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Vowell Voice



WELCOME!

Welcome to *Vowell Voice*, the newsletter of Vowell & Associates, Attorneys at Law. It is intended to help clients and friends stay informed, exercise preventive decision-making, and avoid the pitfalls that lead to time-consuming and costly litigation. If you would like to make comments, suggest a topic for future editions, or be added to our mailing list, please contact Lisa Chapman at Vowell & Associates.

THE TELEMARKETER "DO NOT CALL LIST"

The Tennessee General Assembly established the "Do Not Call" program in 1999. Under the direction of the Tennessee Regulatory Authority (TRA), the program's goal is to minimize unwanted telemarketing calls. The "Do Not Call" program is available to residential telephone subscribers and is a free program. Simply register your residential phone number by calling 1-877-TRA-7030. You may also register online at www.state.tn.us/tra. Unfortunately, business numbers may not be registered in the program.

The program should stop many but not all telemarketing calls. Of course, telemarketers may still call with your permission or by invitation. They may still call on behalf of non-profit organizations, provided that an employee or member of the organization is making the call. Also, a business may call you if you have had a business transaction with it in the previous 12 months.

Violators are subject to a maximum civil penalty of \$2000 per violation. You may report violators by calling 1-800-342-8359 ext. 160 or by submitting the claim form that is found on the website (www.state.tn.us/tra). ❖

ARE YOU DRIVING ON FIRESTONE TIRES?

By now you know that Bridgestone/Firestone has recalled 6.5 million Firestone tires because they are linked to many accidents and at least 103 deaths, mostly involving the Ford Explorer. The problem is that the two steel belts inside the tires are separating. The belts are glued together, one on top of the other. When they come apart the upper steel belt can suddenly pop loose, taking the entire tread with it. Most of the problems have occurred in hot areas like Saudi Arabia and Florida. High speed, which can result in heat buildup, evidently worsens the problem. Firestone also contends that under-inflation is a contributing cause. (Under inflated tires get hot faster.)

Many of the problem tires originated at Firestone's Decatur, Illinois, plant. This is an older plant that has weathered some strikes. During the strikes the production lines were sometimes operated by management workers, but Bridgestone has denied that this is a cause of the problem. Interestingly, Bridgestone's president has stated that the U.S. plant did not meet the standards of its operations in Japan.

Of course both Bridgestone and Ford blame each other. Bridgestone initially claimed that there was no

problem with the tires. Now, it has finally admitted that the tires are defective, but it claims that consumers are at fault for not keeping the tires properly inflated. Bridgestone also claims that Ford is at fault because most of the deaths seem to have occurred in the Ford Explorer, a vehicle with a known propensity to roll over. Bridgestone also claims that Ford is at fault because it has recommended a tire pressure of 26psi while Bridgestone's recommended tire pressure is 30 psi. Ford recently increased its recommended tire pressure from 26psi to 30psi at Bridgestone's urging. Ford, of course, claims that the problem lies entirely with the tires.

The most interesting legal and ethical question is whether the two companies continued selling the tires and vehicles after they learned they were dangerous. Government investigations are in progress in the U.S. and South America. Venezuelan investigators are expected to recommend criminal charges against both companies. ❖

WHICH FIRESTONE TIRES ARE AFFECTED?



All Firestone P235/75 R15 Radial ATX tires and Firestone P235/75 R15 Wilderness AT tires **ONLY** if produced at the Decatur plant.

Identifying P235/75 R15 Wilderness AT Tires Built at Decatur Plant: The first two digits of the DOT code identify where a tire was manufactured. "VD" indicates that the tire was built by the Decatur plant. The third and fourth digits indicate the tire size. There may be tires with a DOT code VDHL that are not affected by the recall if they are not P235/75R15 tires of the Radial ATX, Radial ATX II, or Wilderness AT models. The designations are found on the tire sidewall; in some cases, the designation may be

found on the inside of the tire, depending on how it was installed.

These tires are most commonly found on sport utility vehicles and light trucks. The vehicles that have these tires as original equipment are Ford Explorers, Ford Ranger light trucks, Ford F150 light trucks, Mercury Mountaineers, Mazda Navajo, and Mazda B series light trucks.

What should you do while you are waiting for replacement tires?

Due to the large number of tires to be replaced, the recall will take several months to complete. If you are waiting for replacement tires, the best advice we can give you is to inflate your tires to 30psi, drive slow and don't go to Florida! ❖

ON-LINE INVESTING: HOW TO AVOID FRAUD

The Internet serves as an excellent tool for investors, allowing them to easily and inexpensively research investment opportunities. But the Internet is also an excellent tool for fraud. That's why you should always think twice before you invest in any opportunity you learn about through the Internet.

If you want to invest wisely and steer clear of frauds, you must get financial statements from the company and be able to analyze them; verify the claims about new product developments or lucrative contracts; call every supplier or customer of the company and ask if they really do business with the company; check out the people running the company and find out if they've ever made money for investors before; find out where the stock trades; watch out for high-pressure pitches; and always be skeptical. If the investment sounds too good to be true it probably is. Investments are neither guaranteed nor risk-free. Check with your state securities regulator to make sure the investment is registered and that the person is licensed to do business in

your state with no record of complaints or fraud.

Investment frauds usually fit one of the following categories, according to the Securities and Exchange Commission (SEC):

- The "Pump and Dump" Scam: online posted messages urging the readers to buy a stock quickly or tell you to sell before the price goes down.
- The Pyramid: online messages reading, "How to make big money from your home computer."
- The "Risk-Free" Fraud: online messages reading, "Exciting, low-risk investment opportunities." No investment is risk-free.
- Off-shore Frauds: Be extra careful when considering any investment opportunity that comes from another country, because it is difficult for U.S. law enforcement agencies to investigate and prosecute foreign frauds. ❖



→Interesting!

The "Do Not Call" law prohibits telemarketers from utilizing any method to block or otherwise circumvent caller ID service.

IS USING NAPSTER



REALLY ILLEGAL?

No doubt Napster is very cool. It takes about five minutes to download a song and then you can listen to it any time you like. But is it legal? Or is it illegal copyright infringement? We won't really know the final answer to the question probably until next year or later when the courts make their final decision, but in the meantime you may be interested in learning more about Napster's legal arguments. First it is important to understand exactly how Napster works. You don't really get the music from Napster. All Napster does is provide a listing of other people who are willing to share their music with you. Then you download the music from the other person's computer. You might say that Napster merely introduces you to each other.

Right now Napster is back in business. As you may be aware, it was temporarily shut down by a restraining order issued by the Federal trial court. After two days the Federal appeals court dissolved the restraining order. However the appeals court is scheduled to reconsider the restraining order on October 2, 2000. The hearing will address only the restraining order; a full trial on the copyright infringement claims is likely to start next year. And most legal authorities believe that the Napster case will ultimately be decided by the U.S. Supreme Court.

Now for the legal arguments. First Napster says non-commercial consumer copying has always been recognized as fair use. For instance it would not be illegal for you to telephone a friend and let him listen to your stereo over the phone for free. By the same token it might not be illegal to let your friend record the

music so he could listen to it later, so long as you did not make him pay anything.

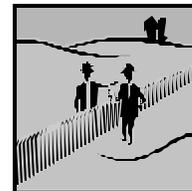
Second, Napster says that even if it is illegal for its users to share copyrighted music with each other, it is itself not guilty of anything. The record industry resists this argument by claiming that Napster is guilty of vicarious or contributory infringement by helping other people act illegally. Napster counters this charge by pointing to the 1984 decision of the U. S. Supreme Court in *Sony v. Universal Studios*. In that case the movie industry claimed the VCR was illegal because people were using VCR's to make illegal copies of movies. The Supreme Court held that Sony was not guilty of contributory infringement because, even though VCR's were predominantly used to copy copyrighted material, there were substantial uses that did not infringe copyrights – either because the material was not copyrighted or because the copyright owner did not object. By the same token, many people share non-copyrighted music through Napster and there are many artists who have expressly given Napster users permission to share their music.

Regardless of how these arguments turn out, and regardless of whether Napster survives, the record industry is in for some change. There is something looming on the horizon that will be even harder for the record industry to deal with than Napster. That something is called Gnutella. Gnutella is similar to Napster in that it permits users to share music with each other. However, Gnutella does not involve a central directory like Napster does. Gnutella users contact each other one on one. For that reason it will be almost impossible to disable Gnutella by injunction or other legal process. ❖

AN EXPLANATION OF EASEMENTS

An easement can be defined as the right to use land for a specific purpose. It is not ownership of the land itself but is merely ownership of the right to use the land for the specified purpose. Here are a few examples. TVA may have an easement to maintain an electric power line over your property. A natural gas company may have an easement to maintain a natural gas line over your property. Or a telephone company may have an easement to maintain a telephone or fiber optics line over your property.

Easements are divided into two general categories: "easements appurtenant" and "easements in gross". An easement appurtenant is a right that a landowner may have to use adjacent land. One example of an easement appurtenant is an easement that gives you the right to have a driveway across your neighbor's land. Another example is a party wall easement. A party wall easement exists when a common wall is built on the lot line that separates two structures, as in row houses or condominiums. Each owner has the responsibility to maintain his side of the wall, which cannot be removed or changed without the approval of both owners. Each owner has an easement in the wall of his neighbor. Party wall easements may also exist when a fence separates the boundaries of two properties.



An easement in gross is an easement that is not appurtenant to the landowner's property. Examples are easements for gas, water, sewer, power lines, pipelines, and telephone lines. The holder of the easement has no interest in the land except the right of use.

An easement of necessity arises when there is a special need, as in the case of a "land-locked" owner. Whenever a landowner has no access to his property, the law will imply a driveway or similar easement. It is said that a purchaser of land cannot be landlocked.

Ordinarily easements are acquired by contract or purchase. However, an easement may be acquired by prescription or adverse possession. This occurs after continuous, long-term, adverse, open, notorious and hostile use of another's property without his permission. Some landowners permit the public to generally use their property, without intending to give up the full ownership of the property. To ensure that this permissive use is not mistaken for adverse possession, the landowner may occasionally exclude the public from the property, such as by blocking ingress to the property on New Year's day each year. ❖

TENNESSEE JUDICIAL SYSTEM

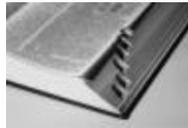
The Supreme Court is the highest court in the state. The five justices are nominated by the Judicial Selection Commission, appointed by the governor and retained by a "yes-no" vote for eight-year terms. The majority of this court's workload consists of cases appealed from lower state courts.

The Intermediate Appellate Courts - the Court of Appeals and Court of Criminal Appeals. These courts hear civil and criminal cases appealed from the trial courts. The Court of Appeals hears appeals in civil cases from trial courts and certain state boards and commissions. The Court of Criminal Appeals hears appeals in criminal cases.

The state's Trial Courts include Chancery, Criminal, Circuit and Probate. Chancery Court and Circuit Court have jurisdiction over domestic relations and civil cases.

Criminal Court has jurisdiction over criminal cases. Probate Courts have jurisdiction over estates, including wills, conservatorships and guardianships. Judges in these courts are chosen by popular election within their judicial districts.

The fourth level of courts in Tennessee is composed of the Courts of Limited Jurisdiction - General Sessions hears preliminary hearings, small claims, misdemeanor, DWI/DUI, and traffic. Juvenile Courts hear paternity cases, mental health and juvenile cases; while Municipal Courts, also known as city court hears preliminary hearings, traffic, and other municipal violations. These courts are funded by their respective counties. ❖



LEGAL TERMS

Jurisdiction: the power and authority of a court to hear and determine a judicial proceeding.

Limited Jurisdiction: jurisdiction which is confined to particular causes, or which can be exercised only under the limitations and circumstances prescribed by the statute.

Fraud: an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right.

Stay: a suspension of the case or some designated proceedings within it. A stopping; the act of arresting a judicial proceeding by the order of a court.

Judicial: Belonging to the office of a judge; as a judicial authority. Relating to or connected with the administration of justice; as a judicial officer.

Judicial System: Entire network of courts in a particular jurisdiction.

Copyright: An intangible, incorporeal right granted by statute to the author or originator of certain literary or artistic productions, whereby he is invested, for a limited period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them.

Infringement of Copyright: Unauthorized use of copyrighted material. In determining whether there is a copyright infringement, and not a "fair use" exemption, the factors to be considered include: (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.

Contributory Infringement: The intentional aiding of one person by another in the unlawful making or selling of a patented invention; usually done by making or selling one part of the patented invention, or one element of the combination, with the intent and purpose of so aiding.

