

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,328,650

United States Patent and Trademark Office

Registered Mar. 14, 2000

SERVICE MARK
PRINCIPAL REGISTER

HYPERTOUCHE

WAGNER, JAMES (UNITED STATES CITIZEN)
235 BELMONT AVE
REDWOOD CITY, CA 94061

FOR: DISSEMINATION OF ADVERTISING
FOR OTHERS VIA AN ON-LINE ELECTRONIC
COMMUNICATIONS NETWORK; PROMOTING
THE GOODS AND SERVICES OF OTHERS BY
PLACING ADVERTISEMENTS AND PROMO-
TIONAL DISPLAYS IN AN ELECTRONIC SITE

ACCESSED THROUGH COMPUTER NET-
WORKS, IN CLASS 35 (U.S. CLS. 100, 101 AND
102).

FIRST USE 6-7-1998; IN COMMERCE
6-7-1998.

SER. NO. 75-599,016, FILED 12-11-1998.

WILLIAM P. SHANAHAN, EXAMINING AT-
TORNEY

Exh. 1007

Exh. 1007

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,367,595

United States Patent and Trademark Office Registered July 18, 2000

SERVICE MARK
PRINCIPAL REGISTER

HYPERTOUCHE

WAGNER, JAMES (UNITED STATES CITIZEN)
235 BELMONT AVE.
REDWOOD CITY, CA 94061

FOR: COMPUTER SERVICES, NAMELY, CREATING AND MAINTAINING WEB SITES FOR OTHERS, COMPUTER SERVICES, NAMELY, DESIGNING AND IMPLEMENTING WEB PAGES FOR OTHERS, COMPUTER SERVICES, NAMELY, DESIGNING AND IMPLEMENTING WEB SITES FOR OTHERS, COMPUTER SITE DESIGN, COMPUTER SOFTWARE (UPDATING OF), COMPUTER SYSTEMS ANALYSIS, CONSULTATION (COMPUTER), HOSTING THE WEB SITES OF OTHERS ON A COMPUTER SERVER FOR

A GLOBAL COMPUTER NETWORK, INTEGRATION OF COMPUTER SYSTEMS AND NETWORKS, MAINTENANCE OF COMPUTER SOFTWARE, MONITORING OF COMPUTER SYSTEM [REMOTE OR ON-SITE], MONITORING THE COMPUTERS SYSTEMS OF OTHERS AND PROVIDING BACK-UP COMPUTER PROGRAMS AND FACILITIES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 6-1-1997; IN COMMERCE 10-17-1997.

SER. NO. 75-540,114, FILED 8-20-1998.

WILLIAM P. SHANAHAN, EXAMINING ATTORNEY

Exh. 1008

Exh. 1008

Reasonabledoubt.com

[Querying whois.internic.net]
[Redirected to whois.joker.com]
[Querying whois.joker.com]
[whois.joker.com]
domain: reasonabledoubt.com
owner: Lisa FitzGerald
organization: Law Offices of Lisa M. FitzGerald
email: fitzgerald@hypertouch.com
address: 235 Belmont Ave
city: Redwood City
state: CA
postal-code: 94061
country: US
phone: 650-367-6664
fax: 650-367-6664
admin-c: fitzgerald@hypertouch.com#0
tech-c: dnstech@hypertouch.com#0
billing-c: hostmaster@hypertouch.com#1
nserver: dns1.hypertouch.com 69.33.227.203
nserver: dns2.hypertouch.com 69.33.19.189
nserver: dns3.hypertouch.com 66.92.173.128
status: lock
created: 1998-06-07 00:00:00 UTC
modified: 2004-05-30 22:30:29 UTC
expires: 2006-06-06 00:00:00 UTC
source: joker.com live whois service
query-time: 0.029581
db-updated: 2006-01-23 19:50:39
NOTE: By submitting a WHOIS query, you agree to abide by the following
NOTE: terms of use: You agree that you may use this data only for
lawful
NOTE: purposes and that under no circumstances will you use this data
to:
NOTE: (1) allow, enable, or otherwise support the transmission of mass
NOTE: unsolicited, commercial advertising or solicitations via direct
mail,
NOTE: e-mail, telephone, or facsimile; or (2) enable high volume,
automated,
NOTE: electronic processes that apply to Joker.com (or its computer
systems).
NOTE: The compilation, repackaging, dissemination or other use of this
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Joker.com.

Exh. 1045

LISA FITZGERALD WAGNER

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Menlo Park, CA 94025
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LEGAL

EXPERIENCE: **Deputy Public Defender, Stanislaus County Public Defender, Modesto, CA**

Represent clients in all stages of criminal proceedings in felony cases including trial, preliminary hearings, 1538.5 and 995 hearings, settlement conferences and arraignment. Research, write, and argue motions, including suppression motions, 995 motions, speedy trial, motions to recuse, and other law and motion matters. Work with other Deputy Public Defenders on drug court, settlement, domestic violence, and deferred judgement calendars.

(February 2000-Present)

Contract Counsel, Integral Development Corporation, Palo Alto, CA

Negotiated and drafted contracts for the corporation, including business partnering agreements, property leases, and user agreements, as well as worked with outside counsel to apply for patents and trademarks and comply with S.E.C. and C.E.C. regulations.

(February 1998-February 2000)

Public Counsel, Commonwealth of Massachusetts, Lowell, MA

Certified by the Commonwealth of Massachusetts to handle state appointed criminal cases; represented indigent juvenile clients in delinquency cases, including arraignment and bail hearings, superior court appeals on bail, probation revocation hearings, plea negotiations, and pre-trial hearings.

(July 1996-October 1997)

Attorney, Law Offices of Richard A. Lalime, Lowell, MA

Responsible for the misdemeanor and juvenile case load of a small general practice law firm, and researched, wrote, and filed substantive evidentiary motions in felony cases; advocated for individual clients in civil rights, workers' rights, and prisoners' rights cases; and advised clients on personal injury, small business contracts insurance coverage and small claims matters.

(September 1995-September 1997)

Law Clerk, District of Columbia Public Defender, Washington, DC

Represented clients in prison administrative hearings and appeals on disciplinary and housing issues; researched and wrote legal memoranda in felony cases; and interviewed and advised clients for sentencing hearings.

(August 1992-April 1993)

Law Clerk, New Hampshire Public Defender, Stratham, NH

Represented indigent clients in all stages of misdemeanor cases, including a bench trial; researched and prepared motions and memoranda in felony cases; and assisted attorneys in felony proceedings.

(June 1992-August 1992)

MEMBER: **State Bar of California (1995)**
State Bar of Massachusetts (1993)

EDUCATION: **Howard University School of Law, Washington, DC**

Juris Doctor, May 1993

Class Rank, Top 15%

Academic Honors: American Jurisprudence Award-Criminal Law
Finalist-Charles Hamilton Houston Moot Court Competition
Academic Merit Scholarship-First, Second, and Third years

Activities: National Moot Court Team (1991-1993)
Howard Public Interest Law Society-President (1991-1993)
Organization of Women in Law (1990-1992)

University of Massachusetts, Amherst, MA

Bachelor of Arts, May 1989

Activities: Resident Assistant (1986-1989)
MASSPIRG-State Board Representative (1985-1987)

Massachusetts Continuing Legal Education, Boston, MA

CPCS Certification, Zealous Advocacy in the District Courts (Summer 1996)

University of Pittsburgh, Pittsburgh, PA

Semester at Sea, Spring 1988

Circumnavigated the globe, visiting 11 countries

SKILLS: WESTLAW, LEXIS, Win95/NT, Macintosh, Web & Email server setup/maintenance,
HTML, MS Word, WordPerfect, Excel

NO UCE -- No Unsolicited Email: [legal notices](#) [email policy](#)

Hypertouch Inc. servers are located in the state of California which has a number of laws prohibiting spam...

Output from ARIN WHOIS

[ARIN Home Page](#) [ARIN Site Map](#) [ARIN WHOIS Help](#) [Tutorial on Querying ARIN's WHOIS](#)

Search for :

Search results for: 66.93.132.74

Speakeasy, Inc. SPEAKEASY-5 (NET-66-92-0-0-1)
66.92.0.0 - 66.93.255.255
SFO BRIDGED CIRCUITS SPEK-SFO-BR-5 (NET-66-93-132-0-1)
66.93.132.0 - 66.93.132.255

ARIN WHOIS database, last updated 2006-01-23 19:10
Enter ? for additional hints on searching ARIN's WHOIS database.

If contact information is out of date or incorrect, please contact hostmaster@arin.net. Include all relevant information in your e-mail and ARIN will investigate the matter.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HYPERTOUCHE, INC., a California corporation,)	
)	
)	
Plaintiff,)	
)	
v.)	
)	
KENNEDY-WESTERN UNIVERSITY, a Wyoming corporation, and DOES 1 through 100, inclusive,)	
)	
)	
Defendants.)	

Case No. C 04 5203 si

CONFIDENTIAL

DEPOSITION OF JAMES JOSEPH WAGNER

August 16, 2005

Reported By:
Karen L. Buchanan
CSR 10772

File No.:
05-10400



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JOE Wagner depo

1 back, please?

2 (The record was read by the Reporter.)

3 THE WITNESS: So the three DNS servers are
4 located, two of them in Redwood City, and one is located
5 up near Skyline Boulevard in the mountains behind
6 Redwood City. I don't know the actual city that's in.

7 BY MS. WOOLLACOTT:

8 Q. The two in Redwood City, is that the Eagle
9 Terrace address?

10 A. Yes. The ones you photographed.

11 Q. The one on Skyline, do you know the address?

12 A. No, not off the top of my head.

13 Q. Is it a house?

14 A. Yes. It's a residence.

15 Q. Do you know who lives there?

16 A. Yes.

17 Q. Who?

18 A. Machiel Van der Loos.

19 Q. Oh, your supervisor?

20 A. Yes.

21 Q. Do you know the IP addresses for those three
22 servers?

23 A. For two of them, yes. The IP address would
24 be -- the two that you photographed are 69.33.227.203
25 and .200.

1 there for when I'm traveling and I can stay there. But
2 it's not deployed.

3 Q. Where is "up there"?

4 A. Up in the Boston area.

5 Q. And does Hypertouch Inc. pay anything towards
6 the Washington, D.C. equipment?

7 A. Towards the equipment?

8 Q. Anything. The DSL line, the name, the IP
9 address, the domain names that are there, anything
10 related to Washington, D.C.

11 A. Well, Hypertouch's Web server is there, and I
12 personally built the Web server. It's a RAID, so we
13 paid the equipment at cost.

14 The domain name served by some of those,
15 including www.hypertouch.com, are hosted on that Web
16 server. And so various clients' domains are hosted on
17 that Web server. So I don't -- so that's the best
18 answer I can give.

19 Q. I'm asking if you pay anything towards it. You
20 said you bought the box. Since you bought the box, have
21 you paid anything towards the site?

22 A. I don't quite understand. I pay registration
23 fees for domain names. I do not pay a monthly fee for
24 co-locating.

25 Q. Same with Skyline, do you pay anything towards

1 Skyline?

2 A. No.

3 Q. Did you provide the box there?

4 A. Yes. And the UPS.

5 Q. The what?

6 A. The UPS, the backup --

7 Q. Oh, and what about the DSL line?

8 A. No.

9 Q. And Eagle Terrace, you pay for the boxes and
10 you pay for the DSL line?

11 A. Correct. "You" being Hypertouch.

12 Q. Correct. We've already gone over what you've
13 individually paid, right?

14 A. Yes.

15 Q. So MegaPath Networks that we discussed, you
16 think it's upstream Washington, D.C., and you know it's
17 the DSL line in Eagle Terrace.

18 A. Yes.

19 Q. Any other relationship that you have with
20 MegaPath Networks?

21 A. Not that comes to mind.

22 Q. And now that we've been going for a while, do
23 you remember that you've had any relationship with
24 Speakeasy or Speakeasy Networks?

25 A. Again, I don't know who is the DSL provider for

1 Skyline, but that could be Speakeasy. I don't know.

2 Q. You've never had a relationship with Speakeasy?

3 A. I have attempted to get their services a couple
4 of times and, for example, they weren't available in
5 Foster City. But no. So I've done inquiries about
6 services, but I have never signed up with them that I
7 can recall.

8 Q. Are you familiar with the term a "backbone
9 provider"?

10 A. Yes.

11 Q. What does it mean to you?

12 A. Backbones are very large telecommunication
13 companies that run their own fiberoptic or cable lines.

14 Q. Hypertouch Inc. is not a backbone?

15 A. Hypertouch has its own network that's hooked
16 up, but it doesn't have a backbone that crosses state
17 lines or anything like that, no.

18 Q. Do you know what a "wholesale ISP" is?

19 A. Wholesale ISP?

20 Q. ISP, Internet service provider.

21 A. I'm not sure what terminology you would use
22 when you say "wholesale ISP."

23 Q. Do you consider SBC to be a backbone?

24 A. I think of backbones as super high-bandwidth
25 trunk lines. I do not know if SBC has their own

1 did not ever click on the Kennedy-Western opt-out?

2 A. I do not recall ever doing that, correct.

3 Q. So therefore, you don't know what would have
4 happened, good or bad, had you done so, correct?

5 A. That is correct. I don't recall having ever
6 tested that.

7 Q. Have you ever filed an FTC complaint?

8 A. I have filed FOIA requests with the FTC.

9 Q. F-O-I-A, all caps?

10 A. Freedom of Information Act complaints with the
11 FTC. I don't recall complaining to the FTC about
12 e-mail, about spam. I could be wrong, but I don't
13 recall.

14 Q. When did you first look at the FTC Web site and
15 see that it had a method by which you could complain
16 about spammers?

17 A. I don't recall exactly. I'm pretty sure it
18 would be prior -- it would be sometime in 2003 or
19 earlier. I'm not sure. Maybe 2003, but I'm not sure.

20 Q. So can I take it you have not filed a complaint
21 with the FTC about Kennedy-Western University?

22 A. Correct.

23 Q. Do you believe Hypertouch Inc. has any actual
24 damages from any e-mails received by you that advertised
25 Kennedy-Western University?