State of Michigan
Attorney Grievance Commission
243 West Congress
Marquette Building, Suite 256
Detroit, Michigan 48226-3259

REQUEST FOR INVESTIGATION OF AN ATTORNEY

Attorney name: **(ONE ATTORNEY PER REQUEST)**	**Douglas W. Sprinkle**
Street and Number:	**Gifford, Krass, Groh, Sprinkle, Anderson & Citkowski**
	280 North Old Woodward Avenue
City, Zip Code and State:	**Birmingham MI 48009**
Area Code and telephone number:	**(248) 647-6000**
Date attorney was hired/appointed?	**First contact October 15, 2001**
Type of case: (divorce, criminal, probate, etc.)	**Intellectual property lawsuit**

Name of Court: **US District Court ED Michigan Southern Division** Case # **01-72987**

Name of Court: **US Court of Appeals, Sixth Circuit** Case # **01-2648, 01-2725**

Have you previously complained to our office about this attorney? **No**

STATEMENT OF FACTS

(Please be specific. You may attach additional pages if necessary)

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September 15, 2003

Request for Investigation of Attorney Douglas W. Sprinkle

I am submitting this document to complain about the behavior of Douglas W. Sprinkle, a senior partner in the firm of Gifford, Krass, Groh, Sprinkle, Anderson & Citkowski of Birmingham, Michigan. Mr. Sprinkle was one of the attorneys who represented The Taubman Company, which was the plaintiff in a lawsuit (*Taubman v. WebFeats*) in which I was the defendant. I won't go into a great deal of detail about the case in this complaint, but I'll be happy to supply whatever additional information you may think is necessary. (Note that the case is copiously documented at my TaubmanSucks.com website, which you are welcome to peruse as if it were attached to this document.)

The action about which I am primarily complaining is that Mr. Sprinkle knowingly made false statements of material facts in a hearing before the United States Court of Appeals for the Sixth Circuit. You'll notice that I have devoted the most space to this serious charge. However, I am also including other charges in this complaint, as evidence that Mr. Sprinkle's misrepresentations to the court were not isolated acts, but in fact are typical of the unethical manner in which Mr. Sprinkle chooses to conduct business. Having said that, I'm not including the additional charges **solely** as illustrations of Mr. Sprinkle's pattern of behavior – I believe that each of the charges I'm including is in itself a violation of the Michigan Rules of Professional Conduct.

Here are the Rules of Conduct that I believe that Mr. Sprinkle has violated, accompanied by explanations of the actions of Mr. Sprinkle that I believe violated those Rules.

Rule 3.3 Candor Toward the Tribunal

"(a) A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal; …or (4) offer evidence that the lawyer knows to be false."

On October 16, 2002, an appeals hearing was conducted in Cincinnati at the US Court of Appeals for the Sixth Circuit. I was appealing two preliminary injunctions that had been issued against me by Judge Lawrence P. Zatkoff of the United States District Court in Detroit. Mr. Sprinkle represented the Taubman Company for the appeal (a complete transcript of the hearing appears on my website at TaubmanSucks.com/Act105.html).

At the hearing, Judge Danny J. Boggs pointed out that I had not asked for money for my domain name or even initiated settlement discussions with Taubman, and that the first mention of money was in an unsolicited settlement offer from Mr. Sprinkle's firm. Mr. Sprinkle interrupted Judge Boggs to claim to claim that he and I and engaged in settlement discussions via telephone prior to their offer. This was a complete fabrication on the part of Mr. Sprinkle.

Here is a transcript of their exchange:

> **[Judge Boggs]** Correct me if I'm wrong. My understanding of the facts is that the website had been in operation for at least a year, maybe nearly two years. You began by making a sort of standard trademark demand letter and ratcheted it up to, you know: "We're going to sue you." It didn't quite say: "You know, you've got a nice business there, shame if you had to litigate against us forever." And then you offered the thousand dollars, right? I mean, so the thousand dollars only came up as your offer as –
>
> **[Doug Sprinkle]** There were telephone discussions, Your Honor.
>
> **[Judge Boggs]** Okay.
>
> **[Doug Sprinkle]** There were telephone discussions between me and my partner, Julie Greenberg, and Mr. Mishkoff.
>
> **[Judge Boggs]** Prior to that letter?
>
> **[Doug Sprinkle]** Yes.
>
> **[Judge Boggs]** Okay, but that's not directly in the record.
>
> **[Doug Sprinkle]** That's not directly in the record.

Note that Mr. Sprinkle claimed that I discussed settlement with him prior to their offer – which, had it been true, would have gone a long way toward convincing the judges that I was a cybersquatter. However, Mr. Sprinkle's claims were entirely false, and the conversations that he claimed to remember are absolutely, 100% fictitious. I see no way to characterize Mr. Sprinkle's assertions other than to call them deliberate false statements about a material point of the case, false statements that were specifically designed to influence the judges in favor of his client.

Fortunately for me, the judges saw through Mr. Sprinkle's attempt at deception. Judge Boggs' skepticism is obvious in the exchange I quoted above. And in the court's decision, Senior Judge Richard F. Suhrheinrich said:

> "Although Taubman's counsel intimated at oral argument that Mishkoff had in fact initiated the negotiation process, correspondence in the record supports the opposite conclusion…"

(The entire decision is online at TaubmanSucks.com/Act112.html)

Judge Suhrheinrich was being kind to Mr. Sprinkle. As you know from the portion of the transcript that I quoted, Mr. Sprinkle didn't "intimate" anything; rather, he made clear and unequivocal statements, ostensibly from personal knowledge. Not only were Mr. Sprinkle's statements not supported by the record, they were utterly false. And if the judges had believed Mr. Sprinkle's assertions, I would have lost the case.

I've been trying to anticipate what Mr. Sprinkle might say in his defense, so I'd like to address some of the possibilities in advance.

- **He may claim that he did not actually say what I've quoted him as saying.** However, I paid a professional transcriptionist to transcribe the hearing from an audiotape provided by the court. Although some small portions of the tape are difficult to understand, the portion quoted in this letter is crystal clear. And, of course, if Mr. Sprinkle contests the accuracy of the transcription, I assume that you can obtain an official audiotape of the hearing directly from the court.

- **He may claim that his statements were true.** However, as Judge Suhrheinrich pointed out in his decision, the record of the case clearly does not support Mr. Sprinkle's statements. (Most of the documents that comprise the record are available on my website, and all of the documents should be available from the courts in which the various filings were made.) More to the point, if I had initiated the settlement discussions and/or if I had attempted to sell the domain name to Mr. Sprinkle's client, that fact would have been made clear in at least one of his firm's numerous filings. If Mr. Sprinkle maintains that his statements were accurate, he will have to explain why his firm somehow neglected to advance those same critically important assertions in any of the dozens of documents they filed prior to the hearing in which he made those statements.

- **He may claim that his "misstatements" were accidental.** However, when my lawyer wrote to Mr. Sprinkle and asked him to retract his statements (letter of October 24, 2002, copy enclosed), Mr. Sprinkle's response ignored that request (letter of October 25, 2002, copy enclosed). My lawyer repeated his request for Mr. Sprinkle to retract his statements (letter of October 28, 2002, copy enclosed), but I do not believe that Mr. Sprinkle even bothered to respond to that request. And as if to confirm the deliberateness of his statements, he repeated his false charges to a reporter from *The Detroit News*, in an article which is online at http://www.detnews.com/2003/business/0302/10/b01-80220.htm. ("Company lawyer Douglas Sprinkle said Mishkoff had offered to sell the Web address to Taubman for $1,000.") I recognize that lying to a reporter is probably not a criminal offense; however, I'm presenting this information to you to deflect the

possibility that Mr. Sprinkle might claim that his misstatements in court were accidental, as his persistence in making those false claims indicates otherwise.

- **He may claim that he was merely mistaken about the timing of our conversation, that he confused a conversation that took place *after* they made a settlement offer with a conversation that occurred *before* their offer.** However, this is impossible, *because there were no telephone conversations of any kind between me and anyone associated with Taubman or Taubman's attorneys prior to their offer!* There were no other conversations about which Mr. Sprinkle might have been confused. My lawyer pointed this out to Mr. Sprinkle in the October 24 letter I've enclosed, to which Mr. Sprinkle declined to substantively respond. I should point out that Mr. Sprinkle could easily disprove my assertion by supplying telephone records that show that he indeed called me, or even by providing "work product" notes that show that we had the discussions he claims we had prior to their settlement offer. However, I am confident that he will not be able to provide either kind of documentation, because no such records could possibly exist. According to my phone records, the only phone calls I initiated prior to their settlement offer were from my fax machine to their fax machine. It is impossible for Mr. Sprinkle to have confused his reported conversation with another conversation that took place prior to their offer, because *no conversation of any kind took place prior to their offer.*

- **He may claim that he confused the substance of one of our conversations with the substance of another of our conversations.** However**,** *I have never engaged in a substantive discussion of any kind with Mr. Sprinkle!* The only times I have ever spoken with Mr. Sprinkle were on two or three occasions when I called to ask Julie Greenberg (Mr. Sprinkle's associate) to concur in a motion that I was filing in the case (while I was representing myself), and I was routed to Mr. Sprinkle because Ms. Greenberg was not available. In each of these instances, our exchanges consisted solely of my asking for Mr. Sprinkle's concurrence and Mr. Sprinkle declining to concur. At no time did I ever engage in even the briefest of discussions with Mr. Sprinkle about any aspect of the case whatsoever. The conversations to which he referred in court are entirely fictitious.

To describe this point as "material" is a massive understatement. If the court had believed Mr. Sprinkle, I would clearly have been considered to be a cybersquatter, and I would have lost the case. Fortunately for me, the court saw through Mr. Sprinkle's deception, and I won the appeal.

Rule 3.3 Candor Toward the Tribunal

"(a) (4) …If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures."

As I mentioned earlier, my lawyer was surprised by Mr. Sprinkle's false assertions, so he contacted Mr. Sprinkle on two separate occasions after the appeals hearing to ask him to retract his false statements. Mr. Sprinkle responded derisively to the first request and, as far as I know, ignored the second. These are hardly "remedial measures" on the part of Mr. Sprinkle.

Comment on Rule 3.3 Candor Toward the Tribunal

"…an assertion purporting to be on the lawyer's own knowledge, as in… a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry."

Although this is a comment rather than a Rule, I feel that I should point out its relevance to this incident. Mr. Sprinkle injected his assertions into his argument on the basis of his supposed personal knowledge, despite the fact that the purported conversations had not been mentioned even once in the dozens of filings that had been made in the case by Mr. Sprinkle's firm prior to the appeals hearing. And the reason that those assertions had not been made earlier was that those assertions were false, as Mr. Sprinkle was well aware.

Rule 3.4 Fairness to Opposing Party and Counsel

"A lawyer shall not: …(e) during trial, allude to any matter that the lawyer does not believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness,…"

As I noted above, Mr. Sprinkle did assert personal knowledge of facts in issue, although they were supported by no evidence whatsoever. Not only was Mr. Sprinkle not testifying as a witness, he notified us that he had no intention of testifying as a witness, so there was no possibility that his "evidence" could possibly have been admitted at the trial. And even if he had wanted to offer his statements as evidence, the federal rule prohibiting the introduction of settlement discussions into evidence would have prevented him from doing so.

Rule 3.6 Trial Publicity

"A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have substantial likelihood of materially prejudicing an adjudicative proceeding."

In an article that appeared in *The Detroit News* shortly after Mr. Sprinkle lost the appeal, the reporter quoted Mr. Sprinkle as saying that I "had offered to sell the Web address to Taubman for $1,000," but that Taubman had "sued to obtain the domain name." Mr.

Sprinkle added that he guessed that "anyone can use the First Amendment as leverage to get money." Clearly, Mr. Sprinkle recognized that his heavily prejudicial remarks would be publicly disseminated, and that *The Detroit News* was likely to be read by potential jurors in Detroit (which is where the trial was scheduled to be held). The appeal that Mr. Sprinkle had lost concerned two preliminary injunctions, but the main case was still very much in progress at the time of Mr. Sprinkle's statements – in fact, the reporter related that Mr. Sprinkle "didn't know if Taubman would decide to appeal to the U.S. Supreme Court."

Comment on Rule 3.6 Trial Publicity

"For guidance in this difficult area, one may consider the following language adapted from the American Bar Association's Model Rule 3.6:

"(a) A statement referred to in Rule 3.6 ordinarily is likely to have such a prejudicial effect when it refers to a civil matter triable to a jury, …and the statement relates to: …(5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial;"

In addition to being inaccurate and prejudicial, the statements that Mr. Sprinkle made to *The Detroit News* in relation to the $1,000 offer pertained to settlement discussions, which means that the entire subject would have been inadmissible in trial according to federal rules. I'm assuming that Mr. Sprinkle is familiar with those rules, so I also have to assume that he knew (or should have known) that the information was likely to be inadmissible as evidence in a trial. In fact, it seems that Mr. Sprinkle recognized that the only way he would be able to get that information in front of prospective jurors was to do so via *The Detroit News*.

Rule 4.1 Truthfulness in Statements to Others

"In the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person."

When Mr. Sprinkle told the reporter that I "had offered to sell the Web address to Taubman for $1,000," he knowingly made a false statement of a material fact to one "third person" (the reporter), and thereby ensured that his false statements would be relayed to **many** third persons.

Rule 6.5 Professional Conduct

"(a) A lawyer shall treat with courtesy and respect all persons involved in the legal process."

On October 15, 2001, Mr. Sprinkle called me and left the following message on my telephone answering machine:

> "Yeah, I assume this is Henry Mishkoff. This is Doug Sprinkle, I'm here with Julie Greenberg. As you know, we represent the Taubman Company. You're in violation of an injunction at this time, my friend. If your website is not off the air at 4:00 Eastern Standard Time, we're going to file a motion and hold you in contempt tomorrow, and then you can explain to the judge why you ignored his order. You want to talk about this, you can give me a call at 248-647-6000. But if your website is up and running as of 4:00 today, Eastern Standard Time, we'll see you in court. Bye."

(A recording of the message is online at TaubmanSucks.com/Act15.html)

Although the facts in Mr. Sprinkle's message were accurate, the message is clearly designed to intimidate rather than to impart information. The threatening tone, the demeaning "my friend," the tightening of the deadline (Ms. Greenberg had earlier left me an message giving me until 5:00 to remove the site) – all these elements were designed to bully me, to make me fearful. This hardly qualifies as courteous and respectful treatment. (By the way, the discourtesy and disrespect are much more evident in the recording than in my transcription, as Mr. Sprinkle's aggressive tone adds a great deal to the effect that he was trying to achieve. Since it is impractical for me to send you a copy of the recording, I urge you to listen to it at the link I provided, above.)

Summary

I believe that Mr. Sprinkle made false statements of material fact before the United States Court of Appeals because he believed that they would help his client and **because he believed that there would likely be no negative repercussions for doing so**. Even though he clearly slandered me, for example, I've been told that there's nothing I can do about it because his statements were "protected," in that they were made in court. If the AGC fails to take action against Mr. Sprinkle, I am concerned that you will reinforce his belief that he is free to indulge in unacceptable and unethical behavior with impunity.

Mr. Sprinkle's actions are perfect examples of the kind of behavior that gives lawyers a bad name. I simply cannot believe that good and decent lawyers (and I know many who fit that description, including several close relatives) would want Mr. Sprinkle to be free to continue practicing law in a manner that brings shame to lawyers everywhere.

By the way, I'm about to go on vacation, so you may not be able to contact me until the end of this month. However, I may be in a position to respond to email, so if you do need to contact me sooner than that, please feel free to write me at Hank@WebFeats.com.

Also: Having never done anything like this before, I have no idea of how long a process like this might take – so if you can, I would appreciate it if you would let me know when I might expect to hear something from you.

Please let me know if you have any questions, and thank you for your help.

I request an investigation by the Attorney Grievance Commission.

Henry C. Mishkoff
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Dallas, TX 75287
972.733.0616
September 15, 2003