

Legg Mason Told to Pay Newsletter

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A federal jury in Baltimore levied a \$20 million penalty against financial services firm Legg Mason Inc. on Friday for illegally distributing a copyrighted investment newsletter to its employees.

According to the lawsuit, the company e-mailed unauthorized copies of Lowry's Market Trend Analysis, a daily e-mail commentary on the stock market, to its network of broker-dealers for more than a decade. During that time only three Legg Mason employees had paid the \$700 annual subscription for the publication, but about a quarter of Legg Mason's 5,300 employees received the newsletter, said Lowry's Reports Inc. President Paul Desmond.

"We felt that this case was worth pursuing because it was significant enough to really send an important message to readers of copyrighted data all across the country," said Desmond, whose North Palm Beach, Fla., company uses supply-and-demand principles to analyze the market. "For small publishing firms, that kind of redistribution really threatens our existence, and it wouldn't take too many situations as massive as Legg Mason to really put us out of business."

Desmond and many niche newsletter publishers get their revenue largely through subscriptions, not advertising. Many subscribers to specialized newsletter pay thousands of dollars a year. The jury took that into consideration when calculating the fine, which was based on Lowry's lost revenue and the number of copyright violations Legg Mason committed.

Legg Mason spokeswoman Maura Fox called the \$20 million fine "grossly excessive" and said the company is considering whether to appeal or take other steps in an effort to reduce the jury award. The company expects to take a \$17.5 million charge against earnings related to the case in the quarter ended Sept. 30. The suit was filed in U.S. District Court in Baltimore in late 2001.

"Over the course of the next few weeks [the company] will aggressively pursue all options to protect the interests of its stockholders," Fox said yesterday.

Elizabeth C. Koch, a D.C. media lawyer who regularly represents newsletter publishers and the Newsletter & Electronic Publishers Association, the industry's trade group, said the ruling is a warning to companies that "they have to be responsible for the actions of their employees and make sure there aren't inadvertent copies" of newsletters being made.

"Often because they are small publishers it is difficult for folks to understand that it is a serious matter," she said. "It is critical to them."

Greg McCaffery, publisher and chief operating officer at BNA Inc., a District-based publisher of government and business news, said the advent of electronic newsletters has exacerbated the problem. "In the good old days the biggest problem was copiers. Now in the electronic world publishers have to be very clear about the licensing arrangement, and users have to take seriously that license."

Still, copyright expert Peter Andrew Jaszi said Legg Mason may have grounds to appeal based on the amount of the damages, because not every Legg Mason broker who received the Lowry publication for free would have paid the \$700 subscriber fee. It is difficult to calculate the exact financial loss Lowry's suffered, he said.

"This kind of case is fairly unusual," said Jaszi, who teaches copyright law at American University. The jury award included \$825,000 for lost revenue and fines of \$50,000 and in some cases \$100,000 for each violation of about 250 copyrights registered to Lowry's that the jury said Legg Mason violated.

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