

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

GATEHOUSE MEDIA MASSACHUSETTS I,
INC., DOING BUSINESS AS GATEHOUSE MEDIA
NEW ENGLAND,

Plaintiff,

v.

THE NEW YORK TIMES COMPANY,
DOING BUSINESS AS BOSTON.COM,

Defendant,

and

THE NEW YORK TIMES COMPANY,
GLOBE NEWSPAPER COMPANY, INC.,
AND BOSTON GLOBE ELECTRONIC
PUBLISHING, INC.,

Counterclaim-Plaintiffs,

v.

GATEHOUSE MEDIA MASSACHUSETTS I,
INC., DOING BUSINESS AS GATEHOUSE MEDIA
NEW ENGLAND, AND GATEHOUSE MEDIA,
INC.,

Counterclaim-Defendants.

Civil Action No. 08-12114-WGY

**DEFENDANT'S ANSWER, AFFIRMATIVE
DEFENSES, AND COUNTERCLAIM-PLAINTIFFS'
COUNTERCLAIMS TO PLAINTIFF'S COMPLAINT**

Defendant The New York Times Company (“New York Times”) submits the following answer, affirmative defenses, and counterclaims to Plaintiff GateHouse Media Massachusetts I, Inc.’s (“GateHouse”) Complaint as follows:

NATURE OF THE ACTION

1. Paragraph 1 of the Complaint is a narrative for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 1 of the Complaint.

2. Paragraph 2 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 2 of the Complaint.

3. Paragraph 3 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 3 of the Complaint.

4. Paragraph 4 of the Complaint states the remedy sought by Plaintiff for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 4 of the Complaint.

5. Paragraph 5 of the Complaint is a narrative for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 5 of the Complaint.

PARTIES

6. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Complaint, and therefore denies the same.

7. New York Times admits the first sentence of Paragraph 7 of the Complaint, and denies the remaining allegations contained in Paragraph 7 of the Complaint.

JURISDICTION AND VENUE

8. Paragraph 8 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 8 of the Complaint, to the extent they relate to the Copyright claims (Count I).

9. New York Times admits that personal jurisdiction exists over it in this District. Except as so admitted, New York Times denies the allegations of Paragraph 9 of the Complaint.

10. New York Times admits the allegations contained in Paragraph 10 of the Complaint.

11. Paragraph 11 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 11 of the Complaint.

FACTUAL ALLEGATIONS

12. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Complaint, and therefore denies the same.

13. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 of the Complaint, and therefore denies the same.

14. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the Complaint, and therefore denies the same.

15. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 of the Complaint, and therefore denies the same.

16. New York Times admits that when GateHouse launched *Wicked Local*, New York Times did not offer an online hyper-local news service in the Commonwealth of Massachusetts. New York Times denies the remaining allegations in Paragraph 16.

17. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 of the Complaint, and therefore denies the same.

18. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the Complaint, and therefore denies the same.

19. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Complaint, and therefore denies the same.

20. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint, and therefore denies the same.

21. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 of the Complaint, and therefore denies the same.

22. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 of the Complaint, and therefore denies the same.

23. New York Times denies the allegations of Paragraph 23 of the Complaint.

24. New York Times admits that on December 11, 2008, a press release was published by Boston.com, and refers to that press release for its complete and accurate content. Except as so admitted, New York Times denies the allegations of Paragraph 24 of the Complaint.

25. New York Times denies the allegations contained in Paragraph 25 of the Complaint.

26. New York Times denies the allegations in Paragraph 26 of the Complaint.

27. New York Times denies the allegations in Paragraph 27 of the Complaint.

28. Paragraph 28 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 28 of the Complaint.

29. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first and third sentences of Paragraph 29 of the Complaint, and therefore denies the same. New York Times denies the allegations set forth in the second sentence of Paragraph 29. The documents referenced in the third sentence of Paragraph 29 speak for themselves, and no further response is required.

30. New York Times denies the allegations contained in Paragraph 30 of the Complaint.

31. New York Times denies the allegations contained in Paragraph 31 of the Complaint.

32. New York Times denies the allegations contained in Paragraph 32 of the Complaint.

33. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 33 of the Complaint, and therefore denies the same.

34. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34 of the Complaint, and therefore denies the same.

35. Paragraph 35 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 35 of the Complaint.

36. New York Times admits that headlines and ledes, accompanied by source-identifying information, are displayed on the website. Except as so admitted, New York Times denies the allegations of Paragraph 36 of the Complaint.

37. New York Times admits that a user viewing the website can mouse click on the headline and is taken to the third party article or blog entry on the website of the third party. Except as so admitted, New York Times denies the allegations of Paragraph 37 of the Complaint.

38. New York Times denies the allegations contained in Paragraph 38 of the Complaint.

39. New York Times admits Plaintiff sent a cease and desist letter demanding removal of GateHouse material. Except as so admitted, New York Times denies the allegations of Paragraph 39 of the Complaint.

40. New York Times denies the allegations contained in Paragraph 40 of the Complaint.

41. New York Times admits that it replied to Plaintiff's cease and desist letter by letter dated November 26, 2008. Except as so admitted, New York Times denies the allegations of Paragraph 41 of the Complaint.

42. New York Times admits it received a letter from Plaintiff dated December 2, 2008, and had no further written communications with Plaintiff. Except as expressly admitted herein, New York Times denies the allegations contained in Paragraph 42 of the Complaint.

43. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 43 of the Complaint, and therefore denies the same.

44. New York Times denies the allegations contained in Paragraph 44 of the Complaint.

COUNT I
(For Direct Copyright Infringement, 17 U.S.C. 501, et seq.)

45. New York Times incorporates by reference its responses to Paragraphs 1-44 of the Complaint.

46. Paragraph 46 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 46 of the Complaint.

47. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 of the Complaint, and therefore denies the same.

48. Paragraph 48 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 48 of the Complaint.

49. New York Times denies the allegations contained in Paragraph 49 of the Complaint.

50. New York Times denies the allegations contained in Paragraph 50 of the Complaint.

51. New York Times denies the allegations contained in Paragraph 51 of the Complaint.

52. Paragraph 52 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 52 of the Complaint.

53. Paragraph 53 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 53 of the Complaint.

54. Paragraph 54 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 54 of the Complaint.

COUNT II
(Unfair Competition and False Designation of Origin, 15 U.S.C. 1125(a)(1))

55. New York Times incorporates by reference its responses to Paragraphs 1-54 of the Complaint.

56. Paragraph 56 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 56 of the Complaint.

57. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57 of the Complaint, and therefore denies the same.

58. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 58 of the Complaint, and therefore denies the same.

59. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 59 of the Complaint, and therefore denies the same.

60. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60 of the Complaint, and therefore denies the same.

61. New York Times denies the allegations contained in Paragraph 61 of the Complaint.

62. New York Times denies the allegations contained in Paragraph 62 of the Complaint.

63. New York Times denies the allegations contained in Paragraph 63 of the Complaint.

64. New York Times denies the allegations contained in Paragraph 64 of the Complaint.

65. Paragraph 65 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 65 of the Complaint.

66. New York Times denies the allegations contained in Paragraph 66 of the Complaint.

67. Paragraph 67 of the Complaint states a legal conclusion for which no answer is required. To the extent an answer is required, New York Times denies the allegations contained in Paragraph 67 of the Complaint.

68. Paragraph 68 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 68 of the Complaint.

69. Paragraph 69 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 69 of the Complaint.

70. Paragraph 70 of the Complaint states a legal conclusion for which no Answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 70 of the Complaint.

COUNT III
(False advertising, 15 U.S.C. 1125(a)(2))

71. New York Times incorporates by reference its responses to Paragraphs 1-70 of the Complaint.

72. Paragraph 72 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 72 of the Complaint.

73. New York Times denies the allegations contained in Paragraph 73 of the Complaint.

74. New York Times denies the allegations contained in Paragraph 74 of the Complaint.

75. New York Times denies the allegations contained in Paragraph 75 of the Complaint.

76. Paragraph 76 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 76 of the Complaint.

77. Paragraph 77 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 77 of the Complaint.

78. Paragraph 78 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 78 of the Complaint.

79. New York Times denies the allegations contained in Paragraph 79 of the Complaint.

80. Paragraph 80 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 80 of the Complaint.

81. Paragraph 81 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 81 of the Complaint.

COUNT IV
(Trademark dilution, 15 U.S.C. 1125(c))

82. New York Times incorporates by reference its responses to Paragraphs 1-81 of the Complaint.

83. Paragraph 83 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 83 of the Complaint.

84. Paragraph 84 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 84 of the Complaint.

85. New York Times denies the allegations contained in Paragraph 85 of the Complaint.

86. New York Times denies the allegations contained in Paragraph 86 of the Complaint.

87. New York Times denies the allegations contained in Paragraph 87 of the Complaint.

88. New York Times denies the allegations contained in Paragraph 88 of the Complaint.

89. Paragraph 89 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 89 of the Complaint.

90. Paragraph 90 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 90 of the Complaint.

91. Paragraph 91 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 91 of the Complaint.

COUNT V
(Unfair Business Practices, Mass. Gen. Laws, ch. 93A, § 11)

92. New York Times incorporates by reference its responses to Paragraphs 1-91 of the Complaint.

93. Paragraph 93 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 93 of the Complaint.

94. New York Times admits Paragraph 94.

95. Paragraph 95 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 95 of the Complaint.

96. New York Times denies the allegations contained in Paragraph 96 of the Complaint.

97. New York Times denies the allegations contained in Paragraph 97 of the Complaint.

98. Paragraph 98 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 98 of the Complaint.

99. Paragraph 99 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 99 of the Complaint.

100. Paragraph 100 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 100 of the Complaint.

Count VI
(Trademark Infringement, Mass. Gen. Laws, ch. 110H, § 13)

101. New York Times incorporates by reference its responses to Paragraphs 1-100 of the Complaint.

102. Paragraph 102 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 102 of the Complaint.

103. New York Times denies the allegations contained in Paragraph 103 of the Complaint.

104. Paragraph 104 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 104 of the Complaint.

105. Paragraph 105 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 105 of the Complaint.

COUNT VII
(Unfair competition)

106. New York Times incorporates by reference its responses to Paragraphs 1-105 of the Complaint.

107. New York Times denies the allegations contained in Paragraph 107 of the Complaint.

108. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 108 of the Complaint, and therefore denies the same.

109. Paragraph 109 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 109 of the Complaint.

110. New York Times denies the allegations contained in Paragraph 110 of the Complaint.

111. Paragraph 111 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 111 of the Complaint.

112. Paragraph 112 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 112 of the Complaint.

COUNT VIII
(Breach of Contract)

113. New York Times incorporates by reference its responses to Paragraphs 1-112 of the Complaint.

114. New York Times admits that a disclaimer is currently placed in the lower right-hand corner stating its “original content [is] available for noncommercial use under a Creative Commons license, except where noted” and that the graphic box to the right of the text currently links to a summary of the Creative Commons license. New York Times denies the remaining allegations of Paragraph 114 of the Complaint.

115. The allegations in Paragraph 115 state a legal conclusion to which no response is required. To the extent a response is required, New York Times denies the allegations of Paragraph 115 of the Complaint.

116. New York Times admits that users who view the summary referenced in Paragraph 115 of the Complaint may currently select a link to view the full license. Except as so admitted, New York Times denies the allegations contained in Paragraph 116 of the Complaint.

117. New York Times denies the allegations contained in Paragraph 117 of the Complaint.

118. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 118 of the Complaint, and therefore denies the same.

119. New York Times is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 119 of the Complaint, and therefore denies the same.

120. Paragraph 120 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations of Paragraph 120 of the Complaint.

121. Paragraph 121 of the Complaint states a legal conclusion for which no answer is required. To the extent that an answer is required, New York Times denies the allegations contained in Paragraph 121 of the Complaint.

AFFIRMATIVE DEFENSES

New York Times, for its affirmative defenses states as follows:

1. The Complaint fails to state any claims upon which relief can be granted.
2. Plaintiff's claims are barred by the doctrine of unclean hands.
3. Plaintiff's claims are barred by the doctrine of fair use.
4. Plaintiff's claims are barred by the doctrine of laches.
5. Plaintiff's unfair competition and business practices claims are preempted by federal law to the extent they are coextensive with Count I.
6. Plaintiff's claims are barred by the doctrine of acquiescence.
7. Plaintiff's claims are barred by the doctrine of estoppel.
8. Plaintiff's claims are barred by waiver.
9. Plaintiff's claims are barred due to an express or implied license.
10. Plaintiff's requested relief would constitute a prior restraint in violation of the First Amendment of the United States of America.
11. Plaintiff's claims are barred by the doctrine of copyright misuse.
12. New York Times reserves the right to assert additional affirmative defenses based upon further investigation and discovery.

COUNTERCLAIMS

Defendant and Counterclaim-Plaintiff The New York Times Company ("New York Times") and Counterclaim-Plaintiffs Globe Newspaper Company, Inc. and Boston Globe Electronic Publishing, Inc. (together, "The Boston Globe") bring these Counterclaims against

Counterclaim-Defendants GateHouse Media Massachusetts I, Inc. and GateHouse Media, Inc. (together, "GateHouse"). As set forth more fully below, GateHouse filed a Complaint, motion for temporary restraining order, and motion for preliminary injunction notwithstanding the fact that (1) GateHouse had already determined that the conduct complained of was lawful and (2) GateHouse itself has engaged and continues to engage in the same and substantially similar conduct, including verbatim copying of headlines and/or ledes¹ from New York Times and The Boston Globe. Despite having been put on express notice by New York Times that its claims are baseless, GateHouse continues to pursue its action and demand for immediate injunctive relief. Upon information and belief, GateHouse is engaged in an unlawful attempt to interfere with The Boston Globe's launch of its own local websites and obtain an unfair and improper competitive advantage.

In addition, given that GateHouse engages in the same and substantially similar conduct that it claims is unlawful and entitles it to monetary damages, to the extent GateHouse prevails, it should be liable on identical claims based on its own past and present third-party news aggregation and verbatim headline and lede linking practices. Specifically, as set forth below, GateHouse entities routinely copy headlines and/or ledes from New York Times and The Boston Globe without authorization and sometimes without attribution. If GateHouse's claims against New York Times have any merit, then its own conduct constitutes copyright and trademark infringement and unfair competition.

THE PARTIES

1. Upon information and belief, GateHouse Media Massachusetts I, Inc. is a Delaware corporation with its principal place of business in Fairport, New York. GateHouse Media

¹ For purposes of these counterclaims the Counterclaim-Plaintiffs adopt GateHouse's definition of the term "lede," which GateHouse defines as the first sentence of a newspaper article. *See* Compl. at ¶ 2.

Massachusetts I, Inc. is a wholly-owned subsidiary of GateHouse Media, Inc., a Delaware corporation with its principal place of business in Fairport, New York. GateHouse Media Massachusetts I, Inc. owns and operates the website *Wicked Local Newton*, located at <http://www.wickedlocal.com/newton>, among others. GateHouse Media Massachusetts I, Inc. is registered to do business in the Commonwealth of Massachusetts, and, upon information and belief, maintains a place of business in Needham, Massachusetts, among others.

2. Upon information and belief, GateHouse Media, Inc., is a Delaware corporation with its principal place of business in Fairport, New York. Upon information and belief, GateHouse Media, Inc., is owner of the website *The Batavian*, located at <http://www.thebatavian.com>, the website "Election 2008," located at http://elections.gatehousenewsservice.com/regional_election_news, the website *MyZeeland.com*, located at <http://www.myzeeland.com>, the website "Southwest Daily News," located at <http://www.sulphurdailynews.com>, and the website *Rockford Register Star*, located at <http://www.rrstar.com>, among others.

3. The New York Times Company is a New York corporation with its principal place of business in New York, New York. The New York Times Company owns and operates the daily newspaper *The New York Times* and its online counterpart located at <http://www.nytimes.com>.

4. Globe Newspaper Company, Inc., is a Massachusetts corporation with its principal place of business in Boston, Massachusetts. Globe Newspaper Company, Inc. owns and operates the daily newspaper *The Boston Globe*. Globe Newspaper Company, Inc. is a wholly owned subsidiary of The New York Times Company.

5. Boston Globe Electronic Publishing, Inc., is a Massachusetts corporation with its principal place of business in Boston, Massachusetts. Boston Globe Electronic Publishing, Inc. is a wholly owned subsidiary of Globe Newspaper Company, Inc. Boston Globe Electronic Publishing, Inc. owns and does business as the website Boston.com, located at <http://www.boston.com>.

JURISDICTION AND VENUE

6. The Court has exclusive subject matter jurisdiction over The Boston Globe and New York Times' claims against GateHouse under the Copyright Act, 17 U.S.C. § 501 *et seq.*, pursuant to 28 U.S.C. § 1338.

7. The Court has subject matter jurisdiction over The Boston Globe and New York Times' claims against GateHouse under 15 U.S.C. § 1125 pursuant to 28 U.S.C. § 1331.

8. The Court has supplemental jurisdiction over The Boston Globe and New York Times' claims against GateHouse under Mass. Gen. Laws ch. 93A pursuant to 28 U.S.C. § 1367(a) because this claim is so related to The Boston Globe and New York Times' claims under federal law that it forms the same case or controversy and derives from a common nucleus of operative facts.

9. Counterclaim-Defendant GateHouse Media Massachusetts I, Inc., is subject to the personal jurisdiction of this Court because, among other reasons, it maintains places of business in this District, regularly transacts business within the Commonwealth of Massachusetts, is registered to do business within this District, and has consented to the personal jurisdiction of this Court by initiating this action.

10. Counterclaim-Defendant GateHouse Media, Inc., is subject to the personal jurisdiction of this Court because, upon information and belief, it regularly transacts business

within the Commonwealth of Massachusetts. In addition, it maintains and operates at least one website that is accessible within the Commonwealth of Massachusetts and that, as is stated below, directly infringes The Boston Globe and New York Times' copyright and trademark rights, causing The Boston Globe and New York Times injury within the Commonwealth of Massachusetts.

11. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) because this is the judicial district where (i) a substantial part of the events or omissions giving rise to the claims occurred; and (ii) where GateHouse resides and/or conducts business.

FACTUAL ALLEGATIONS

Background

12. This case is about linking, the ubiquitous and fundamental online practice of connecting from one website to another.

13. Websites, such as those owned by The Boston Globe and GateHouse, provide links so that their users may traverse the Internet, obtaining content and information from a wide variety of sources in a quick and convenient manner.

14. The practice of linking to another content-provider's content on a website is the backbone of contemporary online news aggregation, and is a practice used by The Boston Globe, GateHouse, and numerous other popular online news outlets, such as Google and Yahoo!.

15. The question raised in this case is whether a party commits copyright and trademark infringement when it engages in the common and widespread practice of posting linked headlines and story identifying ledes on its website that are the original content of another.

Boston.com's Linking Activities

16. The Boston Globe owns and operates Boston.com, a website that provides news and information on a wide variety of subjects on the local, regional, and national level. Boston.com has been an active website since at least 1996, and since that time The Boston Globe has expended significant resources developing Boston.com into the preeminent news and information website for the Greater Boston and New England region.

17. For more than a decade, Boston.com has offered links to content from other local publishers on its website for the convenience of Boston.com users. Specifically, since 2006 Boston.com has offered a search tool called "Local Search." The tool regularly crawls webpages from various other local news sources chosen by editors and stores them in a database. The stored pages are indexed to allow Boston.com users to search for information within the sources. When a user conducts a search the results are displayed as a list of links. The links are the title of the original source; also included is a sentence or two of the original content, which permits the user to identify whether the result is responsive. In other words, the search results appear as they do in popular search engines like Google and Yahoo!.

18. In November 2008, Boston.com launched a trial or "Beta" version of a new Internet initiative at <http://www.boston.com/yourtown> ("Boston.com Your Town"). Boston.com Your Town is an effort by Boston.com to provide Internet users with a comprehensive online resource for aggregated news, events, weather, traffic, schools, businesses, and other information and happenings regarding individual cities and towns in and around the greater Boston area.

19. Boston.com intended the initial launch in November 2008 as a trial of the individual town website Your Town Newton, located at the website <http://www.boston.com/yourtown/newton>. ("Your Town Newton"). As part of a wider trial run,

Boston.com later launched <http://www.boston.com/yourtown/waltham> (“Your Town Waltham”) and <http://www.boston.com/yourtown/needham> (“Your Town Needham”) (together, the “Your Town Sites”).

20. Among numerous other resources and information (both original and third-party), the Your Town Sites include, as part of their content, links to third party news articles that concern the particular city or town. These links are identified by the headline and lede of the original article. For example, Your Town Newton includes a list of links to current news stories related to Newton, Massachusetts, identified by their headlines and ledes.

21. The links on the Your Town Sites are collected from various online news sources, including Boston.com and third-party online publications, including those owned and operated by GateHouse (such as the *Newton TAB* and *WickedLocal.com*). The GateHouse links on the Your Town Sites are sourced from the Boston Globe’s proprietary automated news aggregating software program (the “Aggregator”).

22. The Aggregator is designed to collect free and publicly available information from websites (including GateHouse and other third-party websites) by subscribing to those websites’ RSS (“Really Simple Syndication”) “feed.” An RSS feed is a file offered by websites (including GateHouse publication websites) for the specific purpose of allowing third-parties to link back to the original website. RSS files typically contain headlines and the entire body of news articles chosen by the offering website specifically for the purpose of linking. The Aggregator also collects data provided by a third-party search engine that produces results to pre-set searches compiled in a form similar to RSS.

23. Once the data are gathered in the Aggregator, a website news producer can select a news article and convert the original headline and lede into HTML code that links the user to the

original source and the complete article. During this process, the original content delivered to the Aggregator (other than the headline and lede) is deleted. Selected links are then posted on the relevant Your Town Site.

24. The headline and lede link is immediately followed by an attribution indicating the relevant newspaper or website as the original source and its date of publication. When clicked on by the user, the link's HTML code is implemented to automatically redirect the webpage from the Boston.com Your Town Site directly to the original source webpage and the entire original article.

25. There is nothing particularly new, novel, or innovative about this process. Indeed, and as described above, the process of aggregating news articles from multiple sources on the Internet and offering links to the original sources of each article in one place has been a fundamental component of the online experience for years.

GateHouse's Past and Present Linking Activities

26. GateHouse websites have engaged in and continue to engage in conduct that is substantially similar to, and in some cases indistinguishable from, The Boston Globe's conduct described above.

27. For example, GateHouse's website The Batavian, located at <http://www.thebatavian.com>, regularly and continuously aggregates and copies headlines as links to news articles created by news organizations neither owned by nor affiliated with GateHouse.

28. The "National Headlines" section of The Batavian includes numerous verbatim headline links to news articles published by a wide variety of news organizations, including New York Times. *See* Screenshot, Exhibit 1; *see generally* <http://www.thebatavian.com/tags/national-headlines>. The verbatim headline links are presented in the center of the page as the principal content and include no attribution of original source. *Id.*

29. Other sections of The Batavian, including “Nation and World,” “World Headlines,” and “Political Headlines,” include verbatim headline links to news articles published by a wide variety of news organizations, including The Boston Globe and New York Times. *See* Screenshots, Exhibit 2; *see generally* <http://www.thebatavian.com/nation-and-world>; <http://www.thebatavian.com/tags/political-headlines>; <http://www.thebatavian.com/tags/world-headlines>. The verbatim headline links are presented in the center of the page as the principal content and include no attribution of original source. *Id.*

30. Upon information and belief, GateHouse has regularly and continuously used The Boston Globe and New York Times headlines as links without attribution since the launch of GateHouse’s Batavian website in May 2008. Even after the filing of this litigation, GateHouse continues to use verbatim headlines from New York Times and The Boston Globe as links without authorization and without any attribution. None of these unattributed verbatim uses of headlines are specifically authorized by New York Times or The Boston Globe.

31. Another GateHouse website focused on political news, “Election 2008,” located at http://elections.gatehousenewsservice.com/regional_election_news, aggregated and copied third-party news headlines and ledes as links as recently as October 30, 2008. The third-party headline and lede links were still publicly available on the website as of January 4, 2009. As of the time of filing, the website appears to redirect to <http://www.gatehousenewsservice.com>.

32. Furthermore, upon information and belief, until November 12, 2008, GateHouse aggregated third party news links, including both headlines and ledes, from other news providers and regularly provided those links on WickedLocal.com in the form of search results. *See* Screenshots, Exhibit 3. Upon information and belief, until November 12, 2008, approximately

half of the news links displayed on GateHouse's website WickedLocal.com originated from Boston.com.

33. Upon information and belief, GateHouse and its predecessor began aggregating third party links for its local search function in 2006.

34. In addition to GateHouse's Batavian, Election 2008, and WickedLocal.com websites, documents produced in discovery show that other GateHouse websites engage in similar conduct. For example:

- a. GateHouse's website <http://www.sulphurdailynews.com>, a news website focused on the community of Sulphur, Louisiana, aggregated and used third-party news headlines and ledes verbatim as links as recently as September 2, 2008.
- b. GateHouse's website <http://www.myzeeland.com>, a news website focused on the community of Zeeland, Michigan, aggregated and used third-party news headlines and ledes verbatim as links as recently as January 8, 2009.
- c. GateHouse's website <http://www.rrstar.com>, a website focused on the community of Rockford, Illinois, aggregated and used third-party news headlines and ledes verbatim as links.

35. To date, it is unknown how many of GateHouse's numerous websites have aggregated links to third-party news stories in the past.

GateHouse's Documents Demonstrate GateHouse Does Not Believe in the Basis of its Suit

36. Upon information and belief, GateHouse's own executives believe the basic linking practices at issue here are not only unremarkable but perfectly permissible. Documents produced by GateHouse show that its executives consider the copying of headlines and ledes to be a fair use. Documents produced by GateHouse establish that prior to filing the instant litigation, senior

executives at GateHouse concluded internally and expressed to third-parties that the unauthorized use of its headlines and ledes by third-parties did not violate GateHouse's rights.

37. For example, in an email dated October 2, 2008, Howard Owens, GateHouse's Director of Digital Publishing and Publisher of The Batavian, wrote that a third party's copying and displaying of a "headline, a few [para]graphs and a link back to [GateHouse] isn't a Creative Commons issue, but a fair use issue, and they would probably win on that one." See Bates No. 00677, Exhibit 4.

38. In response to an inquiry from a GateHouse employee about the third-party's use of a GateHouse headline and lede on its website, Mr. Owens specifically instructed the employee to "compare what we do with [the Batavian]." See Bates No. 00677, Exhibit 4.

39. Even more recently, on November 10, 2008 Mr. Owens, in response to an email regarding the use of "headlines and links" by a different third party, wrote that "CC [Creative Commons] wouldn't really apply here . . . Fair use to grab headlines and links." See Bates No. 02065, Exhibit 5.

40. In addition, Anne Eisenmenger, GateHouse's Vice President of Audience Development, has affirmatively approved of the very actions GateHouse complains of in this litigation and has stated to a third-party website operator that GateHouse has no objection to the use of its headlines and ledes, provided GateHouse is attributed. In an email dated October 9, 2008, Ms. Eisenmenger wrote:

I am responsible for GateHouse Media's Wicked Local sites, which include Wicked Local Arlington. I would like to speak with you at your earliest convenience about Famboogle's use of copyrighted GateHouse content on your Arlington site.

We have no objection to Famboogle - or any other website - posting a headline and a line or two of text from a GateHouse story, so long as it is properly credited and links back to our site for the complete story. I can certainly foresee that, in the

future, we might want to do the same with Famboogle stories.

See Bates No. 00682, Exhibit 6 (emphasis added).

The Instant Lawsuit

41. On November 19, 2008, approximately one week after the initial launch of Your Town Newton, GateHouse media sent a Cease & Desist Letter to The Boston Globe, claiming that the display of headlines and ledes on Your Town Newton from GateHouse websites constituted copyright and trademark infringement.

42. On December 22, 2008, GateHouse filed a complaint against New York Times alleging Direct Copyright Infringement (Count I), Unfair Competition and False Designation of Origin (Count II), False Advertising (Count III), Trademark Dilution (Count IV), Unfair Business Practices (Count V), Trademark Infringement (Count VI), Unfair Competition (Count VII), and Breach of Contract (Count VIII). See Compl. (Docket Entry No. 1), filed December 22, 2008.

43. Concurrent with the filing of its Complaint, GateHouse filed a motion for a temporary restraining order and a preliminary injunction seeking to enjoin Boston.com from “reproducing, uploading, posting, displaying, or distributing [GateHouse’s] copyrighted content” and from “using [GateHouse’s] trade names ‘Newton TAB’ and/or ‘Newton TAB Blog’ and/or ‘Daily News Tribune’ and/or ‘Wicked Local’ in a manner that falsely states or implies that plaintiff has authorized, licensed or endorsed defendant, its Infringing Website and/or its complained of actions and/or which confuses the public as to the source or origin of the materials posted at <http://www.boston.com/yourtown/newton>.” See Complaint at Prayer for Relief (a). In support of its motion, GateHouse alleged that it has suffered and will continue to suffer irreparable harm as a result of Boston.com’s display of the headlines and ledes that originate at GateHouse’s website. See Mem. of Law in Support of GateHouse Media Massachusetts I, Inc.’s

Application for a Temporary Restraining Order and Preliminary Injunction (Docket Entry No. 3), filed December 22, 2008, at 4.

44. Upon information and belief, GateHouse is engaged in an unlawful effort to harass Counterclaim-Plaintiffs, thwart the launch of the Your Town Sites, and otherwise obtain an improper competitive advantage against Boston.com. Evidence of GateHouse's bad faith and improper purpose is found among its own regular business practices and its internal communications disclosed in discovery. For example, on November 20, 2008, Rick Daniels, then-Chief Operating Officer of GateHouse, wrote to GateHouse staff that "we have to . . . work like Hell to kill the Globe's Newton baby in the cradle. . ." *See* Bates No. 01404, Exhibit 7.

45. In addition, upon information and belief, GateHouse attempted, in bad faith, to obscure its prior conduct. One week prior to sending its Cease and Desist letter, GateHouse instructed its third-party news aggregator vendor, Planet Discover, to immediately "discontinue to aggregate outside news content," urging it to "kill it off asap". *See* Bates No. 000039, Exhibit 8. Kirk Davis, then-President of GateHouse, stated in his deposition in this action that the decision to "kill off" news aggregation was done in anticipation of filing this action. *See* Deposition of Kirk A. Davis, January 7, 2009, at 45:10-54:17, Exhibit 9.

46. Thus, until one week before it transmitted its Cease and Desist Letter, GateHouse regularly engaged in substantially the same conduct that it would later represent to this Court would cause it irreparable harm and entitled it to an immediate preliminary and permanent injunction.

47. As another example, Count VIII of the Complaint alleges a breach of contract on the grounds that Boston.com has breached the "Creative Commons" license through its use of materials posted on Wicked Local. GateHouse states this allegation despite the fact that its own

Director of Digital Publishing does not believe such use implicates its “Creative Commons” license. *See Exhibit 4, supra.*

48. What’s more, GateHouse did not disclose any of its widespread similar practices on The Batavian, Election 2008, WickedLocal.com, <http://www.sulphurdailynews.com>, <http://www.myzeeland.com>, or <http://www.rrstar.com> to the Defendant or the Court at the time of its motion for a temporary restraining order.

49. Instead, based upon the same or similar conduct in which GateHouse itself engages, GateHouse claimed that it was entitled to immediate injunctive relief, alleging that “Defendant is responsible for the reproduction, transmission, display and distribution of unauthorized versions of GateHouse’s publications on the Infringing Website to users across the United States and beyond,” *see* Compl. at ¶ 38, and that “Defendant’s . . . uses of plaintiff’s marks were willful, intentional predatory acts.” *See* Compl. at ¶ 96. GateHouse made these claims without disclosing that GateHouse regularly engages in the same conduct.

50. As set forth above, GateHouse has brought this lawsuit, and has attempted to invoke the equitable powers of this Court, to enjoin Boston.com from engaging in activities that:

- a. GateHouse itself engaged in with respect to Boston.com content until immediately prior to sending its cease and desist letter;
- b. GateHouse itself engages in – even today – with numerous of its websites;
- c. GateHouse executives have previously concluded are not objectionable; and
- d. GateHouse executives have affirmatively approved with respect to other third-party websites.

51. Upon information and belief, this lawsuit and demand for preliminary and permanent injunctive relief was brought for an improper and unlawful purpose and to obtain an

impermissible collateral competitive advantage over Boston.com. For example, upon learning of the upcoming launch of Boston.com's Your Town Newton, Greg Reibman, Editor-in-Chief of GateHouse's Metro Unit wrote to his colleagues that "[m]y suggestion would be for us to do all we can to make sure the Globe fails here before they roll this out to other communities." See Bates No. 00426, Exhibit 10.

52. Upon information and belief, GateHouse sought a temporary restraining order prior to discovery on the hope that this Court would issue an injunction prior to Defendant's discovery of the foregoing facts.

53. New York Times has informed GateHouse of these facts and its beliefs in writing and asked that GateHouse withdraw its baseless claims. GateHouse refused.

Counterclaim-Plaintiffs' Copyright and Trademark Rights

54. New York Times has registered its copyrights in works appearing in *The New York Times* through September of 2007, and has submitted applications for registration for the first half of 2008. In addition, applications have been submitted for the registration of certain individual articles through December of 2008. The following works are included within those registrations and applications for registration and, upon information and belief, the headline of each has been copied by GateHouse on its website <http://www.thebatavian.com>:²

SOURCE (DATE)	ARTICLE	AUTHOR	TAG
NY TIMES (12/10/2008)	"Carbon Dioxide (No S.U.V.'s) Detected on Distant Planet"	Kenneth Chang	nation and world
NY TIMES (11/30/2008)	"Deep Discounts Draw Shoppers, but Not Profits"	Stephanie Rosenbloom	nation and world

² The Counterclaim-Plaintiffs expect that discovery will identify additional headlines use by The Batavian and will seek leave to amend to add additional works if necessary.

NY TIMES (11/18/2008)	"France Arrests Basque Rebel Tied to Killings"	Victoria Burnett	nation and world
NY TIMES (11/18/2008)	"Clinton Vetting Includes Look at Mr. Clinton"	Peter Baker and Helene Cooper	nation and world
NY TIMES (11/16/2008)	"Across U.S., Big Rallies for Same-Sex Marriage"	Jesse McKinley	nation and world
NY TIMES (9/8/2008)	"Hurricane Ike Smashes West Through Caribbean"	Marc Lacey	World Headlines
NY TIMES (9/3/2008)	"In Japan, a Leadership Vacuum"	Martin Fackler	World Headlines
NY TIMES (9/1/2008)	"As Throngs of Protesters Hit Streets, Dozens Are Arrested After Clashes"	Patrick Healy and Colin Moynihan	National Headlines
NY TIMES (8/29/08)	"Choice of Palin Is a Bold Move by McCain, With Risks"	Peter Baker	Political Headlines
NY TIMES (8/29/08)	"Surge in Natural Gas Has Utah Driving Cheaply"	Clifford Krauss	National Headlines
NY TIMES (8/27/08)	"Clinton Rallies Her Troops to Fight for Obama"	Patrick Healy	Political Headlines
NY TIMES (8/27/08)	"For Obama, a Challenge to Clarify His Message"	Jackie Calmes	Political Headlines
NY TIMES (8/25/08)	"Communities Become Home Buyers to Fight Decay"	Vikas Bajaj	National Headlines
NY TIMES (8/25/08)	"War Veterans' Concussions Are Often Overlooked"	Lizette Alvarez	National Headlines
NY TIMES (8/24/08)	"Drilling Boom Revives Hopes for Natural Gas"	Clifford Krauss	National Headlines
NY TIMES (8/24/08)	"Holding Out, to Last Tiny Isle, as Cajun Land Sinks Into Gulf"	Susan Saulny	National Headlines
NY TIMES (8/24/08)	"Survivors in Georgia Tell of Ethnic Killings"	Sabrina Tavernise	World Headlines

NY TIMES (8/19/08)	Drug Makers' Push Leads to Cancer Vaccines' Rise	Elisabeth Rosenthal	National Headlines
NY TIMES (8/15/08)	No Cold War, but Big Chill Over Georgia	Steven Lee Meyers	National Headlines

55. New York Times is the exclusive owner of numerous versions and variations of the distinctive and famous federally registered mark THE NEW YORK TIMES for, among other goods and services, a “daily newspaper” and “providing a wide range of general interest news and information via a global computer network.” See U.S. Reg. Nos. 0227904 and 2120865, Exhibits 11 and 12. The goodwill connected with the use of, and symbolized by, THE NEW YORK TIMES Mark is an extremely valuable asset of New York Times.

56. The Boston Globe has registered its copyrights in works appearing in *The Boston Globe* and/or Boston.com for the first half of 2008, and has submitted applications for registration through October of 2008. The following works are included within those registrations and applications for registration and, upon information and belief, the headline of each has been copied by GateHouse on its website <http://www.thebatavian.com>:³

SOURCE (DATE)	ARTICLE	AUTHOR	TAG
BOSTON GLOBE (10/22/08)	“McCain, Palin pound away at Biden's crisis remark”	Globe Staff	nation and world
BOSTON GLOBE (9/26/08)	“Kennedy taken to hospital”	Milton Valencia and Stephen Smith	nation and world
BOSTON GLOBE (9/4/2008)	“Palin plunges into the fray”	Michael Kranish	Political Headlines
BOSTON GLOBE (8/2/08)	“Ex-wife accused Rockefeller of being fraud, sources say”	Maria Cramer	National Headlines

³ The Counterclaim-Plaintiffs expect that discovery will identify additional headlines use by The Batavian and will seek leave to amend to add additional works if necessary.

BOSTON GLOBE (7/21/08)	"Lightning leaves 4 in critical condition"	James Vaznis and Emma Brown	National Headlines
---------------------------	---	--------------------------------	-----------------------

57. The Boston Globe and its related entities are the exclusive owner of numerous versions and variations of the distinctive and famous federally registered mark THE BOSTON GLOBE, for a "daily newspaper." See U.S. Reg. Nos. 0199556 and 0721044, Exhibits 13 and 14. In addition, The Boston Globe and its related entities are the exclusive owner of the distinctive and famous federally registered mark BOSTON.COM, for the provision of online news and information services. See U.S. Reg. No. 2903204, Exhibit 15. As a result of these efforts, consumers identify the mark with The Boston Globe. The goodwill connected with the use of, and symbolized by, THE BOSTON GLOBE and BOSTON.COM Marks are extremely valuable assets of The Boston Globe.

COUNT I

(Claim for Costs and Attorneys' Fees)

(By The Boston Globe and New York Times against GateHouse)

58. The Boston Globe and New York Times reallege the allegations set forth in Paragraphs 1 through 57 of the Counterclaim as though fully set forth herein.

59. GateHouse's conduct in bringing this action without basis has caused and continues to cause harm to The Boston Globe and New York Times.

60. As stated in Paragraphs 45-54 of the Complaint, GateHouse has brought this action pursuant, in part, to 17 U.S.C. § 501, *et seq.*

61. GateHouse is therefore liable for New York Times and The Boston Globe's full costs and reasonably attorneys' fees as stated in 17 U.S.C. § 505.

62. As stated in Paragraphs 55-91 of the Complaint, GateHouse has also brought this action pursuant, in part, to 15 U.S.C. § 1125 (a), (c).

63. GateHouse's conduct in bringing this action without any basis in fact or law has caused and continues to cause harm to The Boston Globe and New York Times.

64. GateHouse's bad faith conduct makes this an "exceptional case" pursuant to 15 U.S.C. § 1117(a), and therefore The Boston Globe and New York Times are entitled to recovery of their reasonable attorneys' fees.

65. GateHouse is further subject to the Court's inherent power to award costs and attorneys' fees as it sees fit and just.

66. Given the egregious nature of GateHouse's aforementioned conduct, the Court should do so in this instance, and award The Boston Globe and New York Times its costs and attorneys' fees.

COUNT II

(Direct Copyright Infringement, 17 U.S.C. § 501, *et seq.*)
(By The Boston Globe and New York Times against GateHouse)

67. The Boston Globe and New York Times reallege the allegations set forth in Paragraphs 1 through 66 of the Counterclaim as though fully set forth herein.

68. The Boston Globe and New York Times' publications *The Boston Globe*, *The New York Times*, and their online editions contain material that is wholly copyrightable subject matter, alone or in combination, under the laws of the United States, and that material is owned by The Boston Globe and New York Times, which holds or will hold copyright interests therein pursuant to 17 U.S.C. § 404.

69. The Boston Globe and New York Times have valid and subsisting registrations and applications for registration for Certificates of Copyright Protection to The Boston Globe and New York Times for numerous articles appearing in *The Boston Globe*, *The New York Times*, and on Boston.com and NYTimes.com, as reflected in paragraphs 54 and 56 above.

70. GateHouse has mined each of these sources for the purpose of reproducing, distributing, displaying, and/or creating derivative works from, in whole or in part, The Boston Globe and New York Times' original content without permission, license or authority. Based on GateHouse's own assertions in Paragraph 48 of the Complaint, the conduct described above and committed by GateHouse violates the copyright laws of the United States and the rights of The Boston Globe and New York Times.

71. GateHouse had access to each issue of *The Boston Globe* and *The New York Times*, and their online counterparts, and GateHouse has uploaded content from those sources, in whole or in part, to GateHouse's websites, including WickedLocal.com and The Batavian, in a form identical to that in which they appear in or at the original source, and for the identical purpose.

72. According to GateHouse's legal theories, as articulated in Paragraph 50 of its Complaint, such conduct is willful and intentional infringement of The Boston Globe and New York Times' exclusive rights in the headlines and ledes under 17 U.S.C. § 106, in violation of 17 U.S.C. § 501.

COUNT III

(Unfair Competition, False Designation Of Origin, and False Advertising, 15 U.S.C. § 1125)
(By The Boston Globe and New York Times against GateHouse)

73. The Boston Globe and New York Times reallege the allegations set forth in Paragraphs 1 through 72 of the Counterclaim as though fully set forth herein.

74. As stated above, The Boston Globe, New York Times, and their related entities owns all rights in and to the marks THE BOSTON GLOBE, THE NEW YORK TIMES, and BOSTON.COM, each of which is either arbitrary, inherently distinctive or suggestive, and/or a mark in which The Boston Globe or New York Times has acquired a secondary meaning.

75. The respective marks have been used by The Boston Globe or New York Times continuously and extensively in commerce in the United States for several years, and, upon information and belief, have become synonymous with The Boston Globe and New York Times and the news content they provide as part of their core business models. The mark THE BOSTON GLOBE has been in continuous use in the Boston, Massachusetts area and nationally since at least 1872, and the mark THE NEW YORK TIMES has been in use in New York, New York and nationally since at least 1851. The mark BOSTON.COM has been in continuous use online since 1995.

76. The Boston Globe and New York Times have established extensive goodwill in the marks, which are uniquely associated with The Boston Globe and New York Times in the minds of the general public.

77. GateHouse has used the marks THE BOSTON GLOBE and BOSTON.COM in connection with its own services, including but not limited to WickedLocal.com and the *Newton TAB* Blog, all without authorization or license from The Boston Globe or New York Times.

78. In addition, GateHouse has used headlines of news stories created by New York Times and The Boston Globe, and has copied and displayed those headlines on its website The Batavian without any attribution to the actual source of the news story.

79. According to the legal theory and claim advanced by GateHouse in Paragraph 63 of the Complaint, GateHouse's conduct and uses of THE BOSTON GLOBE, THE NEW YORK TIMES, and BOSTON.COM marks and/or the articles associated therein, demonstrate an intent to deceive, and has deceived, consumers and advertisers to believe that the products and services offered by GateHouse on its websites, including WickedLocal.com and The Batavian, include The Boston Globe and New York Times' original content, and that the display of such original

content by GateHouse is authorized and licensed for use or otherwise approved by The Boston Globe or New York Times, which it is not.

80. According to the legal theory and claim advanced by GateHouse in Paragraph 64 of the Complaint, such uses of The Boston Globe and New York Times' marks are a direct and proximate cause of the public's likely confusion as to the origin and source of GateHouse's products and services, and/or is likely to lead the public to believe that GateHouse is licensed or otherwise authorized by The Boston Globe or New York Times to offer those products and services, including The Boston Globe and New York Times' original content.

81. According to the legal theory and claim advanced by GateHouse in Paragraph 65 of its Complaint, GateHouse's use of The Boston Globe and New York Times' marks constitutes willful and intentional trademark infringement and unfair competition.

COUNT IV

(Violation Of Mass. Gen. Laws ch. 93A)

(By The Boston Globe and New York Times against GateHouse)

82. The Boston Globe and New York Times reallege the allegations set forth in Paragraphs 1 through 81 of the Counterclaim as though fully set forth herein.

83. The parties are engaged in the conduct of trade or commerce within the meaning of Mass. Gen. Laws. ch. 93A, § 11. GateHouse's acts, conduct, and practices as described above occurred and are occurring primarily and substantially within the Commonwealth of Massachusetts.

84. The acts and practices described above constitute unfair and deceptive acts within the meaning of Mass. Gen. Laws. ch. 93A.

85. As set forth above, The Boston Globe and New York Times' marks are distinctive and/or have acquired a secondary meaning and therefore qualify for protection under the laws of the Commonwealth of Massachusetts.

86. According to the legal theories advanced by GateHouse in the Complaint, GateHouse's actions amount to willful, intentional, unfair and deceptive acts which began after each of The Boston Globe and New York Times' marks had become distinctive.

87. According to GateHouse's own legal theories, as articulated by GateHouse in the Complaint, GateHouse's actions and uses of The Boston Globe and New York Times' marks are likely to cause confusion as to the source of origin of the services and materials displayed and distributed on GateHouse's websites, including WickedLocal.com and The Batavian, among others. According to GateHouse's own legal theories, as articulated by GateHouse in the Complaint, GateHouse's actions also falsely suggest The Boston Globe or New York Times' endorsement or sponsorship of GateHouse's websites.

88. In addition, by bringing its lawsuit and seeking injunctive relief in bad faith and for an improper ulterior purpose, GateHouse has acted willfully, unfairly, and deceptively.

89. The Boston Globe and New York Times have been damaged, and continue to suffer damages, as a result of GateHouse's unfair and deceptive acts in an amount to be determined at trial.

WHEREFORE, Counterclaim-Plaintiffs respectfully request that this Court:

- A. Dismiss with prejudice the claims brought by GateHouse against Defendant;
- B. Award statutory and actual damages, in an amount to be determined at trial;
- C. Find that the claims alleged by Counterclaim-Plaintiffs render this an "exceptional case" for the purposes of awarding costs and fees under the Lanham Act, and include a finding

that Counterclaim-Plaintiffs are “prevailing parties” for the purposes of awarding costs and fees under the Copyright Act;

D. Award Counterclaim-Plaintiffs treble damages and costs, reasonable attorneys’ fees and expenses incurred in defending and bringing this action; and

E. Provide such other relief as the Court deems just and proper.

Dated: January 16, 2009

Respectfully submitted,

THE NEW YORK TIMES CO., GLOBE
NEWSPAPER COMPANY, INC., AND
BOSTON GLOBE ELECTRONIC
PUBLISHING, INC.,

By their attorneys,

R. David Hosp (BBO # 634091)
Mark S. Puzella (BBO # 644850)
GOODWIN PROCTER LLP
53 State Street
Boston, Massachusetts 02109
Tel.: 617.570.1000
Fax: 617.523.1231

and

Parker Bagley (*pro hac vice*)
Ira J. Levy (*pro hac vice*)
GOODWIN PROCTER LLP
The New York Times Building
620 Eighth Avenue
New York, New York 10018-1405
Tel.: 212.813.8800
Fax: 212.355.3333

CERTIFICATE OF SERVICE

I, R. David Hosp, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on January 16, 2009.

EXHIBIT 1

THE BATAVIAN

Online News, Community Views

Search this site

[Home](#) [Sports](#) [Business](#) [Announcements](#) [Tags](#) [Photos](#) [People](#) [Jobs](#) [Buy/Sell/Trade](#) [Housing](#)

User login

Username: *

Password: *

- [Create new account](#)
- [Request new password](#)

Our Towns

- [Alabama](#)
- [Alexander](#)
- [Attica](#)
- [Batavia](#)
- [Bergen](#)
- [Bethany](#)
- [Byron](#)
- [Darien](#)
- [Elba](#)
- [LeRoy](#)
- [Oakfield](#)
- [Pavillion](#)
- [Pembroke](#)
- [Stafford](#)

Who's new

- [former_batavian1](#)
- [narflouse](#)
- [Spitz1957](#)
- [dt](#)
- [sparky](#)

Recent comments

- [Actually, town residents...](#)
by [Charles Mallow](#)
- [My heart breaks every day...](#)
by [Laura Russell Roca](#)

National Headlines

- [Link: Global Stocks Rise on Fannie, Freddie Takeover; Treasuries Drop](#)
- [Link: Millions warily watch Hanna's trek toward U.S.](#)
- [Link: As Throngs of Protesters Hit Streets, Dozens Are Arrested After Clashes](#)
- [Link: Mastermind pleads guilty in body-parts scheme](#)
- [Link: Surge in Natural Gas Cars Has Utah Driving Cheaply](#)
- [Link: Fourth 'Idol' judge a straight-shooting hitmaker](#)
- [Link: Communities Become Home Buyers to Fight Decay](#)
- [Link: War Veterans' Concussions Are Often Overlooked](#)
- [Link: IRS loses battle over taxes](#)
- [Link: Gas prices nationally drop 15 cents in 2 weeks](#)
- [Link: Border fence design blasted as causing flooding](#)
- [Link: Drilling Boom Revives Hopes for Natural Gas](#)
- [Link: Holding Out, to Last Isle, as Gulf Takes Cajun Land](#)
- [Link: 'Absurd amounts of rain' as Florida is soaked for 5th day](#)
- [Link: Powder in letter to McCain not dangerous, police say](#)

1 2 3 4 5 6 7 next » last »



Anonymous Tips Welcome



Weather for Batavia, NY



Current Conditions:
Partly Cloudy, 15 F


Forecast:
Tue - Mostly Cloudy. High 30 Low: 27
Wed - Wintry Mix. High: 30 Low: 25

Full Forecast at Yahoo! Weather
(provided by The Weather Channel)


Regional Headlines


- [Gov. Paterson plans at least 4 upstate forums, including one in Rochester](#)
from Democrat & Chronicle
- [Group says New York's Legislature 'still broken,' provides suggestions](#)
from Democrat & Chronicle
- [Empire Games may be downsized](#)
from Buffalo News
- [City's charter review panel plans first session of 2008 tonight](#)
from The Daily News
- [80 Guardsmen return home](#)
from Buffalo News


 [https://
addons.mozilla.org/en...](https://addons.mozilla.org/en...)
by Chris Cline

 Chris: You nearly did!
Thanks...
by Philip Anselmo

 I _just_ posted an article
on...
by Chris Cline

 Lazario: I agree. Most...
by Philip Anselmo

 Laz, Did you call the Town
of...
by John Roach

 When It comes to coffee,
I...
by C. M. Barons

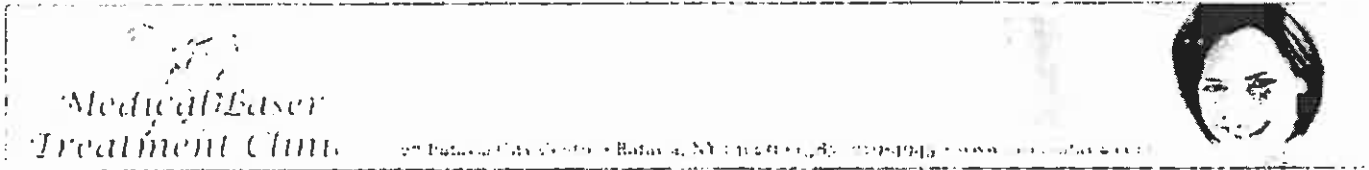
Featured Topics

- [Outdoors](#)
- [Recipes](#)
- [Music](#)
- [Agriculture](#)
- [Schools](#)
- [Health](#)

Copyright © 2008 GateHouse Media. Some Rights Reserved. [Privacy Policy](#) | [Terms of Service](#)
 Original content available for non-commercial use under a [Creative Commons license](#).
 GateHouse NY Network | [Batavia](#) | [Corning](#) | [Herkimer](#) | [Hornell](#) | [Little Falls](#) | [Penn Yan](#) | [Rochester](#) | [Wellsville](#) | [Utica](#)

Your browser either has JavaScript disabled, or does not support it.

EXHIBIT 2



Anonymous Tips Welcome

THE • BATAVIAN

Online News, Community Views

[Sports](#) [Business](#) [Announcements](#) [Forums](#) [Photos](#) [People](#) [Jobs](#) [Buy/Sell/Trade](#)

User login

Username: *

Password: *

[Create new account](#)

[Request new password](#)

nation and world

Bush under attack

Brian Hillobush

politics

I have been to hundreds of press conferences in my life and have never seen anything like this.

Our Towns

- Alabama
- Alexander
- Attica
- Batavia
- Bergen
- Bethany
- Byron
- Darien
- Elba
- LeRoy
- Oakfield
- Pavilion
- Pembroke
- Stafford

W
C
C
F
L
S
e



Who's new

ny15 candiceann
Beth Garlock Adama
NJSloan212

Recent comments

Used the FREE Wi-Fi at Hot ..

I might be able to see... No
problem
Bran' ..

Like Andrew Zimmerman Yes,

Thanks Chad, We really enjoy

I'm glad Chris posted. I've.

Thank you for your response....

no Dan not bitter at all, but...

Chris, that sounds great

Hiking -I chose snowshoeing ..

Featured Topics

- Outdoors
- Recipes
- Music
- Agriculture
- Schools
- Health



0:00 / 0:00

hilly Login or register to post comments

Link: Carbon Dioxide (No S.U.V.'s) Detected on Distant Planet

Login or register to post comments

Link: Senate recount: Pendulum swings to Franken

Login or register to post comments

Link: Pakistan Has Enough Mumbai Evidence to Act, Rice Says

[Login or register to post comments](#)

Link: Pakistan offers 'joint investigation' into Mumbai attacks

[Login or register to post comments](#)

Link: Dow hears recession, and cringes

[Login or register to post comments](#)

Link: Thai court find election fraud, bans ruling political party

[Login or register to post comments](#)

Link: Auto Executives Return to Congress to Plea for \$25 Billion in Loans

[Login or register to post comments](#)

Link: Deep Discounts Draw Shoppers, but Not Profits

[Login or register to post comments](#)

Link: World Falls for American

Media, Even as It Sours on America

[Login or register to post comments](#)

Link: Mumbai cemetery won't bury gunmen

[Login or register to post comments](#)

Link: Black Friday Sales Rose, But More Discounts Loom

[Login or register to post comments](#)

Link: Pakistan blames 'non-state actors' for attacks

[Login or register to post comments](#)

Link: Gas prices drop record amount

[Login or register to post comments](#)

Link: Police Review Video From Wal-Mart Death

[Login or register to post comments](#)

Copyright © 2008 GateHouse Media. Some Rights Reserved. [Privacy Policy](#) | [Terms of Service](#)

Original content available for non-commercial use under a [Creative Commons license](#).

GateHouse NY Network | [Batavia](#) | [Corning](#) | [Herkimer](#) | [Hornell](#) | [Little Falls](#) | [Penn Yan](#) | [Rochester](#) | [Wellsville](#) | [Uti](#)

THE BATAVIAN

Online News, Community Views

Search this site:

[Home](#) [Sports](#) [Business](#) [Announcements](#) [Tags](#) [Photos](#) [People](#) [Jobs](#) [Buy/Sell/Trade](#) [Housing](#)

User login

Username: *

Password: *

- [Create new account](#)
- [Request new password](#)

Our Towns

- Alabama
- Alexander
- Attica
- Batavia
- Bergen
- Bethany
- Byron
- Darien
- Elba
- LeRoy
- Oakfield
- Pavillion
- Pembroke
- Stafford

Who's new

- [former_batavian1](#)
- [narflouse](#)
- [Splitz1957](#)
- [dt](#)
- [sparky](#)

Recent comments

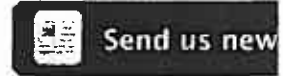
- [Actually, town residents...](#)
by [Charlie Mallow](#)
- [My heart breaks every day...](#)
by [Laura Russell Ricci](#)

World Headlines

- [Link: Hurricane Ike Smashes West Through Caribbean](#)
- [Link: Fresh India nuclear talks begin](#)
- [Link: Cheney supports NATO membership for Georgia](#)
- [Link: In Japan, a Leadership Vacuum](#)
- [Link: Millions Are Displaced by Floods in India](#)
- [Link: Tropical Storm Gustav dumps rain on Haiti](#)
- [Link: Mugabe 'to form government alone'](#)
- [Link: Hijacked plane passengers released](#)
- [Link: Parliament wants Russia to recognize independence of South Ossetia, Abkhazia](#)
- [Link: Pakistani stability hope fades with coalition split](#)
- [Link: Russia warns Moldova against "Georgian mistake"](#)
- [Link: US Military to Investigate Claims of Afghan Civilians Killed in Airstrike](#)
- [Link: Bhutto's Husband Emerges As A Favorable Candidate For Pakistan President](#)
- [Link: Bombings rock Pakistan ahead of elections](#)
- [Link: Russian troops ignore West to continue occupation](#)

1 2 3 4 5 next > last >

Anonymous Tips Welcome



Weather for Batavia, NY



Current Conditions:
Partly Cloudy, 15 F

Forecast:
Tue - Mostly Cloudy. High: 30 Low: 27
Wed - Wintry Mix. High: 33 Low: 25

Full Forecast at Yahoo! Weather
(provided by The Weather Channel)

Regional Headlines

- [Gov. Paterson plans at least 4 upstate forums, including one in Rochester](#)
from Democrat & Chronicle
- [Group says New York's Legislature 'still broken,' provides suggestions](#)
from Democrat & Chronicle
- [Empire Games may be downsized](#)
from Buffalo News
- [City's charter review panel plans first session of 2008 tonight](#)
from The Daily News
- [80 Guardsmen return home](#)
from Buffalo News

https://
addons.mozilla.org/en...
by Chris Qin

Chris: You nearly did!
Thanks...
by Philip Anselmo

I just posted an article
on...
by Chris Qin

Lazario: I agree. Most...
by Philip Anselmo

Laz, Did you call the Town
of...
by John Busch

When It comes to coffee,
I...
by C. M. Barnes

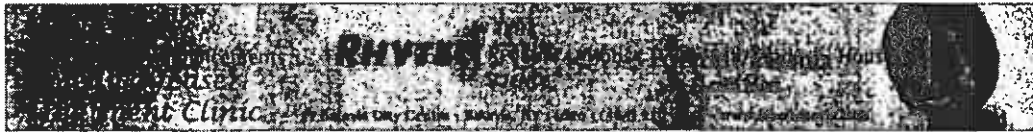
Featured Topics

- Outdoors
- Recipes
- Music
- Agriculture
- Schools
- Health

Copyright © 2008 GateHouse Media. Some Rights Reserved. Privacy Policy | Terms of Service
 Original content available for non-commercial use under a Creative Commons license.
 GateHouse NY Network | Batavia | Corning | Herkimer | Hornell | Little Falls | Penn Yan | Rochester | Wellsville | Utica

Your browser either has JavaScript disabled, or does not support it.

Home Sports



THE BATAVIAN

Online

Search this site:

User login

Username: *

Password: *



- Create new account
- Request new password

Our Towns

- Alabama
- Alexander
- Attica
- Batavia
- Bergen
- Bethany
- Byron
- Darlen
- Elba
- LeRoy
- Oakfield
- Pavillon
- Pembroke
- Stafford

Who's new

- former_batavian1
- narflouise
- Spitz1957
- dt
- sparky

Recent comments

Political Headlines

- [Link: Palin plunges into the fray](#)
- [Link: McCain fought money on teen pregnancy programs](#)
- [Link: Gustav prompts cancellation of speeches by Bush and Cheney at GOP convention](#)
- [Link: Choice of Palin Is Bold Move by McCain, With Risks](#)
- [Link: Clinton Delivers Emphatic Plea for Unity](#)
- [Link: For Obama, a Challenge to Clarify His Message](#)
- [Link: Kennedy Tugs at Hearts, as Obama's Wife Praises Values](#)
- [Link: Biden, with a proclivity to talk, is noted for his consensus-building and style](#)
- [Link: Democrats set stage for historic convention in Denver](#)
- [Link: Anxious Party Hopes to Show Strong Obama](#)
- [Link: Obama Chooses Biden as Running Mate](#)
- [Link: Suspense and 'Seven' On the Campaign Trail](#)
- [Link: Obama's Ads in Key States Go on Attack](#)
- [Link: The Lingering What-If Question: Clinton?](#)
- [Link: Obama Ready to Announce Running Mate This Week](#)

Anonymous Tips Welcome

Send us new



Weather for Batavia, NY



Current Conditions:
Partly Cloudy, 16 F

Forecast:
 Tue - Mostly Cloudy. High 30 Low: 27
 Wed - Wintry Mix. High: 30 Low: 25

[click for the Full Forecast \(provided by The Weather Channel\)](#)

Laz, Did you call the Town of...
by John Roach

1 2 3 next › last ›

When It comes to coffee, L...
by C. M. Barons

http://www.thebatavian.com/bl...
by Brian Hillabush

Wow, great story. Of course...
by Brian Hillabush

So far all I have heard is...
by Paul McCullough

Taking away the blotter would...
by Izzaro Lasko

What happened to the kitchen?...
by Izzaro Lasko

WE heavily debated this last...
by DOUGLAS MCCLURG

The Batavia Lions Club...
by Paul Spolts

Richard, the mere act of...
by Howard Owens

Featured Topics

- Outdoors
- Recipes
- Music
- Agriculture
- Schools
- Health

Microfinance Empowers

Join us in enabling the poorest of the poor to improve their own lives

Public Service Ads by Google

Help these most in need

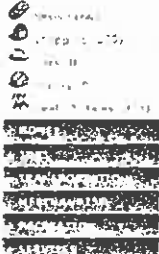
Eradicate extreme poverty & hunger Support Concern Worldwide

Public Service Ads by Google

Regional Headlines

- City's charter review panel plans first session of 2008 tonight
from The Daily News
- 80 Guardsmen return home
from Buffalo News
- Publisher surprised by grand demand for Letchworth book
from The Daily News
- Deer farm idea runs into big roadblock
from Buffalo News
- N.Y. seeks federal help for sewage systems
from Democrat & Chronicle

EXHIBIT 3



ALL NEWS REAL ESTATE JOBS CARS SHOPPING BUSINESSES

Search: Boston GO

Phillips Candy House
Since 1925, our family has handcrafted chocolates and confections in small batches.
www.bostonchocolates.com

NEWS RESULTS

- 1-10 of 164 results for Boston
- Company says it will open facility in South Boston**
Comcast Corp. replied this week to Boston Mayor Thomas M. Menino's complaint that the company had moved call center jobs to Waltham, in an apparent violation of its license with the city. Comcast said it plans to
[Boston Globe](#)
- Boston Teams**
CBS4 Boston | Jan 10, 2008
- WBZ TV - Breaking News, Weather and Sports for Boston...**
WBZ TV - Breaking News, Weather and Sports for Boston, Worcester and New Hampshire
[CBS4 Boston](#)
- Boston Globe - Business News**
[Boston Globe](#)
- Boston Globe - City/Region News**
[Boston Globe](#)
- Ex-officer blames steroids, police**
Former Boston police officer Robert "Kiko" Pulido says he was pumped full of steroids when he suggested to undercover agents in Atlantic City that he knew a good way to transport cocaine into Boston.
[Boston Globe](#)
- Patrick nominates J for Appeals Court**
Governor Deval Patrick has nominated a state court judge, an appellate lawyer, and a Boston firefighter to fill three vacancies on the state Appeals Court. The nominees are: Francis Fadden, a Worcester Superior Co...
[Boston Globe](#)
- Obama crushes McCain in Boston**
Barack Obama is having an easy time beating John McCain in Boston, with 34 percent of the votes counted, 72.5 percent cast ballots for Obama while McCain has picked up only 35.5 percent of the vote.
[Boston North Parkway Blog](#) | Nov 1, 2008
- Cape Wind developer pulls plans for oil powered plant**
After months of denunciation by many of the same environmentalists who have cheered his Cape wind project, Boston energy entrepreneur Jim Gordon abandoned his plan yesterday for an oil-fueled power plant in Chatham.
[Boston Globe](#)
- Advocates seek landmark status for Esplanade**
Worried about the state's on-again, off-again proposal to use Esplanade land for a temporary roadway, Boston residents and park advocates are asking the city to designate the Charles River waterfront a landmark.
[Boston Globe](#)

YARD SALES
CLICK HERE!

WICKED LOCAL DATING

Your .com

NIRLSON WOLPER
Bankruptcy & Real Estate
Providing superior legal services in Bankruptcy law, including Chapter 7, Chapter 13 and Chapter 11. Let us assist in getting you a fresh start.
www.44law.com

WICKED LOCAL
Wicked Local Advertising
Visit the Wicked Local Marketing Center to help you reach your target customers. Creating custom ads is easy as 1, 2, 3. Simply click here to begin! [Click to learn more!](#)

Home Town Stores
Over 110,000 products in over 40 warehouses you'll find that we have one of the widest selections of Ace Hardware & Universal Office Supplies.
[HomeTownStores.com](#)

Save 66% Clearance Sale
Coolmax Socks 6 for \$21 Retail \$60.27 years of Low Price & Top Quality.
[www.fyrbudgetshopping.com](#)

Bride Wanted!
Searching for a bride in need of wedding planning services willing to take a chance?
[www.yourwedding.com](#)

Wicked Local City's
...
[www.wickedlocal.com](#)

Ads by Google





ALL NEWS REAL ESTATE JOBS CARS SHOPPING BUSINESSES

Search: boston globe GO

1 challenge family treasure
Since 1997, our family has handcrafted chocolates and confections in small
batches.
www.bostonchocolate.com

NEWS RESULTS

1-10 of 139 results for Boston

Boston Globe Business News
Boston Globe

Boston Globe City/Region News
Boston Globe

Company says it will open facility in North Boston

Comcast Corp. replied this week to Boston Mayor Thomas M. Menino's complaint that the company had moved 549 center-line telephones, in an apparent violation of its license with the city. Comcast said it plans to
Boston Globe

Ex-wife of former Orlando police

Former Boston police officer Robert "Red" Pugh says he was out-of-control full of steroids when he suggested to undercover agents in Atlanta that he knew a good way to transport cocaine into Boston
Boston Globe

Bankruptcy court approves

Carl Frank, the bedouine investor who recently helped put budget idea for the city, has taken a stake in another major Cambridge District, Genzyme Corp.
Boston Globe

Wife's first new insurer is an old one

Peerless Insurance, which led a wave of insurers fleeing the state's heavily regulated market in the 1980s, said yesterday it plans to be the first new insurer to enter Massachusetts as the state's oldest auto
Boston Globe

Cape Wind developers push plans for oil-purified plant

After months of denunciation by many of the same environmentalists who have cheered his Cape Wind project, Boston energy entrepreneur Tom Gordon abandoned his plan yesterday for a so-called power plant in the sea
Boston Globe

Advocates seek landmark status for 150,400 sq ft

Worried about the state's on-again, off-again proposal to use Esplanade land for a temporary highway, Boston residents and park advocates are asking the city to designate it as Harbor Park waterfront landmark
Boston Globe

Ex-leaders of 11 unions must pay up

Former leaders of 11 unions must pay up, a federal judge ruled yesterday in a trial that will be a watershed in labor history. The judge's ruling says that three former leaders of a union
Boston based in
Boston Globe

Resignation from it just getting warmed up

Like their customers, Arby's Corp. executives John W. Maloney and David Eagle are wondering whether there will be any relief this heating season from escalating oil prices
Boston Globe



Bride Wanted!
Searching for a bride in need of wedding planning services willing to take a chance?
Visit your local Arby's



Bankruptcy & Real Estate
Providing superior legal services in Bankruptcy law including Chapter 7, Chapter 11 and Chapter 13. Let us assist in getting you a Fresh Start
www.kslaw.com

Home Town Stores

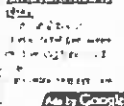
Over 110,000 products in over 40 warehouses you'll find that we have one of the widest selections of Ace Hardware & Groceries Office Supplies
HomeTownStores.com



Wicked Local Advertising
Use the Wicked Local Marketing Center to help you reach your target customers. Creating custom ads is easy as 1, 2, 3. Simply click here to Log in!
Go to learn more!

Save 66% Clearance Sale
- 60% off coats & fur for 100 Police and 27 years of Low Price & Top Quality
www.acehardware.com

1184 1184 1184



Ads by Google

0
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

YARD SALES
CLICK HERE!

WICKED LOCAL **DATING**

Your .com

© 2008 Wicked Local Media, Inc. Some Rights Reserved
Address: 21 South Street Boston, MA 02111
Phone: 781-552-0700 | Email: info@wickedlocal.com



WICKED LOCAL — SERVING 152 COMMUNITIES

Dictionary.com
http://dictionary.reference.com/

Log In Register To Participate

Subscribe to the paper About Us

I'm here all week folks ... Don't forget to top you wanted!

Posted on October 16, 2007 by Peter Chiara
Filed Under: [unclear]

Best of the week

Clarification: A story in yesterday's Nation pages about Mitt Romney mixing up Barack Obama and Osama bin Laden said that Fox News Channel president Roger Ailes had previously used the similarity between the names Obama and Osama to mock the senator. Fox News says Ailes was making a joke aimed at President Bush, not Obama, when Ailes said in a speech to broadcast employees in March "And it is true that Barack Obama is on the move. I don't know if it's true that President Bush called Musharraf and said, 'Why can't we catch this guy?'"

Saw what you will about the coverage, but you have to admit that it's rare for a clarification to have such killer material

Comments

Leave a Reply

Name (required)

Email Address (required)

Website

Towns & Newspapers
 Homes
 People
 Jobs
 Blogs
 Wheels
 Business Directory
 Shopping

JUST ANNOUNCED

2009 Nissan Altima

27.50 City Economy
27.50 Hwy Economy
27.50 City Hybrid
27.50 Hwy Hybrid

CLICK FOR DETAILS

SHIFT CONTINUES

- Top Links
- Classifieds
- Reader's Choice Awards
- Wicked Local Parents
- Travel New England - getAWAY
- Arts & Entertainment
- Wicked Local Contests

Search this blog

Search

Top Cars

- Rerun Connecticut
- Bolton 2008, a poem by Grand Jeffrey
- Like a bloodied warrior, laying
- I love the movie!!!!
- funny John according to public records you have a similar
- the fire department never said seeing his helmet was an

EXHIBIT 4

From: Howard Owens [mailto:howens@gatehousemedia.com]
Sent: Thursday, October 02, 2008 5:08 PM
To: Corblitt, Sarah
Cc: Eisenmenger, Anne
Subject: Re: Famboogle & social networking

I looked at the site and didn't see any of our content. Can specific examples be provided.

Also note that headline, a few graphs and a link back to our site isn't a Creative Commons issue, but a fair use issue, and they would probably win on that one.

Compare what we do with thebatavian.com.

I would like to review examples, however. The no credit thing could be an issue as a violation of Fair Use. The photo issue would probably fall within Creative Commons.

H.

On 10/2/08 4:53 PM, "Corblitt, Sarah" <scorblitt@wickedlocal.com> wrote:

Howard:

See the description below of how a famboogle site is using our content. Isn't this a violation of our Creative Commons license for non-commercial use?

Sarah

From: Laskowski, Nicole
Sent: Thursday, October 02, 2008 4:28 PM
To: Mahoney, Bryan; Corblitt, Sarah; Eisenmenger, Anne
Cc: Cordeiro, Kathy; Floyd, Jesse
Subject: Famboogle & social networking

Hi all,

Okay, so following up on our meeting about wickedlocal people from this afternoon, I set up an account with famboogle.com (a direct competitor with our social networking site that also offers this as a free service). I noticed a "news" tab, and when I clicked on it, I was greeted by headlines and images right from the Advocate's Web site. These weren't the only posts, but probably 3 out of every 5 posts came from our Web site. This not only includes sports stories, features, basic meeting coverage, but listings for community events

and things like local arts happenings that we receive from press releases.

To famboogle's credit, they are only reprinting a few grafs and then providing a link to our Web site for the full story

NOTE: The Arlington Advocate's name does not appear anywhere on this site. Original stories are not given a byline. Photos are not credited. I was never contacted and made aware that they would be doing this.

Also, it is my understanding that [REDACTED], a community journalist in Arlington who manages yourarlington.com, is tangentially involved with famboogle, but it's not clear to me how. Oddly enough, none of [REDACTED]'s original stories are posted on this site, only blurbs or press releases.

Here is a link to a basic description of famboogle: <http://www.yourarlington.com/joomla/content/view/1305/205/>
<BLOCKED::<http://www.yourarlington.com/joomla/content/view/1305/205/>> .

If you are interested in looking more closely at famboogle, please feel free to use the account information I've set up:

email: [REDACTED]@yahoo.com <BLOCKED::mailto:[REDACTED]>

password: [REDACTED]

Thanks,

Nicole

The preceding e-mail message (including any attachments) contains information that may be confidential, may be protected by the attorney-client or other applicable privileges, or may constitute non-public information. It is intended to be conveyed only to the designated recipient(s) named above. If you are not an intended recipient of this message, please notify the sender by replying to this message and then delete all copies of it from your computer system. Any use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

Howard Owens
Director of Digital Publishing
Gatehouse Media, Inc.
www.gatehousemedia.com
howens@gatehousemedia.com
office: 585-598-0052
mobile: 585-260-6970
AIM: hbo3

GMI-Z1-00678

CONFIDENTIAL

The preceding e-mail message (including any attachments) contains information that may be confidential, may be protected by the attorney-client or other applicable privileges, or may constitute non-public information. It is intended to be conveyed only to the designated recipient(s) named above. If you are not an intended recipient of this message, please notify the sender by replying to this message and then delete all copies of it from your computer system. Any use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

EXHIBIT 5

----- Forwarded Message

From: Howard Owens <howens@gatehousemedia.com>
Date: Mon, 10 Nov 2008 13:49:56 -0500
To: Blevins Bill <bblevins@exch.gatehousemedia.com>
Conversation: Boston.com Newton Hyperlocal Website Launch November 14th
Subject: Re: Boston.com Newton Hyperlocal Website Launch November 14th

Well, I've been waiting for Anne to be available for a phone call ... Maybe with Kirk.

CC wouldn't really apply here anyway -- it's more like the issue with Topix.

Fair use to grab headlines and links.

I'd be inclined to call Bob Kempf first, but I don't want to get out in front of Anne or Kirk.

H.

On 11/10/08 1:48 PM, "Blevins Bill" <bblevins@exch.gatehousemedia.com>
wrote:

> why not call and tell Kathleen that creative commons doesn't allow
> content to be used on commercial sites.

>

> /b

>

> --

>

>

> On Nov 10, 2008, at 1:47 PM, Howard Owens wrote:

>

>>>>> Kathleen Skerry
>>>>> Senior Marketing Manager | Boston.com
>>>>> kskerry@boston.com
>>>>> (o) 617-929-8464
>>>>> (c) 781-504-1636

>

Howard Owens
Director of Digital Publishing
Gatehouse Media, Inc.

CONFIDENTIAL

GMI-Z1-02065

www.gatehousemedia.com
howens@gatehousemedia.com
office: 585-598-0052
mobile: 585-260-6970
AIM: hbo3

----- End of Forwarded Message

CONFIDENTIAL

EXHIBIT 6

From: alexander.jones@famoogle.com [mailto:alexander.jones@famoogle.com]
Sent: Friday, October 10, 2008 8:21 AM
To: Eisenmenger, Anne
Subject: RE: GateHouse content on Famoogle

Hello Anne:

Thanks for your email. I will try to reach out to you today (Friday) in the afternoon, or on Monday.

Best regards

Alex
Master Famoogle

From: Eisenmenger, Anne [mailto:aelsenmenger@wickedlocal.com]
Sent: Thursday, October 09, 2008 1:51 PM
To: arlington@famoogle.com
Subject: GateHouse content on Famoogle

Mr. ~~xxxx~~ (or the most appropriate other Famoogle),

I am responsible for GateHouse Media's Wicked Local sites, which include Wicked Local Arlington. I would like to speak with you at your earliest convenience about Famoogle's use of copyrighted GateHouse content on your Arlington site.

We have no objection to Famoogle – or any other website – posting a headline and a line or two of text from a GateHouse story, so long as it is properly credited and links back to our site for the complete story. I can certainly foresee that, in the future, we might want to do the same with Famoogle stories.

Further explanation seems best left to conversation. I can be reached at the below numbers. Or, if you provide me with a number and time to call, I can call you.

Many thanks,
Anne

Anne Eisenmenger
Vice President of Audience Development
GateHouse Media New England
781-433-6750 (office)
617-855-6257 (cell)

The preceding e-mail message (including any attachments) contains information that may be confidential, may be protected by the attorney-client or other applicable privileges, or may constitute non-public information. It is intended to be conveyed only to the designated recipient(s) named above. If you are not an intended recipient of this message, please notify the sender by replying to this message and then delete all copies of it from your computer system. Any use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

The preceding e-mail message (including any attachments) contains information that may be confidential, may be protected by the attorney-client or other applicable privileges, or may constitute non-public information. It is intended to be conveyed only to the designated recipient(s) named above. If you are not an intended recipient of this message, please notify the sender by replying to this message and then delete all copies of it from your computer system. Any use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

EXHIBIT 7

From: Lorenzen, Robin
Sent: Thursday, November 20, 2008 9:46 AM
To: Davis, Kirk; Daniels, Rick; Reibman, Greg
Subject: Re: WGBH talking points

All good points. I'm not sure I would necessarily mention Walmart by name, but refer to those "Big Box Retailers". Not a huge deal either way. I like reinforcing the Globe's regional perspective. I think I'd also talk about the fact that the Globe clearly sees the original Newton news we generate as quality and relevant since our stories are typically their leads. So why go there, when you can get it first at WLNewton.com.

Robin Lorenzen
GateHouseMedia New England
Vice President Marketing & Promotions
Publisher Specialty Products
254 Second Ave.
Needham, MA 02494
508-626-4331
rlorenzen@cnc.com

From: "Davis, Kirk" <kdavis@gatehousemediacnc.com>
Date: Thu, 20 Nov 2008 09:27:59 -0500
To: "Daniels, Rick" <rdaniels@gatehousemediacnc.com>, "Reibman, Greg" <greibman@cnc.com>, "Lorenzen, Robin" <rlorenzen@cnc.com>
Conversation: WGBH talking points
Subject: RE: WGBH talking points

I like these points very much.
You have plenty to work with.

Just remember, talk about our wonderful employees (and they are). Talk about our investment in training, tools, cameras, video --all representative of our commitment to covering our communities best we can.

I think it's ok to say, if pressed, that indeed everybody seems to be asking us how we feel about The Globe leveraging our content to this extent. I'd probably say, well, personally, "thankful" doesn't quite seem appropriate.

Kirk

From: Daniels, Rick
Sent: Thursday, November 20, 2008 9:14 AM
To: Reibman, Greg; Davis, Kirk; Lorenzen, Robin
Subject: RE: WGBH talking points

Greg,

I, myself, would try to pepper these points in around a theme that would talk more about our long-standing, deep and intimate relationship with the people, businesses and institutions of Newton. I think Newton can be accurately portrayed as having a well-functioning and high level of civic engagement and community pride, and through the TAB and WLNewton, we have been the honest broker where a lot of that engagement is played out. You are 100% correct that a journalistic enterprise that's predicated upon parroting the original reporting of others is deeply flawed, but I also think we (you, actually) can portray a confidence that the people of Newton are wise and know the difference between "their" newspaper / website, based on 30 years of publication, and who-knows-how-many thousands upon thousands of stories written, pictures taken, letters published, etc. I would also not be afraid to give the Globe a bit of credit for what they are: One of the best regional Metro newspapers in the country. The Globe itself has a lot of "brand equity" in Newton (and towns like it), and while we can and should sting them for this kind of cheap and dirty pool they are playing in Newton with our content, I do think that reinforcing the position they have, and probably will have until they fold - a solid REGIONAL newspaper - is no skin off our teeth. In fact, a well-worn concept in marketing is that the best brands "own" a word or short phrase, we want to own "local news" when people in Newton and other towns think about the name "TAB". Conversely, if the Globe "owns" regional news, it reinforces the position that we don't mind having as long as it's not "local".

If they have something ORIGINAL, and high-quality to add to the Newton news "stew", it's a good development, and I think we can say it (even if we absolutely HATE it). The worst way for us to potentially act (in my opinion) is "scared", and if ANY of us gets too strident, I think that might be mistaken for fear. We have to both act like the local market leader, AND work like Hell to kill the Globe's Newton baby in the cradle, but that's a deed that is better off done by our actions vs. our words.

Again, part of what works is the words being your own and seems as totally heart-felt. If you want to use any of these thoughts - great. If they don't feel natural to you, don't.

Rick

From: Reibman, Greg
Sent: Wednesday, November 19, 2008 11:09 PM
To: Davis, Kirk; Daniels, Rick; Lorenzen, Robin
Subject: WGBH talking points

Kirk, Rick and Robin:

Here's the talking points I hope to hit during my interview tomorrow afternoon with WGBH's Greater Boston.

Any suggestions? Too strong?....

I'm a fan of the good old days when news rooms competed with each other by out-hustling each other for the best stories, not by sitting in an office in Dorchester and hyper-linking to your competitor's hard work.

The bottom line is this is very bad for journalism. On any given day, the Globe is linking to maybe 10 of our Newton stories. If they expand to 100 of the communities we serve, suddenly they could be lifting 1,000 stories a day from our reporters. That's not good for the future of journalism.

The Globe is like Wal-Mart. One day they came along and decided to open a department called "Newton." But we're more like this famous store in Newton called the Shoe Barn. For decades, everybody has been buying their shoes and their kids shoes at the Barn. And for decades those same people have been getting their news from the Newton TAB.

The Globe has failed covering Newton for years. Their Globe West section has been an embarrassment. So now they've just decided to outsource jobs to India and lift our hard work instead of doing their own reporting.

Greg Reibman
Editor in Chief, Metro Unit
GateHouse Media New England
781-433-8345
greibman@gmc.com



<http://www.ahmne.com>



<http://www.wickedlocal.com>

The preceding e-mail message (including any attachments) contains information that may be confidential, may be protected by the attorney-client or other applicable privileges, or may constitute non-public information. It is intended to be conveyed only to the designated recipient(s) named above. If you are not an intended recipient of this message, please notify the sender by replying to this message and then delete all copies of it from your computer system. Any use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

EXHIBIT 8

From: Shubow, Jonathan [jshubow@wickedlocal.com]
Sent: Thursday, November 13, 2008 5:26 PM
To: ██████████
Cc: Eck, Christopher
Subject: RE:
Follow Up Flag: Follow up
Flag Status: Flagged

Please remove the ones in YELLOW.

Thanks.

Jonathan M. Shubow
Interactive Operations Manager
GateHouse Media New England
254 Second Avenue
Needham, MA 02494

781-433-6765 O
 339-225-0646 C
 781-433-7835 F

JShubow@WickedLocal.com E

www.GHMNE.com W
www.WickedLocal.com W

From: John C. Daniel [mailto:jdaniel@planetdiscover.com]
Sent: Wednesday, November 12, 2008 6:11 PM
To: Eck, Christopher; Shubow, Jonathan
Subject: RE:

News Source	Records
ASSOCIATED PRESS -- MASSACHUSETTS	6
BOSTON HERALD	0
BOSTON.COM	151
CAPE COD TIMES	35
CBS4 - BOSTON	3
DUXBURY REPORTER	0
OLD COLONY MEMORIAL	0
PATRIOT LEDGER & BROCKTON ENTERPRISE	0
(See	
PROJO.COM	18
THE BOSTON CHANNEL	0
TownOnline Blogs: Brookline Blog	10
TownOnline Blogs: Cambridge Blog	10
TownOnline Blogs: Newton Blog	12
TownOnline Blogs: Parkway Blog	12
TownOnline Blogs: Somerville Blog	10
TownOnline Blogs: Somerville Mayor	10
TownOnline Blogs: Watertown Blog	15
TownOnline Blogs: Your Child's Health	10
TownOnline Blogs: Your Town Tonight	0

GMI-Z1-000038

12/26/2008

CONFIDENTIAL

TownOnline News	0
WAREHAM COURIER	0

Sincerely,

[Redacted]
Client Service Manager
[Redacted]@planetdiscover.com | (859) 392-[Redacted]

PLANET DISCOVER
2171 Chamber Center Dr. | Fort Mitchell, KY 41017
www.planetdiscover.com

From: Eck, Christopher [mailto:ceck@wickedlocal.com]
Sent: Wednesday, November 12, 2008 4:57 PM
To: [Redacted], Shubow, Jonathan
Subject: RE:

Please provide us a list of what you are aggregating. I want all outside news sources off.

From: [Redacted] [mailto:[Redacted]@planetdiscover.com]
Sent: Wednesday, November 12, 2008 2:09 PM
To: Shubow, Jonathan
Cc: Eck, Christopher
Subject: RE:

Please provide me a list of exactly which feeds you want me to turn off.

Sincerely,

[Redacted]
Client Service Manager
[Redacted]@planetdiscover.com | (859) 392-[Redacted]

PLANET DISCOVER
2171 Chamber Center Dr. | Fort Mitchell, KY 41017
www.planetdiscover.com

From: Shubow, Jonathan [mailto:jshubow@wickedlocal.com]
Sent: Wednesday, November 12, 2008 1:01 PM
To: [Redacted]
Cc: Eck, Christopher
Subject:

[Redacted]

Can you please discontinue to aggregate outside news content for us and kill it off asap??

Thanks

Jonathan M. Shubow
Interactive Operations Manager
GateHouse Media New England
254 Second Avenue

GMI-Z1-000039

12/26/2008

CONFIDENTIAL

Needham, MA 02494

781-433-6765 O
339-225-0646 C
781-433-7835 F

JShubert@WickedLocal.com E

www.GHMNE.com W
www.WickedLocal.com W

The preceding e-mail message (including any attachments) contains information that may be confidential, may be protected by the attorney-client or other applicable privileges, or may constitute non-public information. It is intended to be conveyed only to the designated recipient(s) named above. If you are not an intended recipient of this message, please notify the sender by replying to this message and then delete all copies of it from your computer system. Any use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

The preceding e-mail message (including any attachments) contains information that may be confidential, may be protected by the attorney-client or other applicable privileges, or may constitute non-public information. It is intended to be conveyed only to the designated recipient(s) named above. If you are not an intended recipient of this message, please notify the sender by replying to this message and then delete all copies of it from your computer system. Any use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

GMI-Z1-000040

12/26/2008

CONFIDENTIAL

EXHIBIT 9

Volume 1, Pages 1-168, Exhibits: 1-21

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

GATEHOUSE MEDIA MASSACHUSETTS I,
INC., d/b/a GATEHOUSE MEDIA
NEW ENGLAND,

Plaintiff,

vs. C.A. No. 1:08-cv-12114-WGY
THE NEW YORK TIMES CO., d/b/a
BOSTON.COM,

Defendant.

C O N F I D E N T I A L

(Includes Portions Marked Attorneys' Eyes Only)

VIDEOTAPED DEPOSITION OF KIRK A. DAVIS

Wednesday, January 7, 2009, 9:44 a.m.

Goodwin Procter LLP

53 State Street - 17th Floor

Boston, Massachusetts

-----Reporter: Alan H. Brock, RDR, CRR-----
abrock@fabreporters.com www.fabreporters.com

Farmer Arsenault Brock LLC

50 Congress Street, Suite 415

Boston, Massachusetts 02109

617.728.4404 fax 617.728.4403

Kirk A. Davis - Vol. I - January 7, 2009
CONFIDENTIAL - ATTORNEY'S EYES ONLY

12 (Pages 42 to 45)

42	44
<p>1 he suggests that you do all you can to make sure 2 that the Globe fails: What -- what has been done, 3 to your knowledge, to make sure the Globe fails? 4 MR. EVANS: Form. 5 A. It's a very broad question. 6 Q. Let me narrow it. Would you agree that the 7 filing of this lawsuit was one action taken to make 8 sure the Globe fails in Newton? 9 MR. EVANS: Form. 10 A. I think the filing of the lawsuit, from my 11 perspective, is to protect our interests. I don't 12 begrudge the Globe, you know, the opportunity to 13 compete, and they are a dominant force. 14 Q. What were the interests you were trying to 15 protect through the filing of this lawsuit? 16 A. They include our copyright, trademark, and 17 the nature of the competition, which we allege is 18 unfair -- among possibly other things, but.... 19 Q. When you just mentioned possibly other 20 things, what did you have in mind? 21 A. Well, you know, I'm not a lawyer, and there 22 are a lot of technical definitions to characterize 23 these different concerns. 24 Q. Through the lawsuit you filed, are you</p>	<p>1 meant, and I think when you talk about aggregation 2 or "full-fledged," those are things that, you know, 3 he would have to interpret exactly what he meant. 4 Q. Does -- or do the Wicked Local websites 5 aggregate news from other sources? 6 MR. EVANS: Form. 7 A. What exactly do you mean by "aggregate"? 8 Q. Do they link to news stories on other 9 websites? 10 A. Yes. 11 Q. And has the practice of linking to other 12 websites' news stories changed at all within the 13 last few months? 14 MR. EVANS: Form. 15 A. I guess you have to understand, we have 16 approximately 400 different -- 450 different people 17 that work in our news organization in Massachusetts, 18 and clearly, in any given time, given the level of 19 experience, you could find an editor in one region 20 that might do something and an editor in another 21 region do something different. There isn't, to my 22 knowledge, an overarching opposition to linking to 23 other content. It's about how it's done. 24 Q. And with respect to how the linking is</p>
43	45
<p>1 attempting in any way to protect your business model 2 that you execute through the Wicked Local websites? 3 MR. EVANS: Objection to form. 4 A. I'm trying to protect our company. 5 Q. I understand that. Do you understand what 6 I mean by "business model"? 7 A. No, not specifically. There are a lot of 8 facets to our business model. 9 Q. Again with reference to the first page of 10 Exhibit 3: Mr. Reibman says he just spoke with 11 someone who attended a rollout meeting in Newton 12 with the Globe last week, and then referring below 13 to the invitation, it's addressed to a Mr. ██████████. 14 Do you know who this Mr. ██████████ is that apparently 15 is the person that Mr. Reibman spoke to? 16 A. No. 17 Q. Mr. ██████████ apparently said to Mr. Reibman, 18 if you look at the third paragraph, quote, "He said 19 the site will be a full-fledged aggregator of all 20 things Newton. They admitted they'd be using 21 material from Wicked Local Newton and the TAB blog 22 heavily." Do you know what Mr. Reibman meant by 23 "full-fledged aggregator"? 24 A. No, I don't know specifically what he</p>	<p>1 done, are you aware of any changes in GateHouse 2 Media New England's practices or policies in that 3 regard within the last three months? 4 MR. EVANS: Form. 5 A. In linking? 6 Q. Yes. 7 A. I think it's the kind of thing where 8 there's an ongoing dialogue between the editors on 9 linking and linking practices. 10 MR. BAGLEY: Let's mark as Exhibit 4 a 11 document bearing plaintiff's production numbers 38 12 through 40. 13 (Exhibit 4, GMI-S1-000038 through 14 000040, marked for identification.) 15 Q. I show you what's been marked as Exhibit 4. 16 I ask if you could review that. 17 THE WITNESS: Start from the back or.... 18 MR. EVANS: However you need to do it. 19 A. Okay. 20 Q. Now, I realize you're not copied on the 21 emails set forth in Exhibit 4, but have you 22 previously seen this exchange? 23 A. I was consulted or remember the dialogue 24 about Planet Discover.</p>

Kirk A. Davis - Vol. I - January 7, 2009

CONFIDENTIAL - ATTORNEY'S EYES ONLY

13 (Pages 46 to 49)

46	<p>1 Q. And what do you recall about that dialogue?</p> <p>2 A. That they wanted to disable the</p> <p>3 application.</p> <p>4 Q. And when you say "they," who are you</p> <p>5 referring to?</p> <p>6 A. Our online management team.</p> <p>7 Q. Mr. Eck, Mr. Shubow?</p> <p>8 A. Yes, certainly Chris Eck. I don't recall</p> <p>9 talking to John Shubow.</p> <p>10 Q. Does Mr. Shubow report to Mr. Eck?</p> <p>11 A. No.</p> <p>12 Q. It identifies Mr. Shubow as Interactive</p> <p>13 operations manager out of Needham. Is he in</p> <p>14 Mr. Eck's department? Or could you describe his job</p> <p>15 function?</p> <p>16 A. I couldn't describe his job function, but</p> <p>17 he works for Anne Eisenmenger.</p> <p>18 Q. I don't see Ms. Eisenmenger copied on any</p> <p>19 of these emails, either. Do you know why in this</p> <p>20 instance the communications were between and among</p> <p>21 Mr. Eck and Mr. Shubow?</p> <p>22 A. No.</p> <p>23 Q. Going back to your recollection of the</p> <p>24 dialogue on this subject matter: What do you recall</p>	48	<p>1 In a competitive business model to pursue our</p> <p>2 advertisers and our readers in a specific town. I</p> <p>3 mean, that's the nature of the concern with what</p> <p>4 boston.com's doing. This is a search function.</p> <p>5 Q. Well, let's look at the first email, the</p> <p>6 next-to-last page of this exhibit, at the bottom,</p> <p>7 from Mr. Shubow to [REDACTED], cc'ing Mr. Eck. And</p> <p>8 [REDACTED] is an employee at Planet Discover;</p> <p>9 correct?</p> <p>10 A. I assume so.</p> <p>11 MR. EVANS: Don't assume.</p> <p>12 THE WITNESS: Okay.</p> <p>13 Q. Understood, you weren't involved in this.</p> <p>14 But the email above the first email from Mr. Shubow</p> <p>15 is back from [REDACTED]. It says [REDACTED] at</p> <p>16 planetdiscover.com. This exchange took place on</p> <p>17 Wednesday, November 12th. And the first email from</p> <p>18 Mr. Shubow says, "Can you please discontinue to</p> <p>19 aggregate outside news content for us and kill it</p> <p>20 off ASAP?" Do you see that?</p> <p>21 A. Yeah.</p> <p>22 Q. So that makes no reference to any search</p> <p>23 function; correct?</p> <p>24 A. That sentence doesn't use the word</p>
47	<p>1 Mr. Eck expressing and what do you recall telling</p> <p>2 him?</p> <p>3 A. My recollection is that Planet Discover is</p> <p>4 a search function, and my understanding is in the</p> <p>5 company that some of our properties had Planet</p> <p>6 Discover that provides a search function, others</p> <p>7 some form of Google provides a search function. It</p> <p>8 wasn't particularly core to the business. And it</p> <p>9 was also apparent that they felt it was going to be</p> <p>10 a potential distraction from the issue or concern</p> <p>11 that we would have with what we were learning about</p> <p>12 what the Globe is doing.</p> <p>13 Q. When you say it would be an issue or</p> <p>14 distraction, in fact some of your sites were</p> <p>15 aggregating news in the same way that you were</p> <p>16 complaining about what boston.com was doing;</p> <p>17 correct?</p> <p>18 MR. EVANS: Form.</p> <p>19 A. Could you repeat the question?</p> <p>20 Q. Sure.</p> <p>21 MR. BAGLEY: Can you read it back.</p> <p>22 (Question read.)</p> <p>23 A. Our concern with what boston.com was doing</p> <p>24 is that they're copying our leads and our headlines</p>	49	<p>1 "search."</p> <p>2 Q. Right. It's talking about the aggregation</p> <p>3 of news content. Correct?</p> <p>4 A. What we were disabling is a search</p> <p>5 function.</p> <p>6 Q. That's your understanding of what was under</p> <p>7 discussion in these emails; correct?</p> <p>8 A. Yes.</p> <p>9 Q. Turning to the first page of Exhibit 4,</p> <p>10 again still on Wednesday, November 12th, 6:11 in the</p> <p>11 evening: Mr. [REDACTED] at Planet Discover emails back</p> <p>12 to Mr. Shubow and Mr. Eck and identifies a number of</p> <p>13 news sources. Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And the third news source down is</p> <p>16 boston.com, indicates in the right-hand column 151</p> <p>17 records. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And do you know what's meant by that?</p> <p>20 A. No.</p> <p>21 Q. Is it my understanding that before I put</p> <p>22 this exhibit in front of you, you had not seen this</p> <p>23 email exchange previously?</p> <p>24 A. Not that I recall.</p>

Kirk A. Davis - Vol. I - January 7, 2009
CONFIDENTIAL - ATTORNEY'S EYES ONLY

14 (Pages 50 to 53)

50	<p>1 Q. You did say, however, that the timing of</p> <p>2 this exchange on November 12th and November 13th was</p> <p>3 in connection with your contemplation of taking</p> <p>4 action against boston.com; correct?</p> <p>5 A. It was in the time frame when we were</p> <p>6 learning about the developments with boston.com and</p> <p>7 trying to determine how to respond, yes.</p> <p>8 Q. And within that context do you recall</p> <p>9 Mr. Eck bringing up the subject of what Planet</p> <p>10 Discover was doing for GateHouse?</p> <p>11 A. I don't.</p> <p>12 Q. Do you recall how you learned that this</p> <p>13 practice was being engaged in by GateHouse Media</p> <p>14 with Planet Discover?</p> <p>15 MR. EVANS: Form.</p> <p>16 A. I've been aware of the search functionality</p> <p>17 of Planet Discover and Google long before, you know,</p> <p>18 this issue arose. So I'm aware of what, you know,</p> <p>19 search functionality is and what Planet Discover</p> <p>20 does and what Google does.</p> <p>21 Q. Okay. Were you aware, in addition to</p> <p>22 knowing what they did, that in fact GateHouse Media</p> <p>23 was using Planet Discover to provide that</p> <p>24 functionality to some of its websites?</p>	52
51	<p>1 A. I was aware that we used Planet Discover</p> <p>2 for search.</p> <p>3 Q. And what is your understanding of the</p> <p>4 search functionality that Planet Discover was</p> <p>5 providing to GateHouse Media?</p> <p>6 A. That you could query a subject and receive</p> <p>7 content related to that query.</p> <p>8 Q. Do you know, could you specifically do a</p> <p>9 news search like, for example, you can on Google --</p> <p>10 a news search, as opposed to a broader Internet-</p> <p>11 based search?</p> <p>12 MR. EVANS: Form.</p> <p>13 A. Yes, my understanding is that you could</p> <p>14 search news items.</p> <p>15 Q. And was there a -- strike that. Before Mr.</p> <p>16 Shubow sent his email on November 12th to Planet</p> <p>17 Discover asking them to discontinue to aggregate</p> <p>18 outside news content for GateHouse, was there a</p> <p>19 discussion internally concerning what Planet</p> <p>20 Discover was doing and how that might impact what</p> <p>21 GateHouse wanted to do with respect to boston.com?</p> <p>22 A. Could you repeat that?</p> <p>23 MR. BAGLEY: Could you read that back,</p> <p>24 please.</p>	53

Kirk A. Davis - Vol. I - January 7, 2009
CONFIDENTIAL - ATTORNEY'S EYES ONLY

15 (Pages 54 to 57)

54	<p>1 It. But I'll represent to you that if you go on 2 Google, rather than doing a search, there's -- on 3 the tool bar there's a button for Google News. If 4 you hit that, it generates a list of news stories 5 without any search having been done. I take it 6 you've never executed that function. 7 MR. EVANS: Objection to form. 8 A. Not on Google News. 9 MR. BAGLEY: Let's mark as Davis Exhibit 10 5 a document bearing production number 259 by 11 plaintiffs. 12 (Exhibit 5, GMI-Z1-00259, marked for 13 identification.) 14 Q. Let me show you what's been marked as 15 Exhibit 5. 16 A. Am I done with this one, 4? 17 Q. Yes. Thank you. 18 Exhibit 5 is again an email from 19 Mr. Reibman in which you are not copied, but I'm 20 going to ask you if you've ever seen this before. 21 A. Not that I recall. 22 MR. EVANS: I just note for the record 23 that it appears this is part of an email chain, all 24 of which is not included.</p>	56	<p>1 seems like it's the Boston Globe. 2 Q. From the context. Do you know of any other 3 globe that would possibly be your No. 1 competition? 4 A. Not at all. 5 Q. And would you agree with Mr. Reibman's 6 statement here that GateHouse Media New England 7 considers the Boston Globe your No. 1 competitor? 8 A. I consider them a major competitor. 9 Q. Is there anyone you consider to be a more 10 major competitor? 11 MR. EVANS: Objection to form. 12 A. I consider the other print media, the 13 community papers that we compete with head to head 14 in a given town, the Herald, radio, TV, websites. 15 But the Globe's a major competitor. 16 Q. But you take issue with identifying them as 17 your No. 1 competitor? 18 MR. EVANS: Form. 19 A. I just think they're a major competitor. 20 Q. Are you familiar with a website under the 21 domain Famboogle.com? 22 A. I'm not familiar with it. 23 Q. Have you ever seen any internal emails at 24 GateHouse Media concerning the subject of</p>
55	<p>1 MR. BAGLEY: Correct. And I'm merely 2 focusing on one statement made in the second email 3 on this page by Mr. Reibman. 4 Q. It's identified as No. 2. Mr. Reibman is 5 emailing a gentleman by the name of XXXXXXXXXXXX. 6 Do you know who that is? 7 A. No. 8 Q. He says to Mr. XXXX, "While it's fine to 9 link to the globe when needed, please know that we 10 consider them our No. 1 competition, and we would 11 appreciate it if when possible you look for another 12 source." Do you understand Mr. Reibman to be 13 referring to the Boston Globe there? 14 MR. EVANS: Object to the form. I guess 15 I'm going to object to any questions about a 16 document that's incomplete, and this witness has not 17 seen and is not copied on. Subject to that, you can 18 answer. 19 A. What was the question, again? 20 Q. Do you understand this reference to the 21 globe, in lower-case G, to refer to the Boston 22 Globe? 23 A. I would imagine that's the case. I 24 obviously don't know, but, you know, it certainly</p>	57	<p>1 Famboogle.com? 2 A. I recall the name, seeing the name on a 3 document Monday, just because the name was so, you 4 know, memorable. 5 Q. Understood. 6 MR. BAGLEY: Let's mark as Exhibit 6 a 7 series of documents bearing plaintiff's production 8 numbers 685 through 688. 9 (Exhibit 6, GMI-Z1-00685 through 00688, 10 marked for identification.) 11 A. Does this start from the back, too? 12 Q. Yes. 13 A. Okay. 14 Q. Is this the document that you referenced 15 earlier having reviewed on Monday for the first 16 time? 17 A. I can't recall. 18 Q. In any event, the subject under discussion 19 in this email exchange is something that had not 20 been brought to your attention prior to this week; 21 is that correct? 22 A. Correct. 23 Q. When you were contemplating bringing this 24 lawsuit and in your internal discussions alluded to</p>

EXHIBIT 10

From: Reibman, Greg
Sent: Monday, November 10, 2008 1:29 PM
To: Eck, Christopher; Warren, Cris; Corbett, Sarah; Davis, Kirk; Daniels, Rick; Cohen, Mark; Elsenmenger, Anne; 'Howard Owens'; Bill Blevins
Cc: Sheehan, Gayle; Spector, Gail
Subject: RE: Boston.com Newton Hyperlocal Website Launch November 14th

Just spoke with someone who attended a roll out meeting in Newton with the Globe last week. (the invitation is below)

About 50 people were there, including advertisers, active participants on the TAB's blog and some city officials.

He said the site will be a full fledged aggregator of all things Newton. They admitted they'd be using material from Wicked Local Newton and the TAB blog heavily. They will have two FTE's dedicated to reporting/covering Newton (we have one reporter). He didn't know how they were planning to post our content but did say their site would offer an opportunity to discuss our content.

The prototype they showed included 10 locations for "postage stamp" ads priced at \$109 monthly; a larger ad that looked like about 4X4 for \$500 monthly and a top banner ad (he didn't know the price).

For those in Fairport, Newton is our top performing GHNE weekly, an affluent city of 70,000 just bordering Boston. My suggestion would be for us to do all we can to make sure the Globe fails here before they roll this out to other communities.

Here's the invitation:

boston.com

Mr. ██████████
Boston.com is pleased to announce our new Newton website and to invite you to share your thoughts and ideas about this exciting new venture.

While we continue to bring the best local news and information to all of greater Boston, we believe that bringing our resources to bear on local communities we can provide the widest scope of news and information, a comprehensive calendar of events, powerful search tools, complete local business information

and a vibrant web community.

Because you are an active voice in the Newton community, we'd like to know what you think. We're hoping you can join us and other voices from Newton for an open meeting where we can give you a first look at the new site, hear your thoughts and feedback and discuss how our site can better serve your local needs.

We hope that you will be able to attend.

Date: Friday, November 7, 2008
Time: 11:00 A.M. – 12:30 P.M.
Location: War Memorial Auditorium
Newton City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02459

Please RSVP to Kathleen Skerry (kskerry@boston.com or 617-929-8464) by November 5, 2008.

Regards,

Kathleen Skerry

Kathleen Skerry
Senior Marketing Manager | Boston.com
kskerry@boston.com
(p) 617-929-8464
(c) 781-504-1638

From: Eck, Christopher
Sent: Monday, November 10, 2008 8:51 AM
To: Reibman, Greg; Warren, Cris; Corbett, Sarah
Cc: Davls, Kirk; Daniels, Rick; Sheehan, Gayle; Cohen, Mark; Eisenmenger, Anne
Subject: Boston.com Newton Hyperlocal Website Launch November 14th
Importance: High

Good Morning:

Below you will find a few links regarding the local online strategy the Globe is launching on the 14th of November. They will be launching the first site in Newton and rolling out additional communities from there. I hear the roll out will be slow for future towns until early 2009.

<http://www.universalhub.com/node/21438>
<http://thegardencity.net/?q=node/921>
<http://www.boston.com/yourtown/newton/>

If you happen to hear anything else would you mind passing it along?

Thanks,
Chris

Chris Eck | Director of Online Sales
GateHouse Media New England
p. 781.433.6751
ceck@wickedlocal.com
www.GateHouseMediaNE.com

The preceding e-mail message (including any attachments) contains information that may be confidential, may be protected by the attorney-client or other applicable privileges, or may constitute non-public information. It is intended to be conveyed only to the designated recipient(s) named above. If you are not an intended recipient of this message, please notify the sender by replying to this message and then delete all copies of it from your computer system. Any use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

GMI-Z1-00428

CONFIDENTIAL

EXHIBIT 11



United States Patent and Trademark Office

Home | Site Index | Search | FAQ | Glossary | Guides | Contacts | eBusiness | eBiz alerts | News | Help

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue Jan 13 04:08:49 EST 2009

[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[Browse Data](#)
[SEARCH OG](#)
[BOTTOM](#)
[HELP](#)
[PREV LIST](#)
[CURR LIST](#)
[NEXT LIST](#)

[FIRST DOC](#)
[PREV DOC](#)
[NEXT DOC](#)
[LAST DOC](#)

Please logout when you are done to release system resources allocated for you.

List At: OR to record: **Record 16 out of 16**

[TARR Status](#)
[ASSIGN Status](#)
[TDR](#)
[TTAB Status](#)
(Use the "Back" button of the Internet Browser to return to TESS)

The New York Times.

Word Mark	THE NEW YORK TIMES.
Goods and Services	IC 016. US 038. G & S: DAILY NEWSPAPERS. FIRST USE: 18570000. FIRST USE IN COMMERCE: 18570000
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	71243450
Filing Date	January 27, 1927
Current Filing Basis	1A
Original Filing Basis	1A
Registration Number	0227904
Registration Date	May 17, 1927
Owner	(REGISTRANT) NEW YORK TIMES COMPANY, THE CORPORATION NEW YORK 229 W. 43 ST. NEW YORK NEW YORK 10036
	(REGISTRANT) NEW YORK TIMES COMPANY, THE CORPORATION NEW YORK 229 W. 43 ST. NEW YORK NEW YORK
Attorney of Record	Jordan A. LaVine
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text Renewal	SECT 12C. SECT 15. SECTION 8(10-YR) 20070209. 4TH RENEWAL 20070209

Live/Dead
Indicator

LIVE

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [Browse Dict](#) [SEARCH OG](#) [TOP](#) [HELP](#) [PRVY LIST](#) [CURR LIST](#) [NEXT LIST](#)
[FIRST DOC](#) [PREV DOC](#) [NEXT DOC](#) [LAST DOC](#)

[| HOME](#) [| SITE INDEX](#) [| SEARCH](#) [| eBUSINESS](#) [| HELP](#) [| PRIVACY POLICY](#)

EXHIBIT 12



United States Patent and Trademark Office

Home | Site Index | Search | FAQ | Glossary | Guides | Contacts | eBusiness | eBiz alerts | News | Help

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue Jan 13 04:08:49 EST 2009

[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[Browse Only](#)
[SEARCH OG](#)
[BOTTOM](#)
[HELP](#)
[PREV LIST](#)
[CURR LIST](#)
[NEXT LIST](#)

[FIRST DOC](#)
[PREV DOC](#)
[NEXT DOC](#)
[LAST DOC](#)

[Logout](#) Please logout when you are done to release system resources allocated for you.

[Start](#) List At: OR [Jump](#) to record: **Record 11 out of 16**

[TARR Status](#)
[ASSIGN Status](#)
[TDR](#)
[TTAB Status](#)
(Use the "Back" button of the Internet Browser to return to TESS)

The New York Times

Word Mark	THE NEW YORK TIMES
Goods and Services	IC 042. US 100 101. G & S: computer on-line services, namely, providing a wide range of general interest news and information via a global computer network. FIRST USE: 19960119. FIRST USE IN COMMERCE: 19960119
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	75055911
Filing Date	February 9, 1996
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	September 23, 1997
Registration Number	2120865
Registration Date	December 16, 1997
Owner	(REGISTRANT) NEW YORK TIMES COMPANY, THE CORPORATION NEW YORK 229 West 43rd Street New York NEW YORK 10036
Attorney of Record	Jordan A. LaVine
Prior Registrations	0227904
Type of Mark Register	SERVICE MARK PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20070713.
Renewal 1ST RENEWAL 20070713
Live/Dead
Indicator LIVE

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [TOP](#) [HELP](#) [PREV LIST](#) [CURR LIST](#) [NEXT LIST](#)
[FIRST DOC](#) [PREV DOC](#) [NEXT DOC](#) [LAST DOC](#)

[| HOME](#) [| SITE INDEX](#) [| SEARCH](#) [| BUSINESS](#) [| HELP](#) [| PRIVACY POLICY](#)

EXHIBIT 13



United States Patent and Trademark Office

Home | Site Index | Search | FAQ | Glossary | Guides | Contacts | eBusiness | eBiz alerts | News | Help

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue Jan 13 04:08:49 EST 2009

TESS HOME NEW USER STRUCTURED FREE FORM BROWSE DICT SEARCH OG BOTTOM HELP PREV LIST CURR LIST NEXT LIST
 FIRST DOC PREV DOC NEXT DOC LAST DOC

Please logout when you are done to release system resources allocated for you.

List At: OR to record: **Record 2 out of 4**

(Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark	THE BOSTON GLOBE
Goods and Services	IC 016. US 038. G & S: DAILY NEWSPAPER. FIRST USE: 18720000. FIRST USE IN COMMERCE: 18720000
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	71207561
Filing Date	January 2, 1925
Current Filing Basis	1A
Original Filing Basis	1A
Registration Number	0199556
Registration Date	June 9, 1925
Owner	(REGISTRANT) GLOBE NEWSPAPER COMPANY CORPORATION MASSACHUSETTS 135 WILLIAM T. MORRISSEY BLVD. DORCHESTER MASSACHUSETTS 02125 (LAST LISTED OWNER) NYT MANAGEMENT SERVICES, INC. CORPORATION DELAWARE 2202 WESTSHORE BOULEVARD TAMPA FLORIDA 33067
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Jordan A. LaVine
Type of Mark Register	TRADEMARK PRINCIPAL
Affidavit Text Renewal	SECT 12C. SECT 15. SECTION 8(10-YR) 20080630. 4TH RENEWAL 20080630
Live/Dead Indicator	LIVE

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [Browse Only](#) [SEARCH OG](#) [TOP](#) [HELP](#) [PREV LIST](#) [CURR LIST](#) [NEXT LIST](#)
[FIRST DOC](#) [PREV DOC](#) [NEXT DOC](#) [LAST DOC](#)

[| HOME](#) [| SITE INDEX](#) [| SEARCH](#) [| eBUSINESS](#) [| HELP](#) [| PRIVACY POLICY](#)

EXHIBIT 14



United States Patent and Trademark Office

Home | Site Index | Search | FAQ | Glossary | Guides | Contacts | eBusiness | eBiz alerts | News | Help

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue Jan 13 04:08:49 EST 2009

[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[BROWSE DICT](#)
[SEARCH OG](#)
[BOTTOM](#)
[HELP](#)
[PREV LIST](#)
[CURR LIST](#)
[NEXT LIST](#)

[FIRST DOC](#)
[PREV DOC](#)
[NEXT DOC](#)
[LAST DOC](#)

Please logout when you are done to release system resources allocated for you.

List At: OR to record: **Record 3 out of 4**

[TARR Status](#)
[ASSIGN Status](#)
[TDR](#)
[TTAB Status](#)
(Use the "Back" button of the Internet Browser to return to TESS)

The Boston Globe

Word Mark	THE BOSTON GLOBE
Goods and Services	IC 016. US 038. G & S: Daily Newspaper. FIRST USE: 19600425. USED IN ANOTHER FORM in 1872 in another style. FIRST USE IN COMMERCE: 19600425
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	72108774
Filing Date	November 21, 1960
Current Filing Basis	1A
Original Filing Basis	1A
Change In Registration	CHANGE IN REGISTRATION HAS OCCURRED
Registration Number	0721044
Registration Date	September 5, 1961
Owner	(REGISTRANT) GLOBE NEWSPAPER COMPANY CORPORATION MASSACHUSETTS 135 WILLIAM T. MORRISSEY BOULEVARD BOSTON MASSACHUSETTS
	(LAST LISTED OWNER) NYT MANAGEMENT SERVICES, INC. CORPORATION DELAWARE 2202 WESTSHORE BOULEVARD TAMPA FLORIDA 33067
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Jordan A. LaVine
Prior	

Registrations 0199549;0199556;AND OTHERS
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECTION 8(10-YR) 20011113.
Renewal 2ND RENEWAL 20011113
Live/Dead Indicator LIVE

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [TOP](#) [HELP](#) [PREV LIST](#) [CURR LIST](#) [NEXT LIST](#)
[FIRST DOC](#) [PREV DOC](#) [NEXT DOC](#) [LAST DOC](#)

EXHIBIT 15



United States Patent and Trademark Office

Home | Site Index | Search | FAQ | Glossary | Guides | Contacts | eBusiness | eBiz alerts | News | Help

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue Jan 13 04:08:49 EST 2009

[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[BROWSE DICT](#)
[SEARCH OG](#)
[BOTTOM](#)
[HELP](#)
[PREV LIST](#)
[CURR LIST](#)
[NEXT LIST](#)
[FIRST DOC](#)
[PREV DOC](#)
[NEXT DOC](#)
[LAST DOC](#)

Please logout when you are done to release system resources allocated for you.

List At: OR to record: **Record 1 out of 4**

(Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark	BOSTON.COM
Goods and Services	IC 041. US 100 101 107. G & S: Providing a website featuring news in the nature of current events reporting and information in a wide variety of fields generally found in daily newspapers, including, news, politics, policy, sports, business, technology, entertainment, arts, leisure, travel, editorial comment, reference materials, and classified advertising, all concerning the Boston, Massachusetts metropolitan area. FIRST USE: 19950710. FIRST USE IN COMMERCE: 19950710
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	78242369
Filing Date	April 25, 2003
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	August 24, 2004
Supplemental Register Date	May 24, 2004
Registration Number	2903204
Registration Date	November 16, 2004
Owner	(REGISTRANT) New York Times Digital LLC LTD LIAB CO DELAWARE 500 Seventh Avenue New York NEW YORK 10018 (LAST LISTED OWNER) GLOBE NEWSPAPER COMPANY LTD LIAB CO MASSACHUSETTS 135 MORRISSEY BOULEVARD BOSTON MASSACHUSETTS 02107
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Jordan A. LaVine
Prior	

Registrations 2078175
Type of Mark SERVICE MARK
Register PRINCIPAL-2(F)
Live/Dead Indicator LIVE

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [TOP](#) [HELP](#) [PREV LIST](#) [CURR LIST](#) [NEXT LIST](#)
[FIRST DOC](#) [PREV DOC](#) [NEXT DOC](#) [LAST DOC](#)