



A FORENSIC DISCOVERY NEWSLETTER  
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## LANDMARK CASE RULING

### COURTS UPHOLD FORENSICON'S NEUTRALITY & METHODOLOGY

What began as an employee's claim for breach of an Employment Agreement and backpay resulted in a counterclaim alleging tortious interference, breach of non-compete and confidentiality duties, and violation of the Illinois Trade Secrets Act. In *Charles A. Krumwiede v. Brighton Associates, LLC and Ismael C. Reyes*, U.S. District for the Northern District of Illinois, Case No. 05 C 3003, Brighton Associates claimed that Charles Krumwiede went to work for a competitor and misappropriated a business opportunity with a potential client, and consequently sought to recover the laptop computer that Krumwiede used when he worked for Brighton in order to determine whether Brighton's data was improperly used.

Krumwiede refused to produce the laptop despite Brighton's preservation letter demanding that Krumwiede immediately cease using the laptop and that any changes to the contents of the laptop would be regarded as deliberate spoliation of evidence.

After a motion to compel was filed by Brighton's attorneys, Greenberg Traurig, the Court ordered that a neutral third party computer forensics firm, Forensicon, Inc. be allowed to inspect the computer. Forensicon created a forensic copy of the hard drive, and issued a report identifying numerous instances of files accessed and deleted, and connection of external devices which suggested transfer of files to other computers.

(Continued on page two...) ➡

## ANOTHER CASE VICTORY

### EMPLOYEE SUES FORMER EMPLOYER—EMPLOYEE PAYS

In the case *Jason Kalish v. Leapfrog Online Customer Acquisition, LLC, et al*, Illinois Circuit Court of Cook County Case No. 03 L 11965, Jason Kalish sued Leapfrog Online after he left the company claiming that the company owed him \$781,632 in commissions and salary. Forensicon was hired to inspect Kalish's work computer and found a "zip" file of company data that had been e-mailed outside the company on Kalish's last day of work. Leapfrog Online then countersued Kalish for misappropriation of a trade secret.

After several months, Kalish admitted to e-mailing a "zip" file to his home computer but refused to allow inspection of that machine.

Leapfrog Online sought a court order compelling the inspection of Kalish's home computer, but Kalish objected to the choice of Forensicon as the independent expert since Leapfrog had already used them in this case.

On August 11, 2005 Defendants' attorneys, Babbitt & Melton, LLP, filed their Reply In Support of Motion to Compel, stating: "Finally, there is no reason not to select Forensicon. The company routinely works as a neutral third party examiner, is practiced at complying with protective orders, with the producing party's privacy... There is no reason to suspect that Forensicon would disclose non-responsive materials to Defendants or anyone else..."

(Continued on page three...) ➡

## Inside This Issue:

<i>Landmark Case Ruling</i>	1
<i>Another Case Victory</i>	1
<i>Forensicon Welcomes New Clients</i>	1
<i>Jason H. McDannold Joins Forensicon</i>	2
<i>Jeanne-Elise M. Heydecker Joins Forensicon</i>	3
<i>Calendar of Events</i>	4

## Welcome New Clients:

- *Clausen Miller PC*
- *Duane Morris, LLP*
- *Karacic & Daffada, Ltd.*
- *Katten Muchin Rosenman, LLP*
- *Lanphier & Kowalkowski, Ltd.*
- *Lindner Spears and Reuland, P.C.*
- *Litchfield Cavo, LLP*
- *Neal, Gerber & Eisenberg, LLP*
- *Pasulka & White, LLC*
- *Williams & McCarthy*

## JASON H. MCDANNOLD JOINS FORENSICON AS MANAGING DIRECTOR



Jason H. McDannold has recently joined Forensicon as Managing Director. Due to phenomenal growth, Lee Neubecker, President and CEO of Forensicon, identified the need for a key player in this role.

"Jason McDannold has the depth and breadth of expertise we need to move Forensicon to the next level," said Mr. Neubecker. "He brings the right kind of experience to our executive team. He will be responsible for client services, internal systems and overseeing the company's expansion into new markets."

Prior to joining Forensicon, McDannold was Managing Partner at Quantinus, a private equity/management consulting firm that specializes in business process optimization, M&A integration, strategic planning and restructuring initiatives. While at Quantinus, he was instrumental in managing large-scale operational restructuring and post-merger integration initiatives for private equity investors and client organizations.

Previous work experience included leadership as a Principal of Niteo Partners (an NEC Company), establishment of ZEFER Corporation's Chicago office and its Program Management Practice, along with expertise as a Client Partner at Cambridge Technology Partners' Midwest Region.

While living in East Asia for nearly four years, McDannold founded and later sold Enterprise Imports, an import/export firm with operations in Seoul, Hong Kong and Taipei.

McDannold received his M.B.A. *with Honors* from the University of Chicago's Graduate School of Business, and earned two B.A.'s, *summa cum laude*, from The Ohio State University. McDannold also attended Yonsei/Ewha Universities in Seoul, Korea, and completed their International Business Program.

Mr. McDannold will be leading Forensicon's strategic growth initiatives with Mr. Neubecker as Forensicon expands its operations.

**Krumwiede attempted to suggest that Brighton's counsel compromised the neutrality of Forensicon by coaching Forensicon's employees and meddling in the creation of Forensicon's expert report. The Court held that neither counsel's contact nor prior dealings with Forensicon compromised the neutrality of the investigation and report, as evidenced by the consistency of the initial and final versions of the expert reports.**

## LANDMARK CASE RULING...

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Forensicon also found instances of defragmentation, and further tracked activity of ZIP files with suspicious filenames some of which were deleted and overwritten.

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The Court also held that Krumwiede's actions amounted to willful and bad-faith spoliation of evidence and warranted a default judgment in favor of Brighton Associates. In deciding between default and lesser sanctions, the Court considered prejudice to Brighton, prejudice to the judicial system, deterrence and punishment. Krumwiede's conduct showed blatant contempt for the Court and a fundamental disregard for the judicial process which could only be adequately sanctioned with a default judgment. In addition, Brighton was entitled to an award of costs and fees relating to its Motion for Sanctions, including fees paid to Brighton's attorneys and Forensicon.

## JEANNE-ELISE M. HEYDECKER JOINS FORENSICON AS DIRECTOR OF MARKETING



Jeanne-Elise M. Heydecker has been named Director of Marketing for Forensicon. She has over 20 years of experience in managing marketing and creative in the High Tech industry.

Prior to her success at MicroE Systems, Ms. Heydecker worked in the product management group at Tripod.com, as the Traffic and Online Promotions Product Manager. In this role, she increased website traffic from 12 million to 16 million page views per day, which was accomplished in 9 months.

Ms. Heydecker joins Forensicon after four years managing the 40+ websites for the Indian Prairie School District, the fourth largest school district in Illinois. Ms. Heydecker received a Webby Award in 2006 in recognition for her outstanding leadership of the Indian Prairie School District's website initiatives.

Before joining the school district, she co-founded BuzzBoltMEDIA.com, an online marketing and computer consulting company. As Vice President of Marketing, Ms. Heydecker was responsible for marketing the organization, as well as overseeing product design, creative, web marketing and consulting services for clients.

Prior to BuzzBoltMEDIA, Ms. Heydecker worked for MicroE Systems, an encoder manufacturer utilizing nanotechnology. She was responsible for marketing communications as the company went through a change in strategy including branding and product changes. The company was later purchased by GSI for more than USD \$58M.

At Telekol, Ms. Heydecker transformed a telephony company into a CTI and unified messaging powerhouse, opening up a new sales channel, managing packaging, product launch, interface design, documentation, sales materials and more. The 'buzz' surrounding the new products attracted Nokia, who purchased the company for USD \$56M.

Before Telekol, Ms. Heydecker grew Semaphore into a leader in the Object-Technology training & consulting industry. Faced with global, publicly-traded competition, Ms. Heydecker re-branded the company and developed the marketing tools that facilitated explosive growth with more than 80% market share.

Ms. Heydecker has presented at a variety of conferences discussing website management and marketing issues.

Ms. Heydecker will be spearheading the re-branding initiatives, and managing all marketing activities that will drive growth and take Forensicon to the next level.

**“Finally, there is no reason not to select Forensicon. The company routinely works as a neutral third party examiner, is practiced at complying with the producing party’s privacy... There is no reason to suspect that Forensicon would disclose non-responsive materials to Defendants or anyone else...”**

**“Plaintiff’s true concern appears to be that Forensicon’s experience with Mr. Kalish’s other deceptive computer conduct will result in a more thorough, effective search for responsive documents. This is a reason to select Forensicon, not reject it.”**

**-Peter Land  
Babbit & Melton**

## ANOTHER CASE VICTORY...

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*“Plaintiff’s true concern appears to be that Forensicon’s experience with Mr. Kalish’s other deceptive computer conduct will result in a more thorough, effective search for responsive documents. This is a reason to select Forensicon, not reject it.”*

Cook County Circuit Court Judge Ronald Bartkovic ordered Forensicon to perform a forensic examination of Kalish’s home computer to establish whether Plaintiff left the

company with Leapfrog Online property. Following the order, Forensicon provided a report detailing their findings.

Shortly after Forensicon’s report, the parties agreed to dismiss all claims without any compensation to Kalish or his counsel. As part of the settlement, Kalish paid Leapfrog Online a significant sum of money.



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## CALENDAR OF EVENTS

### LegalTech New York: January 29-31, 2007

Forensicon will be exhibiting at **LegalTech New York** from January 29–31, 2007. The Conference and show will be held at the Hilton New York Hotel. Visit us on the third floor at booth 3112, just to the left of the entrance. This year we will be introducing our new brand.

### ABA TechShow: March 22-24, 2007

Forensicon is scheduled to exhibit in Chicago at the **ABA TechShow** which is being held at the Sheraton Chicago Hotel and Towers from March 22-24, 2007. Please visit us at booth #416. We will be introducing new service offerings that will be of interest to companies and attorneys that deal with security and risk management relating to electronic Intellectual Property. We hope to see you there!

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Litigation**



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- Where did they send it?
- How did they cover it up?

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