

“Taubman Sucks!”

The true story of how I prevailed against overwhelming odds and secured my right to shout it from the electronic rooftops.

by Henry Charles Mishkoff

In February 2003, Henry Charles Mishkoff emerged victorious from an epic little-guy-against-the-big-company battle that put the corporate world on notice that they and their arrogant lawyers could no longer push people around with impunity. The Internet had leveled the playing field.

The first-person story of Mishkoff’s harrowing two-year legal struggle, “*Taubman Sucks!*” culminates in the dramatic victory that made legal history and captured the imaginations of legions of enthusiastic supporters around the world.

The legal imbroglio began innocently enough when Mishkoff created a website to herald the impending arrival of a new shopping mall near his home in Dallas. Nearly two years later, the mall’s owners, the Taubman Company, noticed the site – but rather than thanking Mishkoff for promoting their mall, they threatened him with legal action, accusing him of infringing on their trademark and unfairly competing with their business.

**“God love you, man.
You are a folk hero
among my students!”**

*Dr. David N. Lowry
Professor of Communication Law
Pepperdine University*

Rebuffing Mishkoff’s repeated attempts at cooperation – and renegeing on a settlement agreement that they themselves had proposed – Taubman dragged Mishkoff into court because he refused to relinquish his website’s domain name.

When Taubman’s lawyers convinced a federal judge to force Mishkoff to remove his site from the Web, Mishkoff created a new website to document Taubman’s shockingly abusive tactics in copious detail. In keeping with the tradition of Internet complaint sites, he named his new website “TaubmanSucks.com.”

When Taubman learned about the new site, they complained to the judge that Mishkoff shouldn’t be allowed to use their trademarked name to criticize them. Because their new complaint clearly crossed the line from trademark issues to constitutionally-protected free speech, Mishkoff never imagined that the judge would force him to take his TaubmanSucks site off the Web – but that’s exactly what the judge ordered him to do. To his dismay, Mishkoff came to the frightening realization that not only was he battling a giant corporation and their overbearing lawyers, he was having to contend with a hostile judge as well.

Prior to this case, several “sucks.com” cases had been decided in various courts, with various outcomes – but as no case had ever risen above the local level, none of the decisions was binding on any other court. With the help of a *pro-bono* lawyer who

specializes in cases involving civil liberties and the Internet, Mishkoff won a far-reaching, precedent-setting victory in the U.S. Court of Appeals. According to that court:

“The rooftops of our past have evolved into the internet domain names of our present. We find that the domain name is a type of public expression, no different in scope than a billboard or a pulpit, and Mishkoff has a First Amendment right to express his opinion about Taubman, and as long as his speech is not commercially misleading, the Lanham Act [trademark law] cannot be summoned to prevent it.”

“*Taubman Sucks!*” not only documents the twists and turns of an agonizing legal ordeal, it explores several important background issues that underlie the case, including the history of complaint sites, the myriad problems caused by the explosion of commercial activity on the Net, and the lessons Mishkoff learned from using the Net to publicize his cause and to garner public support.

The story of Mishkoff’s ordeal has broad appeal. Different people respond to it on very different levels:

- **To the mass market**, it’s the inspirational account of how one man refused to knuckle under to the bullying tactics of a faceless corporate machine.
- **To business people**, it’s a clear warning that, if they fail to treat people with respect in this day of instant global communication, they do so at their own peril.
- **To the online community**, it proves that the Internet can empower ordinary people to pool their resources and achieve extraordinary results.
- **To attorneys and students of law**, it’s a dramatic wake-up call, an inescapable notice that they operate in an arena that suddenly has a new set of rules.

In 2004, award-winning filmmaker Theo Lipfert produced a short documentary about the case. *Taubman Sucks* (the movie) was premiered for an enthusiastic audience at the Seattle Art Museum and enjoyed an extended run at film festivals around the world.

Mishkoff, who earns his living as a computer and Internet consultant, has written two books and dozens of magazine and newspaper articles.

His first book, *Cracking the “Peanut”*: *Your IBM PCjr Companion*, was published by Wordware and was later reprinted by Prentice-Hall. His second book, *Understanding Artificial Intelligence*, was first published by Texas Instruments and has subsequently been reprinted by Radio Shack and SAMS. (It has been translated into several languages and is considered to be part of the standard bibliography of the field of AI.) Mishkoff’s

“This lengthy and often laugh-out-loud funny tale is a good read, comparable to a good book.”

The Southern California Law Blog

first short story, “Dream Girl,” was awarded the grand prize in a contest sponsored by the *Fort Worth Star-Telegram*.

“*Taubman Sucks!*” is a real-life legal thriller that highlights some of the societal issues raised by the explosive growth of the Internet. But it’s much more than that. It’s the true story of how the Internet community rallied to the aid of one of their own – and how they joined forces to successfully fight off a virulent attack by a bevy of unscrupulous attorneys and a mega-corporation with virtually unlimited resources.

“David now has a sling. The Internet and its mass-communication capabilities are a marvelous equalizer. Goliath needs to pay attention.”

-- yclipse tech journal