Memo to Apple: Lay Off Your Fans

Steve Jobs is on the warpath against news leaks appearing on Machead Web sites, but is this a group the company really wants to alienate?

In recent months, Apple Computer's legal attempts to shut down news leaks to fan Web sites have raised First Amendment alarms in my profession. In January, the company sued a Web site called ThinkSecret.com that frequently publishes details of as-yet-unreleased Apple products.

Then, Apple (AAPL) filed a suit against the unknown people who provided this proprietary information and asked the court to issue subpoenas so it could check the e-mail records of ThinkSecret and two other Apple devotee sites. On Mar. 11, Judge James Kleinberg denied a challenge to those subpoenas. Pending an expected appeal, Apple will have the right to get the electronic records it needs to help identify those who leaked the product specs.

Much of the controversy has centered on whether new kinds of journalists -- people like 19-year-old Nicholas Ciarelli, the founder of ThinkSecret -- should receive protection under so-called shield laws that protect "real" journalists from being forced to divulge sources. I have no doubt that ThinkSecret, which I've found to be an increasingly reliable and responsible source of information, makes the cut. But I'll leave that controversy to the First Amendment experts.

BIG BROTHER STRIKES. I want to focus on Apple, and, truth is, the company has more to lose than gain from these suits. Certainly, Apple has the right to use the legal system to help it punish those who have misappropriated its trade secrets, or to identify employees or partners who may have broken confidentiality agreements. But going after the Web sites or forcing them to divulge their sources will put the company in the middle of a freedom-of-speech firestorm that will be a costly distraction for management, and could tarnish the Apple brand.

There's a certain irony to this. Remember the Orwell-inspired ad that ran during the 1984 Super Bowl, that one that depicted Apple as the free-thinking company breaking the Big Brother dogma of the computer industry? Through conscious marketing efforts, Apple has long stood for innovation and creativity, and has been embraced creative sorts like artists and writers -- not people who usually care for big corporations pursuing lawsuits against 19-year-olds. That may vastly oversimplify the nuanced legal issues Apple's lawyers are trying to address, but it could well be the overriding impression that results.

Apple should do what it needs to do to police its own employees and partners. Fair enough. But Jobs & Co. have made their point. I'd bet that just by launching the lawsuits, Apple will reduce leaks, particularly the leaks of very specific proprietary product information at the center of the suit. Apple didn't respond for this story. But if I'm right, Apple execs could and should quietly seek a settlement -- or drop the suits entirely -- in the months ahead.

TOO SECRET? Pushing ahead could backfire. After all, this is a bad way to treat your fans. ThinkSecret and others like it have filled the gap, in a sense, once filled by paper-based trade publications. Hardly enemies of Apple, they are the closest thing the tech industry has to fanzines. By trumpeting news of Apple's upcoming wares, they're only fanning the bonfire of interest in all things Apple. Steve Jobs should thank his lucky stars that there is enough interest to support this cottage industry. It's a problem executives at Dell (DELL), Hewlett-Packard (HPQ), and elsewhere can only envy.

And how do the leaks hurt Apple? Certainly, it shouldn't be concerned about young Mr. Ciarelli and his friends stealing the thunder from Jobs's famous product introductions. Jobs can fill a room whenever he pleases, because Apple customers and the media know it will be a good show -- not just because of his keynote, but because of the sheer coolness of Apple's products. The increasing frequency and accuracy of the leaks out of Apple's Cupertino (Calif.) headquarters haven't made a dent in Apple's ability to get publicity for its new products.
In fact, it's more likely that the leaks tend to mollify some in the Mac community who think Jobs takes Apple's secrecy too far. Until he takes the stage at his keynotes, most of Apple's closest partners -- from retailers to software developers to iPod accessory makers -- have no idea what's coming. Getting an unofficial heads-up in ThinkSecret can at least get them thinking about how they can position their own products in the Apple food chain.

**LIP TIGHTENING.** In fairness, because it sells relatively few models, Apple needs to be far more careful about managing product transitions than some of its less-focused rivals. If word gets out that Dell is going to upgrade a desktop model in a few months, a few customers may hold off on purchases -- but probably not enough to have a material impact. That's not necessarily true for Apple.

Still, from here on out, Jobs should focus on the leak-prevention techniques that worked so well for the company after his return in 1997. At the time, Apple was a reporters' paradise, filled with disenchanted, chatty employees who had little fear of retribution.

That changed overnight, in part because Jobs made it clear that any unauthorized contact with the media was grounds to be fired, many Apple insiders said at the time. True or not, Apple employees clammed up. While "management by fear" is rarely productive, maybe Jobs needs to reinforce the discipline that marked those early days.

**BAD IMAGE.** But continuing on Apple's current legal course doesn't make sense. For one thing, the lawsuits are no slam dunk. Bruce Sunstein, co-founding partner of the Boston law firm Bromberg & Sunstein, points out that descriptions of unannounced products may not even qualify as "trade secrets."

Unlike the secret formula for Coke (KO), such descriptions are certainly not secrets once Apple has shouted them to the world at one of Jobs's famous keynote speeches. "And what's the extent of the harm? You can argue that leaks like these actually help by creating an air of anticipation for when the product is announced," says Sunstein. And what if Apple wins? Then, the much more important First Amendment issues will take center stage. Then Apple, which has long played the underdog role, would be cast as the enemy of free speech. It would be better to let the lawsuits fade away.

---

**Burrows** is Computer editor for *BusinessWeek* in Silicon Valley