

The IP Beacon, February 2011

February 2, 2011 Jeffrey Becker, Randall Colson, David Bell, Brent Folsom, Kenric Kattner, Stephen Pezanosky

PRACTICES Intellectual Property

The IP Beacon is a Haynes Boone Newsletter highlighting current issues in Intellectual Property Law. Articles featured in the February 2011 issue include:

[Brand Owners Weigh In on Google AdWords Appeal](#)

In *Rosetta Stone Ltd. v. Google Inc.*, a U.S. District Court held that Google was not liable to Rosetta Stone for selling to Google's advertisers the right to use the Rosetta Stone trademark as a keyword to trigger advertisements for Rosetta Stone's competitors. Rosetta Stone appealed the ruling to the U.S. Court of Appeals for the Fourth Circuit. This article examines the issues, implications to search engine businesses, the District Court's reasoning, and several points raised in the appeal.

[Used DVD and Video Game Resales One Step Closer to Extinction](#)

Your favorite local and online video game and DVD resellers may become extinct due to a September 10, 2010 Ninth Circuit Court of Appeals ruling.

[Beware of Fraudulent Trademark and Patent Notices Mimicking Official Communications](#)

Companies and business owners should be wary of notices that claim to originate from official trademark offices and vendors, because these notices may be illegitimate. Unscrupulous companies that send such notices prey on trademark (and patent) registrants by using information from actual governmental registrations in an attempt to deceive registrants into paying for unneeded or fraudulent services, or for duplicative services already performed at no additional charge by the United States Patent and Trademark Office (USPTO) or counterpart agencies in other countries. This article discusses an example of one such illegitimate scheme, and provides some tips on how to avoid similar ones.

[Third Circuit Concurring Opinion Supports Trademark Licensees' Retention of Rights in Bankruptcy Cases](#)

A significant concurring opinion in a recent Third Circuit Court of Appeals case suggests that, contrary to common belief, trademark licensees may be able to retain their rights in bankruptcy cases even if licensors reject the license agreements. The majority held that the trademark license was not an executory contract; therefore, it could not be rejected under the Bankruptcy Code. While the majority opinion applies narrowly to circumstances involving perpetual, exclusive, and royalty-free trademark licenses, the concurring opinion has a potentially broader application. The concurrence helps trademark licensees take the position that, despite intentionally excluding trademarks from the Bankruptcy Code definition of "intellectual property," Congress intended for bankruptcy courts to exercise equitable powers in cases involving rejection of trademark license agreements.