

The logo for Astrachan Gunst Thomas features a stylized, swirling blue graphic to the left of the firm's name. The name "astrachan gunst thomas" is written in a lowercase, sans-serif font, with "astrachan" and "gunst" in a lighter blue and "thomas" in a darker blue.

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Avoid a Beating By Your Business Software

By: Julie R. Rubin

I don't know why, but autumn's chill makes me think of steamy, hot biscuits. But not just any old biscuits. They've got to be Maryland Beaten Biscuits. Just flour, salt, water and, of course, lard. (Say what you will about lard, but until you've experienced the sinful splendor of a lofty lard biscuit, keep your comments to yourself.) Quite literally, you beat the heck out of the dough for about 20 minutes with a mallet to pump air into the dough before baking. Seriously. Get yourself good and angry, and whip up a batch of these beaten beauties. Add a pat or two of salted butter. Now you're talking.

I had just returned home from the market with the purest leaf lard available and a sack of fresh flour. The geese were laughing their honky laughter on the river behind our house and all was well with the world, as I cut the lard into the flour, and prepared to add cold water to the bowl. My thoughts of biscuits dripping with salty, creamy butter were disturbed by the sound of the telephone.

"Julie's Bistro," I quipped into the receiver. "Julie, this is Marge. We have a really serious problem," the familiar voice on the other end of the line said. Yes, it really was serious. In fact, the problem had the potential to shut down Marge's business that employed well over 350 people and is her life blood.

My client's business was based on her key employees' ability to train other employees to support a fast-growing, in-demand office technology. Her business grew by leaps and bounds as this new technology was adopted by businesses country-wide, but the company's infrastructure did not support the growth. Cash flow lagged behind cash needs. Lines of credit had been tapped to fund the gap, but the credit was now exhausted. Marge's customer support employees were screaming for updated software, so they could efficiently perform their job functions.

Looking for a solution, Marge turned to the head of her IT department, a clever youngster who had been with her for several years and had proved adept at problem solving. "We need new software, and we need it now. Figure it out," she commanded, leaving the IT manager to find an answer and get it done.

The IT manager visited Marge's CFO to talk about funding the cost of the software, but the conversation was futile. There was no money left to borrow and cash was tight. IT's

estimate of the cost to purchase two suites of upgraded software, one suite containing fifteen programs and the other containing eight, was \$300,000. He reported this to Marge, who snapped that the company could not afford that. But, she added "I don't care how you get it done, just get it done!"

And get it done he did. He purchased one copy of each software suite and had each loaded on 350 computers throughout Marge's offices. He didn't do it himself, of course – he was an executive level manager. He ordered his assistant to do the work. Unbeknownst to the IT manager, his assistant was locked in a death grip with human resources over various issues relating to the company's denial of his requested medical leave and non-payment of his overtime wages.

Two months after the suites of software were duplicated without permission from the copyright holder, the assistant lost his fight with HR and left the company. The very next day, the assistant called the Business Software Alliance, a trade association created by the country's largest software developers to monitor illegal reproduction and use of their copyrighted software. The assistant reported his former employer. No matter that he did most of the illegal reproduction, BSA was more than happy to take his statement in vivid detail, particularly the part about being instructed by the IT head to pirate software.

Two weeks and three days from the date he told his tattle tale to BSA, a certified letter from a law firm addressed to Marge arrived in the mail. It set out exactly what had occurred, although most of the details and allegations were unknown to Marge, and many were even unknown to the head of IT who had delegated this task to the canary who had sung. The letter advised that Marge's company could be held liable in federal court under the Copyright Act for \$3,450,000 -- \$150,000 multiplied by 23 separately copyrighted programs contained in two suites. And attorney's fees to boot. That's when a panicked Marge called me. No buttery biscuit would quell her problems.

I could hear the air escaping from my mouth. I know I hadn't heard my biscuits rising, because they weren't yet in the oven. I told Marge that this was a very serious problem and that her company, and maybe even the owners who benefited and could have stopped the infringement, would be liable. "Although, arguably," I added, "at trial, you might measure damages by the number of suites copied and not the number of programs contained in each suite." "What will that cost me?" Marge asked. "Plenty," I replied, "and there remains the issue of your potential obligation to pay their attorney's fees and \$300,000 in damages." She uttered an expletive. "Did they make a settlement offer?," I asked. "Yes," Marge replied, "\$750,000."

That telephone call with Marge took place several months ago. Since then, I have been negotiating with BSA to settle this matter for less than BSA's demand, while at the same time avoiding suit. Think it's no big deal to pirate software because no one would ever know? Think again. BSA gets a substantial number of its tips from former employees with an axe to grind. I often think about that day in my kitchen, my never-baked beaten biscuits, and just how easy it would have been for Marge to avoid this serious problem. Had she stayed in the loop and taken an interest in making sure her IT manager's "solutions" were legal, Marge would have avoided the beating she took by BSA.