

Media Risk for Nonmedia Businesses

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You are the CEO of a small Internet business that squeaked through the bubble collapse and you think that there may be a light at the end of the tunnel. You have an idealistic and dedicated staff, one of whom decided some time ago to customize his e-mail signature with an inspirational quote from the Reverend Martin Luther King. The employee becomes more enamored of the idea and runs a Google search for images, one of which he pastes into the e-mail signature block. Six months later, you get served with a lawsuit set in Memphis by the estate of the Reverend Martin Luther King claiming damages for commercial misappropriation of likeness. Is the business liable? Does your insurance provide a defense? Indemnity?

This may seem like a far-fetched scenario. Granted, the estate of the Reverend King has not demonstrated an incredibly aggressive stance in such litigation, but it has sued and won on some cases of significant commercial appropriation. What if the employee was an Elvis Presley fan instead? Graceland is a much less forgiving litigant. Is your company at risk? Do you have coverage for it? Can you afford to ignore the risk?

Many, if not all, businesses now engage in many forms of publishing and broadcasting without even realizing it. Recent technological advances in communications have created a dramatic increase in the publishing and broadcasting capabilities available to even the smallest modern business. Webpages, e-mail, graphics software, flash animation, .mp3—these are all methods of creating, storing, modifying, and disseminating information. While the term “broadcasting” is not necessarily the best fit, the ability to broadly disseminate information through the Internet certainly provides unprecedented direct access to a large audience with nothing more than a PC and an Internet connection.

The purpose of this article is to explore some ramifications of this explosion of communication capacity in relation to two legal issues. The first is to ex-

plore the increasing exposure to media risk for companies outside of the traditional ambit of media business. This does not involve an exploration of law so much as it reviews the variety of opportunities for companies to engage unchecked in the publication of potentially defamatory, infringing, or invasive material.

The second part is a discussion of commercial general insurance coverage for these risks. The traditional concepts and language of Commercial General Liability (CGL) advertising injury coverage were not designed to address modern forms of communication. As a result, courts making coverage decisions are faced with difficult interpretive issues. This section will discuss some recent cases and how they might impact the coverage for a company faced with a media tort claim.

Collapse of Traditional Buffers

Traditionally, a company that wanted to engage in publication or broadcasting, typically for marketing and promotional purposes, was forced to hire specialists in the field to prepare material and disseminate it. Larger firms might have in-house marketing departments, but more commonly businesses hired outside ad agencies. Of course, all mass media had to be contracted with media companies—newspapers, broadcasters, billboard owners, and the like. These professionals provided some buffers between the company and the risks inherent in publishing and broadcasting.

Even if legal professionals were not involved, ad agencies and media companies have had substantial expertise in recognizing media tort risks. These companies would advise the client not to engage in defamatory or infringing activities, both to prevent harm to their client and to avoid exposure themselves. If the client came to the ad agency wanting to use a song heard on the radio for the client’s next ad campaign, the agency would inform the client of the risk of copyright violation and license costs. Similarly, the broadcaster or publisher would decline to broadcast unlicensed proprietary materials, shielding both the client and itself from risk.

Other inherent barriers reduced the risk of various methods of infringement. Copying a proprietary mark for publication required expensive artwork and sophisticated printing technology. Infringing on copyright-protected music or literary works required cumbersome reproduction efforts. Capturing and reproducing still or video images of people or works of art was also a complicated task.

Much, if not all, of these organic protections have been stripped away by modern technology. Many forms of mass production of advertisement-quality materials are available with a desktop computer and off-the-shelf software or freeware. Publication, distribution, and broadcasting no longer require the services of a publishing company or broadcaster. Companies are free to defame and infringe without any of the inherent buffers that were part of the traditional promotional and advertising environment.

Similarly, the artistic and reproduction barriers to many forms of media infringement are gone. A publication-quality copy of a logo of Microsoft or GE, infinitely replicable, is obtainable with no more effort than a left click of the mouse on a website.

Text, music, images, and video can all be downloaded or uploaded in a matter of seconds and then copied, modified, published, or broadcast with ease, and there are no longer any of the natural buffers that formerly protected businesses from media risks. Many of these businesses have not adopted rigorous content controls for internally produced materials.

Harm to Reputation

Words and nonverbal messages can convey meaning that is harmful to the reputation of both individuals and business entities. For individuals, the claims include a variety of formulations, such as defamation, false light, and injurious falsehood. For business interests, the risks are trade libel, business disparagement, and interference with contractual relations. Without the buffer of professional media consultants, companies engaging in publication can easily cross one of these lines unknowingly.

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Invasion of Privacy

The public revelation of personal information about an individual can give rise to legal claims. A related issue that has not traditionally been associated with media risk is the failure to protect confidential information collected and stored in the course of business. This risk is increasing with the rise of database hacking. Some businesses are now under statutory obligations regarding data protection such as the Health Insurance Portability and Accountability Act (HIPAA), which sets standards for the protection of health-related information. Finally, the commercial appropriation of the name or likeness of a person is traditionally clustered with invasion of privacy, although the legal issues are often similar to those of infringement of intellectual property.

Intellectual Property Infringement

This comprises a long list of high-risk exposures. Copying and dissemination of

harm are automatically within coverage of a standard liability policy.

Common Media Activities

A desktop computer and an Internet connection can open up a world of opportunities to obtain or create infringing material and then copy, store, print, burn, post, or display it. This article will not attempt to explore the large variety of opportunities for engaging in media risks. Instead, it will include a brief review of some common methods that businesses frequently utilize to disseminate information that might expose them to media tort risks.

Material Acquisition and Creation

The acquisition and creation of information has become painfully simple with modern technology. The Internet is awash in music, images, text, video, and source code. Much of this information can be downloaded in a matter of seconds, often without the payment of a fee or registration of any information. For

every Napster that is shut down, there are plenty of substitutes ready to provide free access for users to share such materials. It is probably only a matter of time before someone locates a server within the jurisdictional boundaries of a country with little or no intellectual property

protection, so that no federal writ can be enforced against the operator.

The Internet is not the only source for the acquisition of materials created by others. Desktop computers can upload and store music and video from CD or DVD discs. An inexpensive scanner and free OCR software can convert printed text into digital word processing files with ease. Once the material has been digitally stored, there are virtually limitless opportunities to modify and reproduce such material.

The creation of original material is also radically simplified. Digital images, sound, and video can be captured directly into the PC hard drive or uploaded in seconds with a USB or firewire connection. Off-the-shelf software provides drag-and-drop mixing, editing, titles, special effects, and reproduction in multiple formats. A creative employee with a video camera and a PC can produce feature-length movies and burn them to CD or DVD format for distribution. Flash and

other animation tools are another simple way of creating new material or manipulating copied material.

Any distribution of material opens the door to media risk. The ease of acquisition, creation, and distribution expands the nature of the risks by lowering the threshold for obtaining or creating harmful material. Unless a business has a rigorous review procedure, prepared materials can easily incorporate infringing or disparaging information that could induce a claim. But prepared materials are actually the least risky activity. They can be reviewed and massaged to eliminate risky content so long as the business undertakes a thorough review. The more risk-prone activities are those that entail instantaneous dissemination of potentially harmful information without any advance preparation.

Publication and Broadcasting

Enormous quantities of information can now be copied and distributed at very low cost and any one part of that information can be grounds for a claim of defamation, invasion of privacy, or infringement. Imagine an employee who sees an advertisement with a funny slogan or catchy jingle and thinks that it would be great to adapt it for marketing the company's products or services. Using an office PC, the employee might download a copy of the music or recreate a modified version of the slogan and incorporate this into a power point, flash animation, or .pdf file promoting the company or its services. The high-risk item is now ready for distribution by print, CD, or, worse, mass e-mail or posting to the Internet. Once a digital copy is distributed by e-mail or the web, retraction of the offending material is virtually impossible. Unless there is a careful screening process and disciplined self-regulation, media torts can be committed unwittingly and under management radar.

The advances in print technology have made reproduction and publication of high-quality paper materials a relatively simple matter. This technology is now so commonplace that marketing materials can easily be customized in limited runs to address narrow sectors or even individual customers. The ability to individualize marketing materials may have a significant impact on an insurance claim due to the lack of consistency in the interpretation of "advertis-

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copyright-protected materials, such as art, logos, names, music, and literary works, expose the copier to liability claims.

Companies also face risks for infringement of trademarks, trade names, trade dress, and unfair competition. These issues focus on unfairly using the name or style of another business so as to cause confusion to potential customers. An unwary business embarking on the creation and dissemination of materials faces significant risks of infringement.

It is important to note that risk and exposure exist even if the company has not actually breached any duties or caused any harm. For many companies, the cost of successfully defending a claim could be a crippling financial burden if the claim was not covered by a liability policy providing for defense. Whether traditional liability insurance covers these risks for the nonmedia company may depend on the nature of the activity giving rise to the claim because not all claims of infringement or

ing” under CGL coverage.

Moreover, hard-copy marketing materials are no longer limited to print media. Many businesses utilize CD burners to produce presentations for mass distribution. A CD holds 700 or more megabytes of information, which is several times larger than the hard drive of a PC just ten years ago.

Of course, hard-copy materials are cumbersome and expensive distribution channels when compared with the Internet and e-mail distribution. Many start-up businesses have a website and e-mail address before they have a phone or post office box. Anything that can be printed or burned on a CD can also be linked or posted to a website or attached to an e-mail for costless distribution. HTML-encoded mass e-mails and other similar processes provide yet another method for the creation of original material or the incorporation of infringing material into widely distributed material. The ability to disseminate through the Internet is the highest media risk facing businesses because the dissemination can take place from any workstation without any checks.

Given the ease of preparing customized text, graphic, sound, or video material, the risk of preparing infringing materials is much higher than it has ever been in the past. The ability to disseminate these materials to thousands of recipients with the touch of a button amplifies the risk dramatically. These risks can be addressed to some extent by careful screening processes and by educating employees. Perhaps a greater risk is in the transmission of unprepared materials, which is also a common feature of modern business communications.

Spontaneous Communications

Assume that one of your salespeople is a member of an online discussion group with several thousand users who focus on technology in your company’s specialty area. Someone posts a query online about a competitor’s services. Part of your standard sales pitch is that your solution is faster and more reliable than others and that you have some testing to back it up, but it is a few years out of date. Your salesperson thinks that this is a great opportunity to tout your services to the entire group and posts a response asserting that your solution beats the competitor in side-by-side speed tests. It turns out that this is no longer accurate

due to various upgrades by your competitor against which you have not tested. Your company is now exposed to a disparagement claim for broadcasting a disparaging remark to several thousand users who are members of a core customer target group.¹

Modern technology has radically increased the speed of information transfer, and businesses want to capitalize on this as much as possible. The ability to respond to customers instantaneously without leaving voice mail or sending faxes is a huge advantage. Because speed is a valuable asset, businesses do not want to slow the process down by a granular review of every message sent out. But the exposure for a single e-mail can still be significant. Even if the disparagement was sent to only one recipient, that recipient could forward it to any number of people who might forward it again in a geometric progression. Each iteration would still have the signature block of the salesperson and could eventually reach the same thousands of recipients as though it were a newsgroup posting.

Businesses often operate their own electronic newsgroups for customers or others to post messages. If a customer posts a disparaging message about a competitor, then the company might be exposed solely on the basis of transmitting the disparaging material, even if it did not originate with a company employee. The benefits of increased communication capacity are significant, but it brings additional risks that formerly were reserved to media specialists.

E-Business Risks

Assume that your Internet business is a web-casting company. Your clients pay you to provide conferencing services where they can display information to large groups of participants who each watch the presentation through a web browser. Your company’s participation is limited to providing web-hosting and e-mailing conference keys to the participants. Unbeknown to you, one of your customers is using your service to broadcast defamatory material allegations about a lawyer with a national reputation for bulldog litigation tactics.

Are you on the hook? Do you think that the lawyer will care even if you

have a good defense? How much will it take to get to summary judgment? If your business has not approached these questions from the perspective of media risk analysis (and insurance), then it is not prepared for the ramifications.

Many new business models have sprung up around the Internet, such as application service providers, web-hosting providers, e-mail hosting services, Internet advertising services, and e-zines, among others. All of these businesses are focused exclusively on the collection, storage, and dissemination of informa-

Many traditional concepts in media law and practice are inapplicable to new business models involving the Internet.

tion. Many of the traditional concepts in media law and practice are inapplicable or are a poor match at best; therefore, even a specialist might have difficulty categorizing the risks of such varied business activities. If this article does nothing else, it should encourage such businesses to perform a careful review of their media risks and determine whether those risks and their insurance are compatible.

Insuring Media Risks

This discussion focuses on the most common form of business liability coverage—the CGL policy—and, in particular, a specific part of the CGL policy, Coverage B, which generally covers personal and advertising injury. Coverage B does not universally cover all media risks; therefore, a business engaging in a significant amount of media activities should examine its insurance to determine whether additional coverage is warranted.

Other policies may afford some coverage to a business exposed to media risk. There are a variety of nonuniform errors and omissions coverage forms, some of which may have provisions affording media risk coverage. Sometimes directors and officers coverage can be pressed into service for a media risk claim. Some umbrella policies may fill the holes of CGL Coverage B, although the term “umbrella” can be deceptive because many policies are follow-form and only provide an excess layer of policy limits restricted to the claims covered by the underlying

CGL. If an individual is included as a defendant, the individual's homeowners coverage might also be invoked. None of these is a particularly reliable source of protection unless the insurance has been reviewed to determine the extent of its application, and exploration of the varieties of insurance options is outside the scope of this article.

The Basics of CGL Coverage

In brief, CGL coverage is generally occurrence, rather than claims-made, coverage, meaning that it provides coverage for occurrences within the policy period. CGL coverage generally provides separate obligations for defense and indemnity. The duty to defend is the obligation to retain counsel and defend a lawsuit against the insured for a covered claim, and defense costs are typically not deducted from the policy limits available to settle or pay a judgment. The duty to indemnify is the obligation to pay a judgment for a covered claim.

Insurance coverage is governed by applicable state law, although coverage

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disputes are commonly resolved in federal diversity actions through declaratory judgments. Many states hold that the duty to defend is broader than the duty to indemnify and that the duty to defend is determined by comparing the complaint to the coverage of the policy. Regardless of the truth or falsity of the allegations in the complaint, if one or more of the allegations of the complaint are within the terms of the coverage, then the duty to defend is triggered. Many states hold the carrier obligated to defend all claims if one covered claim is included in the complaint. These rules are not universal, and some states determine the existence of a covered claim on the basis of the actual facts rather than the allegations of the complaint.

Specifics of Coverage B

CGL Coverage B covers personal injury and advertising injury. Some policies

include variations, but the general form of the coverage is as described below.

Personal Injury Coverage

Personal injury coverage applies to personal injury caused by an offense arising out of the insured's business activities, excluding advertising, publishing, broadcasting, or telecasting done by or for the insured. The covered offenses for personal injury coverage are set forth in the definition of "personal injury" and include (1) oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products, or services, and (2) oral or written publication of material that violates a person's right of privacy.

Advertising Injury

Advertising injury coverage applies to "[a]dvertising injury" caused by an offense committed in the course of advertising your goods, products, or services." The covered offenses are enumerated in the definition of "advertising injury" and include (1) oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products, or services, (2) oral or written publication of material that violates a person's right of privacy, (3) misappropriation of advertising ideas or style of doing business, and (4) infringement of copyright, title, or slogan.

What Coverage B Does Not Cover

There are some important exclusions for Coverage B. Coverage B is excluded for personal injury and advertising injury for "publication of material whose first publication took place before the beginning of the policy period." Coverage for advertising injury is excluded for "an offense committed by an insured whose business is advertising, broadcasting, publishing or telecasting." As pointed out above, the coverage provision of personal injury excludes advertising, publishing, broadcasting, or telecasting done by or for the insured; therefore, this exclusion would be largely redundant with regard to personal injury coverage.

The language of Coverage B relating to media activities was written before

the advent of significant commercial Internet activity. Accordingly, there are tensions between the coverage language and the business climate in which modern businesses engage in media activities. Coverage B provides a substantial amount of protection, covering defamation, disparagement, and invasion of privacy unless the insured is in the media business. Most of the problems arise in connection with infringement torts, especially around trademark infringement. Some recent cases provide examples of how courts have struggled to apply the language of Coverage B.

Advertising Injury Cases

Tension arises in the area of advertising injury with regard to two issues. One is a split of authority with regard to coverage for trademark infringement. The other is how to apply the term "advertising" under various circumstances. This definitional issue may become an important point of litigation for businesses using modern technology for media activities. Another important issue that may affect Internet businesses is the exclusion for companies whose "business is advertising, broadcasting, publishing or telecasting." The following is a discussion of a few cases examining these issues.

Trademark Infringement

A frequent battle in advertising injury coverage is whether trademark infringement under the Lanham Act fits within the offenses of misappropriation of advertising ideas or style of doing business or infringement of copyright, title, or slogan. Trademark infringement litigation can be very expensive if not covered by liability insurance; therefore, triggering the duty to defend is an important consideration. The Sixth Circuit has taken the position that since trademark infringement is not specifically named in the enumeration of these offenses, it is not covered under a CGL policy.²

Most other courts that have addressed this question have rejected the Sixth Circuit's reasoning. Rather than examine the legal formulation of the claim as the Sixth Circuit has, most courts look at the factual allegations of the complaint to conclude that trademark and trade dress infringement are forms of misappropriation of advertising ideas or style of doing business.³ Because triggering the duty to defend is dependent on the factual alle-

gations of the complaint against the insured, the courts finding coverage will look to the facts, rather than the legal theory, of the pleading.

This dispute is still active, and some policies now include specific exclusion for trademark infringement. A broadly worded complaint, including claims of theft of advertising methods and unfair competition, might still trigger a duty to defend, but probably not in the Sixth Circuit. Therefore, any claimant who wants to trigger insurance coverage for a claim of trademark infringement should, if possible, file in a jurisdiction outside the Sixth Circuit and plead multiple factual grounds for relief, tracking the advertising injury coverage provisions. This will permit the insured defendant to bring its coverage claim against the insurer in a less hostile environment with better chances of success. This is an example of the perverse unity of interest between opposing parties in the approach to liability insurance coverage.

Advertising

The definition of "advertising" for advertising injury coverage has been the point of several judicial opinions that may bear on the coverage for modern businesses engaging in electronic media activities. In several cases, the courts have denied coverage for claims arising out of tailored solicitations to potential customers. *Solers, Inc. v. Hartford Casualty Insurance Co.*⁴ involved an insured that did not engage in traditional advertising because its business was based exclusively on government contracting awards obtained through tailored proposals.⁵ The insured had been sued for misappropriating the business proposals and plagiarizing marketing materials of a former employer. A federal district court in Virginia concluded that individual submissions in response to requests for proposals did not constitute "advertising" for CGL coverage.⁶

The First Circuit reached a similar conclusion when the insured had prepared tailored promotional materials directed to two institutional investors for a proposed real estate investment.⁷ The court acknowledged a possible split of authority, but concluded that Massachusetts law would not include such activities within the definition of advertising.⁸ Similarly, the Seventh Circuit in *Zurich Insurance Co. v. Amcor Sunclipse North America*,⁹ interpreting California law, held that per-

son-to-person persuasion was not within advertising injury coverage.¹⁰ The insured had developed a product in competition with its former supplier of the same product and then directly solicited to the supplier's customers. The court stated that advertising "refers to the dissemination of prefabricated promotional material."¹¹

In contrast, courts have found that direct mail and facsimiles can be advertising for the purpose of advertising injury coverage. One insured was sued for using the mailing list of a workers' compensation carrier to send letters and faxes claiming that the carrier was no longer writing coverage.¹² The court cited *Amcor Sunclipse* for the proposition that dissemination of prefabricated materials by direct mail constituted advertising for CGL coverage.¹³ Another case held that the use of an infringing trademark on a business letterhead constituted covered advertising injury for CGL coverage.¹⁴ The court interpreted the complaint against the insured very broadly and distinguished *Amcor Sunclipse* on the grounds that the complaint alleged that the infringing letterhead impacted "the commercial public" and that the business targets for the insured were a very limited commercial audience.¹⁵

These cases beg certain questions about how to distinguish covered from uncovered claims. In *Solers*, the commercial audience consisted of one purchaser, the federal government, to whom each of the parties sent proposals according to customer specification. In *Amcor Sunclipse*, there was also a restricted audience, consisting of the customer list of the former supplier, but the direct solicitation did not qualify as advertising. In *Legion Indemnity*, the audience was again limited and the coverage was afforded because the insured sent the same canned letter to each of the parties.

These cases raise some important questions for modern businesses utilizing electronic publishing. Presumably mass e-mail of preformatted .pdf brochures will qualify as advertising. However, businesses are increasingly customizing materials for targeted groups or important individual prospects. This is a natural extension of the original concept of direct mail advertising, but could run

afoul of the limitations imposed on advertising injury coverage.

Another recent case, *CAT Internet Systems, Inc. v. Providence Washington Insurance Co.*,¹⁶ illustrates the difficulty in applying traditional concepts to the e-commerce of the Internet. An insured registered the domain name "magazine.com" but did not set up a webpage at that address. Instead, the insured linked the domain so that browsers going to that address would be automatically redirected to a pornographic website or to a competitor of the website found at "magazines.com," which sold magazine subscriptions online.¹⁷ Magazines.com sued for trademark infringement, and the court found coverage without examining whether the complaint alleged "an offense committed in the course of advertising" the insured's

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goods, products, or services.¹⁸ It seems clear that the insured did not advertise its own goods or services, because it merely redirected browsers to other websites. Nothing about the insured ever appears to have been disseminated to anyone. This is an example of a business model that does not appear to fit within any of the traditional concepts of the advertising injury coverage language.

Exclusions


One final issue is the exclusion for advertising injury for an insured whose business is advertising, broadcasting, publishing, or telecasting. Many Internet businesses might fall into this category unexpectedly, as did one insured in a recent case, *American Employers Insurance Co. v. DeLorme Publishing Co.*¹⁹ The insured was a map publisher that produced a GPS and software package for onboard navigation with a portable computer for use in a car. Rand McNally sued on the grounds that the insured infringed its trademark with the name of its competing system.²⁰ The court went to great lengths to reject the Sixth Circuit position on coverage of trademark claims, but then de-

nied coverage on the grounds that the insured was a publisher subject to the exclusion.²¹ This is a bit ironic in that the purpose of the exclusion appears to be to avoid insuring publishers for offenses committed in their publication activities, but the complaint against this insured was for advertising its competing software system in a store circular.²²

The *DeLorme* case suggests a potential problem for many Internet businesses that are not in the business of advertising, broadcasting, publishing, or telecasting but that might be subject to this exclusion. The insured in *CAT Internet* was in the business of redirecting browsers from the domain "magazine.com" to other commercial websites. One way to characterize this is that *CAT Internet* directed commercial website information to individuals at their computer screens, which might be considered "advertising, broadcasting, or publishing" the material that the insured transmits.

One of the hypotheticals above describes a conferencing service on the Internet where customers can display information across the Internet to other participants. Again, this is not a traditional sort of broadcaster, but is arguably within the ambit of the exclusion for broadcasters and publishers. Google.com does nothing but assemble customized search information and transmit it to users, which is arguably another form of publishing in the medium of the Internet. Since so much of the business of the Internet is about the collection, storage, and dissemination of information, most Internet companies might fall into this category of publisher.

Conclusion

Most companies are taking advantage of modern technology to engage in unprecedented levels of media activity and are incurring attendant media risks. Many new businesses are completely based on the Internet, challenging many of the traditional concepts by which we define media activity. CGL insurance provides substantial coverage for many of these risks, but there are some significant gaps that businesses may want to evaluate in light of their exposure to media risks.²³ 

Endnotes

1. In *Winkevoss Consultants, Inc. v. Federal Insurance Co.*, 11 F. Supp. 2d 995 (N.D. Ill. 1998), the insured was sued for

making a negative product comparison with a competitor's software and was seeking coverage for the claim from its CGL carrier.

2. *Advance Watch v. Kemper Nat'l Ins. Co.*, 99 F.3d 795 (6th Cir. 1996) (applying Michigan law to a claim of trade dress infringement); *Sholodge, Inc. v. Traveler's Indem. Co. of Ill.*, 168 F.3d 256 (6th Cir. 1999) (applying Tennessee law to a claim of service mark infringement).

3. *Adolfo House Distrib. Corp. v. Travelers Prop. & Cas. Ins. Co.*, 165 F. Supp. 2d 1332 (S.D. Fla. 2001) (cites other opinions granting coverage for trademark infringement). *See also* *Charter Oak Fire Ins. Co. v. Hedeem & Cos.*, 280 F.3d 730 (7th Cir. 2002); *Am. Employers Inc. Co. v. DeLorme Publ'g Co.*, 39 F. Supp. 2d 64 (D. Me. 1999).

4. 146 F. Supp. 2d 785 (E.D. Va. 2001).

5. *Id.*

6. *Id.*

7. *Liberty Mut. Ins. Co. v. Metro. Life Ins. Co.*, 260 F.3d 54, 64 (1st Cir. 2001).

8. *Id.* (citing *Smartfoods, Inc. v. Northbrook Prop. & Cas. Co.*, 618 N.E.2d 1365 (Mass. App. Ct. 1993)).

9. 241 F.3d 605 (7th Cir. 2001).

10. *Id.*

11. *Id.* at 607.

12. *Am. Safety & Risk Serv., Inc. v. Legion Indem. Co.*, 153 F. Supp. 2d 869 (E.D. La. 2001).

13. *Id.* at 874.

14. *Charter Oak Fire Ins. Co. v. Hedeem & Cos.*, 280 F.3d 730 (7th Cir. 2002).

15. *Id.* at 737.

16. 153 F. Supp. 2d 755 (E.D. Pa. 2001).

17. *Id.*

18. *Id.*

19. 39 F. Supp. 2d 64 (D. Me. 1999).

20. *Id.*

21. *Id.* at 81.

22. *Id.* at 69.

23. In *Matagorda Ventures, Inc. v. Travelers Lloyd's Insurance Co.*, 203 F. Supp. 2d 704 (S.D. Tex. 2001), the insured had pasted copyright-protected images of watches on its commercial website and was seeking coverage for the infringement claim.