

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BARCLAYS CAPITAL INC., MERRILL LYNCH, :
PIERCE, FENNER & SMITH INCORPORATED, :
AND MORGAN STANLEY & CO. INCORPORATED, :
:
Plaintiffs, :
:
-v- :
:
THEFLYONTHEWALL.COM, :
:
Defendant. :
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06 Civ. 4908 (DLC)

PERMANENT
INJUNCTION

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: <u>3/18/10</u>

DENISE COTE, District Judge:

WHEREAS defendant Theflyonthewall.com, Inc. ("Defendant") admits that its use of excerpts from seventeen research reports infringed upon the copyrights owned in those reports by plaintiffs Morgan Stanley & Co. ("Morgan Stanley") and Barclays Capital Inc. ("Barclays Capital") (collectively, "Copyright Plaintiffs") in violation of one or more exclusive rights enumerated in Section 106 of the Copyright Act, 17 U.S.C. §§ 106(1), (3), and (5); and

WHEREAS it has been further determined by this Court following trial that Defendant violated the common law of New York by misappropriating Plaintiffs' commercially valuable, time-sensitive equity research recommendations and analyses, as described in this Court's March 18, 2010 Opinion and Order; it is hereby

ORDERED that Defendant, its agents, servants, officers, employees, and all those acting under its control and/or on its behalf and/or in concert with it, are permanently enjoined and restrained from:

1. Copying, distributing, displaying, or in any other manner publishing, selling, offering to sell or distribute (via any form of marketing or advertising), abstracting, broadcasting, making derivative works from, licensing, or transmitting, without prior written authorization by the Copyright Plaintiffs, any portion of the copyrighted elements of any research reports generated by Copyright Plaintiffs, whether now existing or as may be created at any time in the future;

2. Disseminating the dial-in numbers, pass codes, web links, or other controls on access to conference calls, webcasts, or other events pertaining to research hosted by Plaintiffs;

3. Disseminating in whatever form, via any medium now known or hereafter developed, whether to subscribers or anyone else, and whether for monetary consideration or otherwise, research reports, summaries, abstracts, headlines, or any other synopses of Plaintiffs' proprietary research recommendations or analyses, including, but not limited to, summaries or descriptions of ratings, new coverage initiations, price targets, or earnings estimates (each a "Recommendation") before:

(a) the later of one half-hour after the opening of the New York Stock Exchange or 10:00 a.m. (Eastern Standard or Eastern Daylight Savings time, whichever is then in effect) on the day the Recommendation is first distributed by the sponsoring Plaintiff to its clients, for those Recommendations first distributed prior to 9:30 a.m., or

(b) two hours after the Recommendation is first distributed by the sponsoring Plaintiff to its clients, for those Recommendations first distributed at or after 9:30 a.m. on a given day.

The provisions of subparagraph (a) shall not be deemed to restrict Defendant from referring after 9:30 a.m. to one of the Plaintiffs' Recommendations in the context of independent analytical reporting on a significant market movement in a security that has already occurred that same day;

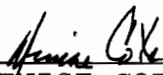
4. Marketing its service in a fashion so as to convey that subscribers will receive access to the Plaintiffs' Recommendations closely proximate in time to Plaintiffs' own dissemination of those Recommendations.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction for the enforcement of compliance with this Injunction. Defendant may, anytime one year from the date of this Order or thereafter, apply to this Court to modify or vacate the Injunction in the event that it can demonstrate that

the Plaintiffs have not taken reasonable steps to restrain the systematic, unauthorized misappropriation of their Recommendations. If Defendant makes such an application, the Plaintiffs shall be given an opportunity to be heard, and the Court will thereafter determine what, if any, modification to this Injunction may be appropriate.

SO ORDERED:

Dated: New York, New York
March 18, 2010



DENISE COTE
United States District Judge