Vol. VII No. 1 March 21, 2001

THE RISLEY NEWSLETTER

WORLDWIDE DOMAIN NAME DISPUTE

RESOLVED OVER INTERNET

CONTENTS

Internet David Defeats Cyber Goliath

The Law Office of Robert L. Risley started the new millennium with a stunning upset victory over the largest law firm in the world. On January 16, 2001, the World Intellectual Property Organization Arbitration and Mediation Center in Geneva, Switzerland,[1] ruled in favor of Risley's client, Mr. Yomtobian. in a trademark/internet domain name dispute with Dylex, Limited, a clothing retailer in Canada, represented by Baker and McKenzie, the world's largest law firm. The Administrative Panel ruled it was "compelled to find that the Complainant has not made out its case and relief is accordingly denied."

Mr. Yomtobian. is a cyber-entrepreneur in the business of developing internet web sites, registering domain names, and providing web advertising for his customers. The website www.thriftys.com was one such site, offering directories for travel, food, restaurants, tickets, loans, website development, and the like. In 1998 Mr. Yomtobian received notification that a clothing retailer in Canada, Dylex, Limited, operated over 100 stores in Canada with a similar name, THRIFTYS. Mr. Yomtobian had already moved to protect his rights by filing an application to register the trademark, "thriftys.com" with the United States Patent and Trademarks Office.

Mr. Yomtobian, with Mr. Risley's help, had already successfully defended the Thriftys.com trademark. Only a few months earlier Thrifty Car Rentals, a major car rental company in the U.S. opposed the registration of the trademark. Attorney Risley negotiated a resolution and Thrifty, Inc.,

withdrew its opposition to Mr. Yomtobian's trademark application. Risley had argued that Mr. Yomtobian's business was not in competition with the car rental company. Moreover, a chain of drug stores in the U.S. also uses the name. Finally, he pointed out the stores were also not in competition with Thrifty, Inc. The resolution of this matter became a key grounds for fighting back against Dylex. The Administrative Panel found that while Mr. Yomtobian's domain name was "identical or confusingly similar" to Dylex's trademark, the Complainants use of the name "THRIFTYS" was restricted to Canada. The Panel's Decision cited the dispute with the car rental company and pointed out that "various entities trade in the USA under the THRIFTYS name. They appear to be in unrelated areas and to co-exist without any significant difficulties . . . ."

A major part of the Dylex complaint were allegations that Mr. Yomtobian provided explicit pornographic material on the "thriftys.com" website and used links to direct internet surfers to pornographic material on other web sites. Mr. Yomtobian denied that any explicit pornographic material was available on his website and asserted that his domain name did not attract anyone to adult sites. The Administrative Panel agreed, finding the domain name "thriftys.com" was not being used to direct internet users to any pornographic or sexually explicit web sites, but rather, was being "used for commercial purposes."

A second major allegation was that Mr. Yomtobian had registered his domain name in bad faith. However, the Administrative Panel following Risley's suggestions found that the Complainant had not satisfied the grounds for this allegation, and the Panel was forced to rule against Dylex.

The third allegation against Mr. Yomtobian was that he had no "legitimate interest or right" in the name "thriftys.com." Mr. Yomtobian countered that he had spent hundreds of thousands of dollars developing his website and that he was unaware of Complainant's use of the name "THRIFTYS" until he had registered the contested domain name. The Panel found that neither party had submitted compelling evidence to support their allegations, but that Dylex had the burden of proof and "accordingly, the benefit of the doubt has to go to Risley's client the Respondent [Mr. Yomtobian]."

In the end, the Panel found that Complainant had not been able to prove its case and therefore ruled in favor of Mr. Yomtobian.[2]

The internet is a fairly rough-and-tumble arena, with players lawyers, arbitrators and judges making up the rules as they go along. As has happened so often before, Mr. Risley was very gratified that he could climb in the ring on behalf of his client and go head to head against the big guys, in this case, the largest law firm in the world, and win.

Be Careful with Your IRA

Individual Retirement Accounts (IRAs) create real tax concerns for all of us, especially upon the death of the "plan's participant." As you know, these accounts have never been taxed, and when the funds or its income are withdrawn from the IRA, they are subject to income tax. For citizens with only modest estates, unprotected by the "lifetime exemption," these IRA funds are also subject to estate taxes. When both taxes are combined, the government's share becomes confiscatory, taking up to 80% of the IRA and leaving the participant with only 20%.

Even worse, in some situations where the participant transfers an IRA to a trust, the transfer may trigger an income tax on the entire IRA fund, a result nobody contemplates or relishes. If the proper steps are taken, however, taxes can be minimized, if not entirely avoided. The following illustrates one newly accepted method of minimizing income tax and preserving a "QTIP" marital deduction upon the death of the participant survived by a spouse.

"A" died in 1999 at the age of 55, survived by his spouse, "B," who was 50 years old. Prior to his death, A established an IRA and named the trustee of A's testamentary trust as the beneficiary of the IRA. A copy of the testamentary trust and a list of the trust beneficiaries were provided to the IRA custodian within nine months after A's death. As of A's death, the testamentary trust was irrevocable and was a valid trust under state law.

The testamentary trust required that all income be paid annually to B, and no one had the power to appoint principal to any person other than B. A's children, who were all younger than B, were the remainder beneficiaries, and no one else had an interest in the trust. B had the power, exercisable annually, to compel the trustee to make withdrawals from the IRA in an amount equal to the income earned on the IRA assets and to distribute that income, through the trust, to B. There were no prohibitions on withdrawals in excess of the IRC Sec. 408(a)(6) minimum required distribution amount.

The trustee of the testamentary trust elected to receive the required distributions over a time period based upon B's life expectancy. Because B was not the sole beneficiary of the testamentary trust's interest in the in the IRA, the trustee elected to have the required distributions from the IRA to the trust begin no later than December 31 of the year immediately following the year of A's death. On B's death any undistributed balance of the IRA would be distributed to the testamentary trust over the remaining distribution period.

This Ruling stated that whether A's executor can elect to treat the trust and IRA as QTIP [Qualified Terminable Interest Property, Sec. 2056(b)(7)] depends upon whether B is entitled to all of the income for life payable annually.

B has the power, exercisable annually, to compel the trustee to withdraw the income from the assets in the IRA and to pay that income to B. If B exercises this power, the trustee has to withdraw from the IRA the greater of the amount of income earned on the IRA assets during the year or the annual required minimum distribution, making B entitled to all of the income for life, payable at least annually.

B's power to compel the trustee's action meets the standard set forth in Reg. Sec. 20.2056(b)-5(f)(8) for the surviving spouse to be entitled to all the income for life payable annually. Thus, B has a qualifying income interest for life within the meaning of Sec. 2056(b)(7) and for purposed of Secs. 2519 and 2044 in both the IRA and the testamentary trust. Nothing in the IRA instrument prohibits the trustee from withdrawing such amount from the IRA. If B does not exercise this power, the trustee must withdraw from the IRA only the annual minimum required distribution.

Result: The executor may elect QTIP treatment for the IRA and the trust. Because the trust is a conduit for payments equal to income from the IRA to B, A's executor must make the QTIP election for both the IRA and the testamentary trust.

Another bit of sound advice is: Use your IRA money first following retirement and minimize use of your other funds or assets.

Horseless Carriage Update

The recent saga of the Horseless Carriage Club of America, detailed in our June 2000 Newsletter, continues with some interesting new twists, even though the litigation has been concluded. Past President Jim Zordich and other report that a group of Past Presidents has developed and circulated a resolution calling for the current Board of Directors to remove Robert Sahl from the Board and as a member of the Club. Robert Sahl, you may recall, is the dictatorial president who refused to relinquish the podium and gavel to the newly elected Board of Directors, claiming without support or

evidence that the election was tainted, even though the election ballots had been counted by an independent, Certified Public Accountant.

Spotting a telescammer. It's not so easy.

(This article is excerpted from a story by Mark F. Soupiset appearing in *USAA Magazine*, August/September 2000.)

Alfred still remembers the conversation clearly. A man with a pleasant voice called him at his Virginia residence late last September to tell him that he and other lucky individuals had won a sizable monetary prize, perhaps as much as $300,000 each. The man gave Alfred, 79, a phone number where he could be reached and his company's name but said he didn't know the details and not to ask too many questions. The prize amount would vary depending on the number of winners, he explained, adding that one of his colleagues would call Alfred soon with much more information.

Alfred was contacted two days later by a woman who verified that he had won and explained that his prize consisted of cash and tax-free bonds. He and his wife would begin receiving monthly payments of between $5,000 and $12,000 in October, she said, and any credit card balance he had would also be paid off. She added that a small cost would be involved to register the bonds in his name.

The caller then asked Alfred for his age, the last four digits of his Social Security number and the number on the back of his Visa card, which included the account number and three additional digits used to help legitimate merchants ensure that cardholders actually have physical possession of the card. Reluctantly, Alfred agreed and gave her the information, not realizing he was disclosing everything the caller would need to access his Visa account.

Another day passed and Alfred was called by the man who first told him about the prize, saying his company wanted Alfred's photo to publicize its contests. "I asked him where I should send the photograph," says Alfred. The man explained that he would receive a packet in the mail the following Tuesday to answer all his questions.

" I remember it was a rainy day, and I planned to stay home all day so I'd be here when the package arrived," explains Alfred. "It never came, but I thought that maybe the rain had caused a delay."

That's when his suspicion led him to call Visa to report that something was amiss. The service representative told him that a charge of $3,000 was already on his account from a merchant in Denmark. Visa closed his account, issued new cards under a new account number and credited the $3,000. "At first I was very angry and frustrated," explains Alfred. "Now I feel very fortunate because it could have been much worse for me."

Indeed, many citizens are not so lucky. Americans lose an estimated $40 billion to telemarketing fraud annually. These schemes usually involve bogus healthcare services; unnecessary, incomplete or shoddy home repairs; investment fraud; phony sweepstakes and fake charities. Although all Americans are at risk for such scams, research shows that in every case the elderly are disproportionately targeted.

Why are older individuals the most popular targets? Dorothy Bargholz, chief of staff of the New Jersey Division of Consumer Affairs and head of its Elder Fraud Investigations unit, said that studies indicate that the majority of elder fraud victims are well-educated, well-informed and socially active. The problem, she explains, frequently stems from the fact that the elderly are the most polite generation in America. Seniors may find it more difficult to say, "No," especially on the phone. "They have a courteousness that's ingrained and a tendency to trust," says Bargholz. "That – combined with the fact that many have substantial assets from years of hard work and Social

Security benefits – makes them prime targets for scam artists." And once victimized, they remain silent, either because they fear the loss of the independence, are embarrassed or believe someone might think they can't handle their own affairs, says Bargholz.

According to Susan Grant, director of anti-fraud programs operated by the nonprofit National Consumers League (NCL), seniors frequently need help to determine whether telemarketing offers are valid or fraudulent.

"All consumers – especially seniors – need to understand that telescammers aren't just sleazy salespeople trying to make a living. Fraudulent telemarketers are hardened criminals out to take their victims' life savings," says Grant. "They're so good at what they do, there have been cases where they have persuaded people to mortgage their homes to claim contest winnings or make investments."

What can we do to protect ourselves from fraud? The good news is that there are many simple yet effective tactics that anyone can implement to help thwart illegal telemarketers.

Here are some helpful tips. Ask for the organization's full name, address and telephone number up front. In the case of charities, asking how much of your donation goes to the actual charity and how much goes to administrative costs.

Call the state attorney general, division of consumer affairs or secretary of state's office to see if the charity is registered, and beware of charities with names that sound alike. Don't assume you know a group because the name sounds familiar.

Dixon says these tips are also good to remember when dealing with charities over the phone:

- **Pay with a check made out to the charity, not the fundraiser.**
- **Don't give at the door to a courier or messenger, or by leaving a check under the doormat. Send it directly to the charity.**
- **Keep records of your donations and pledges, and check your records if someone says you made a pledge you don't recall.**
- **Know the difference between tax deductible and tax-exempt. Donations to tax-exempt organizations are not necessarily tax deductible for you; if your donation is tax deductible, get a receipt.**

According to the NCL, telling the caller that you want to check out the offer before making a decision and asking for a number to call back are two of the simplest strategies. If a caller refuses to give a telephone number or insists on an immediate decision, a "red flag" should to up alerting you to possible fraud.

Alfred says he plans to be much more careful in the future and will never give out his credit card number or other personal information over the phone unless he initiates the call. "I would give the same advice to anyone else: When asked to provide personal information over the telephone, just don't do it," he says.

LEGAL WORD SEARCH

Puzzle created by Stephanie and Gregory Zajac, ages 13 and 10.

See how many of the following legal terms you can find in the puzzle below:

- ANSWER
- APPEAL
- AWARD
- APPEARANCE
- CITATION
- CONSERVATORSHIP
- CONTRACT
- CORPORATION
- COUNSEL
- COURT
- DAMAGES
-
- DISCOVERY
- EXECUTOR
- EXPERT
- HEARING
- INTERROGATORY
- JUDGE
- JUDGMENT
- JURY
- MOTION
- NOTICE
- PETITION
-
- PROBATE
- RECOVERY
- RESPONSE
- SANCTIONS
- SUMMONS
- TRIAL
- TRUST
- WILL
- WITNESS

C Z L Y A S E T P D C O R P O R A T I O N

O C A P P E A R A N C E K C O U N S E L H

N W W V P X L I S P O J X G P L K V J W M

T T A W E V R A Q P U O Y P G W I L L L H

R X R K A R T L N R R V U C E Z P W Q L M

A H D P L F D L N O T I C E G R O N C Q O

C L J I U B A I T B W R F S S M T R U S T

T	N	K	D	S	X	I	Y	C	A	O	G	P	E	N	H	P	W	U	V	I
F	H	B	I	J	C	S	I	N	T	E	R	R	O	G	A	T	O	R	Y	O
P	E	T	I	T	I	O	N	Y	E	K	N	E	G	L	N	M	T	E	D	N
C	A	R	E	A	H	W	V	Z	O	S	K	C	C	O	S	Z	H	S	S	R
D	R	F	M	N	I	Q	L	E	V	T	R	O	E	P	W	A	H	P	B	X
C	I	T	A	T	I	O	N	U	R	W	Y	V	P	K	E	J	R	O	C	H
J	N	L	N	E	I	G	J	U	R	Y	A	E	T	U	R	V	F	N	N	O
S	G	E	Z	J	Q	M	U	D	E	I	M	R	X	B	G	Y	L	S	M	E
T	S	Q	S	U	R	S	D	F	P	O	G	Y	W	V	U	M	E	E	C	S
S	H	U	C	D	E	A	G	O	R	Q	E	P	V	S	R	U	F	L	T	G
Z	G	P	M	G	I	W	E	X	E	C	U	T	O	R	C	J	T	A	C	B
O	D	N	A	M	T	X	G	V	K	J	I	L	M	C	S	Y	A	Q	P	M
C	N	M	S	E	O	C	O	N	S	E	R	V	A	T	O	R	S	H	I	P
P	A	W	U	N	X	N	N	P	G	S	E	K	T	O	H	Z	J	L	F	A
D	M	K	B	T	O	P	S	A	N	C	T	I	O	N	S	T	D	O	N	E

***Check our new Web Site* – "www.risleylaw.com"**

Robert L. Risley, A Professional Law Corp.

790 E. Colorado Blvd., Ninth Floor

Pasadena, California 91101-2113

Telephone: (626) 397-2745 E-Mail: bob@risleylaw.com