
Second Circuit Holds Financial Firms' Claim for "Hot News" Misappropriation Preempted By Federal Copyright Law

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On June 20, 2011, the Second Circuit in *Barclays Capital Inc. v. theflyonthewall.com, Inc.*, ruled that plaintiff financial firms' claim against an online news aggregator for "hot news" misappropriation under New York law was preempted by federal copyright law. In reversing the District Court for the Southern District of New York's holding that the aggregator had committed "hot news" misappropriation by early morning reporting of that day's stock recommendations, the panel made a key distinction between makers and breakers of news:

"[A] Firm's ability to make news-by issuing a Recommendation that is likely to affect the market price of a security- does not give rise to a right for it to control who breaks that news and how."

The decision could have broad implications for financial firms, traditional media companies, and news aggregators, many of whom filed amici briefs on appeal. Though the Second Circuit did not address the viability of the "hot news" misappropriation tort, its analysis suggests it exists, but in a circumscribed form.

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