain name disputes were so "time-crunch, first-come-first-serve" that the Internet community was forced to devise a "quick and dirty" dispute resolution process.

[1] See, e.g., Mazagwa, 117 Cal.App.4th 274, 287, 291-292, 297-298 ("Trade secrets are ... not in the public domain").

[2] See, e.g., Bancroft-Whitney Co. v. Glaser, 825 F.2d 1298, 1303-1304 (8th Cir. 1987); Sarkes Tarzian, Inc., v. Audio Devices, Inc., 166 F.Supp. 250, 258 (D. Del. 1958).

[3] See, e.g., Sarkes Tarzian, 166 F.Supp. at 258; Mazagwa, 117 Cal.App.4th at 287; Bancroft-Whitney, 825 F.2d at 1303-1304.

[4] See, e.g., Mazagwa, 117 Cal.App.4th at 291-292, 297-298.

[5] See, e.g., Sarkes Tarzian, 166 F.Supp. at 258; Mazagwa, 117 Cal.App.4th at 287; Bancroft-Whitney, 825 F.2d at 1303-1304.

[6] See, e.g., Digital Equip. Corp. v. Emerson Radio, Inc., 5663 F.Supp. 450, 451 (D. Mass. 1987).

[7] See, e.g., Mazagwa, 117 Cal.App.4th at 287 (quoting Restatement of Torts, § 757, comment b, at 5).

[8] See, e.g., Mazagwa, 117 Cal.App.4th at 287.

[9] See, e.g., Mazagwa, 117 Cal.App.4th at 287.

[10] See, e.g., Digital Equip., 5663 F.Supp. 450, 451 (D. Mass. 1987).

[11] See, e.g., Mazagwa, 117 Cal.App.4th at 287.

[12] See, e.g., Mazagwa, 117 Cal.App.4th at 287.

[13] See, e.g., Mazagwa, 117 Cal.App.4th at 287.

[14] See, e.g., Digital Equip., 5663 F.Supp. 450, 451 (D. Mass. 1987).

[15] See, e.g., Digital Equip., 5663 F.Supp. 450, 451 (D. Mass. 1987).

[16] See, e.g., Digital Equip., 5663 F.Supp. 450, 451 (D. Mass. 1987).

[338] 755 P.2d at 1131-32.

[339] 755 P.2d at 1141-42.

[340] *See, e.g.,* Noth v. Scheurer, 285 F. Supp. 81 (E.D.N.Y. 1968) (seatbelt case); O'Keefe v. Kansas City Western Ry. Co., 124 P. 416 (Kan. 1912); Halvorson v. Voeller, 336 N.W.2d 118 (N.D. 1983) (holding that a motorcyclist's failure to wear a helmet may constitute a failure to mitigate damages even where there is no statute requiring the wearing of a helmet.); Mikaelian v. Accurso, 422 N.Y.S.2d 750 (N.Y. App. Div. 1979) (affirming jury's one-sixth reduction of damages awarded to an infant injured in an automobile accident where that proportion of the damages was found to have resulted from the failure to use a seatbelt). *See also*: Diehl v. Ogorewac, 836 F.Supp. 88 (E.D.N.Y. 1993); Allstate Ins. Co. v. Lafferty, 451 So. 2d 446 (Fla. 1984); Vredeveld v. Clark, 504 N.W.2d 292 (Neb. 1993); Barcello v. Rubin, 578 So. 2d 58 (Fla. Dist. Ct. App. 1991); Bales v. Shelton, 399 S.E.2d 78 (Ga. Ct. App. 1990); Sewell v. Wofford, 475 N.E.2d 575 (Ill. App. Ct. 1985); Waterson v. General Motors Corp., 544 A.2d 357 (N.J. 1988).

[341] 555 P.2d 48 (Okla. 1976).

[342] *Id*. at 61-62.

[343] In many cases, the courts have held or recognized that non-use of a seatbelt by a plaintiff who was injured in a motor vehicle accident is not admissible for the purpose of reducing the damages to be awarded. *See, e.g.*: Dillinger v. Caterpillar, Inc., 959 F.2d 430 (3d Cir. 1992) (citing Pa.C.S.A. § 4581(e)); Barron v. Ford Motor Co. of Canada Ltd., 965 F.2d 195 (7th Cir. 1992) (applying N.C. law); Freeman v. Case Corp., 924 F. Supp. 1456 (W.D. Va. 1996), *rev'd on other grounds*, 118 F.3d 1011 (4th Cir. 1997), *cert. denied*, 118 S. Ct. 739 (1998) (applying Virginia law) (citing Va.Code § 46.2-1094(E)); Clarkson v. Wright, 483 N.E.2d 268 (Ill. 1985)(citing Ill. Rev. Stat., ch. 95 1/2, ¶ 12-603.1 (1985)); Partman v. Budget Rent-A-Car of Westchester, Inc., 649 A.2d 275 (Conn. Super. Ct. 1995) (citing C.G.S.A. section 14-100a(c)(4)); Miller v. Coastal Corp., 635 So. 2d 607 (La. Ct. App. 1994) (citing LSA-R.S. § 32:295.1(E)); Glyn-Jones v. Bridgestone/Firestone, Inc., 857 S.W.2d 640 (Tex. Ct. App. 1993), *reh'g denied*, (July 7, 1993) *and writ granted*, (Dec. 8, 1993) *and decision aff'd and remanded*, 878 S.W.2d 132 (Tex. 1994)(citing Tex.Rev.Civ.Stat.Ann. art. 6701d, § 107C(j) (1992).

[344] *See* Elgison & Jordan, *supra* note 55; James M. Jordan, *Get On Your Marks!*, found at (visited Nov. 23, 1999) <http://www.ipmag.com/ajordan.html>.

[345] *See* Murray & Rosenthal, *supra* note 168; Ebbinghouse, *supra* note 47 ("Vigilantly search out others who begin abusing your trade/domain name and call them on it.").