

the two sources of a product or service are one in the same.

False Advertising

A little known branch of intellectual property law that may be effectively used by the small developer to combat unfair advertising is also contained in the Lanham Act.

If an advertisement causes confusion as to source, sponsorship, approval, endorsement or affiliation of product through a false statement of fact then it is considered to fall under a false advertising pretense. Whether the advertisement affects a plaintiff's or defendant's goods or services, a suit can be filed. No comparative claim is necessary.

When a statement is merely ambiguous, which is often the case with commercial advertising, the plaintiff must first establish the consumer's understanding of the statement by using consumer surveys, and build a case around that evidence. This is costly and many small companies cannot afford such a process.

Despite the murky waters of false advertising the U.S. marketplace remains a free market economy. Accordingly, the Lanham Act ensures truthful comparative advertising, irrespective of directness. Therefore, provided that a firm's advertisement is not confusing and makes no explicit or implicit false statements of fact, comparative advertising is permitted. Use of the competitor's name, pictures of products, or price have now become common in many forums of commercial advertising.

Future Industry Trends

A whole new area of federal law dealing with information-provider, information-users, content ownership, first amendment rights and the internet are under consideration. The next several years will be a transitional period for both state and federal legislators. Some of the most interesting proposals are summarized below.

Some software developers are attempting to conform to the cost/payment structure outlined in the traditional "copyright clearinghouse model". Based on this principal every time material is used, copied or transmitted a royalty is paid to the clearinghouse. That royalty payment is then subdivided between the author, the publisher and the clearinghouse. Contracts are typically negotiated up front and attorneys are involved.

The most radical proposal suggests the abandonment of intellectual property as it exists today for a concept known as "relationships". This is a concept in which the user of copyrighted material has close ties to the developer and provides the copyright holder