

August 2008

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News

Letter from the Information Technology Section Council

Welcome to the inaugural issue of the Information Technology Law Section e-newsletter! This e-newsletter is intended to briefly inform you of notes and news related to the IT Law Section and IT law in general. We plan to provide this e-newsletter to our membership on a regular basis.

As you will see from the Section Events below, the Section is sponsoring seminars at the State Bar Annual Meeting in September and through ICLE in October. Also available now on our website is the [August 2008](#) edition of our Section newsletter, *Michigan IT Lawyer*, which is a full publication providing substantive articles on issues affecting IT lawyers.

Since this is the first issue of the e-newsletter, we welcome your comments on how to improve it to better serve you and the rest of our membership. We also welcome contributions of substantive items, news, and events that you think would be of interest to IT lawyers. If you would like to contribute, please contact Ron Nixon at ron.nixon@kkue.com.

Computer Forensics Experts are Now Required to be Licensed in Michigan

The Michigan Legislature recently revamped the 1965 Private Detective License Act, and the renamed Professional Investigator Licensure Act was signed into law for immediate effect on May 28, 2008. MCL 328.821 et seq. With some exceptions, the act now requires computer forensics practitioners who obtain evidence for court and other proceedings to be licensed as professional investigators. Some of those exceptions include licensed attorneys and salaried persons employed exclusively and regularly on employer-only business. To qualify for a license, computer forensics practitioners should have a bachelors or other post-graduate degree in computer forensics or other computer forensic industry certificated study acceptable to the Michigan Department of Labor and Economic Growth. Unlicensed regulated activity could result in civil penalties of up to \$25,000 or felony

Trademark Owners Must Police Their Own Marks Online

A federal district judge recently held in a dispute between eBay and the famous jeweler, Tiffany, that eBay was not liable for either direct or contributory trademark infringement or dilution despite hundreds of thousands of counterfeit Tiffany silver jewelry items being sold through eBay's online marketplace. The crux of the court's opinion is that eBay could not be liable for direct infringement or dilution because eBay's own use of the Tiffany mark was a nominative fair use that merely alerted buyers to the fact that Tiffany products were available. eBay could not be liable for contributory infringement or dilution for merely having generalized knowledge that sellers may have been selling counterfeit Tiffany merchandise when it took appropriate corrective measures upon receiving notice of specific instances of infringement. The court concluded the 66-page opinion by stating that "it is the trademark owner's burden to police its mark, and companies like eBay cannot be held liable for trademark infringement based solely on generalized knowledge that trademark infringement might be occurring on their websites." *Tiffany (NJ) Inc. v. eBay, Inc.*, No. 04-cv-4607, 2008 WL 2755787 (S.D.N.Y. July 14, 2008).

Section Events

- September 17, 2008, 2-4 p.m.— Information Technology Law Section Business Meeting and Program: The Practice of Information Technology Law (Dearborn Hyatt, State Bar of Michigan Annual Meeting)
- October 29, 2008, 9 a.m.-1 p.m.— ICLE Seminar: Information Technology Law: What Every Lawyer Should Know (Inn at St. John's, Plymouth)

criminal charges.

It would be prudent to ensure your computer forensics expert has or is in the process of obtaining a license in any pending matter. The act does not mention whether it would preclude an unlicensed computer forensic expert from testifying with respect to investigations conducted prior to the effective date of the act.