Navigating the evolving landscape of social media

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Protecting Your Trademarks in the Electronic Environment

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Online Brand Enforcement

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With over 15 years experience in the Domain Name and Online Trademark industry, Safenames offers a comprehensive suite of tools and services, tailored to fit your individual brand requirements.

The ever growing global problem of online brand abuse in the form of cyber-squatted domain names has cost many millions to companies doing business on the Internet. To address this challenging issue, Safenames has developed a fully managed and innovative brand protection service called Safenames’ Mark Protect.

Mark Protect was created to simplify the overwhelming task of policing and taking action on trademark infringements across the Web. Whether you are just beginning to assess the impact of cyber-squatting on your business or have been fighting this problem for years, Safenames’ Mark Protect is the right solution for you.
Social media – blessing or curse?
Social media has made it possible for brands to transcend borders and has made a significant difference in the day-to-day lives of its users. It has been credited with bringing people closer together; however, many also blame social media platforms for contributing to societal conflict. In many respects, social media is seen as a double-edged sword – and the situation is no different when considered in the context of a brand.

Social media allows brands to engage more directly with their consumers, thereby offering them an insight into customer motivation. However, such knowledge comes at a price. Before the invention of blogs, tweets and other forms of social media, an unhappy customer had a limited sphere of influence. Today, that same dissatisfied customer can rely on various social media networks to spread their news, experiences and reactions to a much wider audience.

So how can brand owners safely navigate the ever-evolving landscape that is social media?

Although it is a hard truth that we must learn from our mistakes, it is also equally true that we can learn from the mistakes of others. Thus, it is essential for brands to learn from the failures and successes of the approaches adopted by their competitors in tackling online abuse.

Brand perception and engagement
“If Facebook were a country, it would be the most populous nation on earth.” – The Huffington Post

With a community of over 2 billion active users, Facebook is central in connecting brands to their fan base. A prime example is Coca-Cola, which boasts a following of over 106 million people on its Facebook page. This statistic makes Coca-Cola the second most popular product brand on the platform, ranked by number of fans. What is of further interest is that the page was not even created by Coca-Cola; it was created by two fans back in 2008. Notably, within only three months of the page’s creation, it had amassed millions of followers.

In an effort to integrate its platform with brand owners’ marketing strategies, Facebook established a policy whereby brand pages can be administered only by authorised representatives of a brand – in effect, encouraging them to enforce their trademark rights and take over unofficial brand pages. This strategy created a dilemma for Coca-Cola – how do you protect one of the world’s most valuable brands without alienating fans in the process? Michael Donnelly, Coca-Cola’s former group director of worldwide interactive marketing, commented: “We threw a variable to Facebook and said we are interested, but we’d rather walk away from it than have it be perceived that we caused this action.”

In considering how its actions could affect brand perception, Coca-Cola adopted an innovative approach. It chose to engage with the creators of the page and decided to retain them to co-administer it.

Coca-Cola’s actions illustrate the importance of companies putting their communities
first. The purpose of a brand page is to engage with the community and allow consumers to express their feelings towards a particular brand openly. Coca-Cola was not willing to lose its most valuable consumers – its fans – just to exercise its legal rights.

The collaborative approach adopted by Coca-Cola provides a crucial lesson for brands – namely, to work with the community to deliver the brand’s message, rather than forcing people to accept it through heavy-handed legal policies and procedures. When a trademark owner attempts to engage with the community as an initial step of brand enforcement, it can provide the necessary guidance to its fans on how to avoid the dilution of its brand. Ultimately, Coca-Cola’s approach resulted in the desired outcome: a brand page run by the community, for the community – but supported by Coca-Cola.

The ‘Streisand effect’
The Manchester United case study serves as a cautionary tale for trademark owners that might prefer to use heavy-handed measures to suppress fans.

In 2014 an avid fan of the club created the Twitter account ‘@manutd_players’, which functioned to list every player who had ever represented the club. However, in February of that year Manchester United’s brand protection team reported the account to Twitter for unauthorised use of the club’s crest and it was subsequently suspended.

Twitter’s copyright policy states: “Twitter will respond to reports of alleged copyright infringement, such as allegations concerning the unauthorised use of a copyrighted image as a profile or header photo.” Although Twitter’s takedown procedure provides for a relatively quick and simple solution for trademark owners in enforcing their rights through the platform, it may not always be the most appropriate one for the circumstances. The Manchester United case was not a prototypical example of copyright infringement; it concerned a fan who likely believed that his actions would only be furthering the club’s prestige, which was built on a tradition of iconic players.

The Twitter account against which the club sought to take action had only 100 followers, but the club’s brand protection team failed to consider that platforms such as Twitter can give a voice to the marginalised.

What transpired can only be described as the ‘Streisand effect’, a phenomenon where an attempt to suppress or censor information has the unintended consequence of publicising the information more widely. Hence, the club’s heavy-handed approach attracted unwanted media attention and prompted accusations of bullying.

Despite the club’s justification in adopting the approach it took, it failed to consider the implications of sending a takedown notice on this occasion. Although trademark owners should never feel overly threatened by the negative publicity that may arise from pursuing legitimate claims of infringement, this does not mean that they should avoid exploring alternative approaches – especially when interacting with fans.

An objective view of online infringement
In contrast to the Manchester United debacle, a cease and desist letter penned by Jack Daniel’s in 2012 offered an insight into how trademark owners can balance trademark enforcement alongside fan engagement.
The author of the novel *Broken Piano for President* designed a front cover very similar to the Jack Daniel’s Tennessee Whiskey label; but rather than reacting angrily, the company’s legal team sent what was described as perhaps the “world’s most polite cease and desist letter”. An excerpt from the letter included the following:

*We are certainly flattered by your affection for the brand, but while we appreciate the pop culture appeal of Jack Daniel’s, we also have to be diligent to ensure that Jack Daniel’s trademarks are used correctly… as a fan of the brand, I’m sure that is not something you intended or would want to see happen.*

Unlike in the Manchester United case, Jack Daniel’s did not adopt a one-size-fits-all enforcement strategy, but instead took an objective view of the matter. First and foremost, it recognised that the author was likely a fan, which allowed it to encourage the infringer to empathise with the company.

The distinction between the misguided fan and the flagrant infringer who seeks to take unfair advantage of a brand must be carefully identified in each case, and should ultimately dictate the approach.

US entertainment company Netflix recently applied this principle when attempting to shut down an unauthorised pop-up bar based on its hit show *Stranger Things*. Rather than adopting threatening language through its cease and desist letter, Netflix maintained a conversational but firm tone, incorporating references from the show throughout.

*Look, I don’t want you to think I’m a total wastoid, and I love how much you guys love the show. (Just wait until you see Season 2!)*

But unless I’m living in the Upside Down, I don’t think we did a deal with you for this pop-up.

The letter was not only successful in fulfilling its purpose, but Netflix was also applauded online for its “human approach” in not treating its fans as if they were the enemy.

In both cases, Jack Daniel’s and Netflix carefully considered whether any action taken could be counterproductive and have a negative impact on how the brand’s voice comes across. A fact worthy of attention is that these letters ultimately went viral. An aggressive approach could have been perceived as an overreaction and caused more harm to the brand than the infringement itself. As counsel, the primary concern is to protect the brand through proper enforcement measures, but it is just as important not to take a client’s brand for granted. A brand’s corporate reputation is inextricably linked to how it is perceived in the marketplace. If a company alienates its fans, it could begin to lose its identity; consumer confidence is likely to decrease, and once that trust is gone, it can be almost impossible to rebuild it.

**Reputation versus enforcement: a balancing act**

LEGO faced such a challenge in 2014, when Greenpeace began a campaign designed to put pressure on the Danish toymaker to end its longstanding partnership with oil company Shell. Greenpeace believed that Shell was using its relationship with LEGO to create a family-friendly image of itself. For example, many believed that LEGO toys branded by Shell were aimed at “polluting” the minds of the younger generation and diverting attention from its dangerous plans to drill for oil in the Arctic.

In retaliation, Greenpeace launched its campaign, which consisted of a video advertisement uploaded to YouTube, featuring an Arctic LEGO diorama with many of the toy inhabitants drowning in an oil spill. Alongside the video was a remixed version of the theme tune “Everything is Awesome” from the mega-hit film *The Lego Movie*. In a matter of days, the video had been viewed over 3 million times.

Being hasty with legal action can sometimes make the infringer’s campaign more successful

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This attack had far-reaching implications, beyond LEGO and Shell. Warner Bros, which produced the movie, opposed the video on the grounds of copyright infringement and the video was subsequently removed from YouTube and later VIMEO, but this only added fuel to the fire. The video was widely shared and uploaded to various social media platforms, and the media extensively covered the incident. In the face of public pressure, Warner Bros yielded by withdrawing its complaint and the video was reinstated.

Through the power of social media, Greenpeace did not call into question LEGO’s commitment to sourcing non-oil-based materials (it is no secret that Lego uses oil companies to provide the materials needed to create its bricks), but instead, it questioned why LEGO would allow its brand to be aligned with a company that many would associate with having a negative impact on the environment. How would LEGO respond to such enormous pressure?

In October 2014, despite a partnership that spanned over 50 years and was worth an estimated £68 million, LEGO announced that it would not be renewing its co-promotion deal with Shell.

Although Greenpeace’s issue was primarily with Shell, LEGO became a pawn in its campaign, forcing it to choose between its reputation and its loyalty to Shell. Unfortunately, as Warner Bros learned, retaliation through legal means was not the answer and neither was silence. This was simply not a battle that LEGO could shy away from.

This case study offers some vital lessons for brand owners when handling public pressure through social media:

• Being hasty with legal action can sometimes make the infringer’s campaign more successful;
• Brands need to differentiate between PR issues and legal issues; and
• Legal and PR teams need to cooperate on brand issues.

Naturally, when faced with an attack through social media, it is counsel’s instinct to take a defensive stance. However, when counsel are familiar with the functions of the brand’s PR team and work in collaboration with them, situations like the one faced by LEGO can be used as an opportunity to reinforce the brand’s mission.
Comment
The world of social media continues to evolve. The Internet and brands have become so entwined in our daily lives that we look to them as ambassadors for change that will improve the quality of our lives. Gone are the days when fans were simply there to consume the information presented to them by corporations. Social media has given a voice to consumers, allowing them to call companies to account when they fail to practise what they preach. Yes, this may sometimes create an uncomfortable environment for brand owners and legal counsel, but social media is not going anywhere, and the only way for brand owners to survive is to adapt. What this means in practice is that brand owners must create and implement an enforcement strategy which is specifically adapted to social media.

Although many of these platforms present aggrieved rights holders with a range of enforcement tools, rights holders must handle this weaponry appropriately to avoid shooting themselves in the foot.

Brand owners should not be afraid to venture through the ever-evolving landscape of social media, but should do so with caution. With each obstacle they must assess the impact that their actions, or inaction, may have on their reputation.

The internet age will continue to bring new challenges, but whether brand owners consider social media to be a blessing or a curse will ultimately depend on how they choose to approach it. WTR