DEALING WITH FALSE INTERNET RUMORS: A CORPORATE PRIMER

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The corporate "cybersmear" — in which a false and disparaging rumor about a company, its management or its stock is posted to the Internet — is a problem that is out of control and is likely to get worse. Beginning about six months ago, the U.S. Securities Exchange Commission began receiving one to two calls a day from victims of corporate cybersmears seeking help.[1]

Since last June, American companies fighting such cybersmears reportedly have filed one or two lawsuits a week in Santa Clara County, California where Yahoo! Inc. is based. The suits typically list unnamed "John Does" as defendants and are intended to use the court's powers to help identify and to pursue claims against persons who have posted false and disparaging cybergossip about the companies on Yahoo! message boards.[2]

Recently, talk show host Oprah Winfrey opened her show by denouncing false Internet rumors that clothing designer Tommy Hilfiger had appeared on her show and made racially insensitive comments. Winfrey reportedly told her audience "Read my lips, Tommy Hilfiger has never appeared on this show. And all of the people who claim that they saw it, they heard it — it never happened."[3] Other false Internet rumors recently have swirled around e-greeting card distributor Blue Mountain Arts. The company has been forced to mount a marketing campaign to fight false Internet rumors that a Blue Mountain e-greeting card will infect recipients' computers with a virus.[4]

Nevada-based AgriBioTech Inc. recently suffered the effects of a cybersmear campaign. Though the company's fundamentals are sound and analyst confidence in the company reportedly is high, cybergossip posted to a Yahoo! Finance message board recently drove the company's stock to close at $9.75 per share compared to its 52-week high of $29.50. The Internet rumors, posted anonymously, falsely claimed that one of the company's co-founders would be indicted within two days, that the company was about to declare bankruptcy and that there was evidence of accounting fraud. The rumors reportedly led the company's CEO to conduct a

conference call to reassure investors and analysts and to declare that the rumors were a "coordinated effort" by short sellers to drive down the price of the company's stock.[5] Sadly, AgriBioTech is not alone. Other companies have limped through similar incidents in the last few months.[6]

As the AgriBioTech case demonstrates, Internet rumors can raise serious issues for companies and their Investor Relations personnel. Occasionally, however, there is a humorous element. For example, a rumor that recently circulated throughout the Internet suggested that Nike would replace old sneakers collected and forwarded to the company by schools. The rumor prompted the return of truckloads of sneakers to Nike's doorstep. Although the rumor was false, nearly 7,000 pairs of smelly shoes quickly piled up in the company's headquarters.[7]

Companies Have Begun To Fight Back

Recently, companies have begun to fight back. More than a few have filed lawsuits seeking to identify the perpetrators and to hold them accountable for their actions. For example, following anonymous postings to a Yahoo! message board that falsely disparaged the company and its management, Canadian-based Philip Services Corp. reportedly filed several lawsuits against "Does 1-100" seeking to identify persons responsible for the postings and to hold them liable for defamation and breach of fiduciary duty.[8] Indeed, even the "Carib Inn," a small tropical resort in the Caribbean, has gone to court after an anonymous posting to an America Online message board falsely accused the resort of unsafe scuba diving practices.[9]

The number of companies willing to sue to protect their good name and reputation is growing fast. Among the many well-known companies that have chosen this route, in addition to Philip Services, are E*Trade Group Inc., Sunbeam Corp., National Semiconductor Corp. and Amplicon Inc.[10]

Securities Regulators Have Become Involved

Exchanges and self regulatory organizations are not twiddling their thumbs. For example, on August 13, 1998, the Toronto Stock Exchange proposed guidelines for the use of electronic communications. The guidelines addressed, among other things, Internet rumors.[11] The proposed guidelines provide as follows:

> A company is not expected to monitor chat-rooms or news groups for rumours about itself. Nevertheless, the TSE recommends that the company's standard policy for addressing rumours apply to those on the Internet.
>
> Whether a company should respond to a rumour depends on the circumstances. The TSE suggests that the company should consider the market impact of the rumour and the degree of accuracy and significance to the company. In general, the TSE recommends against a company participating on a chat-room or news

> group to dispel or clarify a rumour. Instead, it is preferable for the company to issue a news release to ensure widespread dissemination of its statement.
>
> If a company becomes aware of a rumour on a chat-room, news group or any other source that may have a material impact on the price of its stock, it should immediately contact Market Surveillance. If the information is false and is materially influencing the trading activity of the company's securities, it may consider issuing a clarifying news release. The company should contact Market Surveillance so that the TSE can monitor trading in the company's securities. If Market Surveillance determines that trading is being affected by the rumour, it may require the company to issue a news release stating that there are no corporate developments to explain the market activity.

Securities regulators have taken notice as well and, in some instances, apparently are considering enforcement actions. For example, in September false Internet rumors reportedly began circulating that Lehman Brothers Holding was experiencing financial difficulties and that the Federal Reserve was looking to find a buyer for Lehman. Since then, at least one news report suggests that the SEC is investigating the matter and indicates that "the SEC suspects the Lehman rumors may have come from traders who had bet Lehman's stock would decline or potential acquirers looking to knock down the company's value."[12]

John Reed Stark, head of the SEC's newly-created Internet Enforcement Office, calls the act of posting false Internet rumors a "corporate cybersmear." In a multi-media presentation that he periodically gives at conferences and seminars throughout the country, Mr. Stark emphasizes that the SEC has observed such incidents with increasing frequency recently and that regulators and enforcement officials are prepared to take action in appropriate circumstances.[13]

Such action would be welcome in many quarters. But a mere promise of regulatory "action" is of little use to a company during that agonizing period when false postings are first discovered and the company must weigh its rather unsatisfying options. Seeking a judicial remedy may satisfy primal urges to seek vengeance, but is likely to be a costly and, perhaps, futile option. Anyone including short sellers, fired employees, disgruntled employees and irate customers can easily walk into a cybercafe, plunk down cash to gain Internet access for a few minutes, and then make false and disparaging postings through services like www.anonymizer.com. Such postings are difficult if not impossible to trace.

What courses of action are available to a company to protect itself against such rumors and to deal with false rumors once they have been posted? The remainder of this article will explore a few of the available options.

PREEMPTIVE MEASURES

The increasing frequency of corporate cybersmears strongly suggests that companies should anticipate the worst and put into place corporate policies and damage control mechanisms designed to deal with a corporate cybersmear as soon as it is discovered. There are a wide variety of preemptive measures that a company might take.

First and foremost, the company must be cyber-savvy and well-informed to avoid being caught off guard. Assign personnel to monitor pertinent Internet chat rooms, message boards, Usenet newsgroups, Web pages and other Internet sites where the company is likely to be mentioned.[14] For larger companies, public relations firms and other businesses will perform such monitoring for a fee. Some of the most widely-used monitoring services include: Ewatch Inc., a company that has developed powerful monitoring software named eWatch and that recently was acquired by WavePhore Inc.[15]; Burson-Marsteller, a PR firm that provides a service called QUIKeclip (based on eWatch); and PR firm The Delahaye Group.[16]

Smaller firms that do not have the resources to hire such consultants are not left out in the cold. Robotic agent software that will automatically troll designated sites is inexpensive and easily available through Web sites such as www.botspot.com. Moreover, some Web sites offer free services to monitor message board postings about certain companies. One such widely-used site is www.companysleuth.com.

Second, take steps to minimize the risk that company employees are not involved — intentionally or unwittingly — in starting the sort of Internet rumors that can mushroom into public relations nightmares. Employees should be provided with clear guidelines that proscribe discussions of internal corporate matters, company business, client information or confidential business data via the Internet. Additionally, employees should receive training to impress upon them the importance of following such guidelines and the damage to the company that can result from a failure to abide by such policies.[17]

CIBER Inc. is a good example of the problems that can arise in the absence of clear employee guidelines that proscribe discussions of internal corporate matters on the Internet. CIBER Inc. reportedly paid little or no attention to Internet message boards until its stock price declined for no apparent reason. The company issued a press release stating that it was unaware of any company-specific reason for the price decline and its Director of Investor Relations began to monitor message boards related to the company. What she discovered shocked her. People identifying themselves as company employees were discussing the company on the message boards. She now says that the company is drawing up an Internet policy for the next edition of its employee handbook.[18]

Similarly, Raytheon recently filed suit against twenty-one "John Does" who allegedly posted purportedly embarrassing information about the company including information regarding rumors of product testing failures. It recently has been reported that one of the

posters, who used the name "RSCDeepThroat," was a Vice President of the Company who since has resigned from the Company.

ONCE THE RUMORS FLY

When the company learns of false and disparaging rumors about its products, its management or the value of its stock, it has a variety of theoretical options. It may:

Remain silent and do nothing.

- Handle the rumors in precisely the same fashion as it otherwise would handle any other marketplace rumors, without regard to the fact that the rumors arose via the Internet.

- Contact, and seek to involve, the Securities and Exchange Commission, other regulators or law enforcement authorities.[19]

- Reply via the Internet, press releases, or news conferences; it may provide a specific rebuttal or may simply refer to its public filings.

- Issue cease and desist letters or formal demand letters to operators of Web sites, Internet message boards, chat rooms or Usenet newsgroups demanding that offending postings be removed or, in extreme cases, blocked in advance.

- Sue the persons who posted the offending messages for cyberlibel or, if the postings were made anonymously, sue unnamed "John Does" for cyberlibel, and use the court's subpoena powers to identify the defendants so that claims may be prosecuted against them.

Choosing one of these options, or some combination of them, is a notoriously difficult task for most companies. Moreover, the decision is an intensely factual one, driven by the specific circumstances surrounding the rumor. For example, one company faced with a false rumor posted in an Internet chatroom reportedly chose not to respond to the rumor specifically because the rumor was promulgated by a person who fraudulently claimed to be the CEO of the company. The company believed that a message from its actual CEO released in a chatroom populated by a fake CEO might not be credible.[20]

SILENCE MAY NOT BE GOLDEN

Although many companies believe that silence or a simple "no comment" to all rumors — including Internet rumors — is an appropriate response, there can be risks to such an approach when cybergossip is involved. Indeed, some would argue that there can be circumstances in which a company risks potential liability under the securities laws if it simply ignores Internet rumors.

Ordinarily a company has no duty under the securities laws to correct or to verify rumors unless those rumors can be attributed in some way to the company.[21] If, however, the company has placed a hyperlink on its own Website to link to the very message board, chatroom or newsgroup devoted to the company and its securities and the rumor appears on the linked site, an argument could be made that the company has entangled itself with the rumor and, thus, may have a duty to respond.[22]

Additionally, self regulatory organization rules such as those promulgated by the New York Stock Exchange, AMEX and NASDAQ may impose an independent duty on listed companies to respond to Internet rumors. For example, section 202.03 of the New York Stock Exchange Listed Company Manual requires listed companies, in certain circumstances, promptly to deny or clarify rumors without regard to the source of such rumors.[23] Thus, silence may simply not be an option in some circumstances.

Finally, mere inaction is rarely a viable alternative. Companies have an obligation to act prudently and to protect shareholders' interests. Is there a chance that the rumors may be true? Is an investigation warranted? Such questions presumably prompted one company recently to ask its CEO to take a four-week vacation while the company investigates disparaging rumors posted to an online message board.[24]

USING THE INTERNET TO REPLY TO RUMORS

Marketing experts and public relations firms often urge corporate clients to respond to cybergossip before it spirals out of control. Often they urge clients to go so far as to participate in Usenet newsgroups, message boards and chat rooms to add the company's view to the overall mix of information.

Internet-savvy securities lawyers, however, generally advise against using the Internet to respond to cybergossip. There are unique liability risks associated with using the Internet to reply to cybergossip. As one noted commentator emphasizes, the "potential for liability escalates if . . . the firm has followed the advice of some public relations experts and responded directly to newsgroups where *un*favorable rumors were flying. The failure to then similarly correct beneficial rumors gives rise to very plausible claims of selective disclosure."[25]

In addition, despite the undeniably public nature of easily-accessible chat rooms, message boards and newsgroups, questions arise over whether or not a reply posted to such locations constitutes "widespread dissemination" of the company's reply to the investing public. If a company feels compelled to reply to cybergossip on the Internet, it rarely — if ever — should do so without also issuing a news release containing identical information using traditional means of dissemination. This said, there may come a time when a company concludes that a response to cybergossip is necessary to correct misunderstandings or to clarify the company's position.

In such circumstances, some companies have chosen to permit their Investor Relations personnel or other employees to discuss appropriate company matters in chat rooms and on message boards. For example, for a period of time the Investor Relations Manager of Genzyme Corporation, Stephen Push, participated in several online chat rooms that dealt with Genzyme issues. Push, who since has left Genzyme and now manages Investor Relations for Gene Logic, stopped the practice last year when it began to take too much of his time. According to Push, "'It was low volume three years ago, it only took 10 minutes a day. But the activity is increasing and the payoff is relatively small."[26]

Once a company decides that it should use the Internet to respond to cybergossip, the next issue involves what form that response should take. When the cybergossip appears on a Web site, one option is the use of so-called "exchange links." Exchange links permit the same Web site to publish "both sides of a story."[27] Another less effective option is to use the company's pre-existing Web site or to create a new Web site to address the issue. If the cybergossip appears in chat rooms, on message boards or in Usenet newsgroups, the company may choose to participate in those media to set the record straight.

No matter how the company chooses to respond, however, it is critical that it treat all such communications just as carefully as it would a formal press release issued in a more ordinary context. Such communications should be vetted with counsel and should be scrupulously accurate and complete.

WIELDING THE LITIGATION CLUB

For many companies the most expensive, time-consuming. and least-palatable option is to commence litigation against the perpetrators of disparaging Internet rumors. Although many such lawsuits have been commenced, neither their success nor their deterrent value has yet been proven.[28]

Cyberlibel lawsuits are not necessarily the answer. The now-infamous McDonald's "McLibel" case filed in England is perhaps the most notable failure in the libel context. In the McLibel case,

> McDonald's filed a libel action in England over statements made in a pamphlet (that might well have been placed on a Web site by more sophisticated defendants). McDonalds won the suit but in so doing spent $16 million in order to obtain an uncollectible $68,000 judgment. The trial was the longest in English legal history and was a public relations disaster for the company. McDonald's would have done well to just have looked the other way.[29]

In addition, there is no assurance that the culprits can actually be identified no matter how much time, money and effort are spent. Nor is the deterrent value of such lawsuits yet

demonstrated. And, even if a matter can be prosecuted to judgment, there would seem to be at least some likelihood that an individual defendant would be judgment-proof.

A less expensive alternative, though not necessarily a more effective one, would be to issue cease and desist letters to persons who can be identified as responsible for false and disparaging postings. Absent the ability to identify such persons, it is at least possible to issue such letters to Web site owners or to the operators of message boards or Internet chat rooms arguing that such postings violate user policies and should be removed or even blocked in the future. The company should take care, however. Cease and desist letters almost invariably are posted by the recipient to a Web site and "can quickly become 'David and Goliath' affairs in the court of public opinion, thereby leading to a public relations debacle."[30]

WHAT'S A COMPANY TO DO?

It would seem that the brief, but helpful, Guidelines issued by the Toronto Stock Exchange provide a starting point for companies in the United States, Canada and elsewhere when faced with deciding how to deal with a corporate cybersmear campaign. With that in mind, here are a few recommendations:

- If you have not already done so, create, distribute and implement a standard corporate policy for dealing with rumors of any sort — Internet or otherwise. Experienced securities counsel are typically well versed in the sorts of issues that should be included within such policy statements.

- Be Internet savvy and Internet-informed. Arrange for an employee or an outside service to monitor the Internet for references to and rumors about the company. Many companies utilize clipping services or monitor local print publications. The Internet should be treated no differently. Like various print media, the Internet is a powerful communications medium.

- Refrain from participating in chat room, message board, newsgroup or other Internet communications to dispel or clarify a rumor unless there is a very good reason for doing so Do so only after vetting the issue with counsel.

- If you believe the actual or particular market impact of the rumor, the degree of accuracy of the rumor, and the rumor's significance to the company warrant a response, follow the company's pre-established policy for responding to such rumors and, if appropriate, issue an appropriate and properly-disseminated news release dealing with the rumor.

- If you believe that the rumor may have a material impact on the company's stock price, then promptly consult with experienced securities counsel and consider whether to contact appropriate regulatory authorities including securities regulators,

appropriate exchanges on which the company's stock is listed and any other pertinent self regulatory organizations to alert them to the existence of the rumor.

- Consider the pros and cons of issuing an appropriate cease and desist letter as described above or, if you believe there are valid reasons to do so (such as deterrence or even remedying actual damage), consider filing an appropriate lawsuit.

Companies, of course, cannot stop rumors — particularly Internet rumors that can instantaneously be published to tens of thousands of people simultaneously. Preparation for the inevitable, then, would seem to be the best policy.

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ENDNOTES

1. Carl S. Kaplan, *Companies Fight Anonymous Critics With Lawsuits*, N.Y. Times on the Web, Mar. 12, 1999 <htpp://www.nytimes.com/library/tech/99/03/cyber/cyberlaw/12law.html>.

2. *See* M.L. Stein, *Libel Suits Against Online Messages Increase*, Editor & Publisher Interactive, Nov. 11, 1998 <http://www.MediaINFO.com/ephome/news/newshtm/stories/111198n2.htm>.

3. John Lang, *Internet Rumor Mill Can Be Vicious*, Deseretnews.com, Mar. 14, 1999 <http://deseretnews.com/dn/view/0,1249,70001137,00.html?>.

4. Bob Sullivan, *Blue Mountain Victim of Virus Hoax: E-Mail Virus Rumor Threatens the Company's Core Business on the Internet*, ZDNN Tech News, Mar. 17, 1999 <http://www.zdnet.com/zdnn/stories/news/0,4586,2227229,00.html>.

5. *Internet 'Lies' Hit Biotech Company Shares*, NewsLinx Web News, Aug. 28, 1998 (reprinted from Computergram) <http://www.newslinx.com/News/August/cg-082898b.html>.

6. *See*, *e.g.*, Carl S. Kaplan, *Companies Fight Anonymous Critics With Lawsuits*, N.Y. Times on the Web, Mar. 12, 1999 <http://www.nytimes.com/library/tech/99/03/cyber/cyberlaw/12law.html> (noting that Seattle-based Wade Cook Financial Crop. recently filed a cyberlibel suit against 10 "John Does" who posted allegedly defamatory comments about the company's Chief Executive Officer"'; Aaron Elstein, *Heard on the Net: IndyMac Threatens To Fight Its*

Message-Board Critics, Wall St. J. Interactive Ed., Mar. 9, 1999 (available via search at http://interactive.wsj.com/) (noting that IndyMac Mortgage Holdings recently posted two messages on a bulletin board warning "financially interested authors" who have posted "untrue" messages about the company may face lawsuits); Malcolm Maclachlan, *Yahoo Suits Could Chill Speech*, CMPNet TechWeb, Mar. 12, 1999 <http://www.nytimes.com/techweb/TW_Yahoo_Suits_Could_Chill_Speech.html> (describing suit recently filed by Raytheon against 21 anonymous posters on Yahoo! Finance message boards); Dennis Taylor, *Internet Opens Door To All Traders, Including Cheats*, Bus. J., Oct. 26, 1998 <http://www.amcity.com:80/sanjose/stories/102698/focus2.html> (noting that Lehman Brothers Holdings Inc. is fighting ongoing Internet rumors falsely claiming that it is experiencing financial difficulties); Rebecca Landwehr, *Companies Battle Libel on the Web: Chat Rooms Pose Legal Challenges*, Denver Bus. J., Oct. 12, 1998 <http://www.amcity.com/denver/stories/101298/story5.html> (noting that after its stock price declined for no apparent reason, CIBER Inc. discovered cybergossip in Internet message board postings purportedly authored by company employees); Julie Tilsner & Joan O'C. Hamilton, *Who Are These People? - Investor Chat Rooms Give Companies Fits*, Signals Magazine, Sept. 10, 1998 <http://www.signalsmag.com/signalsmag.nsf/0/B7297A46D39F75678825667B00756736?Open> (noting that Biotech companies such as Zonagen have been particularly hard hit by unfounded Internet rumors); George Erb, *Guarding the Net: Companies Alert to Internet Stock Chat*, Puget Sound Bus. J., Aug. 31, 1998 <http://www.amcity.com/seattle/stories/083198/story3.html> (noting that false Cybergossip drove down Labor Ready Inc.'s share price by 26 percent and prompted the company's Chairman to conduct a teleconference for investors to debunk the rumors); *Company Blames Stock Drop on Net Rumors*, ZDNet News, June 3, 1998 <http://www.zdnet.com/zdnn/stories/zdnn_display/0,3440,2109614,00.html> (reporting that Impath Inc. was forced to deny rumors posted to a Yahoo! message board that it was under investigation by the U.S. Securities and Exchange Commission).

7. *Companies Grapple With Online Gripes*, USA Today Tech Rep., Sept. 16, 1998 <http://www.usatoday.com/life/cyber/tech/ctd49.htm>.

8. A copy of the complaint filed on behalf of Philip Services Corp. In the Superior Court of the State of California for the County of Santa Clara may be found at <http://www.ljx.com/LJXfiles/philsuit.html>. For some of the many articles about the suits filed by Philip Services, *see*, *e.g.*, Joana Glasner, *ISPs Identify Users in Defamation Suits*, Law Journal EXTRA!, Jul. 14, 1998 <http://www.ljx.com/LJXfiles/philipsvc.html>; Jim Hu, *ISPs Ordered To Reveal User Names*, C/Net News.Com, Jul. 10, 1998 <http://www.news.com/News/Item/0,4,24099,00.html?st.ne.fd.mdh>; Christen Whalen, *Yahoo Yanks Investor Gossip*, Wired News, Jul. 10, 1998

<http://www.wired.com/news/news/politics/story/13645.html>; Brock N. Meeks, *Anonymous Speech A Myth on the Net: A Chilling Case Study From Canada*, MSNBC, Jul. 14, 1998 <http://www.msnbc.com/news/180191.asp#body>.

9. *See Bowker v. America Online, Inc.*, No. 95L 013509, Verified Petition for Discovery (Cir. Ct. Cook Cty. Ill., filed September 12, 1995) available at <http://www.courttv.com/library/cyberlaw/aoldefamation.html>.

10. *See* Erik Espe, *Firms Sue To Unmask Online Attackers*, The Bus. J., Aug. 10, 1998 <http://www.amcity.com/sanjose/stories/081098/story1.html>; Dennis Taylor, *E-Trade Closes in on Perpetrator of False Net Posting*, Bus. J., Jul. 6, 1998 <http://www.amcity.com/sanjose/stories/current/story3.html>.

11 Toronto Stock Exchange, Proposed Electronic Communications Disclosure Guidelines, Aug. 13, 1998 <http://tse.com/mregs/pdf/web_proposed.pdf>. See also Toronto Stock Exchange, TSE News Releases: TSE Proposes Guidelines for Electronic Communications & Disclosure — August 13, 1998, <http://tse.com/news/news_rel/news_047.html>.

12. *Lehman Bros Chasing Down "Rumours, Lies"*, Sydney Morning Herald Online, Oct. 13, 1998 <http://www.smh.com.au:80/news/9810/13/text/business13.html>.

13. The SEC, of course, is concerned not only with the impact that false Internet rumors may have on companies, but also with the harm that may be inflicted on investors. Indeed, posting false rumors to message boards, chat rooms and newsgroups is increasingly a feature of so-called "pump and dump" schemes where the bad guys try to "pump" up the price of a small company's stock by fanning the rumor mill. When the stock price rises, they dump their shares before other investors learn of the scheme and suffer losses. On February 19, the SEC approved a series of measures designed to reduced the risk of such microcap fraud. See *SEC Approves Series of Measures in Ongoing Fight Against Microcap Fraud*, SEC News Release No. 99-21, Feb. 19, 1999 <http://www.sec.gov/news/microreg.htm>. *See also* SEC, *Adoption of Amendments to Rule 504 Fact Sheet*, Feb. 19, 1999 <http://www.sec.gov/news/extra/micro504.txt>; SEC, *Adoption of Amendments to Form S-8 Information Sheet*, Feb. 19, 1999 <http://www.sec.gov/news/extra/micros8.txt>; SEC, *Reproposal of Amendments to Rule 15c2-11 Fact Sheet*, Feb. 19, 1999 <http://www.sec.gov/news/extra/micro15c.txt>; SEC, *Adoption of Amendments to Rule 701 Fact Sheet*, Feb. 19, 1999 <http://www.sec.gov/news/extra/micro701.txt>. Also on February 19, the SEC released an Investor Brochure entitled *Microcap Stock: A Guide for Investors* <http://www.sec.gov/consumer/microbro.htm> and opened a Web page devoted to protecting investors from microcap fraud. *See* SEC, *About Microcap Fraud*, Feb. 19, 1999 <http://www.sec.gov/news/extra/microcap.htm>.

14. Admittedly, some believe that once a company begins monitoring the Internet for rumors, it assumes a duty to correct false rumors of which it learns if it has no valid corporate purpose for leaving the rumor uncorrected. *See* Arnold S. Jacobs, 5C LITIGATION AND PRACTICE UNDER RULE 10b-5, § 88.04[b], at 4-23 through 4-24 (1996).

15. *See* Matt Richtel, *Company Trolls for Scuttlebutt on the Internet*, N.Y. Times on the Web, Mar. 8, 1999 (available via search at http://www.nytimes.com).

16. *See* Burson-Marsteller Introduces Comprehensive Internet Monitoring for Clients, Press Release, eWatch, May 22, 1997 <http://www.ewatch.com/Newsroom/burson.html>; Online Interview: Katherine Delahaye Paine: The Nielsen of PR for the Internet!, Interactive PR, Nov. 18, 1996 (available in LEXIS News Library, Allnws File); Peggie R. Elgin, IR Pros Tap Internet To Reach Investors, Track Rumors, Corporate Cashflow, Jan. 1996, at 3.

17. Employees must be made to understand, for example, that they may have ***personal*** liability risks if they discuss rumors or other corporate matters via the Internet — even if their intent is to defend the company. To the extent that such postings hype the company's stock, contain material misrepresentations or omit material information, the posting employee may be accused of violating the general antifraud provisions of the federal securities laws. Of course, if statements made by employees via the Internet are treated as company disclosures, inaccuracies could also result in company liability under Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

18. Rebecca Landwehr, *Companies Battle Libel on the Web: Chat Rooms Pose Legal Challenges*, Denver Bus. J., Oct. 12, 1998 <http://www.amcity.com/denver/stories/101298/story5.html>.

19. One recent news report notes that the SEC's Office of Internet Enforcement currently receives about 200 to 300 "complaints . . . about message-board activity" each day. Michelle Leder, *Stemming the Tide of Touts on Stock Message Boards*, N.Y. Times on the Web, Feb. 21, 1999 <http://www.nytimes.com/library/tech/99/02/biztech/articles/21stocks.html>.

20. Robert A. Prentice, The Future of Corporate Disclosure: The Internet, Securities Fraud, and Rule 10b-5, 47 Emory L.J. 1, 73 n.329 (1998).

21. *State Teachers Retirement Board v. Fluor Corp.*, 654 F.2d 843, 850 (2d Cir. 1981).

22. Howard M. Friedman, SECURITIES REGULATION IN CYBERSPACE § 13.03[b], at 13-10 (Bowne & Co. 1997); Prentice, *The Future of Corporate Disclosure*, *supra* n.14, 47 Emory L.J. at 75.

23. *See also* AMEX COMPANY GUIDE §§ 401-405; NASD MANUAL (CCH) RULE 4310(a)(15)-(16); Friedman, SECURITIES REGULATION IN CYBERSPACE, *supra* n.16, § 13.03[b], at 13-9; Prentice, *The Future of Corporate Disclosure*, *supra* n.14, 47 Emory L.J. at 76.

24. Carrie Lee, *Heard on the Net: Firm Responds to Allegations, Showing Clout of Net Chatter*, Wall St. J. Interactive Ed., Feb. 4, 1999 (describing instance where 25-employee company named Gyrodyne Co. of America asked CEO "to take up to four weeks of vacation time while it investigates anonymous allegations of wrongdoing and other complaints that were lodged on the Internet") (available via search at http://interactive.wsj.com).

25. Prentice, *The Future of Corporate Disclosure*, *supra* n.14, 47 Emory L.J. at 76. *See also* Friedman, SECURITIES REGULATION IN CYBERSPACE, *supra* n.16, § 13.03[b], at 13-11.

26. Julie Tilsner & Joan O'C. Hamilton, *Who ARE These People? Investor Chat Rooms Give Companies Fits*, Signals, Sept. 10, 1998 <http://www.signalsmag.com/signalsmag.nsf/0/B7297A46D39F75678825667B00756736?Open>. Another company has chosen to respond to Internet rumors via the Web. David M. Schwartz, the CEO of Imaginon Inc., reportedly posts his own messages to a Yahoo! message board "to dispel the many rumors about the company." According to Schwartz, he has chosen this approach because "the rumors and volatility were scaring away long-term investors. 'Our stock has been all over the map, and that doesn't do us any good in the long run.'" Michelle Leder, *Stemming the Tide of Touts on Stock Message Boards*, N.Y. Times on the Web, Feb. 21, 1999 <http://www.nytimes.com/library/tech/99/02/biztech/articles/21stocks.html>.

27. Prentice, The Future of Corporate Disclosure, supra n.14, 47 Emory L.J. at 74; see also Kmart Sucks! Destroy Microsoft? What Do You Do When People Say Mean and Nasty Things About Your Brand on the Net?, Interactive PR, Aug. 26, 1996 (available in LEXIS News Library, Allnws File).

28. For an example of a complaint filed against unnamed "DOES 1-100" alleging claims for defamation and breach of fiduciary duty, *see Philip Services Corp. V. Does 1-100*, (Super. Ct. Calif. for County of Santa Clara, filed June 4, 1998) (available at <http://www.ljx.com/LJXfiles/philsuit.html>). For an example of a verified petition filed against America Online, Inc. seeking discovery to identify persons and entities responsible for allegedly false postings to a message board, *see Bowker, et al. v. America Online, Inc.*, No. 95L 013509 (Cir. Ct. of Cook County, Ill., filed Sept. 12, 1995) (available at <http://www.courttv.com/library/cyberlaw/aoldefamation.html>).

29. Prentice, *The Future of Corporate Disclosure*, *supra* n.14, 47 Emory L.J. at 73 (footnotes omitted).

30. *Id.* at 74. One recent example of such a public relations debacle in the context of a domain name dispute involved Colgate-Palmolive. When a group of young people in Indiana registered the domain name "ajax.org" and put up an innocuous Web site with a pirate theme "for free exchange of information, ideas, and cool pictures of Bill Gates dressed up like Hitler," Colgate-Palmolive issued a cease and desist letter claiming the domain name infringed on its registered mark "Ajax." The recipients posted the cease and desist letter to their Web site, as well as an exchange of follow up letters with the company's counsel, some of which are quite humorous. After an electronic "petition" denouncing the company was circulated via the Internet, Colgate-Palmolive reportedly backed down and issued a letter stating that "it will not be necessary to suspend the use of your domain name under the current circumstances." To view a Web page devoted to the dispute, point your browser to <http://www.ajax.org/ajax/colpal/>.