

Zen & The Art of Legal Networking

INSIGHTS & COMMENTARY ON RELATIONSHIP BUILDING WITHIN THE INTERNATIONAL LAWYERS NETWORK

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Conference Re-cap: ALM's Social Media; Risks and Rewards Brand Protection and Promotion and Social Media



After lunch, [ALM's Social Media: Risks & Rewards conference](#) focused more on the rewards of social media. The Brand Protection and Promotion of Social Media session featured [Jennifer Arkowitz](#) from Townsend and Townsend and Crew as the moderator, and [David Morris](#), Senior Corporate Counsel of TripAdvisor, [Alexandra Sepulveda](#), Trademark Counsel with General Mills, and [Johanna Sistek](#), Trademark Counsel for Google, Inc. as speakers.

Proactive or Reactive?

Arkowitz's first question was whether each of the companies were more proactive or reactive in their social media efforts.

Sepulveda (General Mills) said that for them, it's a combination. When Facebook had a big land grab for user names, they went through their brand list and got all of those names. She said that as trademark lawyers, they're classic hostages, because if they know about something, they have to do something about it.

Sistek (Google) said that they have issues raised internally from employees as well as users, so they're able to be reactive instead of proactive. She added that all of their teams use social media in what they do.

Morris (TripAdvisor) commented that they're both proactive and reactive. Being an online brand is core to what they do, so although they don't have a dedicated social media team, about half the company is working on social media. They do that internally and externally. TripAdvisor uses small firms to scour the net for mentions of their company - this is at a cost, but it does help to find those mentions.

There's Infringement. Now What?

Arkowitz's next question was whether their companies are proactive or reactive, once they learn of a misuse or infringement, what do they do?

Sistek (Google) said that it's very easy to have stuff taken down on Facebook. You need the name, address and where the content is. They want to know if you're the owner, where does the content live and how it's infringing on your rights. Sistek cautioned that this information is sent to the person who is infringing your rights, so be careful what you say here. She also warned to be careful about what you send because your contact information might get sent to the person, and said in her experience, she's had someone trying to friend her on Facebook she since reported him for infringement.

Sepulveda (General Mills) said that they have internal email aliases to use for enforcement and commented that Twitter's takedown policy is similar to that of Facebook. She said that they generally will see a copyright infringement policy that reflects the digital millenium copyright act, and a separate non-copyright policy. Twitter's policy is on their website and says that you have to provide what you believe you own, what you believe is being infringed, where it resides, and how to get a hold of you.

She said their takedown policy is pretty similar - they will respond if a trademark is being used and will confuse users. The question that they ask is "will it be tolerated?" People might be upset about a post, but Sepulveda advised developing a thick skin, Companies want to develop a dialogue with their consumers and as long as the information being put out there isn't confusing, it will be tolerated under many social media policies. She said that on Twitter, when they learn of an intent to confuse others, they will suspend the account. If it's accidental, they will contact the account holder to see if they can get it removed.

Blogs

Arkowitz asked about blogs, saying that Blogger is hosted by Google and allows people who want to manage and operate blogs to take advantage of that.

Sistek (Google) said that just using someone else's trademark in your blog is not unfair use, because you could be a fan. Blogger's content policy states that if there's impersonation going on, like the fake Betty Crocker site that appeared to be a real site, they would probably take that down. She said that sometimes they get complaints that someone is trying to impersonate a real site. Sistek commented that Wordpress probably has a similar policy, though she wasn't able to find their removal policy.

Social Media Mishaps

Arkowitz commented that it's not always the case that you want to take action against an infringer and gave the example of the public relations mishap that followed the Greenpeace video. She asked the panelists to talk about the stakeholders to manage and what factors to consider when deciding whether to pursue a brand misuse.

Morris (TripAdvisor) said that speed wins. Essentially a company's ability to control and shape the message is determined by how quickly they can respond. It puts pressure on the general counsel in the room. For some companies, they might be more aggressive for their bigger brands, but do a cost-benefit analysis for some of the smaller ones. He said that it's important to ask who's posting this - is it a brand, customer, angry hotelier? This will affect the path they want to take. Budget is also an issue - how much money are they going to spend either on time internally or counsel budget? If they send letters, are they really going to chase them?

Sistek (Google) agreed that it's important to triage what's being used and how. Is it negative? Is it important enough to go after? If it's negative, in what way? She said that sensitivity is also an issue. If it's a group of school teachers, they might be softer in their approach than if it's a cybersquatter. She said that an issue they've seen recently is about employee discussion groups and dating sites with Google employees. She said they don't want to control or stop that, but they have to exercise control if the logo is being used there. They don't want to stop socialization going on out of the network, but they have to tread a fine line as to whether the company endorses it.

Promoting Your Brand

Arkowitz asked the panelists to talk about what they've done to promote their brands through social media.

Sepulveda (General Mills) said that one of the hats that she wears is to be the legal advisor for their brands. She talked about creating an in-game element to "grow" their blueberries in a Farmville crop. Farmville was created by Zenga, one of the largest creators of games, and is one of the most popular games. It's exclusively on Facebook. Their brand team wanted to maximize their exposure without making it look obvious or inauthentic. Sepulveda commented that authenticity is very important in social media, saying that the public sees right through anything fake.

They had to walk the line between talking to people organically and telling them that it's one of their products. So they decided it was better to do it within a game. They used a "what's this" messaging across the top to explain more about their products. At the same time, they hired an agency to create their own Farm within Farmville to extend their branding efforts.

Morris (TripAdvisor) said that beyond the basics of Facebook, YouTube, etc, they wanted to do something different. He said that people look at reviews on TripAdvisor when traveling and may choose a hotel based on them. So they worked with Facebook to create an API for an opt-in system that takes information from your Facebook friends who have traveled, such as their favorite cities, and pulls up their hotel reviews.

It can tell users how many of their friends went to New York City, for example, and shows some interesting features. He commented that what's important in social media is trust - do you necessarily trust the crowds? Morris said that you might, when a hotel has 500 good reviews. But for a small bed and breakfast with only five reviews you might not. However, if a friend reviewed it, that will carry more weight. You might give them a call and get their opinion.

Morris said that this ties in to a number of issues - what can you get from Facebook, which is quite a frightening amount of information. He added that thousands of sites have complicated Facebook integrations, and you can get an incredible amount of non-personally identifiable information, but if you collect enough of it, you can figure out who someone is.

He said if you're doing a Facebook integration, pay attention to what you're taking and make it just what you need to create a rich user experience. He cautioned the audience not to "creep people out" on the web. If your user doesn't understand how you obtained their information, why you're using it, and why they chose it, it feels wrong and this isn't what you want for your brand.

Sistek (Google) said that blogs are one of the earlier things, but she saw this as more of a monologue. She said they're more like a company newsletter, but you can tailor them to customer groups. Google has blogs for different products, like Picasa. She added that Wordpress has blogs for other brands as well and said that blogs are one way to promote a brand that companies may not have thought of.

She commented that Twitter channels are another way - you can have tweets on different topics, like public policy or research. She said these are like blogs, but are a way to promote your brand in a short, simple way. Companies like P&G and Dolce & Gabbana use Twitter to promote their brands. Sistek said that Peet's Coffee tweets about where their coffee is being grown.

Sistek added that YouTube is also a great option and there are ways to promote your brand. She said that they host webmaster home videos, like something as simple as how to run a search on Google. Kraft Foods has cooking demonstrations. It's another way to think about promoting your brand that is not traditional advertising, and may be less expensive.

Twitter can also be used in addition to increasing the brand's visibility. Sistek used Comcast as an example of how to use Twitter successfully. She said that they used to have a terrible customer service reputation, but started to use their Twitter page as a way to immediately respond to feedback. This has helped them to develop a more positive public persona.

Ever-Changing Terms of Service

Arkowitz said that Facebook and Twitter's Terms of Services are constantly changing, and wanted to know how the panelists manage this.

Sepulveda (General Mills) said that this is critical for her, because a lot of times, people will want to put a Facebook Connect badge on a box. But they might get it wrong. She checks their terms of service every thirty days, particularly on Facebook. Sepulveda added that LinkedIn is looking for IP counsel, so she anticipates that they will be changing theirs soon too. She said that even up to six months ago, it was fine to use the Facebook Connect badge, but that's no okay anymore.

She said that she's not even sure Twitter used to have a terms of service policy, because she had seen an email exchange from someone who wanted to use the Twitter logo, and the Twitter employee asked him to use a bird or a T. Three years later, they have a policy that's always changing, so she has Outlook reminders to check them every thirty days.

Morris (TripAdvisor) said that he has sympathy for Facebook, but their policy changed three times while they were working on their integration. The lesson is that they iterate very quickly, which can be frustrating for your company. For them, it's a challenge keeping up with the terms and services issues, and he added that the comments from the morning sessions that the policies need to be more clear and narrow become problematic for companies.

He said that part of the goal is to draft a clear policy, but one that's also fairly broad and lets your business do what it needs to do. Theoretically, he prefers them to be clear, but broad, so that less policy changes are necessary. He talked about where the privacy directives are going, like in the European Union. He said that in the US, we have more of an opt-out regime, but in Europe, it's more opt-in. This has a lot of impact, and affects what they call the "downturn." Having to opt in has an incredible effect on the bounce rate.

Another challenge is consistency among different international points of sale. They have websites in twenty languages and thirty countries - they can't have the same policy in every country. So it's important to talk to local counsel and find out what the product really is, how it applies to local law and whether the policy complies. It may not always be possible for a company to do the things that it wants to do. He said companies can rely on a severability clause, but that may be a risk. So he recommended getting as close to each country's laws as you can, but expecting perfection is not always possible. You may not get every little item.

Sistek (Google) said that she sees incoming complaints about both content hosted on blogs on Blogger, but also other user-generated content. She said that it goes back to the earlier discussion about different policies and complaint procedures, depending on whether it's copyright. She emphasized that it's important to have clear policies that are easy to understand, as well as how to complain about problems and get them removed. She said that they have internal teams to handle complaints.

Morris (TripAdvisor) warned the audience to be careful about what people promise. It's necessary to have a reasonable amount of training for people. If you make a promise to remove something, and you don't, you lose that protection from libel. YouTube can't exist without those protections. If you take action that pulls you out of that protection, you're in trouble. Also trust is very important, so making sure you keep that trust is essential.

He also said it's important to discuss balancing verification methods, using human and electronic messages, versus the amount of disclosure about those methods. The more information you give the easier it is for frauders to get around those methods.

Final Thoughts

Arkowitz asked about their final thoughts.

Sepulveda (General Mills) said that business people don't want to know what their pain is as a trademark lawyer - they want to know what she thinks. She said if you're going to do something, do it big and think about what happens if it gets pulled in the middle. She asked them to think about what happens if there's user pushback?

Sepulveda used the example of Burger King's envelope-pushing app that people should de-friend ten friends on Facebook to get a free Whopper. They didn't take into account that this violated Facebook policy. But they had a plan for the app getting pulled and used that to continue the app. They fully thought through everything that could happen - the campaign was big, fun and they had a plan for when it got pulled and used that to continue the brand expansion.

She said that their job as lawyers is not always to give legal advice, but to help them slow down and think through the plan, to provide the second thought.

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