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Intellectual Property, E-Commerce and Entertainment Law

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Selected Legal Info, News And Trends

July 2006

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## **CAN THE OWNER OF REAL ESTATE OR A BUILDING BE HELD LIABLE FOR THE COPYRIGHT AND TRADEMARK INFRINGEMENT OF TENANTS?**

This may be a question property owners don't want to hear. However, based on a recent U.S. District Court decision in New Jersey, the answer to the question may be even more disheartening to landlords. Why? Because the answer is "yes".

In the New Jersey case, a federal judge ruled that the corporate owners of a flea market in Western New Jersey named the Columbus Farmers Market could be held liable for the sale of counterfeit compact discs by vendors at the flea market. In part the court found the flea market owners liable because the Recording Industry Association of America ("RIAA") notified the owners of the counterfeit sales more than 10 years ago and the owners didn't take adequate steps to stop the sales. Thus the flea market owners' knowledge of the problem was a critical factor in the judge's ruling. In legal terms, the court found the flea

market owners liable for both contributory and vicarious copyright infringement because they knew about the problem, didn't take adequate steps to stop it and profited from the sales of the counterfeit cds by virtue of the booth rental fees the flea market charged the vendors and the increased crowds that were allegedly drawn to the flea market.

If this decision was an isolated one, it might not be of such great concern to real property and building owners. But it's not. Other cases – including cases in California – have similarly held landlords liable for copyright infringement and in some cases trademark infringement.

For example, last year a permanent injunction and final judgment on consent were entered in a trademark infringement case brought by LVMH Moët Hennessy Louis Vuitton against a group of landlords in New York's Chinatown over counterfeit goods sold by tenants at eight Canal Street locations. Under the terms of the judgment, the landlords were required to post signs warning potential customers that the sale and purchase of

counterfeit Louis Vuitton goods at those store locations is illegal.

In the California case about 10 years ago ([Fonovisa Inc. vs. Cherry Auction Inc.](#)), - a case that sounds remarkably similar to the recent New Jersey case - a flea market was held liable for the sale of counterfeit cds by vendors on the premises.

These cases represent a trend: copyright and trademark owners attempting to enforce their intellectual property rights as broadly as they can. Those efforts can be seen in the hundreds of lawsuits that have been filed by the RIAA against end-users and consumers for illegal file-sharing of copyrighted music and in the high-profile lawsuits that shut-down the Napster and Grokster file-sharing websites. But based on the flea market cases, it also appears that otherwise respectable and responsible landlords and property owners need to take defensive steps to protect themselves from similar claims. In all likelihood, those defensive steps will vary from situation to situation but one fact remains: steps do need to be taken.

### **U.S. COPYRIGHT OFFICE RAISES FILING FEES**

For the first time in several years, the U.S. Copyright Office has raised the basic filing fee for a copyright application. The new fee schedule went into effect July 1<sup>st</sup> and increases the filing fee for a copyright application to \$45 from \$30. Although the new fee represents a 50% increase from the prior filing fee, we still believe copyright applications and copyright registrations represent the best bargain in terms of overall protection of

intellectual property (“IP”). We say that because of the broad range of works that are protected by copyrights combined with the affordable cost.

Copyright law protects “original works of authorship” – a rather broad term that covers everything from books to screenplays, illustrations, computer programs, songs, photographs and choreography. As far as the cost is concerned, the \$45 filing fee compares quite favorably to other forms of IP protection. For example, the filing fee for a U.S. trademark application is a minimum of \$275 for one class of goods or services. The initial filing fee for a U.S. patent varies from \$75 - \$150 *plus* approximately \$650 when the patent is actually issued by the U.S. Patent Office.

In addition, copyright applications are typically granted in less time than U.S. trademark applications and patent applications. The typical time it takes the U.S. Copyright Office to process a copyright application is less than eight months, whereas a trademark application typically takes twelve to eighteen months. A patent application can take at least as long as a trademark application and often longer.

For more information about copyrights, please visit our website at [www.branfman.com](http://www.branfman.com) and click on “Copyright Basics”.

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