

Protecting Your Corporate Brand - Elements of Risk

The internet is undoubtedly one of the most powerful marketing and communications tools available to corporations. But alongside the potential branding benefits come a wide range of legal and compliance challenges which are of particular importance to governance, legal and IT executives. Corporate domain names and brands are open to misuse, trademarks can be infringed and customer privacy can be violated through complicated scams. Legal teams need to work in unison with marketing and IT professionals to formulate systems to monitor and police any damaging activity that could be taking place on the internet.

Serious consequences

Left unchecked, online brand infringement can have a significant impact on a company's reputation and its ability to effectively market and sell products. Some of the most common impacts include: lost sales and revenues; diverted customers; tarnished brand equity; weakened or unenforceable trademark rights; limited pricing power; and a loss of brand trust. Legal teams need to ask themselves: What obligations do I have to proactively police the internet for abuse? How are my brands being misused in the online environment? And how can I be proactive about monitoring online abuse without being overwhelmed with data? The global, anonymous nature of the

internet makes understanding and detecting abuse extremely difficult. Criminals, disgruntled employees, upset consumers and even overzealous competitors are free to post almost anything online from anywhere in the world. The oldest and most well known form of online brand infringement is direct domain name abuse. Many people are aware of this because of the very prominent 'cybersquatting' cases. Most recently, companies like MySpace, the BBC and Victoria's Secret have won battles contesting domain names. Despite the relatively robust legal protections that have been enacted, this form of violation continues to increase every year. As of June 2007 the Internet Corporation for Assigned Names and Numbers (ICANN) reports that it has handled 11,249 cases involving 19,573 domain names since 1999. The severity of domain name infringement depends largely on the type of content associated with the infringing site. This can range from inactive pages to potentially offensive material such as pornography. Traffic diversion is another common infringement and is constantly evolving and changing. Though it can take several forms, the basic theme involves leveraging the name recognition of a particular brand so as to drive traffic to a third-party site. This type of infringement is profitable because unsuspecting users are redirected to a different website that can feature pop-up advertisements from

competing companies or, in some cases, users are even redirected right to a competitor's site. Other traffic diversion pages may attempt to capture credit card details or other sensitive information from unsuspecting users who believe that they are accessing a trusted site. In some cases the squatter may also attempt to profit by selling the site back to the brand name owner.

The dirty dozen

12 areas of infringement remain the key methods used in online attacks

1 Domain name abuse

2 Traffic diversion

3 Trademark infringement

4 Trademark dilution

5 Offensive content

6 Brand disparagement/feedback

7 Claimed affiliations

8 Affiliate/partner compliance

9 Unlicensed/unauthorized sales

10 Product counterfeiting

11 Digital piracy

12 Identity theft & fraud

Source: CSC

One form of diversion still little understood by many companies is the practice of linking search results to pay-for-placement banner and pop-up ads, which are often triggered by keywords linked to trademarks. Competitors can apply these tactics to your brand, or protesters can try to dissuade users from purchasing your products.

Apart from diversionary tactics, straightforward trademark theft, where individuals and companies create marks deceptively similar to registered trademarks, is still an extremely prevalent activity on the internet.

Alan Greenspan, a media and IP attorney at Jackson Walker, provided a cautionary warning in a September 2006 interview: 'For some reason, the world is of the opinion that if you can find it on the internet, it's yours to do whatever you want with. People would never imagine a situation where a customer would come in and steal things off somebody's desk but that is exactly what is happening on the internet all the time.'

He went on to say that 'many companies do not have a good handle on their intellectual property and some have even failed to properly register trademarks and copyrights.'

Apart from the obvious problems associated with trademark theft, dilution is also a concern that needs to be attended to just as closely. With trademark dilution, abuse can occur even in the absence of consumer confusion. Using easily identifiable trademarks without permission or in a generic manner and altering text or other elements to convey a usually negative message can weaken brand equity and potentially impact brand reputation.

Many of the traffic diversion and infringement techniques that have been described in this chapter were pioneered by the online

pornography business. That industry remains one of the foremost perpetrators of online brand infringement. In fact, these practices are so common that every company should automatically assume that its brand names are being used to direct users to pornographic content, and should therefore monitor accordingly.

Monitoring of official third-party relationships is also vital to a company's reputation. When working with affiliates there is a loss of control of information and it is easy for out-of-date pricing or specs to be released. Constant monitoring can help to prevent inadvertent brand damage but there is a larger problem: substandard customer service or illegal behavior by affiliates can cast a pall over a legitimate company's business. As unfair as it may be, many an honest company has fallen afoul through guilt by association, from both a legal viewpoint and a moral one.

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