

## Deadline.com's Parent Company MMC Sends 'Cease & Desist' Letter To TheWrap

By NIKKI FINKE, Editor in Chief | Wednesday February 23, 2011 @ 5:13pm PST

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Deadline.com and its parent company MMC is embarking on an intensified legal campaign to protect its original content. I began Deadline Hollywood Daily exactly 5 years ago in March and have seen it grow as a very successful and widely respected website of breaking news and analysis and commentary about the entertainment industry. I will not, and can not, allow anyone to rip off Team Deadline's exclusive coverage. It often can take weeks of working our deep sources to report and write our posts. And yet a proliferating number of blogs and websites without the journalism credentials we have often post our original content 5- or 10-minutes after us without credit and/or linkback and without individually reporting the articles themselves. And merely calling a studio or network and saying, "Is this correct?", then copying Deadline's post often word-for-word and slapping a different byline on it, does not constitute reporting in my journalism playbook. Nor should it for you readers.

In 2010, Deadline's parent company MMC brought separate lawsuits in Federal Court against the owners and operators of [DeadlineHollyweird.com](#) and [BoxOfficeWorld.com](#). Both resulted in the owners of those respective websites effectively closing up shop immediately after we filed suit. While those websites still technically exist on paper, they have been completely stripped of all content. We are currently in the process of resolving those lawsuits in a very favorable manner. In particular, the settlement in the Deadline Hollyweird lawsuit won by MMC's outside counsel Bryan Freedman of the Century City law firm of Freedman & Taitelman will result in, among other things, the defendant transferring the entire domain [DeadlineHollyweird.com](#) to MMC.

Now we embark on our next phase of copyright protection. TheWrap.com has had many wholesale staff turnovers since it began in January 2009 and at present is operating with just a handful of reporters — apparently the least amount in its brief history. As one of TheWrap's reporters emailed to a Deadline staffer expressing his frustration trying to compete with us, "I spend my days following and getting scooped by you." But that is no excuse for what keeps happening and is even increasing as outlined in this [letter](#) which attorney Freedman just sent to TheWrap's editor-in-chief Sharon Waxman, COO Mark Davis, and board directors Ben Choi (a principal at Maveron which initially funded TheWrap) and Charles Koontz (a media entrepreneur):

February 22, 2011

Re: [Mail.com Media Corporation v. the Wrap News, Inc. d/b/a The Wrap.com](#)

### CEASE AND DESIST: THEWRAP.COM

Dear Messers Davis, Choi and Koonen:

This firm represents Mail.com Media Corporation ("MMC"), the owner of the website [www.deadline.com](#) ("Deadline.com"). It is our understanding that the Wrap News, Inc. ("WNI") owns and operates [www.thewrap.com](#) ("TheWrap.com"). I am contacting you because it has become apparent that TheWrap.com and its employees have engaged in a continuous pattern of misappropriating content from Deadline.com, publishing that information on TheWrap.com, passing off that information as its own, and doing so without compensating or even crediting Deadline.com. In many instances, TheWrap.com's misappropriation involves the wholesale copying of substantial portions of articles posted on Deadline.com. While I want to inform you that MMC and my office intend to closely monitor TheWrap.com for any continued infringement, I also want to stress the need for WNI to implement internal policies and procedures that will discourage future infringement by TheWrap.com, and minimize WNI's exposure to copyright infringement or "hot news" misappropriation liability.

MMC is concerned that TheWrap.com's infringement on and theft of Deadline.com content is not an isolated incident. Rather, TheWrap.com's copying of Deadline.com content, which has been going on for some time now, is only getting worse and is apparently becoming an institutionalized practice. As a result, both MMC and my office intend to make a concerted effort to monitor the TheWrap.com in order to identify and document any infringement of Deadline.com content that occurs on a going forward basis in case formal legal action becomes necessary. Rest assured, nothing will fly under our radar.

If TheWrap.com's infringement continues, MMC intends to vigorously protect its intellectual property rights. As you probably are aware, the unauthorized copying and distribution via the internet of even portions of Deadline.com content, without the express permission of MMC, constitutes copyright infringement in violation of Title 17 U.S. Code, Section 106(a) of the Copyright Act of 1976. Such infringement subjects WNI to damages and injunctive relief. Moreover, based on what is undoubtedly willful infringement of MMC's rights under 17 U.S.C. Section 101 *et seq.*, WNI could be liable for statutory damages as high as \$150,000 for each act of infringement as set forth in Section 504(c)(2), as well as attorney's fees and costs.

Even when TheWrap.com does not copy Deadline.com's content verbatim, WNI's misuse of Deadline.com's exclusive and breaking stories exposes WNI to liability under California's "Hot News" misappropriation laws. Like many other jurisdictions, California recognizes the tort of "Hot News" misappropriation. *See Balboa Ins. Co. v. Trans Global Equities*, 218 Cal. App. 3d 1327, 1342 (1990); *X17 v. Lavandeira*, 563 F. Supp. 2d 1102 (C.D. Cal. 2007). A defendant will be liable under this theory if: (i) the plaintiff generates or collects information at some cost or expense; (ii) the value of the information is highly time-sensitive; (iii) the defendant's use of information constitutes free-riding on the plaintiff's costly efforts to generate or collect it; (iv) the defendant's use of the information is in direct competition with a product or service offered by the plaintiff; (v) the ability of the other party to free-ride on the efforts of the plaintiff would so reduce the incentive to produce the product or service that its existence or quality would be substantially threatened. *National Basketball Ass'n v. Motorola, Inc.*, 105 F.3d 841, 852 (2d Cir. 1997); *Lavandeira*, 563 F. Supp. 2d at 1105, 1108-1109; *International News Service v. Associated Press*, 248 U.S. 215, (1918). As TheWrap.com's sources clearly are not as robust as those of Deadline.com, TheWrap.com attempts to compete with Deadline by free-riding off of Deadline.com's exclusive information and breaking news. This is underscored by the fact that TheWrap.com frequently posts articles mimicking Deadline.com's exclusive content shortly after [deadline.com](#) breaks such news.

The obvious problem with TheWrap.com's institutionalized content theft is highlighted by Sharon Waxman's sentiments towards such practices. Last year, Ms. Waxman voiced her frustration towards the alleged theft of TheWrap.com's content: "Newser's conduct violates The Wrap's rights because: (1) The Wrap generates and gathers time-sensitive information at a cost, including, without limitation, original stories ferreted out and reported by The Wrap's full-time employees and paid contributors; (2) Newser free-rides on The Wrap's sweat of the brow by publishing summaries of these stories without affording The Wrap appropriate credit and a prominent link; and (3) Newser is in direct competition with The Wrap. Thus, Newser's conduct, in addition to amounting to garden variety plagiarism, constitutes unfair competition and violates certain deceptive trade practices statutes." MMC agrees with Ms. Waxman. Something must be done about these practices.

MMC demands that WNI and TheWrap.com immediately cease the continued publication, use and distribution of the copied and misappropriated content from Deadline.com, and that WNI and TheWrap.com desist from this or any other infringement of MMC's rights in the future. Unfortunately, it does not appear that WNI has executed policy and procedure necessary to curtail infringement. In fact, WNI's lack of oversight of TheWrap.com's staff and contributors seems only promote continued infringement. While we recognize that WNI is faced with the challenge of constant staff turnover, we strongly recommend that WNI take this problem seriously, investigate TheWrap.com's journalistic practices, and establish guidelines, checks and balances that will hopefully prevent, not encourage, future infringement. If increased oversight is not successful, a more aggressive strategy may become necessary. We sincerely hope that WNI is capable of regulating TheWrap.com's use of content so as to avoid MMC's need to take more formal remedial steps.

This letter is not intended to set forth MMC's entire position regarding this matter. The foregoing, therefore, does not constitute an election or waiver of rights. MMC reserves all of its rights and remedies against WNI.

Very truly yours,

Bryan J. Freedman  
FREEDMAN & TAITELMAN, LLP  
ATTORNEYS AT LAW