

Hamilton County LAW LIBRARY NEWS

Professional legal information, resources, and services

A Monthly Newsletter from the Hamilton County Law Library

June 2014

Supreme Court of the United States Establishes New Standard for Standing in False Advertising Cases under the Lanham Act

By Stephen Weigand of Faruki Ireland & Cox PLL. Reprinted with permission.

Must a plaintiff be an actual competitor of the defendant to maintain a false advertising claim under the Lanham Act? The Supreme Court of the United States recently, and unanimously, said “no.” Although some federal circuit courts previously required a competitor relationship between plaintiff and defendant, the Supreme Court of the United States recently resolved a circuit split and set forth a new standard to determine whether a plaintiff has standing to bring a false advertising claim under the Lanham Act, 15 U.S.C. § 1125(a).

In Lexmark International, Inc. v. Static Control Components, Inc., No. 12-873, 572 U.S. ____ (2014), the Supreme Court held that a plaintiff has standing to bring a false advertising claim under the Lanham Act if (1) the plaintiff is “within the zone of interests in a suit for false advertising,” meaning that the plaintiff alleges an “injury to a commercial interest in reputation or sales”; and (2) the plaintiff’s “injuries are proximat-

caused by violations of the statute.” Lexmark, slip op., p. 13.

This case involved Lexmark International, Inc. (“Lexmark”), a manufacturer and seller of laser printers that work only with toner cartridges also manufactured and sold by Lexmark, and Static Control Components, Inc. (“Static Control”), a company that made certain component parts used by remanufacturers of Lexmark cartridges. To compete against remanufacturers, Lexmark introduced a “Prebate” program through which Lexmark provided customers with a 20 percent discount on new toner cartridges if the customers agreed to return the cartridges to Lexmark once they were empty. The new Prebate cartridges contained microchips that would disable the car-

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[www.http://www.hamilton-co.org/cinlawlib/](http://www.hamilton-co.org/cinlawlib/)

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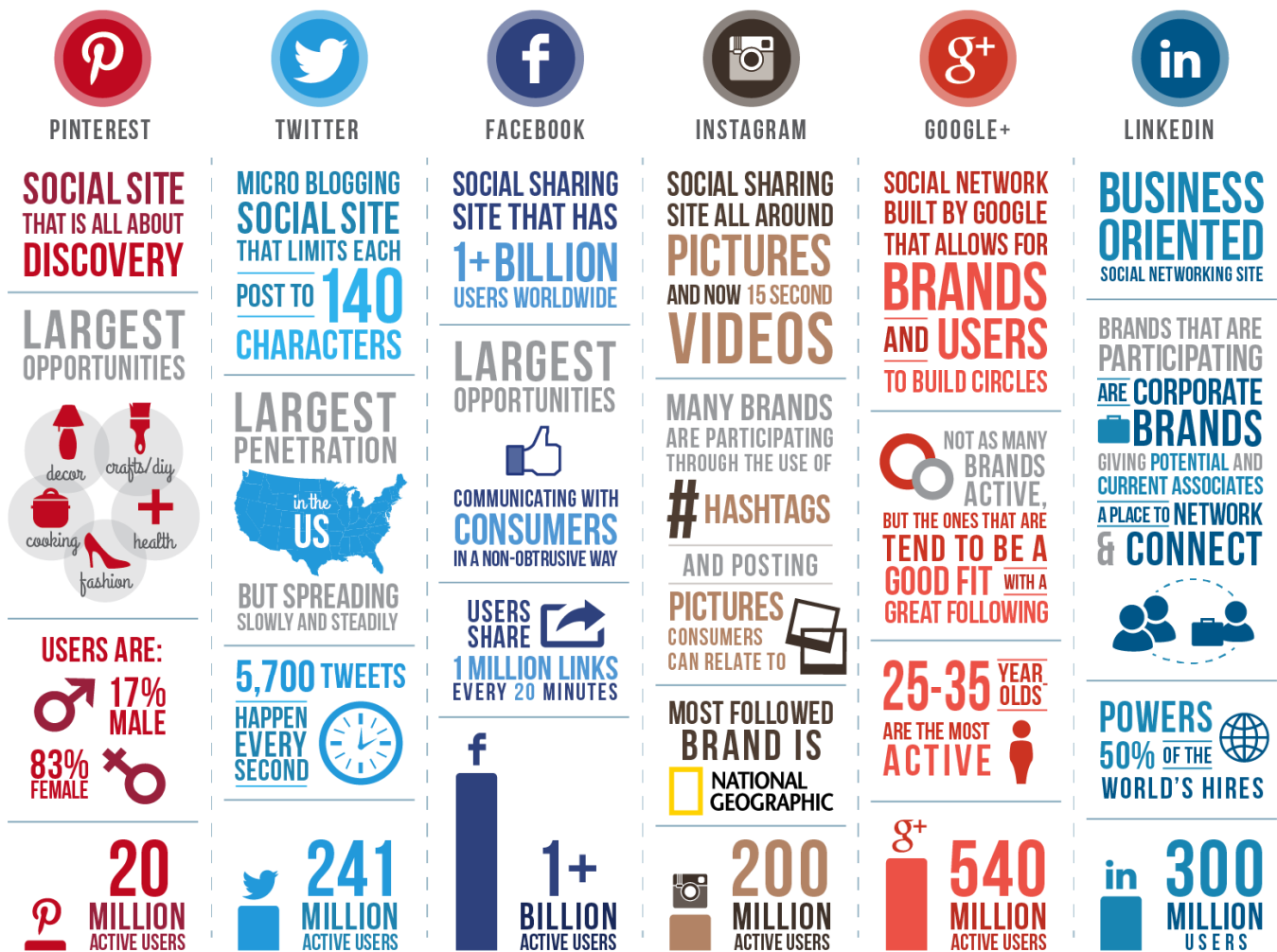
Tech Tip: Compare and Leverage Social Media Sites

By: Julie Koehne, Assistant Law Librarian, Systems

Here is a nifty tool to help compare the most popular social media outlets. This infographic breaks down and displays the advantages of each and how they can be best utilized to promote your law practice or department.

Compliments of the Leverage New Age Media Blog

<https://leverage.newagemedia.com/blog/social-media-infographic>



Statistics as of 4.25.2014. Designed by: Leverage - leverage.newagemedia.com

They will attempt to keep this tool updated roughly every six months. Check back for updated statistics and archived data!

Upcoming CLE

Free to subscribers; \$50 for non-subscribers
To register, call 513.946.5300 or via email
reference@cms.hamilton-co.org

Ohio Legislative History

Presenter: Laura Dixon-Caldwell
June 25, 2014
Noon-1pm
1.0 hour of general CLE credit in Ohio and
Kentucky

Speakers Needed

Thanks to all who volunteered their time to present CLEs at the Law Library .We are working on scheduling more CLEs for 2014. If anyone is willing to present, please contact Laura Dixon-Caldwell at 946.5300 or ldixon-caldwell@cms.hamilton-co.org.

County Offices: Information Needs?

What print and online legal information does your county office need? Please contact library director [Mary Jenkins](#). We can determine whether the law library already provides a particular resource of interest or whether a discount is available for multi-copy purchases or joint licensing agreements. Proposals for material that can be made available countywide through the law library will be approved, pending the availability of funds and in accordance with the law library's collection development policies. This is a great opportunity to cooperatively identify cost-effective and efficient means of accessing legal information.

Testimonials

The library staff is grateful to the Law Library users who have provided testimonials for the new website (to be launched soon). You've spoken of the availability and quality of our services ranging from expert legal research guidance to videoconferencing to CLEs. You've spoken highly of staff who solve problems, go the extra mile, and make a difference to your practice. We are identifying ways to provide users more specific expressions of return on investment, like use of online legal databases, attendance at CLEs, research inquiries, for example. We should be able to tell you that, but we'll admit to appreciating it when a subscriber says, "I already know well the value of my subscription to the Hamilton County Law Library." Would you like to provide brief testimony as to the library's value? Please send an email to [Mary Jenkins](#), describing a valuable service or a good experience and its impact on you.

Air Conditioning

A contractor is in the process of replacing AC equipment in the Courthouse. Some of the roof units are accessed via the Law Library, requiring us to restrict use of conference rooms, one at a time. In the end, Law Library users will enjoy better temperature control. Thanks for your patience. We've heard many stories about summer research projects here in the days before it was air conditioned so we know our users are appreciative of a good AC system on hot, muggy summer days.

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tridge once it ran out of toner. Static Control, however, developed its own microchip that functioned similar to Lexmark's microchip, which Static Control sold to remanufacturers who could continue to compete with Lexmark by refurbishing and reselling used Prebate cartridges.

In response, Lexmark sent notices to remanufacturers, claiming that it was illegal to sell refurbished Lexmark cartridges and that it was illegal to use Static Control's component parts to refurbish those cartridges. Lexmark then sued Static Control for copyright infringement, and Static Control counterclaim and alleged, among other things, violations of Section 43(a) of the Lanham Act (codified at 15 U.S.C. § 1125(a)) based on the Act's prohibitions on false advertising.

Section 1125(a) provides:

"1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which —

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act."

Static Control contended that Lexmark violated the Lanham Act by falsely advising remanufacturers that it was illegal to sell refurbished Prebate cartridges, and also that it was illegal to use Static Control's products to refurbish those cartridges. Static Control asserted that Lexmark materially misrepresented the "nature, characteristics, and qualities" of both Lexmark's and Static Control's products.

The district court in Kentucky granted Lexmark's motion to dismiss Static Control's Lanham Act claim, holding that Static Control lacked "prudential standing" to bring that claim based on a multi-factor balancing test from federal antitrust law and applied by the Third, Fifth, Eighth, and Eleventh Circuits in Lanham Act cases. In contrast, the Seventh, Ninth, and Tenth Circuits applied a categorical test, which permitted Lanham Act suits only by an actual competitor. The Sixth Circuit reversed the dismissal of the Static Control's Lanham Act claim, and instead applied a "reasonable interest" test that it borrowed from the Second Circuit. Under the Sixth Circuit's reasonable interest test, a Lanham Act plaintiff has standing if the plaintiff can demonstrate "(1) a reasonable interest to be protected against the alleged false advertising and (2) a reasonable basis for believing that the interest is likely to be damaged by the alleged false advertising." Lexmark Int'l, Inc. v. Static Control Components, Inc., 697 F.3d 387, 410 (6th Cir. 2012).

The Supreme Court granted certiorari "to decide 'the appropriate analytical framework for

determining a party's standing to maintain an action for false advertising under the Lanham Act." Lexmark, slip op., p. 5. Justice Scalia, writing for the Court, rejected the prudential standing test applied by the Sixth Circuit, and also rejected the multi-factor balancing test and the categorical test.

Instead, the Court held: "To invoke the Lanham Act's cause of action for false advertising, a plaintiff must plead (and ultimately prove) an injury to a commercial interest in sales or business reputation proximately caused by the defendant's misrepresentations." Lexmark, slip op., p. 22. As applied to the facts of the case, the Court held that Static Control adequately pleaded both elements, and the Court affirmed the judgment of the Sixth Circuit.

For further information, contact [Stephen A. Weigand](#).

Grant Funding

The Law Library was recently awarded funding through the Consortium of Ohio County Law Libraries for several items, which will be deployed over the summer:

- Mobile device charging stations
- A public computer management application
- Several workstations for the computer room

We're grateful for the support for these technology needs. All county law libraries in Ohio pay a portion of their statutory revenue into the statewide consortium fund, so it is also good to be able to bring grant dollars back to Hamilton County.

The Very Latest News

This newsletter is very informative but be sure to follow our other sources of news, too, for the latest updates:

Facebook www.facebook.com/pages/Hamilton-County-Law-Library-Ohio

Twitter [@HCLawLib](https://twitter.com/HCLawLib)

LinkedIn <http://www.linkedin.com/groups/Hamilton-County-Law-Library-OHIO-4266465>

Practice Area Updates <http://www.hamilton-co.org/cinlawlib/interact/list.html>

Blog <http://www.hamilton-co.org/cinlawlib/>

Technology for the Courts

The Law Library provides a number of technology-based services at no charge for Hamilton County's courts, including video-conferencing, Skype and web conferencing, scanning and mobile printing, and research support. Contact [library staff](#) for more information about these services or see our Welcome guide as a starting point.



Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepards', CCH Omnitax, CCH Human Resources Group, and CCH Business Group resources, Hein Online Law Journals and Federal Register, and over 70 Aspen / LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

5 meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters

You and the Legal System: Employment Law

Attorney Steven Stuhlbarg is our next speaker in the *You and the Legal System* series for the public. Mr. Stuhlbarg will discuss Employment Law on Friday, June 20 at noon in the Law Library. The discussion will focus on:

- Wrongful Termination
- Employment Discrimination

The program is free to the public. To register, call 513.946.5300.

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may want to pass along the program announcement to clients, staff and community organizations. If you would like more information, please contact Laura Dixon-Caldwell at 513.946.5302.

You and the Legal System is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service.

Save the date for the next event in the *You and the Legal System* series on July 18. Check out July newsletter for more information.



Employment Law Resources

The Law Library offers a variety of print and electronic resources on Employment Law. If you have questions about access to any of these resources, just call us at 513.946.5300.

50 employment laws in 50 states
KF3320 .Z99 2014

Advanced employment law
KFO331 .A934 2013

Basics of employment law
KFO331 .B37 2013

Civil rights in the workplace
KF3464 .P48 2014

The Developing labor law: the board, the courts, and the National Labor Relations Act
KF3369 .D48 2013

Discipline, documentation, and discharge of problem employees
KFO334.5 .E55 D57 2012

Employment discrimination law
KF3464 .L56 2012

Inside arbitration: how an arbitrator decides labor and employment cases
KF3424 .A73 2013

Ohio employment practices guide
KFO331 .S571 2013

Ohio Employer's Guide
KFO331 .O35 2014

Online Resources/Remote Access*

IntelliConnect-Contains arbitration decisions, cases, federal and state laws and regulations, newsletters and titles such as:
Disabilities Management Guide
COBRA Handbook
EEOC Compliance Guide
Employment Law Answer Book
Employment Practices Guide
HR Compliance Library
Labor Law Journal
NLRB Case Handling Manual
OFCCP Compliance Manual
Payroll Management Guide
State by State Guide to Employment Law
Wages-Hours Library

Aspen/Loislaw

Employment Discrimination Law Library:
Employment Discrimination Law & Practice
Representing Plaintiffs in Title VII Actions
Americans With Disabilities Act Handbook
Sexual Harassment in the Workplace: Law and Practice
Civil Rights In the Workplace
Employee Relations Law Journal
Also includes articles and forms and checklists.

Employment Law Library

Employment Relationships: Law and Practice
Employee Dismissal Law & Practice
Covenants Not To Compete
Employment Law Answer Book
Immigration Law In the Workplace
Also includes articles and forms and checklists.

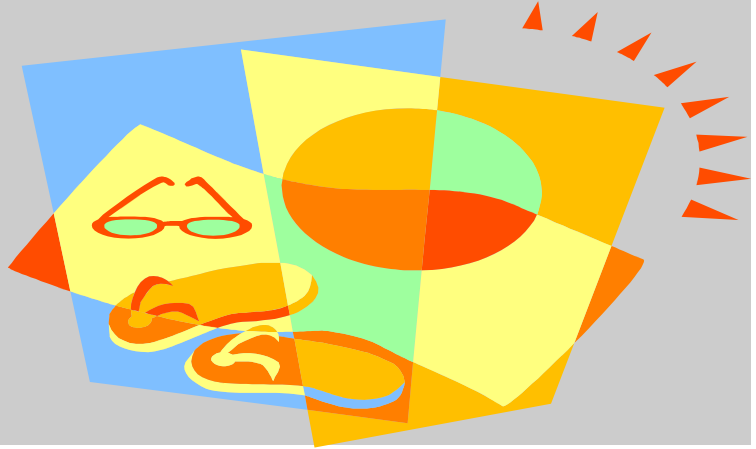
*Remote access is available to subscribers who are solos or firm attorneys whose entire firm has a subscription to the Law Library.

Upcoming Events:

June 20: You and the Legal System: Employment Law

June 25: Ohio Legislative History CLE

July 10: Law Library Board Meeting



June 2014 Law Library Newsletter

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ADDRESS CORRECTION REQUESTED

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