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HEADLINE: Dow May Sue Over Hoax Web Site

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Dow Chemical says it is considering options, including possible legal action, against two activist groups that recently created a fake Dow Web site. The groups -- DowEthics, a recently formed ad hoc assemblage; and the Yes Men, a group that spoofs business and government -- posted the site on December 3, the 18th anniversary of the methyl isocyanate leak at Union Carbide's **Bhopal**, India plant that killed more than 3,000 people, says Michael Rose, a member of DowEthics.

The groups want to raise public awareness for victims including the thousands of survivors of the accident and to show "that Dow has done very little to clean up the environment there," Rose says. "We don't expect to effect legislative changes with this." The general public "had assumed that something had been done to help the victims," but that is not the case, he says. Rose says that since Dow now owns Carbide, the responsibility falls on Dow's shoulders. That is a major theme of the hoax site, which contains articles including "Responsible Care: Aiming for Zero Responsibility." Dow acquired Carbide in 2001 and says that nothing more is required of it or Carbide, which remains a separate legal entity (*CW, May 15, p. 11*).

The Yes Men says it registered the site under the name of James Parker, son of Dow CEO Michael Parker, to be "really funny." But the move backfired, as it allowed James Parker to take ownership of the site. He and Dow's lawyers were then able to force the site's Internet service provider, Things.Net, to take it down under provisions of the Digital Millennium Copyright Act.

Dow says the site violates several cyberspace copyright laws, including the Antisquatting Consumer Protection Act and the Lanham Act, each of which include trademark protection provisions. Dow says that online trademarks, images, text, and designs are protected by copyright law and cannot be reproduced without authorization.

On December 6, DowEthics and Yes Men registered the fake Dow site again, this time under the domain name, DowEthics.com. "A lot of people out there are cloning the site," or putting it on their individual servers, and so it could live on in cyberspace indefinitely, even if DowEthics.com were forced to close, Rose says.

Internet spoofing, or "cloning," of corporate Web sites is common, but it typically involves the use of domain names that are easily recognizable as spoofs or non business entities -- such as IHateMicrosoft.com, says Steve Borgman, partner/intellectual property and technical litigation at law firm Vinson & Elkins (Houston). In such cases "it would be really, really hard for Microsoft to argue that the domain name, at least by itself, could cause confusion in the public's mind that Microsoft was the sponsor of the site," Borgman says. Lawyers from Dow, however, may be able to make a case that the dow-chemical.com domain name could be mistaken for the company's corporate Web site, he says.

The hoax may also fall under "cyber-squatting," a vague term often used as a catch-all for many cyber activities, including creation of fake Web sites, Borgman says. Other examples that fall under this category include registering a misspelling of a company's trademark, such as www.dell.com, instead of www.dell.com; or registering a competitor's name or trademark, or an opposing organization, he says.

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