



Intellectual Property Entertainment and Sports Law Section Newsletter

Alabama State Bar Association

Volume 6, Issue 2

December 2012

In This Issue

Eleventh Circuit
Admonishes Lawyers,
"Exercise Caution
Before Importing
Standards From One
Area of Intellectual
Property Law Into
Another"

Some Assignments
Are More Equal
Than Others

Steady Diet of
Everything: Socialized
Music Against the Law

Upcoming CLE

February 22, 2013
Mid-South Intellectual
Property Institute
University of
Mississippi School of
Law

July 1-20, 2013
Alabama State Bar
Annual Meeting
Point Clear, Alabama

Newsletter Submissions:

Now accepting
submissions to the IPE&S
Newsletter. Please submit
your article or
announcement for
consideration to Stacey
Davis at [sdavis@-
bakerdonelson.com](mailto:sdavis@-bakerdonelson.com)
Deadline: February 1,
2013.

Eleventh Circuit Admonishes Lawyers, "Exercise Caution Before Importing Standards From One Area of Intellectual Property Law Into Another"

(Sovereign Military Hospitaller Order of Saint John of Jerusalem of Rhodes and of Malta v. the Florida Priory of the Knights of Hospitallers of The Sovereign Order of Saint John of Jerusalem Knights of Malta, The Ecumenical Order)

By Harriet Ivy

Trademark practitioners are familiar with the oath signed by every applicant for registration of a trademark:

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the form or any resulting registration, declares that he/she is properly authorized to execute this form on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the form is being filed under 15 U.S.C. § 1126(d) or (e), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

The oath has given rise to a frequent type of "fraud on the Patent and Trademark Office" claim, specifically, the charge that the registrant obtained the registration through fraud because it signed the oath knowing of use of the mark by others. See 6 MCCARTHY ON TRADEMARKS & UNFAIR COMPETITION § 31:75 (4th ed.) (herein "MCCARTHY"). In fact, however, "Fraud in a trademark cancellation is something that must be 'proved to the hilt' with little or no room for speculation or surmise; considerable room for honest mistake, inadvertence, erroneous conception of rights, and negligent omission; and any doubts resolved against the charging party." 6 MCCARTHY at § 31:68 (citing *American Flange & Mfg. Co., Inc. v. Rieke Corp.*, 80 U.S.P.Q.2d 1397, 1416 (T.T.A.B. 2009), withdrawn on settlement 90 U.S.P.Q.2d 1127 (T.T.A.B. 2009); *Enbridge, Inc. v. Excelerate Energy Ltd. P'ship.*, 92 U.S.P.Q.2d 1537 (T.T.A.B. 2009)).

The Eleventh Circuit confirmed the difficult burden borne by the claimant seeking to cancel a trademark registration on grounds of fraud in *Angel Flight of Georgia, Inc. v. Angel Flight of America, Inc.*, 522 F.3d 1200 (11th Cir. 2008). Fraud must be proved by clear and convincing evidence and occurs only when an applicant knowingly makes false, material representations in connection with an application for a registered mark. See *Angel Flight*, 522 F.3d at 1209; see also *In re Bose Corp.*, 580 F.3d 1240, 1245 (Fed. Cir. 2009) ("[W]e hold that a trademark is obtained fraudulently under the Lanham Act only if the applicant or registrant knowingly makes a false, material representation with the intent to deceive the PTO. Subjective intent to deceive, however difficult it may be to prove, is an indispensable element in the analysis. Of course, 'because direct evidence of deceptive intent is rarely available, such intent can be inferred from indirect and circumstantial evidence.

(Continued on page 2)

But such evidence must still be clear and convincing, and inferences drawn from lesser evidence cannot satisfy the deceptive intent requirement."').

In *Angel Flight*, the district court had found that the registrant had intentionally provided an incorrect first date of use for the registered mark and had failed to disclose use of the mark by other organizations even though he was aware other groups were using the mark *and* had a right to do so. The Court of Appeals reversed the district court on the first point but upheld the ruling on the second as not clearly erroneous. *See id.* at 1210-11. First, it held, "A misstatement of the date of first use in the application is not fatal to the securing of a valid registration as long as there has been a valid use of the mark prior to the filing date." *See id.* at 1210. Because it was clear from trial testimony and documents admitted into evidence at trial that the registrant had begun using the mark before it applied to register it, the improper first use date contained in its application was not a basis to invalidate the registration. *See id.*

On the second point, the Eleventh Circuit acknowledged that a more difficult question was presented. While "[p]urposefully failing to disclose other users' rights to use the same or similar marks may qualify as a material omission justifying cancellation of a trademark," to commit fraud, the registrant must *know or believe* that others have a right to use the mark. *See id.* The testimony at trial revealed that the registrant was aware that other organizations were using the mark at the time that the application was filed but did not disclose that information to the Trademark Office. The Eleventh Circuit found that it was possible for the district court to infer that the registrant had concealed that information because he knew or believed the other organizations had an equal right to use the mark. *See id.* at 1211. Accordingly, the district court did not clearly err by cancelling the mark. *See id.*

There is a scienter element in trademark fraud. "Should have known" is not the standard. *See* MCCARTHY at § 31:61 ("Proof of knowledge of falsity and intent to deceive is always essential."). According to the Trademark Trial and Appeals Board:

Intent to deceive must be "willful." If it can be shown that the statement was a "false misrepresentation" occasioned by an "honest" misunderstanding, inadvertence, negligent omission or the like rather than one made with a willful intent to deceive, fraud will not be found Fraud, moreover, will not lie if it can be proven that the statement, though false, was made with a reasonable and honest belief that it was true . . . or that the false statement is not

material to the issuance or maintenance of the registration.

MCCARTHY at § 31:66 (citing *Smith Int'l, Inc. v. Olin Corp.*, 209 U.S.P.Q. 1033, 1043 (T.T.A.B. 1981)). While charges of fraud on the PTO for non-disclosure have met with little success, litigants continue to fruitlessly pursue them. *See* 6 MCCARTHY at § 31:75. Professor McCarthy surmises that the reason may be that litigants have an "erroneous view that patent law disclosure standards apply" to trademark registration practice. *See* 6 MCCARTHY at § 31:75.

Certainly, the importation of standards from patent law was the reversible error made by the Southern District of Florida in *Sovereign Military Hospitaller Order of Saint John of Jerusalem of Rhodes and of Malta v. The Florida Priory of Knights Hospitallers of the Sovereign Order of St. John of Jerusalem, Knights of Malta, the Ecumenical Order*, 816 F.Supp.2d 1290 (S.D. Fla. 2011) (herein "*Order of Saint John*"). In that decision, the district court saw a "parallel" between the facts before it and those before the Supreme Court in *Global-Tech Appliances, Inc. v. SEB S.A.*, 131 S. Ct. 2060 (2011), which discussed whether active inducement of patent infringement requires actual knowledge that the induced acts are infringing. *See Order of Saint John*, 816 F. Supp.2d at 1300. According to the district court, the question before the Supreme Court in *Global-Tech* had been whether active inducement of patent infringement requires actual knowledge of the patent as opposed to "deliberate indifference" to a known risk that the induced patent might violate a patent, and the Supreme Court held that "the appropriate standard is willful blindness as opposed to deliberate indifference." *See id.*

In *Order of Saint John*, the district court found that, while the registrant knew of the existence of other organizations that used the subject marks at the time of the submission of the registrant's applications to the Trademark Office, it had put forth an individual to sign the applications for its marks who had no such personal knowledge. *See id.* at 1300. The district court then held, "[t]o the extent that a willful blindness standard applies here," the registrant's failure to inform the signatory on its applications of the existence of other organizations using the marks "is evidence of willful blindness" *Id.* (emphasis added). Finding that four of the registrant's service marks were procured by fraud, the district court cancelled them. *See id.*

On appeal, the Eleventh Circuit cited its prior decision in *Angel Flight* and the decision of the Federal Circuit in *In re Bose Corp.*, 580 F.3d 1240 (Fed. Cir. 2009), to state the applicable rule and burden of proof:

An applicant commits fraud when he 'knowingly makes false, material representations of fact in connection with an application for a registered mark.' Fraud further requires a purpose or intent to deceive the PTO in the application for the mark. The party seeking cancellation on the basis of fraud must prove its claim by clear and convincing evidence. This is necessarily a heavy burden, and 'any doubt must be resolved against the charging party.'

Sovereign Military Hospitaller Order of Saint John of Jerusalem of Rhodes and of Malta v. The Florida Priory of the Knights Hospitallers of the Sovereign Order of Saint John of Jerusalem, Knights of Malta, the Ecumenical Order, Case No. 11-15101, p. 16 (11th Cir. September 11, 2012) (citations omitted herein). The Court of Appeals further admonished, "It was error to look to [*Global-Tech*] for the applicable standard to analyze a claim for fraud on the PTO. We have been admonished to exercise caution before importing standards from one area of intellectual-property law into another." *Id.* at 20-21. Moreover, the fraud claimant had not pointed to any authority that would establish the "historic kinship" necessary to justify translation of a patent-infringement standard into the trademark-application context, and there was no justification for the importation of the willful blindness standard from the law of patent infringement to find the required intent to deceive the PTO. The district court accordingly erred. *See id.* at 21.

The Eleventh Circuit found one additional deficiency in the district court's decision in *Order of Saint John*. "If the declarant subjectively believes the applicant has a superior right to use the mark, there is no fraud, even if the declarant was mistaken." *Id.* (quoting *Bose*, 580 F.3d at 1246). Because the record-evidence established that the registrant could have justifiably believed that its marks were superior based on its first use dates, which pre-dated any other organization's alleged first use, there was no evidence that the registrant knew or believed that any other organization had a superior right to the marks at issue. *See id.* at 22.

Professor McCarthy has compared the registration processes for patents and trademarks and concludes that the different scope and impact of the two registrations necessitates different standards for fraud in the procurement. *See* MCCARTHY, §§ 31:63-31:65. A trademark, unlike a patent, is not created by registration; it is created by use and may exist regardless of registration. *See* MCCARTHY, § 31:65. Every right of a patentee is given him by the Patent Office, and there are stringent patent disclosure rules requiring complete disclosure by the applicant. *See*

MCCARTHY, § 31:64. The standard of disclosure and, hence, for fraud in the trademark context is quite different than that in patent procurement, and confusion of the standards applicable to patents with those applicable to trademarks is very likely to lead to error, as it did in *Order of Saint John*. *See* MCCARTHY, § 31:65.

Harriet T. Ivy is an attorney in the Birmingham office, of Baker Donelson Bearman Caldwell & Berkowitz, P.C. and has broad experience in the area of business litigation. She concentrates her focus in areas of intellectual property litigation, particularly trademark, trade secret and copyright litigation. She has also represented and counseled clients in the field of antitrust law. She may be reached at hivy@bakerdonelson.com or 205.328.0480.

Her full bio may be found at

<http://www.bakerdonelson.com/harriet-thomas-ivy/>.

Some Assignments Are More Equal Than Others

By John W. Smith T

Companies often have policies requiring employees to transfer rights to inventions developed by the employee on company time using company resources. To protect their rights, many companies utilize lengthy assignments drafted by legal counsel. Understandably, managers often ignore the details of the agreements, and are primarily concerned that the agreements are properly executed by the employee. As a result, companies with seemingly comprehensive assignments can develop a false sense of security about their rights to the inventions of their workforce. However, to paraphrase George Orwell's *Animal Farm*, while all assignment agreements may be created equal, some are more equal than others.

That is one way to look at the recent decision from the United States Court of Appeals for the Federal Circuit which addressed an employee's challenge to an intellectual property assignment agreement with his employer. In *Preston v. Marathon Oil Co.*, Yale Preston worked for two years on Marathon Oil's coal bed methane wells located in Wyoming. In connection with his hiring in 2001, Preston received an offer letter that described Preston's responsibilities and compensation and expressly designated the employment relationship as "at will," meaning that both he and the company had the ability to terminate the employment relationship at any time. About one month after starting work, Preston signed a seemingly comprehensive document requiring him to assign any intellectual property "made **or** conceived" by him while he worked for Marathon. The agreement also permitted Preston to identify his prior existing inventions that would not be deemed the property of the company. Utilizing this provision, Preston

generically referred to one item to be excluded from the scope of the agreement, but he did not provide any description of the device listed by him, and the company apparently did not obtain any additional details to understand what he had listed.

The value of design patents lie in creating overlapping intellectual property protection for a commercialized good. For example, a good could be the subject of one or more utility patent applications directed to the operation, use and manufacture of the good and one or more design patent applications directed to the actual appearance of the commercial embodiment of the good, thus developing a true intellectual property portfolio protecting the good.

Within months of beginning work, Preston disclosed to fellow employees his idea for a potential improvement to coal bed methane wells, which utilized baffle plates to increase the separation of water and gas to allow the gas to be collected more quickly. Preston's idea took off, and the company soon began installing baffle plates at several of its coal bed methane wells. The company also initiated its internal patenting process to seek protection of Preston's system and informed Preston that it was doing so. Not long after, Preston quit his job and filed his own application with the United States Patent and Trademark Office (USPTO). Indeed, Preston was able to obtain an earlier filing date on his patent application and a much earlier issuance date than did Marathon. (Interestingly, the USPTO eventually allowed both Preston's and Marathon's patents to issue, but not before the company's application overcame objections based on Preston's earlier applied-for and issued patent.)

Both parties sued each other, seeking declarations that they owned exclusive rights to the invention, and after much procedural wrangling, the case ended up being heard by a Wyoming federal court. Marathon based its claim primarily on its assignment agreement with Preston. Preston argued that the assignment did not apply because he had conceived of his invention prior to working for Marathon and because he had listed it in the assignment and that it was therefore excluded from the agreement's scope. The trial and appellate courts held that Marathon's assignment agreement was effective despite Preston's challenges. The case deserves a close look because it exposes pitfalls that can render employment assignment agreements vulnerable.

First, the court recognized that assignment agreements are creatures of contract and should be construed according to state contract law. However, knowing which state law to consult is not always easy. The determination can depend on several factors,

including where the agreement is signed, where the agreement is to be performed, and where the lawsuit over the agreement will likely occur. Many assignment agreements attempt to overcome these problems by designating the state law to be applied, but such "choice of law" provisions are not always enforced. Consequently, especially for companies with locations in multiple states, it is wise to consider the law of the state in which the individual is employed and would most likely bring any legal action against the agreement.

This proved important in *Preston* when the employee received nothing of value when he executed the assignment about one month after he began working. One of the key issues in the case was whether an assignment agreement executed after the commencement of the employment relationship requires additional consideration beyond merely the continuation of at-will employment. The Federal Circuit looked to Wyoming law and ruled that continued employment is sufficient. However, the outcome would probably have been different in other states which require more than continued employment to enforce certain types of employment agreements executed during the term of the employment relationship.

There are steps that companies can take to address the problem of consideration, which should work in most states. One option is to have the assignment executed at the commencement of (but not before) the employment. A related option is to reference the assignment agreement in any hiring or offer letter given to the prospective employee, making the hiring decision expressly conditioned on the future execution of such agreements. Still another option is to provide remuneration to the employee at the time of the execution of the assignment, or at least to schedule the execution of the agreement in conjunction with the employee's periodic performance appraisal especially if the appraisal is accompanied by an increase in the employee's compensation or payment of other benefits.

One thing is certain: all courts will construe assignments to give effect to the plain language of the agreement. It is therefore critical to review periodically the language of the key provisions in the assignment. In *Preston*, the court held that the employee had agreed to assign any invention that he "conceived or made" during his employment. That is, "or" means "or" according to the Federal Circuit, which found that Preston had at least made the invention while at Marathon and his argument that his conception of the invention occurred prior to his beginning to work there was irrelevant. An interesting question would arise had the agreement used "and" instead of "or." Some courts apply rules of interpretation that construe the use of the word "and" in contracts to be broad enough to

encompass "or." On the other hand, in the context of the *Preston* assignment, the use of "and" arguably would have altered the meaning of the agreement.

Likewise, the Court emphasized that the agreement's key assignment provision contained present-tense language resulting in the automatic transfer of Preston's ownership to Marathon without the need for additional acts by Preston. This serves as a reminder that each word in a contract can have significant effect on the agreement's interpretation and enforcement, particularly the operative language that accomplishes the transfer of rights. Although every situation is different, and legal counsel should be consulted, the following assignment provision was deemed to be effective as an automatic transference of rights in *Preston*:

EMPLOYEE agrees to promptly disclose to [company] **and does hereby assign** to [company] all Intellectual Property, and Employee agrees to execute such other documents as [company] may request in order to effectuate such assignment. (Emphasis added)

Lastly, in siding with Marathon, the Court also concluded that Preston had failed to prove that his generic notation in the exclusion provision captured the invention that was actually reduced to practice during his employment term. In other words, companies need to be careful to require that any invention expressly excluded from the scope of an assignment agreement should be fully disclosed and defined to avoid future conflict about what is not being assigned.

As noted, the assignment at issue in the *Preston* case appears to have been relatively comprehensive, much like many agreements used by companies seeking to protect intellectual property developed on company time. It is easy to see how companies believe that the execution of such detailed agreements will provide full and enduring protection. However, even though the employee's challenge to the assignment in *Preston* was unsuccessful, the decision shows that employers should periodically review assignments and give consideration—not only to what the agreement says, but also when and where it is executed. Otherwise, a company will be left with an assignment that is less than equal to the task.

John W. Smith T is an associate at Bradley Arant Boult Cummings LLP in the firm's Litigation, Product Liability, Employment, Financial Services, and Intellectual Property practice groups. He has handled a wide range of litigation matters representing clients in commercial disputes, personal injury and products liability cases, intellectual property matters, employment discrimination, and real estate cases. John tried cases in various state and federal courts, including in Alabama, Florida and Texas. He may be reached at jsmitht@babco.com or 205.521.8521. His full bio may be found at <http://www.babco.com/jsmitht>.

Steady Diet of Everything: Socialized Music Against the Law

By Andrew Wheeler-Berliner

A punk rock anarchism burns through every kid pounding d-beats, lighting up turntables, or slamming a guitar, fueling a creative fire that pushes music to unfathomable heights. A similar ethos lives in the social media entrepreneurs who are redefining the music business. This new generation is crashing the gates of the majors, seizing control from the Ivy League grads in Hollywood suits, and promising no limits to what's possible save for what's allowable under the law.

Welcome to the social media revolution, where web-based and mobile software applications transform the passive nature of listening to music into an interactive adventure. A survey of just a handful of those applications discloses a raft of intellectual property issues rising from the acts of the social media pioneers who are fundamentally changing the ways we listen to, use, and experience music.

Social media encourages content sharing across multiple online destinations to change the way we discover music. Spotify incorporates social features into a streaming music service, allowing users to share tracks with friends and listen to playlists compiled by other users. New websites like The Hype Machine and This Is My Jam streamline music discovery by cutting through the massive amounts of content available online. The Hype Machine scours the internet, identifying songs and artists trending on music blogs, and features audio and video files of the artists generating the most buzz. This Is My Jam may be the first micro-music blog. Users can name a song they just can't get out of their heads. The site then conducts a web-wide search, providing audio and video files the users can display on their profiles. People share their songs by displaying the video on multiple social sites and discover new music by following others with similar tastes.

Social media is making listening to music a collective experience. Djtxt and Turntable offer mobile applications that enable users to choose the music played at parties, events, and bars. Each app offers a unique method for crowd-sourcing a playlist. Turntable users add songs to a playlist by selecting tracks from Turntable.fm's streaming music service or uploading music directly from a smartphone. Djtxt users compile a playlist by sending requests via email, twitter or text. Songs are available from Grooveshark's streaming

service, whose app provides a playlist at the end of the night for all to see. Both applications are rapidly gaining popularity, but they feel completely ordinary compared to Automatic DJ. Introduced at Music Hack Day, this app uses facial recognition technology to recognize the people in a room, scans their Facebook profiles to determine musical tastes, and then compiles a playlist from songs available through Spotify.

Social media is also changing what we can do with music. The Infinite Jukebox takes an audio file and reformats the song to play on endless loop. LyriChef promises to create new songs from lyrics pulled from a user's favorite hip-hop artists. Echonest recently developed Remix, which enterprising individuals are using to power applications that reverse the beats in Coldplay's "The Scientist", re-edit the music video for "Boom Boom Pow" by the Black Eyed Peas, and synch Nine Inch Nails over chopped-up footage of NBC's "Kramer". All these videos and more are can be viewed on YouTube, the web's premier video-sharing site.

The socialization of music promises new markets for artists, but it is not without its costs. New technologies threaten parties enforcing copyrights in recorded music, and dangerous traps await developers who lack the patience to slow down and wait for the law.

Licensing issues arise when social media services launch without negotiating licensing agreements. Grooveshark neglected to acquire any licensing rights before launching, and was subsequently sued by every major music label. Universal Music Group sought damages exceeding \$15 billion for illegal copies of Universal's pre-1972 catalogue found on Grooveshark's servers. More recently, Grooveshark has been sued by EMI for failing to pay out royalties on the licensing agreement the parties entered into to settle a previous lawsuit.

But not all streaming sites have eschewed the law. Spotify operates lawfully by limiting the social features to songs for which it has acquired a proper license. An on-going struggle over royalty rates has led, however, to criticism of the service by several musicians, most notably The Black Keys, for failing to compensate artists adequately.

As highlighted in this article, a political campaign does not violate copyright law by its use of a copyrighted song in conjunction with a campaign event as long as it has secured the proper public performance license. Non-copyright prohibitions may still snare a campaign that uses a song without approval from its artist. In order for a political campaign to avoid these potential claims - and the attendant bad press - they

should contact the artists and/or songwriters to obtain their permission before using a song in connection with the campaign.

Licensing disputes are hardly limited to streaming music services. The shift to tablet computing and smartphones could raise questions of whether previously granted distribution licenses are sufficiently broad to permit use on over multiple platforms, while use of Djtxt and Turntable at public events could generate disputes as to whether the license granted for personal streaming authorizes performance of the songs in commercial settings. Content created using Echonest Remix could, depending on the project, require synchronization rights and permission to create derivative works. Finally, the massive increase of applications enabling infringement could amplify voices calling for modification of the Supreme Court's holding in Sony permitting technology capable of infringing uses so long as it has a significant non-infringing use.

Whatever copyright battles may loom, the fight will almost certainly be available for viewing on YouTube which, despite numerous lawsuits, remains host to untold legions of infringing content. Search for a song on YouTube and you'll likely be treated to an official music video, unofficial music videos, live performances, audio files, numerous cover versions, and home footage featuring the song in the background. Despite repeated commands to upload only content personally created by up-loaders, infringing content flourishes—in part because users misunderstand fair use, and in part because people simply do not care.

To date, YouTube has avoided liability under 17 U.S.C. 512(c), the safe harbor provisions of the Digital Millennium Copyright Act (DMCA). The DMCA shields content providers from liability for infringing user-generated content stored on the service provider's network so long as the service provider lacks actual knowledge or is unaware of facts or circumstances making the material apparent, provided that it acts to remove or disable access to the material once it becomes aware of or is notified of the infringing content and does not receive a direct financial benefit when it has the "right and ability to control" the infringing activity.

YouTube diligently complies with these requirements, but a recent split between the Second and Ninth Circuits threatens to weaken the protection service providers enjoy under the DMCA. In *Viacom International, Inc. v. YouTube*, the Second Circuit reversed the lower court's granting of summary judgment for the defendant, holding that, while the District Court properly held that §512(c) requires

knowledge of specific acts of infringement, sufficient evidence was presented that a jury could find actual knowledge of specific infringing acts existed. More significantly, the Second Circuit further held that the District Court erred in stating that the "right and ability to control" infringing activity required knowledge of specific acts. By so holding, the Second Circuit split from the Ninth Circuit's opinion in UMG Recordings, Inc. v Shelter Capital Partners LLC, which held the "right and ability to control" means control over specific instances of infringing activity known to the provider.

If the common law has a flaw, it's the sloth-like pace at which it reacts to rapidly advancing technology. The ink hadn't dried on Napster before Grokster's peer-to-peer software offered illegal file-sharing absent a central server. The Supreme Court responded with a unanimous death punch, finding Grokster liable for the infringing acts of its users because it distributed its program for the primary purpose of promoting file-sharing. But the Court split over whether to modify Sony, allowing peer-to-peer software to flourish. Now the social age is serving up another round, and waiting for the law to respond. At some point the legal issues raised by today's technologies will be settled, but just as sure as there's an undiscovered talent out there ready to set the world on fire, there's another unknown kid ready to smash it all down.

Andrew Wheeler-Berliner Attorney Andrew Wheeler-Berliner created 23rd Street Law to serve the legal needs of Birmingham's rapidly growing entrepreneurial community. As a small business owner, he is personally familiar with the many challenges of creating a business, and uses his knowledge to help businesses recognize and address the legal hurdles facing new companies. Andrew is a transportation advocate and an active supporter of Birmingham's vibrant music and art scenes. He may be reached at info@23rdstreetlaw.com or (205) 593-4162. His full bio may be found at <http://23rdstreetlaw.virb.com/contact>.

ANNOUNCEMENTS

The Mid-South Intellectual Property Institute's Second Annual Conference will take place on February 22, 2013 at the University of Mississippi School of Law.

The Institute was founded to provide resources for lawyers and business owners in the Mid-South who have an interest in IP issues. For more information, visit: <http://misipi.org>.

The February 2013 conference will be held in conjunction with the Oxford Film Festival. www.oxfordfilmfest.com

The 15th Annual Sidewalk Film Festival will take place August 23-25, 2013 in downtown Birmingham, Alabama, welcoming some 20,000 filmgoers to the city's coolest venues for more than 200 films, panels, parties and more. For more information visit: www.sidewalkfest.com

Intellectual Property Entertainment and Sports Law Section Officers:

Chairman
Stacey Davis

*Baker Donelson Bearman Caldwell
& Berkowitz, PC*

Chairman-Elect
Russ Gaché

The Gaché Law Firm, PC

Treasurer
Pamela Smith

Balch & Bingham, LLP

Secretary
Mike Denniston

Bradley, Arant, Bolt & Cummings, LLP

DISCLAIMER

This newsletter is a periodic publication of Intellectual Property Entertainment and Sports Law Section of the Alabama State Bar and should not be construed as legal advice or legal opinions on any specific facts or circumstances. The contents are intended for general information only, and you are urged to consult your own lawyer or other tax advisor concerning your own situation and any specific legal questions you may have. For further information about these contents, please contact your lawyer.

The Alabama State Bar requires the following disclosure: "No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers."