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
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
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
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
Process Solutions

- Client education
- Pipeline review
- Legal signoff
- Chargeback billing

ANY EFFECTIVE SOLUTION REQUIRES TOP MANAGEMENT SUPPORT
Marketing Ethics

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