

Media Strategies for a Networked World

Branding and Letting Go of Control

or,
Can you keep your trademark lawyers and marketing division happy at the same time?

Wendy Seltzer

Schedule

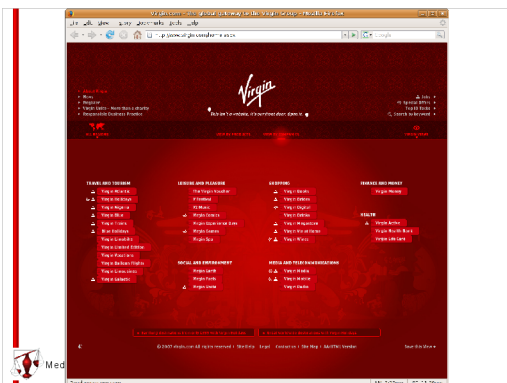
- Presentations:
 - Artist or Artists' Organization
 - Recording Label or Movie Studio
 - Technology Company
- Lecture
- Breakout:
 - As part of a multinational business, how does your division treat its brands?

Overview

- What is branding?
- Why brand?
- What protects brands?
- How should a business protect its brand?
- When do brands or brand-managers get out of control?

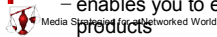
What is branding?

- Trademark:
 - Name or logo
 - Designating source of goods or services
- More broadly
 - Corporate image
 - Reputation
 - Consumer goodwill
 - Consumer protection



Why brand?

- Establish an identity as a trusted source of quality
 - products / services / information
 - specific and/or “house” brands
- Give customers a “hook” for their positive associations and goodwill
 - enables them to make decisions to return to a known source; differentiate among similar offerings
 - enables you to extend from that loyalty to new products



Protecting brand

- Marketing and customer service establishes the brand
- Trademark law helps to protect it
 - Trademark prevents another from creating a “likelihood of consumer confusion”
 - by imitating your mark or using one that is confusingly similar
 - by passing off its goods as yours
 - Trademark infringement
 - Trademark dilution
 - UDRP (domain name dispute resolution)



Trademark law in a nutshell

- TM protects commercial use of a source-identifying name or design (the “mark”)
 - Once you’ve adopted (and, in many jurisdictions, registered) a mark
 - You can stop others from using it or a confusingly similar mark without authorization
 - On the same class of goods or services
- Infringement = “likelihood of consumer confusion”
- Dilution = lessening the distinctive capacity of a famous mark



Trademark law in a nutshell

- TM can lose protection if it no longer designates source
- In most regimes, TM law does not forbid comparative advertising, criticism, parody



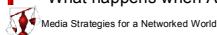
Apple Records & Apple Computer



Apple

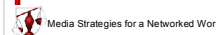


No infringement while the goods and services differ.
What happens when Apple Computer becomes Apple Inc.?



Domain names

- Not the same as TM but can infringe
 - ICANN’s UDRP sets up quasi-arbitration
- harrods.com infringes “Harrods”
- vivendiuniversalsucks.com infringes “Vivendi Universal”?
 - ...being satisfied that certain members of the public in general and “Internauts” in particular, not being English speakers and/or aware of the meaning of the word “sucks” in the Internet world, would be likely to understand “sucks” as a banal and obscure addition to the reasonably well-known mark VIVENDI UNIVERSAL and that, accordingly, <vivendiuniversalsucks.com> refers to goods or services provided by the Complainant, this Panel, by majority, finds the requirements of paragraph 4(a)(i) of the Policy to have been met.



But watch out...

- U.S. phone company Verizon registers verizonsucks.com before adopting the name
- 2600 Magazine registers verizonreallysucks.com
- Bell Atlantic sends a trademark threat
- 2600 registers VerizonShouldSpendMoreTimeFixingItsNetworksAndLessMoneyOnLawyers.com

Bell Atlantic Network Services, Inc. South River, NJ
100 Montross Street
Rm 1000
South River, NJ 07075
201.549.4000

May 5, 2000

VIA CERTIFIED MAIL
RETURN RECEIPT REQUEST
AND EMAIL

EMAIL ADDRESS: emmanuel@2600.com

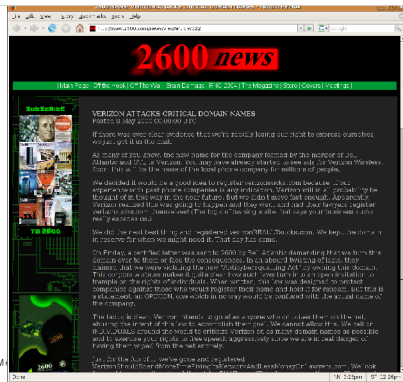
Mr. Emmanuel Goldkorn
2300 33rd Avenue
P.O. Box 848
Mickleton, NJ 07053

RE: Unauthorized Use of the Verizon Name and Mark in the Domain Name
VERIZONREALLYSUCKS.COM

Dear Mr. Goldkorn:

I represent Bell Atlantic Corporation (hereinafter "Bell Atlantic") and its subsidiaries, which own the rights to use the BELL and BELL ATLANTIC trademarks. Bell Atlantic owns the VERIZON trade mark and service mark. It has recently come to my attention that you have registered the domain name VERIZONREALLYSUCKS.COM incorporating the "VERIZON" mark referenced above. This letter is to inform you that your registration and/or use of these domain names infringes Bell Atlantic's valuable trademark rights in the "Verizon" mark and violates the new Anti-Cybersquatting Consumer Protection Act (the "Anticybersquatting Act").

Accordingly, unless you immediately agree to take the steps set forth below,



Verizon apologizes

- A Verizon spokesman says that around 200 letters were sent to various holders of domains with "Verizon" in them. These people, according to Verizon, had the domains with the sole intent of selling them.
- "It turned out 2600 was the one exception," said Verizon spokesman Larry Plumb. "Once we saw it met the standards of fair use, we decided not to pursue it. We're out to defend our brand against confusion and dilution, not squelch free speech."

New Media

- From "consumer" to "conversation"
- You're not the only one with a communications platform
- Customers can share information
 - about product quality
 - about complaints
 - about run-ins with brand police

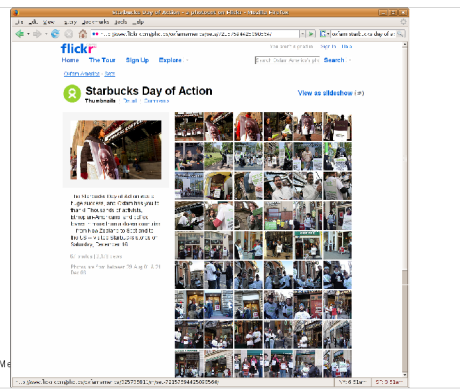
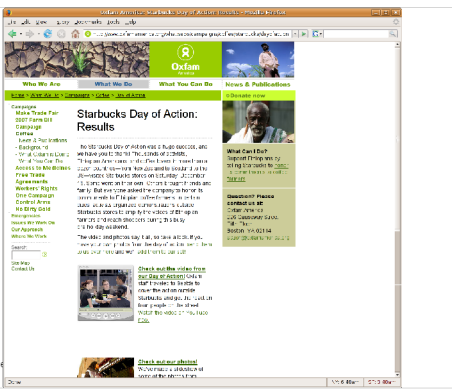
What happens when you over-react?

Oxfam and Starbucks

- Oxfam: Starbucks day of action, uses web, video, photos
<http://www.youtube.com/watch?v=0N5wz>
- Starbucks posts a video response
<http://www.youtube.com/watch?v=DuOth>



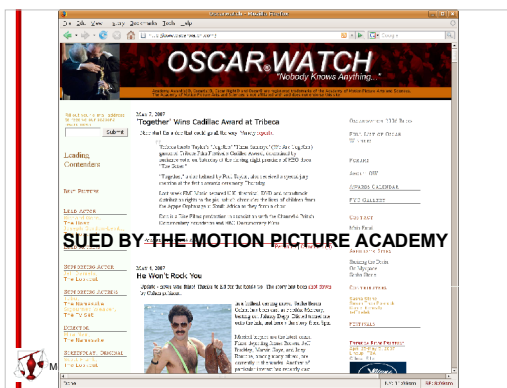
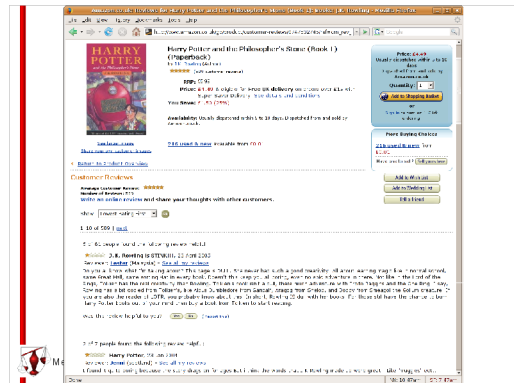
ode=related&s



Where else

- Interactive websites
 - <http://www.waxy.org/archive/2004/07/01/amazonco.shtml>
- Weblogs, Podcasts
 - Should the corporation and/or employees blog?
 - How should they respond to comments?
 - <http://channel9.msdn.com/>
 - http://blogs.sun.com/jonathan/#Safe_Harbor
- Wikipedia
 - Can you resist the urge to edit yourself?
- Virtual Worlds

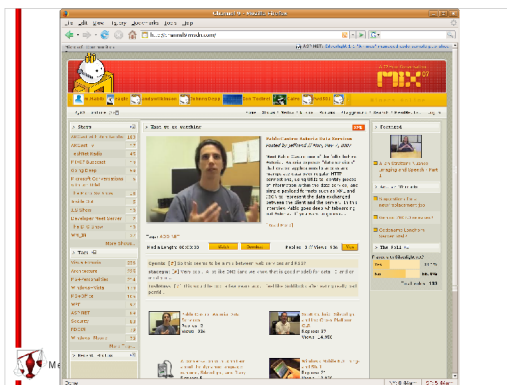
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Blogs

- Weblogs, Podcasts
 - Should the corporation and/or employees blog?
 - How should they respond to comments?
 - <http://channel9.msdn.com/>
 - http://blogs.sun.com/jonathan/#Safe_Harbor

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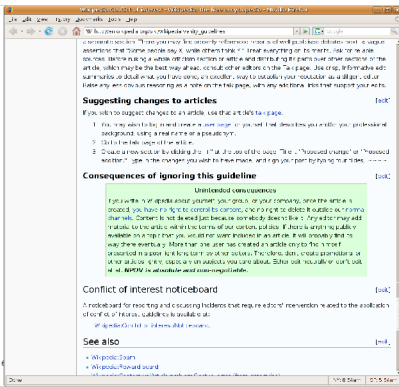


Blogging

- Who can speak for the company?
- What kinds of approvals (delays) are required?
- How genuine does the blog sound?
- What topics are on/off limits?

Wikipedia

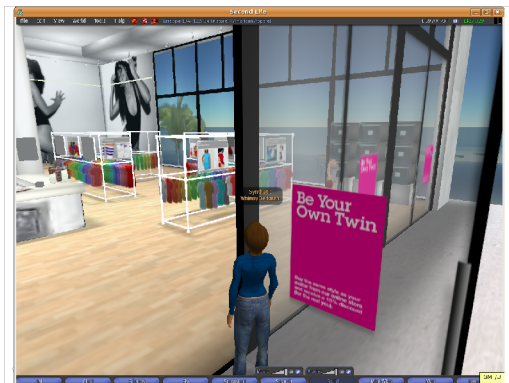
- Policies
 - Neutral Point of View (NPOV)
 - No original research
- Can you resist the urge to edit yourself?

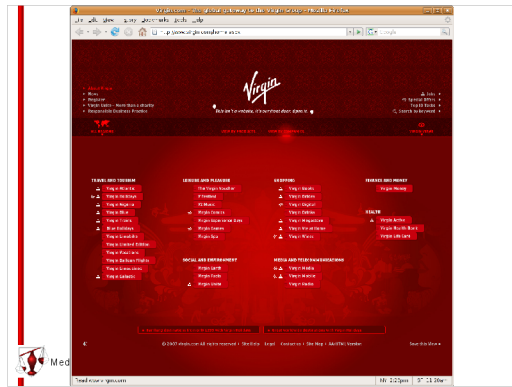
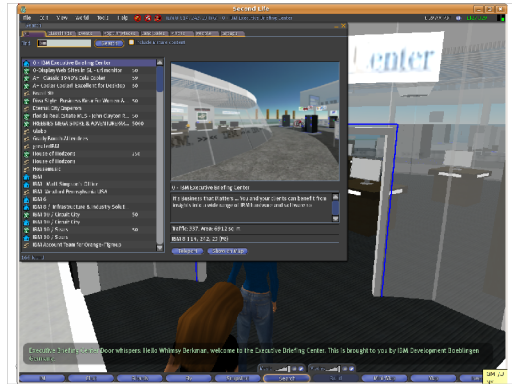


Engaging ethically

- Disclose conflicts or paid reviews
- Follow the guidelines of the forum and community you're in
 - e.g. Wikipedia's don't edit your own page
 - "If you write in Wikipedia about yourself, your group, or your company, once the article is created, you have no right to control its content, and no right to delete it outside our normal channels."

Virtual worlds





Breakout

- You work for Global Corp's
 - Business Development
 - Marketing and Sales
 - Corporate Communications
 - Legal
 - New Media spinoff
- How do you approach these situations?
 - Employee blogging
 - The iPhone

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