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Trademark Verdict a Wake-Up Call for Web Hosting Industry

By MyHostNews.com
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Web Hosting Reviews – This is a cautionary tale for all web hosting, SEO and web development companies. A recent precedent-setting case has put these types of companies in serious jeopardy of being sued. The case, *Rog Cleveland® Golf Company, Inc. v. Prince (et al.)*, centered on the sale of a website selling counterfeit Roger Cleveland golf clubs operated by www.copycatclubs.com (Copycat) that was hosted by Bright Builders, Inc. After the jury issued a verdict of trademark infringement, the judge in the case assessed damages against Prince Distribution and Bright Builders.

The complaint stated Prince Distribution/Copycat sold or otherwise contributed to the sale of counterfeit Cleveland Golf brand golf clubs and were therefore liable for direct and /or contributory infringement of the golf club trademarks. In a most astonishing move though, Bright Builders was issued a judgment in the amount of \$770,750 for contributory infringement, despite the fact that Bright Builders had no knowledge of or control over what was posted on the Copycat site. Prince Distribution, the counterfeiter, was only ordered to pay Cleveland Golf Company \$28,250.

Cleveland Golf Clubs originally sought from Prince damages for acts of willful trademark counterfeiting in the amount of \$2 million per counterfeit mark, including triple damages where appropriate as well as attorney fees and costs. The jury awarded Cleveland Golf Clubs considerably less and reserved the harshest penalty for Bright Builders. The order against Bright Builders essentially put the company out of business.

In a press release issued about the case, Stephen Gingrich, Vice President of Global Legal Enforcement and HR for Cleveland® Golf/Srixon® stated "companies like Bright Builders who can amplify the impact and scope of this problem are even more dangerous. Counterfeiting has existed for thousands of years but has been a localized issue. The Internet, ease of global shipping and payments, combined with SEO's and web hosts injecting steroids into the situation has brought the issue into every consumer's living room."

Although they were not the original target, the judge and jury placed principal blame on a web hosting company. The inflammatory remarks about companies like Bright Builder masks the real issue in this case, which was counterfeit golf clubs. When the counterfeiter declared bankruptcy, the complaint was amended to add Bright Builders.

This sets a dangerous precedent by placing Internet providers in serious jeopardy of being ordered to pay huge judgments and being put in a position to undertake the impossible burden of monitoring everything posted to the sites they host or build and being responsible for taking action to report illegal activity. Now, these companies are liable for policing what is posted to the sites they host in the context of trademarks, which is an impossible burden. Service providers simply cannot verify that every product sold on a third-party site they host is not counterfeit. Ironical other recent cases have reached the exact opposite conclusion in the context of copyrights.

In light of this case, hosting companies and others must take the wake-up call and ensure they have policies and disclaimers in place to shield them from this kind of liability. It's not enough to have indemnity clauses in contracts. Bright Builders had an indemnity clause, but Copycat went bankrupt and the plaintiff went after Bright Builders. What's necessary now is for companies to have policies and contract clauses in place to specifically deal with contributory infringement.

What can you do to protect yourself? Contact legal counsel specializing in information technology and e-commerce immediately to put protective policies and procedures in place.

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