Legal aspects of digital and interactive marketing

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Agenda

• Introduction
• Legal aspects

Case study
Marketing?
Copyright issues?
Trade mark issues?
Other issues?
Conclusion

• Two reminders:
New gTLD program
Cookies and privacy law
Introduction

- digital marketing = ?
- interactive marketing = ?
- Legal aspects thereof = ?
Introduction

• digital marketing = ?
“Digital Marketing is the practice of promoting products and services using digital distribution channels to reach consumers in a timely, relevant, personal and cost-effective manner” (Wikipedia)

• interactive marketing = ?

• Legal aspects thereof = ?
Introduction

• digital marketing = ?

• interactive marketing = ?

“Interactive marketing is the ability to address the customer, remember what the customer says and address the customer again in a way that illustrates that we remember what the customer has told us” (John Deighton - Harvard Business School)

• Legal aspects thereof = ?
Marketing?

• digital and interactive marketing
  Banner, webvertising, search engine optimisation, search engine advertising, adwords, metatag manipulation, spam, social media, mobile advertising, blog, microsite, etc.

• Legal aspectst hereof = ?
Introduction

• digital and interactive marketing

• Legal aspects thereof = ?
  – No “Facebook Treaty”, “SEO Act”, ... no rules ?
  – Samesame, but different: new applications of copyright, trade mark, unfair trade practices, ...

➢ Not about problem-solving but about problem-spotting
Case Study
Interview met CIO van het jaar, Sabine Everaet
Inspired by Coca-Cola

Met je smartphone een unieke kijk op Coca-Cola vastleggen: dat was de opdracht die de frisdrankenreus gaf aan de deelnemers aan zijn online phoneography wedstrijd ‘125 jaar Coca-Cola Design’. Het bedrijf riep de deelnemers op om vast te leggen hoe het design van Coca-Cola hen inspireert in hun dagelijkse leven en hun foto te delen op twitter.

Winnaars van de Coca-Cola phoneographywedstrijd zijn bekend

vrijdag 20 januari 2012, 12u46

Marketing?

• Definition of advertising (« reclame/publicité ») under Belgian law:

“communicatie die rechtstreeks of onrechtstreeks ten doel heeft de verkoop van producten of diensten te bevorderen ... ongeacht de plaats of de aangewende communicatiemiddelen”

“elke vorm van communicatie bestemd voor het direct of indirect promoten van de goederen, diensten of het imago van een onderneming”
Copyright issues?

• Is a format protected?

• Who owns the copyrights?

• What about the content (pictures, video’s,...)?
Copyright issues?

• Is a format protected by copyright?

Copyright protects the author of **works:**

- No definition – very broad concept
- « Original » creation – personality of the author
- Perceptible by the senses
- No ideas, concepts, theories
Copyright issues?

• Who owns the copyrights?

Copyright protects the **author** of works:

- Natural person (software is a special case)
- No registration is needed, no formalities required
- 70 years after the decease of the author
- Copyrights can be assigned or licensed (specific rules!)
Copyright issues?

• What about the content?

Authorization is needed for the use of every *work*:

- Pictures, music, software, video’s, charts, drawings, ...
- Author may oppose the use of his work without his consent
Trade mark issue?

- What is a trade mark?
- Use of a third party’s trade mark (AdWords decisions)
- User name squatting
Trade mark issue?

- What is a trade mark?

- Trade marks protect brand identities that are capable being represented graphically and that are sufficiently distinctive to distinguish goods or services of one undertaking from those of others

- *Registration* is required
## Trade mark issue?

<table>
<thead>
<tr>
<th>Trade mark (®)</th>
<th>- Word: “Breitling”</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- figurative:</td>
</tr>
<tr>
<td>Patent (PAT)</td>
<td>Mechanics</td>
</tr>
<tr>
<td>Design</td>
<td></td>
</tr>
<tr>
<td>Domain name</td>
<td><a href="http://www.breitling.com">www.breitling.com</a></td>
</tr>
<tr>
<td>Copyright (©)</td>
<td>Look and feel – manual – marketing documents</td>
</tr>
</tbody>
</table>
Trade mark issue?

• Use of a third party’s trade mark (AdWords decisions)

  - Advertisers may be prohibited to use a third party’s trade mark if it is not clear whether or not the goods originate from the trade mark holder or not.
Trade mark issue?

- Use of a third party’s trade mark (AdWords decisions by Court of Justice)
  - Internet referencing service providers (i.e. Google) do not “use” the trade marks and therefore do not infringe these trade marks...

Maybe different in Benelux?
Trade mark issue?

• User namesquatting
Trade mark issue?
Trade mark issue?
Other issues?

• Portraits and names

• Terms and conditions of social networks
Other issues?

• Portraits and names: authorization is almost always required
Other issues?

- Terms and conditions of social networks:

  Social networks may remove materials...
Conclusion

• Be sure to have obtained all rights and consents

• Check terms and conditions before using social networks

• Be vigilant regarding your IP, but beware of perception issues...
Conclusion
Two reminders
New gTLD program

What is it?
• On 20 June 2011 ICANN's board voted to end most restrictions on the generic top-level domains (gTLD) from the 22 currently available (such as .com)

• Entities will now be able to apply for their own gTLD, such as .crowell or .iab

What did it cost?
• Evaluation fee of 185.000,00 $ (business startup and operation costs not included)
New gTLD program

• New gTLD Timeline

• - 20 June 2011- Board Approval of New gTLD Program

• - 12 January to 12 April 2012 – Application Window (but there was a glitch...)

• - November 2012 – Evaluation and Objection Resolution Complete

• - December 2012 to January 2013 – New gTLDs available for use

• (this is a best case scenario for the simplest, uncontested gTLD applications. Applications that encounter objections or competitive applications can expect to take up to a year more to resolve.)

➤ Be prepared!
Cookies and privacy

• Currently, an “opt-out” system applies, whereby a cookie can be stored on a user’s computer where:

(a) the user is provided with clear and comprehensive information about the purpose of the cookies; and
(b) the user has been given the opportunity to refuse the use of cookies
Cookies and privacy

- E-Privacy Directive however provides that the use of cookies requires the *explicit and prior consent* of the website user (‘opt-in’ system)

  *unless* the cookie is ‘strictly necessary’ to deliver a service that has been explicitly requested by the user

- E-Privacy Directive should have been implemented into Belgian law by the end of May 2011...
Questions?

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