

# **Making your mark and protecting your brand online in Canada**

## **Part 2 - Mitigating branding risks in the era of social media and eCommerce**

*Not for distribution*

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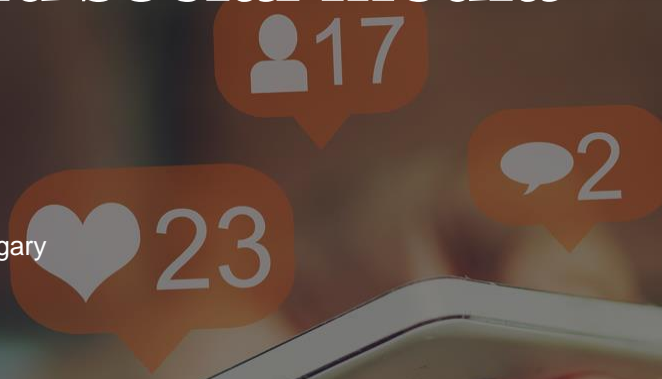
# Agenda

- Welcome and introductions
- Branding and social media firestorms
- Online marketing and advertising challenges
- Guarding against online fraud
- Data privacy and cyberattacks
- Closing remarks
- Breakout sessions

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# Branding and social media firestorms

Elizabeth Williams  
Partner, Lawyer, Trademark Agent, Calgary



# What is a social media firestorm?

## Word of mouth phenomemon in the social media context

- Specific target (person, organization or brand)
- Some kind of a perceived failure
- Vast and abnormal number of criticizing and aggressive comments
- Intention to scrutinize, criticize and discuss a failure

## Risks

- Claims filed by consumers
- Financial impact
- Reputational harm
- #Boycott\_\_\_\_\_
- Talent retention/recruitment and training

# Practical guidelines/Best practices

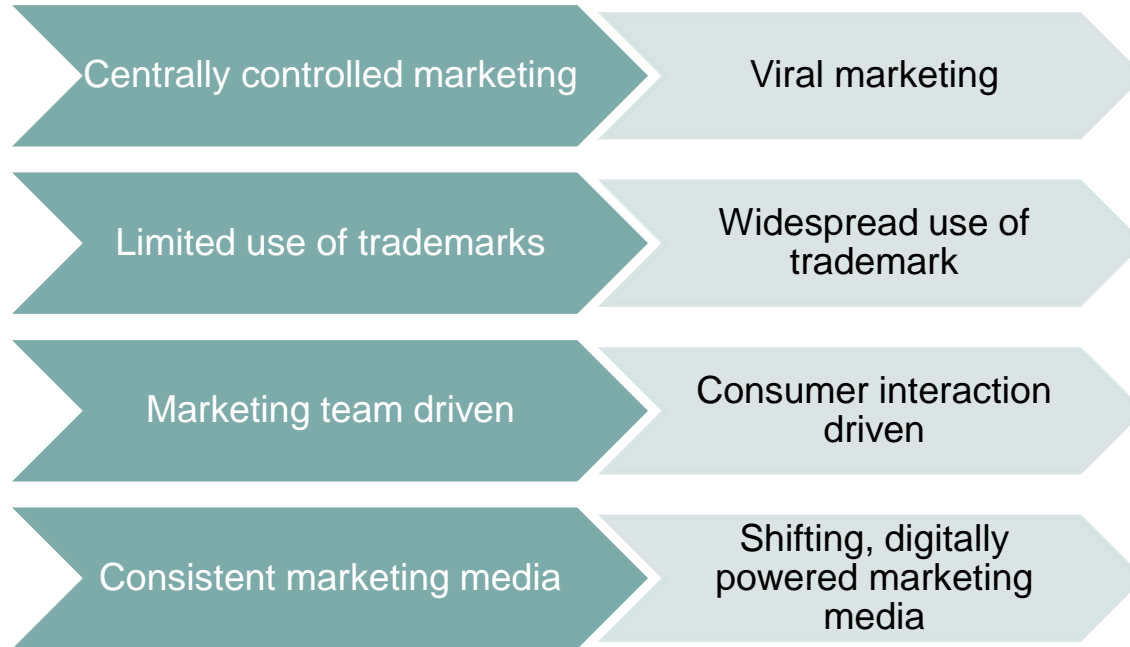
- Monitor, monitor, monitor – spot emerging issues
- Policies and crisis plan
- Involve legal counsel and your business teams
- Speak as one voice – timely response and accurate information
- Consider both the legal and public relations implications of organizational decisions
- Legal privilege
- Board oversight
- Reputation restoration



# Strategic online marketing and branding

Mat Brechtel  
Partner, Lawyer, Trademark Agent, Vancouver

# New world, old law



# Set the right conditions

- Your trademark portfolio should be **digital-ready** for online use
  - Booking.com
  - #yourbrand and @yourcompany
- **Educate** your team, and your audience for decentralized marketing
  - Brand appearance conventions: lululemon
  - Clear guidelines and advice for staff, marketing, influencers, and fans



# Clear the field

Think nationally:  
trademarks,  
business  
operations

Think  
internationally:  
unified platforms,  
domains

# Build the team

## Marketing

- Image
- Message
- Platform
- Audience

## Counsel

- Register
- Ensure consistency

## Consumers and fans

- Educate
- Engage
- Empower

# Guarding against online fraud

Karen MacDonald  
Partner, Lawyer, Trademark and Patent Agent, Vancouver



# Opportunistic counterfeiting for the times

- PPE
  - N95 Masks, face shields
- Cleaning products
- COVID-19 tests
- Fake medicine
  - Chloroquine, hydroxychloroquine
- “Virus Shutout Lanyards”
  - Containing chloride dioxide (toxic pesticide)
- Arriving by
  - International mail
  - Express consignment cargo



# Fake websites

- Made to look real
- Payment processing without product delivery
- Price gouging / discounting
  
- Real life example
  - usa.cloroxer.com
  - ny.cloroxer.com
  - ua.disinfe.com
  - la.disinfecs.com


Protect Your Health by Clorox

Earn Rewards Points Free Shipping US Dollar LOGIN / REGISTER CHECKOUT 0 ITEM(S) - \$0.00

CLOROX

SEARCH...


BATHROOM CLEANING AND DISINFECTING KITCHEN LAUNDRY OUTDOOR PET




Help Prevent the Spread of Coronavirus  
Free Shipping over \$40  
3 Day Flash Sale

CLOROX


FEATURED PRODUCTS




Clorox Disinfecting Wipes (300 Count Value Pack), Bleach Free Cleaning Wipes  
★★★★★ (1665)  
~~\$12.78~~ \$9.19



Clorox Disinfecting Wipes (300 ct Brit +Co Value Pack), Bleach Free Cleaning Wipes  
★★★★★ (279)  
~~\$12.98~~ \$8.99



Clorox Disinfecting Wipes (225 Count Value Pack), Crisp Lemon and Fresh  
★★★★★ (112)  
~~\$9.94~~ \$7.03



Clorox Clean-Up All Purpose Cleaner with Bleach, Spray Bottle, Original, 32  
★★★★★ (73)  
~~\$5.66~~ \$4.03

# Protecting your brand

## Be proactive

- Register your trademarks with CIPO
- Monitor
- File Request for Assistance (CBSA); Trademark Recordal (CBP)
- Customer tips and hotline

## Enforce

- Collect evidence
- Remove content
- Target payment processing
- Remove social media advertising
- Litigation: strong tools and civil remedies
- Canadian Anti-Fraud Centre:  
[www.antifraudcentre-centreantifraude.ca](http://www.antifraudcentre-centreantifraude.ca)

# Don't be fooled

- Check
  - Links, domain name, URL
  - Spelling errors
  - Product alignment
  - Pricing
  - Contact information
  - Terms of service
- Contact brand owner



If in doubt, don't risk it!



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# Data privacy and cyberattacks

John Cassell  
Partner, Calgary



# Current trends

## Pandemic-related vulnerabilities

- Virus-related phishing scams/social engineering
- Targeted attacks on the health and life sciences sector and others
- Teleworking mistakes due to the rapidity of the transition have created new vulnerabilities

## Ransomware and disruptive malware attacks

- Ransomware combined with exfiltration; strains and modules evolving
- Growing in prevalence, with the malware attacks often aimed at causing operational disruption in key industry sectors – more targeted “big game hunting” than previously
- Malware-as-a-service

## A more activist / aggressive approach from regulators and customers

- Highlights the importance of protecting the bank by safeguarding legal privilege over key documents to the extent possible

# Cybersecurity: An ounce of prevention

**The biggest mistake many organizations make is figuring out how to respond to a cyberattack or data breach after it has already occurred – facing a cyberattack is not a question of “if” but “when”.**

## **Preventive measures and safeguards**

- Administrative: mapping critical information assets; information security, confidentiality and privacy policies; employee training and testing (continuous), business continuity/disaster response plans
- Technological: regularly update antivirus and malware definitions, implement software security patches, intrusion prevention and detection; change all administrator default passwords; encryption

## **Develop, implement and test an incident response plan/playbook in advance of an incident occurring.**

- Early recognition of incident and speed of initial response
- Identification of Incident Response Team and role clarity
- Protocols regarding internal and external communications

# Privilege Issues in Cyberattacks

- Claims of legal privilege over reports produced by digital forensics firms, either in prevention of or in response to cyberattacks, are increasingly (and at times successfully) under attack
- Ensure counsel brought in before any 3rd party substantively engaged (even if alerting comes from 3rd party)
- Update the terms of existing IT service provider engagement in the event of a breach
- Where a breach affects your organization across multiple jurisdictions, make sure you understand or receive advice on the laws of privilege in those jurisdictions

# Communications

- Establish protocols on:
  - Internal communications for Incident Response Team (**IRT**) (only factual comms, mark documents and emails as privileged and confidential, copy lawyers)
  - Internal communications for employees outside IRT
  - External communications (limit to need to know basis; no comms without lawyers)
  - Evidence preservation/legal hold
  - Escalation
- Limit written communications to the extent possible
- Keep all communications factual and free from speculation and avoid criticism
- Treat all documents you create as statements that you may need to defend or explain in court – irrespective of the privilege position
- Move from mass communication to mindful / smart communication – protect the company and yourself
- Guard against communication leaks outside IRT

# Closing remarks

# Learn more

- **Breakout sessions now**
  - Technical support available by emailing [rsvp.canada@enortonrosefulbright.com](mailto:rsvp.canada@enortonrosefulbright.com)
- **Join us again**
  - October 29, 2020 | Part three | Effective registration and branding strategies for 2020

# Moderator



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# Our speakers



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