

## Case Summary

### Mastercard, Inc. v. Moulton

2004 WL 1393992 (S.D.N.Y. 2004)

#### **Court Issues Spoliation Sanctions for Negligent Destruction of Email**

In an action to assert a copyright infringement claim, the plaintiff sought spoliation sanctions against the defendant because the defendant had negligently destroyed email that was pertinent to the litigation. The defendant, and an employee of the defendant, both testified that the server automatically destroyed email that was over 21 days old, and that neither of them had tried to print out or save the email in some way. Therefore, the defendant could not comply with the discovery instructions because he could not produce those emails that were over 21 days old. The plaintiff sought a sanction of a conclusive determination on the issues of “confusion by the public” and “dilution and tarnishment of the marks”. Alternatively, the plaintiff requested that the trier of fact be permitted to infer such conclusions from the destruction of the emails.

#### **Decision**

The court granted the sanction in the form of a jury instruction that would allow the jury to infer that the defendant’s negligent destruction of the email destroyed evidence of “confusion by the public” and “dilution and tarnishment of the marks”.

Deletion of Electronic Documents