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The VETERAN

Ian Ballon's
journey from
earthquakes
to e-commerce



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Veteran

From earthquakes
to e-commerce,
Ian Ballon has
seen it all

By Kathy Braidhill

Ian Ballon's legal career in California got off to a pretty shaky start.

Hours after being admitted to the California bar on October 17, 1989, Ballon returned to work at his new job in Coudert Brothers' San Jose office. A former business litigator in Washington, D.C., Ballon had recently moved west — and to Silicon Valley, in particular — in order to practice in the fast-developing area of what was then known as “computer law.”

VIRGINIA LEE HUNTER

A few minutes after 5 p.m. that day, the Loma Prieta earthquake rocked the Bay Area. The building that housed Coudert's office shook so hard that at least one partner was sent reeling into a hallway. But while the office quickly emptied out in the aftermath of the quake, the firm's newest hire stayed put. "We had the biggest earthquake in modern history, and Ian continued working," recalls Betsy Bayha, a former Coudert attorney who had recruited Ballon and who is now general counsel at NetIQ Corporation in San Jose. "Everyone was gone, the place was deserted and he was keeping his cool. He was unflappable."

The earth-rattling beginnings to Ballon's legal career in California perhaps served to signal the changes that would rearrange the landscape for attorneys engaged in the field of Internet-related law. Ballon arrived in Silicon Valley at the dawn of the Internet era and built a practice that revolved around guiding companies as they tried to navigate the breakneck pace of the dot-com frenzy of the 1990s. The anachronisms involved in practicing technology-related law had not yet disappeared. "When I started practicing law, documents were still being delivered by bike messengers in spandex tights," says Ballon. "Faxes were more common, along with telexes. I had practiced for three years before we had computers. Computers were for secretaries."

Today, he is widely recognized as an expert in navigating the legal thicket of e-commerce. Along with his practice, Ballon serves as executive director of Stanford Law School's Center for E-Commerce and as an adviser to the American Law Institute's international intellectual property jurisdiction project. He also is the author of "E-Commerce and Internet Law: Treatise With Forms" (LegalWorks/West Publishing), which was published in 2001 and updated last year.

As of last November, Ballon also has a new business address. He left Los Angeles' Manatt, Phelps & Phillips, where he had been a partner since 2000, and moved over to Greenberg Traurig, a Miami-based firm that has been beefing up its intellectual property group in California. Ballon, who lives in Santa Monica, divides his time between the firm's Los Angeles and Palo Alto offices. "The bulk of Ian's practice has been in IP litigation, but he is also very much involved in structuring business and technical solutions to assist companies to be competitive in the marketplace," says Terence Clark, a Greenberg partner who chairs the firm's national IP practice and media litigation groups.

Ballon, of course, has brought more than just his experience to his new firm. Among his roster of clients that have followed him to Greenberg are eBay, Knight-Ridder, Twentieth Century Fox Corp., Fujitsu and NBC Universal Studios. While Ballon likes the idea of working at a firm that has been bulking up its national IP group, he also says, without divulging the details, that problems had developed at Manatt. The firm "had developed a business conflict that was

impacting my ability to represent my existing clients," he says. "It started to impact my practice in a way that provided the impetus to consider looking elsewhere."

Some of Ballon's clients say they appreciate his approach when it comes to resolving issues in Internet-related areas of law that are still evolving. "Ian does litigation but he also is someone with whom we are likely to consult for an opinion about a particular problem, especially one where there aren't clear answers," says Jay Monahan, deputy general counsel for litigation and intellectual property at eBay.

Alasdair McMullan, senior vice president for legal affairs at EMI Recorded Music, North America, recalls Ballon's efforts in a "sensitive" Internet domain-name dispute that arose about five years ago. "It was a significant trademark for us and it involved someone who had a legitimate right to the mark, so it became a serious fight," says McMullan. "This was a very new and arcane area of the law before the set procedures went into place and the law was very confusing." Ballon negotiated a settlement under which EMI retained the disputed trademark.

Earlier in his career, Ballon's background in business litigation conveniently dovetailed with the issues that many of his Internet-related clients were bringing to him. One of the biggest challenges — which, to some degree, continues to confront lawyers practicing in this area — revolves around clients' demands for near-instantaneous legal advice. "I would get a phone message from a client saying, essentially, 'I've decided on a foolish course of action that will expose my business to a great vulnerability and I want to get it resolved. Call me in 10 minutes,'" says Ballon. "That was emblematic of the urge to do things instantly in those days. We had to move at ridiculously fast speeds."

Ballon's career as a "computer-law" attorney also has bridged the earlier era of Internet generalists and the more recent trend toward specialization. Some years ago, for example, one of his clients turned to him for Internet-related advice that also involved the need to address banking and financial matters. Although Ballon was quick to inform the client that he did not feel qualified to offer advice in those areas, the company still looked to him for overall guidance on such online matters as authentication, fraud and related issues. "We were constantly being driven into these transactions, and it was very unnerving," he says, reflecting the nature of his legal practice in those days. "Every six months it was different than it was six months earlier."

These days, specialization has replaced the somewhat seat-of-the-pants approach that Ballon and other lawyers like him found themselves taking when it came to addressing a variety of matters involving e-commerce and other online ventures. "Now, we have lawyers who deal specifically with, say, Internet banking — security and privacy experts," he says. "It has gotten more specialized. In some ways it's easier to be an attorney today [in this field] than it was 10 years ago."



Although the frenzied demands of dot-com ventures is mostly a thing of the past, Ballon himself still moves at a brisk pace. In addition to his busy litigation practice, Ballon maintains a full schedule of speaking engagements, keeping his Internet treatise updated and spending time as executive director of the Stanford Center. The mission there is to offer

For financial services, the big issue is identity theft.”

At the moment, Ballon is spending a fair amount of time consulting with his clients about a new spate of California laws dealing with online privacy and security. In particular, he’s concerned about what he regards as an increasingly fertile environment for class-action litigation against companies

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— Ian Ballon

practical solutions for problems and issues surrounding e-commerce, says Ballon, rather than turning the Internet into a subject for academic analysis.

He sees the Stanford operation as a place for lawyers and others to obtain practical advice that applies to specific kinds of e-commerce and companies. “If you’re in entertainment, one of the biggest problems is the concern about piracy,” he says. “If you’re in health care, the issue there is electronic records, with the overwhelming issues of privacy and secu-

engaged in e-commerce. “One of the laws requires a company to maintain ‘reasonable’ security precautions,” says Ballon. “The problem is what is reasonable?”

With class action guidelines and strict liability rules in California that are different from those at the federal level, Ballon and other attorneys who represent companies in this area are bracing their clients for new waves of class actions. “It creates a huge cost of doing business in California,” he says. ❖