
Web Marketing Issues

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Gotchas—Gaming

- Any payoff (coupons, rebates, referral fees, etc.) produces some unwanted behavior
 - Countermeasures
 - Anti-fraud detection
 - But gaming never 100% detectable
 - Contractual flexibility
 - Ability to void unwanted behavior
 - Ability to terminate program
 - Legal enforcement against gamers
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Gotchas—Affiliate Programs

- Goal: create distributed marketing force
- Reality: spam, adware ads, self-dealing
 - Customer relations/PR issue
 - Legal risks
 - Advertiser liability in CAN-SPAM (15 USC 7705)
 - Spitzer v. DirectRevenue
- Countermeasures
 - Strict code of conduct (Fenn, Hypertouch, Synergy6)
 - POLICE AFFILIATES
 - Tight payment controls
 - But too much control/monitoring exposes risk of agency
- Do cost-benefit analysis

Gotchas—Marketing Copy

- Goal: accurate marketing copy
 - Plaintiffs use marketing copy in court (ex: Yahoo “syndication fraud” case, KinderStart case)
- Reality: 100% accuracy isn’t possible
 - Sites change daily
 - Marketing copy resides lots of places
 - Diffuse/nonexistent ownership of marketing copy
- Solutions
 - Minimize copy proliferation
 - Designate owner of site text
 - QA must include marketing copy

Gotchas—Overspending on Legal

- If marketing measured by CPA, marketing-related legal expenses should also be measured by CPA
 - Many marketing-related lawsuits don't make economic sense
 - E.g., keyword metatags, domain names, and competitive keyword ad purchases
 - *Occasionally*, lawsuits can generate cost-effective press
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Process Problems

- Decision-making in uncertain legal environment
 - Marketing law is notoriously amorphous
 - Lawyers have personal incentives to tell clients what they want to hear
 - Last minute requests
 - Clients lack business case for decision
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Process Solutions

- Client education
 - Pipeline review
 - Legal signoff
 - Chargeback billing
 - ANY EFFECTIVE SOLUTION REQUIRES
TOP MANAGEMENT SUPPORT
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Marketing Ethics

- Questionable marketing practices (even if “legal”)
 - ❑ Rogue contractors
 - ❑ “Arbitrage” businesses
 - ❑ Undeserved cognitive authority
 - ❑ Opaque/confusing content/practices
 - ❑ Objectionable content
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Marketing Ethics

- Lawyer psychology
 - “All’s fair in love and war” / anything that makes money *must* be good
 - “Zealous advocate”
 - Gatekeeper
- Finding your polestar
 - If characterized in the least favorable way in the NYT, would I be embarrassed?
 - The mom tests
 - If I explained what I was doing to mom, would I be embarrassed?
 - Would I tell my mom to sign up?

(Avoiding) the Race to the Bottom

- “But X is doing it...”
 - Industry conventions may be indefensible when scrutinized
 - “Browsewraps”
 - Revenue recognition of barter deals
 - Stock option “backdating”
 - X may be in factually different position
 - X may not have gotten internal legal blessing
 - We don’t play that way