

Rules of engagement: brands and social media

Social media afford invaluable opportunities to enhance brand awareness, strengthen customer relations, garner market research and bolster sales – but only if used wisely

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The early days of the Internet were all about email and finding information. Today, websites are not simply tools for seeking information – they allow dynamic interaction while disseminating content. This can be as simple as asking for comments or votes, or as complex as recommending films based on the ratings of other users with similar interests. Such dialogue can take place through blogs, social networks, social news and online encyclopaedias. Generally, most applications that allow for the creation and exchange of user-generated content on the Internet fall within the definition of ‘social media’.

This presents an unprecedented opportunity for brands to engage with consumers. Newspapers and television are one-way marketing vehicles where customer feedback can be assessed only through sales volumes. Social media is a participative forum and it takes just a few clicks for a company to connect with thousands of business contacts and customers. In addition to networking, businesses can gather valuable insights by reading comments made by customers, industry experts and even competitors. Used wisely, social media can help a growing business to boost brand awareness, improve customer relations, garner market research and bolster sales. As the popularity of social networks rises, marketing experts

recommend that even the smallest of companies dive in.

Reaching out using social media

A good example of social media use is provided by Indian telecommunications brand Tata Docomo. When planning to enter the market in 2009, Tata was up against several entrenched telecommunications operators and chose (then little-used) social media to spearhead its marketing campaign. Although its products and services are a major part of its success story, its secret ingredient has been social media outreach. It opened Twitter, Facebook, Orkut and YouTube accounts and invited visitors to sign up to these communities months before the brand launch took place. A valuable beta customer base was developed, from which feedback was collected about usage and preferences. Product ideas were bounced off this fanbase in order to tailor product offerings. In addition, each media channel was targeted differently – for instance, as Twitter typically has a more evolved technical audience, followers were invited to hack into a social game as part of a contest and suggest ways to prevent others from doing so.

Since the launch, Tata’s dealings with its more than 100,000 direct followers have increased further. The company not only monitors its own accounts, but also searches several hundred blogs each day to ensure that every question, comment or complaint regarding the brand is responded to and resolved expeditiously. At the end of 2011 the company had the sixth-largest subscriber base in the country, and it acknowledges that the brand was built on social media and public relations strategies.

Social media is about not only using existing websites, but sometimes creating

your own. Starbucks did just that with its “My Starbucks Idea” site to assess consumer feedback better. Users can submit suggestions to be voted on by consumers, and the most popular suggestions are highlighted and reviewed. Taking this a step further, Starbucks then added an “Ideas in Action” blog, which updates users on the status of the suggested changes. By empowering its web-savvy consumers, Starbucks lent its product offerings a signature personal touch.

Harnessing this medium for business is not just for corporations: Varanasi taxi driver Devesh Mishra obtains a great deal of business from his video posted on YouTube.

Protecting brands in the social space

Social media also poses trademark worries for businesses. In particular, information about goods or services can be spread within seconds – with the wrong sort of information, it may not take long for the strength and reputation of a trademark to be damaged.

Companies and celebrities are also at risk of imposters usurping their identity. Sometimes it is just a case of limited resources – for instance, a search for Johnny Walker on Facebook returns several results for people named Johnny Walker, along with the page for the famous spirit. However, if one of the individuals revealed in the search happened to be selling counterfeit Johnny Walker whisky on his page, it would be a straight case of trademark infringement. While the traditional principles of trademark law might be used to remedy such misuse, the absence of unique user names on Facebook certainly complicates matters.

Consider a different scenario. An ardent Tiffany & Co fan creates a Twitter account under the username “BigTiffanyFan” and tweets regularly on her favourite Tiffany jewellery. For the most part, followers discuss actual Tiffany experiences. However, a few tweets mention Tiffany mobile phone covers, which users incorrectly believe to be genuine products. Left unchecked, Tiffany’s trademark rights are in danger of dilution through blurring.

A third example may be where a business owner creates a blog for interacting with consumers. What if an employee makes a sales pitch to an online consumer with inaccurate comparisons to a competitor’s product? A case of misleading advertisement could result.

Many of these issues are akin to trademark disputes in cyberspace; however, established laws may prove inadequate. For

instance, clear rules and legal procedures (Uniform Dispute Resolution Policy (UDRP) techniques) exist for resolving cybersquatting and domain name disputes. However, these disputes involve second-level domain names (eg, ‘facebook’ in www.facebook.com). But social media sites do not provide users with second-level domain names – on Facebook and Twitter, for example, users select personalised ‘usernames’ that appear as part of the URL or web address (www.facebook.com/username). Consequently, the trademark owner may need to rely on traditional trademark principles to prevent misuse.

Further, use in commerce is a requisite in establishing passing off or infringement. However, if a third party is not using the social media site to sell goods or services, its use of a brand name may not qualify as use in commerce (eg, in the Tiffany & Co example above). A user may also use the defence of free speech or parody. Twitter users are allowed to create parody, commentary or fan accounts, provided that the account’s profile information makes it clear that the creator is not actually the same entity as the subject of the parody/commentary.

Remedies specific to social networks

A brand owner may discover that rather than the established legal remedies, it may be better to turn first to the social media site’s terms of service in order to stop damage to a trademark. For example, Twitter reserves the right to terminate an account immediately if it judges that its rules or terms of service have been violated. Several parameters have been defined in regard to acceptable content covering, among other things, impersonation, the unauthorised publication of confidential information (eg, a person’s credit card information), compliance with local laws regarding online conduct and spam. To prevent user name squatting it is Twitter policy to remove accounts which have been inactive for more than six months. The buying and selling of user names is also prohibited. In addition, Twitter reserves the right to reclaim user names on behalf of businesses or individuals that hold a legal claim or a trademark in such name. Accounts using business names or logos to mislead others are liable to permanent suspension.

The same applies to Facebook. Its statement of rights and responsibilities prohibits users from posting content that infringes another party’s IP rights. Procedures are specified for reporting



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violations and if a valid claim is made, the allegedly infringing content is promptly removed. Accounts of repeat infringers are also terminated in appropriate circumstances. Even though applications developed by third parties for the Facebook community are not controlled by Facebook, if direct communication with the developer of the application fails to resolve a violation of rights, Facebook asks to be contacted so that it can assist. Guidelines are also laid down to tackle various other issues which may be of concern to brand owners (eg, imposter accounts, advertising violations and hate speech).

Facebook and Twitter lead the pack when it comes to social networking. However, all major social media sites are likely to have similar policies in place.

Multi-pronged approach

A recent news report stated that Minister Farooq Abdullah had registered a police complaint against unknown persons for opening a fake Twitter account in his name and posting “objectionable, indecorous and intemperate material” on the site. In another instance, Indian entertainment company UTV lodged a complaint with Facebook after it found a page bearing the name UTV Entertainment Media Pvt ltd, which was being used to dupe aspiring actors. The page was removed. At the same time, a court action was pursued seeking a temporary stay of misuse of UTV Software Communications’ trademark by a fake casting agency named UTV Entertainment Media Private Ltd.

Both of these instances involved the Indian social media space. However, the larger point being made has universal applicability, which is that in most instances, a multi-pronged effort is required to protect a brand name. While Twitter and Facebook

may take down material upon receipt of a complaint, permanently injunctioning an offender to prevent future misuse requires recourse to well-established remedies prescribed under local, more traditional statutes. These could range from the Civil and Penal Code, IP statutes and company law to constitutional provisions on equality and free speech. As in the case of other disputes on the Internet, if an action involves a complainant and an infringer located in different countries, complex questions of jurisdiction will also have to be considered.

Practical suggestions

The best way to avoid any dispute is to negate its basis. Therefore, it is advisable for trademark owners to register their brands (and key variations) as user names on popular social media sites and to use them actively. For instance, an official Facebook page to engage with users is preferable over multiple fan pages. In this case, detailed trademark use policies can be prescribed for employees and third parties who join the user community. Compliance is simpler to track and a positive brand image can be ensured.

Further, while it may be impossible to reserve all marks and their misspellings in all domains and social networks, the sites likely to be used commercially should be prioritised. Other sites can be monitored for brand misuse by utilising independent monitoring service companies.

Alternatively, search engines can help companies to find damaging content – for example, Icerocket searches blogs, Twitter, MySpace, news and images; while Google provides an alert service which will notify a company of the use of company names and brands on blogs, the Web, news, videos and discussion groups.

Finally, while determining its trademark

enforcement strategy in the social space, a company must analyse which content is likely to pose the greatest risk. Negative, inaccurate, misleading comments, infringement and counterfeiting deserve a swift, sharp response. However, addressing a cease and desist notice to a misguided fan or an irate customer might not be the best course of action. A lack of humour and low tolerance of criticism may lead to a business alienating its key demographics.

From an Indian perspective

Indian companies are spending an increasing percentage of their marketing budgets on digital media, estimated at 10%. The year 2011 saw leading Indian telecommunications company Bharti Airtel doubling its spend on online activities, with social media outlays forming an integral part of the expanded budget. Total digital spend in the country approximates Rs20 billion (around US\$400 million), with roughly 50% of that spent on social networking sites. As India has the third-largest internet user base behind China and the United States – India crossed the 100 million mark in 2011 – social media marketing is not just another global fad to be followed, but rather a business imperative. The facts that the Indian mobile phone subscriber base comprises more than 800 million people and more than 75% of smartphone users in India access social networking sites on their devices (in the United States, the figure is 54%) only underscore the rising value ascribed to social networking by companies operating in India.

Case studies reveal a plethora of Indian brands which successfully engage with customers on social media sites. Flipkart, India's largest online bookseller (established in 2007), realised early on that listening to online customers was the best way to grow. Ching's Secret is a market leader in the Chinese food ingredients sector – its fan page on Facebook generated more than 165 million page views in one month. It monitors feedback not just on the brand page, but across Facebook, Twitter and various blogs, with response times ranging from a few seconds to 10 minutes.

Internet penetration is currently at about 10% and as this figure rises exponentially, as it is expected to do, the initial focus of many businesses may be skewed in favour of attracting new consumers, rather than ensuring a high satisfaction quotient among the existing customer base. While examining standards of social media interactions in the aviation business, a study found that Indian airline companies were not as prompt as US

carriers in responding to customer queries or complaints. Immediate replies could be expected from the latter, but Indian response time sometimes stretched beyond 24 hours, with many responses being rather standard and stale. Indian businesses need to set themselves higher standards in future if they want to stay ahead of the curve.

On another note, Minister Kapil Sibal was recently one of India's most tweeted personalities after a proposal for a pre-filtering system for all content posted on social media sites. In contrast to tight controls in China, Indian internet access is largely unrestricted. Further, pre-screening to check compliance with all local laws would be extremely onerous, if not impossible. Since most sites have complaint mechanisms to take down offensive material, this proposal appeared rather drastic. The ire of the Indian online community was quick and voluble, provoking a wide public debate. The government has clarified that it is not seeking to censor the Internet, but rather was calling for a discussion after spotting online content that could potentially foment religious tensions. Only time will tell how this pans out.

Conclusion

In base economic terms, a tweet or a Facebook post has negligible cost. But given the steadily increasing might of social media, a strong brand presence across networking sites and blogs can be the difference between a lucrative sale and another fruitless cold call. Reportedly, 200,000 Indians join social networks every month, so every business will want to jump into the fray to maximise gains.

Concurrently, minimising risk is an equally compelling business imperative. From a trademark perspective, a specialised mechanism to resolve disputes on social media sites is something that all brand managers would welcome. UDRP procedures to resolve domain name disputes are an excellent reference point. In the meantime, a watchful eye and a well-planned enforcement strategy are the most significant rules for brand engagement in social media. ■

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