

Not 'free to share' Grokster shuts down

The peer-to-peer (P2P) file-sharing service, Grokster, stopped doing business in early November. As detailed in the October 2005 issue of the *Tennessee Bar Journal*, the U.S. Supreme Court ruled this summer that using Grokster to trade copyrighted material is illegal.

Now the company has been banned from participating in the sharing of

copyrighted files, ordered to stop giving away its software and pay \$50 million to settle piracy complaints charged by the music and movie industries.

According to Rolling-Stone.com, another P2P company — Mashboxx — has agreed to buy Grokster's assets and recast it as a legal file sharing service called Grokster 3G, which will launch before



the end of 2005.

TBA members may read about the Supreme Court's Grokster decision ("Free to Share? Grokster decision sidesteps innovation/copyright battle; puts focus on business strategies," by David Moser, October 2005 TBJ) at http://www.tba.org/Journal_Tbarchives/tbj-2005_10.html.

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More information for Tennessee lawyers representing employers

Racing to the court house over non-competes

On Nov. 15, the 11th Circuit Court of Appeals in *Manuel v. Convergys Corp.*, No. 04-16032, 2005 U.S. App. LEXIS 24549 (11th Cir.), accelerated the trend of racing to the courthouse over employment-related non-competition agreements (NCAs), discussed in the October 2005 *Tennessee Bar Journal* ("New Race to Tennessee and Georgia Courthouses Over Non-Competition Agreements," by Donald Benson and Stephanie Bauer Daniel).

Manuel worked in Florida for an Ohio corporation. His NCA contained both an Ohio choice of law provision and a permissive forum selection clause stating that any NCA disputes "may" be brought in

the state or federal courts of Hamilton County, Ohio.

On April 5, Manuel accepted work in Georgia. On April 8, Manuel resigned, but promised to work until the end of the month. He promised that he

would not work for a competitor and that he had not yet accepted another job. On April 9, Manuel leased an apartment and obtained a driver's license in Georgia. On April 20, Manuel brought a Georgia declaratory judgment action that the NCA was unen-

forceable under Georgia law. The district court granted Manuel's motion for summary judgment on the NCA and applied Georgia law in dismissing Convergys's counterclaims for trade secret violations.

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forceable under Georgia law. The district court granted Manuel's motion for summary judgment on the NCA and applied Georgia law in dismissing Convergys's counterclaims for trade secret violations. Where over-lapping actions are pending in two federal courts, the 11th Circuit followed the "first filed" rule. Georgia's connections to this action were not "slight or manufactured." The appellate court was particularly sympathetic to the Georgia forum because

Georgia civil procedure allows for expedited settings of such competing litigation (citing the Georgia' Civil Practice Act provision on the expedited setting of competing actions, O.C.G.A. § 9-2-46(a)).

Tennessee lawyers should recommend that employer clients consider their options:

- (1) drafting NCAs for enforcement in Georgia for those employees who can easily relocate,
- (2) drafting mandatory forum selection clauses to assure a favorable court and choice of law, and/or
- (3) preemptively racing to the courthouse.

— Donald Benson