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Olive Garden Asserts It Did Not Pull Letterman Ads

While the Olive Garden restaurant chain may have found David Letterman's joke about Alaska Governor Sarah Palin's daughter to be in poor taste, it denies reports that it pulled future advertisements from airing during *The Late Show with David Letterman* as a result.

Olive Garden spokesman Rich Jeffers described a report by Andy Barr, posted on Policito.com, that the chain was "canceling all its booked ads" on Letterman's show for the rest of 2009 as "erroneous." In a statement, Jeffers explained that Olive Garden's schedule of ads during *The Late Show*, which was scheduled months in advance, had simply been completed earlier last month.

Olive Garden's supposed decision to pull the ads kept alive the Letterman/Palin controversy, which began over a joke Letterman made about Palin's daughter being propositioned by former New York Governor Eliot Spitzer and "knocked up" by Alex Rodriguez. In response, the Palin camp was quick to denounce Letterman for making such comments about Governor Palin's youngest daughter. Letterman later clarified that his comments were directed to the Governor's older daughter whose unplanned teen pregnancy garnered a great deal of media attention.

After Governor Palin accepted Letterman's public apology, it seemed the controversy had run its course. Then Politico.com reported that Olive Garden was pulling its ads and apologizing if "Mr. Letterman's mistake, which was not consistent with our standards and values, left you with a bad impression of Olive Garden." Although Olive Garden was quick to correct the report, noting that "[n]o authorized spokesperson for the company

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Natural MarketPlace 2009 Regulatory Seminar confirmed the information" in it, the company did state that it takes all "guest concerns seriously" and "will factor those concerns in" when planning its future advertising schedule.

Why it matters: The brouhaha over Olive Garden's purported reaction over David Letterman's joke demonstrates how quickly information – or misinformation – can travel across the Internet. It also shows how advertisers can be affected by the content of the shows they sponsor. Indeed, in the wake of Letterman's joke, groups called for consumers to boycott not only the show, but also its sponsors. While advertisers may be able to screen some of the programs during which their ads air, as was the case with Letterman's show, this is not always an option.

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Feds Seize $34 Million From Online Poker Pots

The U.S. Attorney of the Southern District of New York has frozen and seized bank accounts worth an estimated $34 million from 27,000 online poker players. The move raises the stakes in a long-running dispute between the Justice Department and the online gambling industry, with members of Congress on both sides.

The Justice Department has waged a multiyear campaign against Internet gambling, using several laws that critics claim are vague, ambiguous, and in some cases, contradicted by state law, including a 2006 law that prohibits financial institutions from processing payments for illegal online gambling. This month's seizure – the first time federal authorities have gone after online poker accounts – comes on the heels of the introduction by Representative Barney Frank (D-Mass.) of proposed legislation that would legalize and oversee online gambling, including the $6 billion-per-year online poker industry. The bill would tax gambling revenue and provide gamblers with some protections. Rep. Frank and others contend that Internet gambling is here to stay and that consumers would be better served if the industry were subject to oversight requiring games to be run fairly and players' ages to be verified.

Earlier bids by Congress to legalize and regulate online gambling have wilted on the vine for fear that such measures could end up encouraging gambling. The latest bill is already being attacked on the same grounds. For example, Representative Spencer Bachus (R-Ala) criticized the new bill on the grounds that it would be a "clear danger to our youth, who are subject to becoming addicted to gambling at an early age."

The United States' efforts to curtail online gambling are also part of an ongoing trade dispute with the European Union. Earlier this month, the E.U. released findings that U.S. laws prohibiting financial institutions from processing Internet gambling monies violate international trade rules, although the E.U. has said that it will not file a formal complaint without first trying to negotiate a solution with the Obama Administration.

Speaker: Ivan Wasserman

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Why it matters: The seizure of the online gambling funds is a risky move and could backfire if a court finds the seizure illegal. Yet, it is not the first time the Justice Department has made a strong move against online gambling. Several high-profile arrests of gambling executives and the passage of a federal law regarding the processing of online gambling funds have contributed to the shutdown of a number of major offshore Internet betting companies. It is not clear, however, whether the shutdown of these companies simply resulted in the emergence of other companies that continue to service U.S.-based gamblers.

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Lawsuit Targets KFC Oprah Promo

A lawsuit has been filed over a recent KFC promotion announced on *Oprah*, in part because the promotion may have actually been too successful. The plaintiffs, who filed suit in California state court, are seeking class action status.

The allegations made against KFC and its parent company in the complaint include claims for false advertising, fraud, and unfair business practices. It stems from a promotion that began last month when Oprah announced a coupon offer from the chain, good for a free meal consisting of two pieces of KFC's grilled chicken, sides, and a biscuit. Coupons were available through Oprah's Web site. Sixteen million coupons were downloaded, a number that KFC did not anticipate, as franchises across the U.S. ran out of the promised chicken.

To deal with the tremendous demand, KFC first extended the promotion for an additional day and transferred the downloadable coupon to its own site (from Oprah's). On May 7, with demand still high, KFC announced that it would not honor the coupons that day and promised a rain check. According to the complaint, a KFC press release explained that to get the rain check, which was redeemable for a two week period, consumers needed to present or mail their downloaded coupons with their rain check request to a KFC outlet by May 19.

Although KFC responded quickly to the unanticipated demand, adding a free Pepsi to the rain check offer and maintaining Oprah's support, the complaint asserts that KFC should have been able to do more to accommodate consumers who spent money to print out and travel to a KFC in anticipation of a free meal. It also alleges that the terms and conditions of the promotion subsequently imposed by KFC were more onerous than the original offer, and as such will deprive many consumers of their free meal. It describes the promotion as a "classic example of a bait and switch" and seeks monetary, injunctive, and declaratory relief.

Why it matters: It's almost a given that a big promotion that suffers even a small hiccup will result in someone filing suit. As a result, before launching a large scale promotion, companies should include in their cost-benefit analyses the costs – legal, settlement, and adverse publicity – of possible ensuing lawsuits. In addition, for nationwide televised promotions, especially those that use the power of *Oprah*, companies should carefully determine not only what the estimated response will be, but should also have a contingency plan if the response is overwhelming.

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Protecting Your Identity Online Can Be An Ongoing Battle

When Internet domain names first arrived on the scene, registering a dot-com – or maybe a dot-net or dot-org – was considered the best practice for the protection of important trademarks. Most of the disputes that arose regarding registrations were between so-called cybersquatters and trademark owners (generally companies), with a few celebrities thrown into the mix.

But today, with the skyrocketing popularity of online social networks, registering a dot-com address may no longer be enough for a company, trademark owner, or even a garden-variety Internet blogger or YouTube mini-celebrity to protect identity. In this solipsistic Internet era, the battle has spread to other Internet territory and users, with seemingly everyone seeking to pursue and protect their 15 minutes of online fame, or at the very least turn a profit.

In fact, laying claim to and protecting one's trademark or name online can be a fulltime job. For instance, after Facebook started issuing facebook.com/yourname and other customized addresses earlier this month, more than 9.5 million users sprinted to snatch up their top choices in less than a week. The new vanity addresses are being issued on a first-come first-served basis. Trademark holders and celebrities who find their Facebook names taken by someone else are invited to fill out a complaint form, with disputes to be addressed case-by-case. Another form can also be completed to prevent someone from taking a registered mark as an address.

On Twitter, the issue of impostor accounts has the potential to create the same kinds of issues. As we wrote about a few weeks ago, Tony LaRussa, manager of the St. Louis Cardinals baseball team, recently sued Twitter, saying it did not do enough to keep someone from "tweeting" under his name. Twitter, which has started providing well-known users with a "badge" on their pages that verifies their identity, says it shuts down accounts used by known impersonators and is fighting the suit.

Additionally, it's unclear which – if any – of these new sites are worth spending money on over the long haul. For instance, MySpace is now running a distant second in popularity to Facebook. And Facebook's vanity addresses themselves could turn out to be worthless, since Facebook has said they will not be transferable. Of course that has not stopped some cybersquatters from registering company names on Facebook in the hopes that they can sell them to the companies they belong to for a profit.

Why it matters: Social networking sites continue to attract users and are now among the most popular destinations on the Web. While the sites are working to provide trademark owners, companies, and individuals with different tools to protect their identities and brands, there is still a threat of abuse by cybersquatters and others looking to profit from trading on the marks and identities of others. Trademark owners need to devote sufficient resources to policing and protecting their marks on all new media on the Internet.

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Liquor Ads Are Becoming More Common On Television

From 1948 until 1996, TV stations at both the national and local level adhered to a voluntary ban on TV advertising from liquor companies, administered by the Distilled Spirits Council of the United States, an industry trade organization. When the ban ended in 1996, liquor ads began to air on local and national cable channels; however, ads for spirits have not really been shown on network television. Although NBC ran spots for Smirnoff vodka during *Saturday Night Live* at the end of 2001, it stopped in early 2002.

Yet, this year, with television ad revenue sharply off, local network affiliates are getting a piece of the approximately $451 million spirit industry advertising spend by airing ads for distilled spirits. In February, local CBS affiliates and CBS-owned stations in 15 markets including Boston, Chicago, Denver, Los Angeles, Miami, Philadelphia, and San Francisco, aired a 30-spot for Absolut vodka. More recently, local affiliates have run ads for Patron, a top-shelf tequila, on NBC's *The Tonight Show with Conan O'Brien* after Conan replaced Jay Leno on June 1. Ads for Chivas Regal Scotch have also aired on NBC-owned stations during the show.

Despite what appears to be a growing trend, none of the broadcast networks – ABC, CBS, NBC, or Fox – have aired national ads for spirits, although they continue to show beer and wine commercials.

Why it matters: With ad spending down by more than 27 percent in the local market in the first quarter of 2009 and off by close to 10 percent, or $1.6 billion, throughout the television media landscape, it is not surprising that television stations are looking for new sources of revenue. Yet, while the number of liquor ads may continue to grow, an industry code does place limits on their exposure to people under 21 and by extension limits the kinds of programs during which they may air.

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Drug Marketers Venture Onto Social Networks

An increasing number of drug manufacturers are testing the waters of social network sites such as Facebook, YouTube, and Twitter to market their products.

In the past, drug makers, concerned about negative reactions from consumers and lacking guidance from the Food and Drug Administration on online drug marketing, have been slow to embrace social media as a marketing tool. The growing popularity of social networks as a source of medical information and support, however, has caused drug manufacturers to take a closer look at the marketing potential of these Web sites. While drug companies may be new to using popular social networking sites, consumers are used to turning to the Internet for health information. Indeed, more than 60 million U.S. adults used health blogs, online support groups, and other health-related social media applications last year, double the number from the previous year, according to a November 2008 survey by Manhattan Research.

Recent examples of social media ventures by drug marketers include:

- Merck, maker of Gardasil, a vaccine to help prevent human papillomavirus, which can cause cervical cancer, created a Facebook page last year to promote the drug.

- Bayer Aspirin recently launched a Facebook page for women that includes an interactive quiz to assess the risk of heart disease.

- Reckitt Benckiser, maker of Suboxone, a drug for opiate dependency, provided a grant to the National Alliance of Advocates for Buprenorphine Treatment to create YouTube "webisodes" about a man addicted to painkillers and his efforts to get clean.

- Sanofi-Aventis, the maker of various insulin treatments, launched a YouTube channel called "Go Insulin" that features informational videos and testimonials from patients about type 2 diabetes and insulin treatment. AstraZeneca also launched a YouTube channel to promote its asthma drug.

Why it matters: The appeal of social networking sites for drug makers centers on their multifaceted usefulness for consumers. Moreover, online advertising through these kinds of sites is not only far less expensive than traditional media but is also more flexible. Yet drug makers should proceed with caution, taking into account consumer reaction to, and government regulation of, their online marketing efforts. In 2008, the FDA's division of Drug Marketing, Advertising, and Communications sent a warning letter to one drug company regarding a YouTube video for one of its drugs. The FDA warning letter claimed that the video overstated the drug's efficacy and omitted important risk information. The FDA has said that it will continue to monitor "promotion done by or on behalf of drug companies such as on companies' own product Web sites and their placement of promotion on others' Web sites."

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