

Dealing With Consumer-Generated Content on Social Networking Sites

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Consumer-generated content on social networking websites like Facebook and Twitter can provide unique marketing and public relations opportunities for brands.

The Coca-Cola Company reportedly has benefitted from a high-quality fan-generated tribute on Facebook – at one time the second most popular page on the website – and from viral videos portraying Diet Coke and Mentos geysers as wholesome family fun. Kraft Foods' marketing strategy for rolling out DiGiorno-brand flatbread pizza involves partnering with influential Twitter users, who include mentions of "tweetups" featuring the product in their commentary.

Of course, consumer-generated content also carries the risk of creating unwelcome associations for brands or products. People twitter as *Harry Potter* characters, and the series' Facebook groups include "R-rated" fan fiction and a link to nude pictures of actor Daniel Radcliffe. Ce De Candy Inc., has run up against viral videos and Facebook groups dedicated to children "smoking Smarties" – crushing the candy and puffing out the dust as if smoking a cigarette. Needless to say, these are not welcome developments for either brand.

The nature of social networking creates particularly acute risks because Facebook groups and Twitter followings may involve substantial numbers of enthusiastic customers. Appearing heavy handed in dealing with the Harry Potter group, for instance, could irritate many of its 170,000 fans.

The use of popular characters and products cannot be easily controlled on social networking



sites. The expense of trying to control every use of your intellectual property may simply be unjustifiable, and innocuous uses may even be beneficial to the brand. However, for large groups or particularly damaging content, there are several strategies to keep control over your rights.

Prevention

An ounce of prevention is worth a pound of cure. If an intellectual property owner can control certain uses of its brand names from public use, they cannot be abused. While the most obvious way to this goal is registering account names that might be confusing to consumers, rights holders should be vigilant about new opportunities for infringement. For instance, when Facebook began allowing members to create "user names,"

which could be easily accessed at [www.facebook.com/\[username\]](http://www.facebook.com/[username]), it gave trademark holders a limited time before user names were allowed to place terms they controlled off limits. This ensured www.facebook.com/MickeyMouse could only be accessed by the Walt Disney Company.

Partnering

Consumer-generated content on large social networks carries great risk, but partnering with those groups can allow a company to harness the enthusiasm of some of a brand's most die-hard fans. Influential social networks can be partnered with rather than feared, because most people who go to the effort of creating a fan page would appreciate the recognition for their efforts. This not only lets a company retake control of its

image, but can allow it to harness powerful social networks it did not have to build.

“Fan kits” are popular in the video game industry. These provide revocable licenses to proprietary materials – such as artwork and text – in exchange for fan sites agreeing to terms that limit their ability to damage the product or character’s image. In the case of social networking, such terms may include licensor approval of any transfer of administrator rights over the page, prominent placement of disclaimers, requirements for comment moderation and prohibiting content that may be offensive. It is particularly important to occasionally “audit” partnered social networks because authentic artwork and text may make the site appear “official” and make any transgressions more damaging.

The Social Network

It goes without saying that rights holders should tread lightly when considering action against user-generated content on a social networking site. The reputational damage of being perceived – rightly or wrongly – as an online bully may be worse than that of the objectionable content.

If it is determined that a page on a social networking site should be shut down or taken over by the rights holder, one method is working through the social network itself. Facebook, for instance, has a fairly robust system to protect intellectual property owners on its Facebook “pages,” which require authorization of the intellectual property holder. Facebook does not require proof of authorization to create a page, but will delete pages in violation or turn them over to the intellectual property owner. While the policy does not apply to “fan clubs” and “groups,” the “Mickey Mouse Fan Club” is less likely to be mistaken for the work of Walt Disney Co. than “Mickey Mouse’s Facebook Page.”

This policy is how Coca-Cola’s marketing division gained access to the tribute page mentioned earlier. Facebook decided on its own to either delete the page or turn it over to Coca-Cola. The soft drink giant was able to be the “good guy” by offering a middle course: day-to-day operation of the page would be left up to the creators, but marketing personnel would have access to the site.

Working through the social network provider has an additional advantage: Facebook can shut down the page much more quickly and quietly than threats of litigation. The Harry Potter fan site featuring a link to nude photographs of Daniel Radcliffe, for instance, has over 170,000 members. A founding user who feels threatened

has time to tell a one-sided version of the story to the fans and may be able to frame the action as a corporate giant picking on a defenseless individual.

While Facebook will provide users with notice of most alleged intellectual property violations, it is not required to provide notice when it shuts down an unauthorized “page.” It can therefore sever the communication links that would allow users to get riled up in the first place.

Facebook has a similar policy to protect rights holders when a user has selected a registered trademark as their username. For instance, if an individual chose the username “Transformers,” they could damage the Transformers brand by creating a site at www.facebook.com/Transformers that contained objectionable content or that simply was badly made. Hasbro, the owner of the Transformers brand, could file an online complaint at http://www.facebook.com/help/contact.php?show_form=username_infringement. This policy is weaker than the policy for pages, as the user probably will be notified of who sought to cancel their username and given the complaining party’s email address as well. While the official complaint form for usernames requires a trademark registration number, other protected marks could presumably be pursued under Facebook’s generic intellectual property infringement policy. That policy is available at http://www.facebook.com/legal/copyright.php?howto_report#.

Cease, Desist & Litigation

If a site infringes upon a copyright or trademark, suing the site or the user who created the content may be desirable in egregious cases, although rights-owners must be prepared in the event the cases become a *cause célèbre*.

The anonymity of the Internet may hinder such a suit, but because social network users often provide information about themselves on their profiles, identifying the user may be much easier than in other contexts, such as posting copyrighted YouTube videos.

If the individual can be identified, a simple cease and desist letter may serve to resolve the matter. If it does not, a take-down letter complying with the Copyright Act under 17 U.S.C. §512(c) should be sent to the social network. The network loses its immunity to suit unless it “expeditiously” removes or disables the content after a proper take-down notice. 17 U.S.C. § 512(c)(1)(C).

If the individual cannot be identified, a take-

down letter should still be sent, but a subpoena can be issued for the identity of the user. 17 U.S.C. § 512(h). A traditional infringement suit could then be brought against the user and, if applicable, the social network.

Conclusion

Most consumer-generated content on social networks is benign or inconsequential. However, content that poses a substantial threat of damaging intellectual property, and groups large enough to be of substantial use – or damage – to a company, do exist. The issues with benign content can often be resolved through a partnership with set rules. More offensive content can be dealt with through processes set up by the social networks themselves, demand letters or through litigation.

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