

Doing business online - how to avoid the legal pitfalls

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Agenda

- Part I – fundamental issues for the online business
 - Attracting customers
 - The virtual enterprise
 - Trading in a borderless environment
- Part II – using Web 2.0
 - Social networking and user communities
 - Culture clashes

Attracting customers

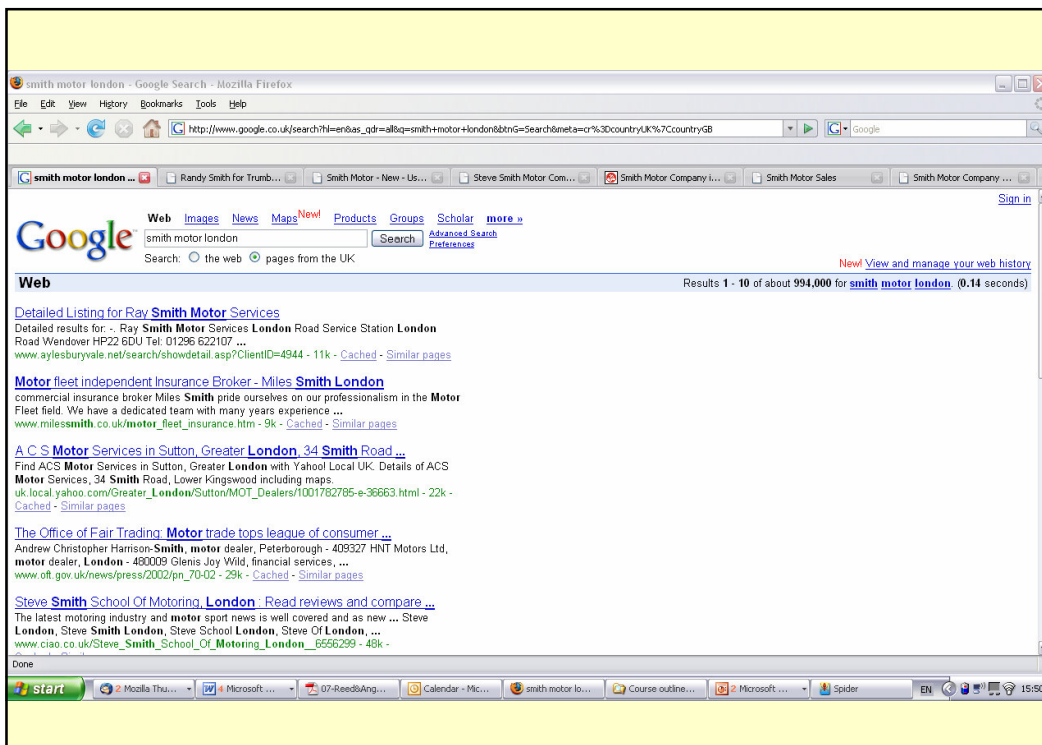
- The internet is unimaginably big
 - Approx. 10.4 million pages referring to “law firm”
- How can your customers find you?
 - Suitable domain name
 - New branding?
 - Search engine optimisation
 - UK Google search for law firm Chichester gives top three links to Thomas Eggar pages

Domain name pitfalls

- Most of the good names are taken
 - Potential for confusion
 - smithmotor.com, smithmotorcompany.com
 - Unique names hard to remember
 - stevesmithmotorcompany.co.uk, smithmotorsales.ca
- Litigation over “your” name is often pointless
 - Domain name registry dispute resolution policies normally only protect against abusive registrations
 - As between legitimate traders, the rule is first come first served
 - Registered trade marks don’t often help, as rivals will usually have an unregistered trade mark

Rebranding

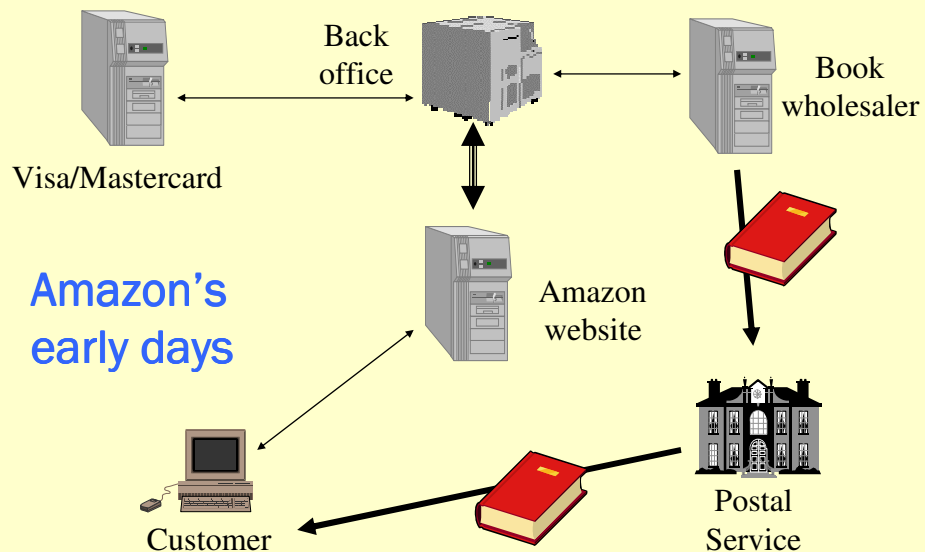
- Effective in dealing with the domain name problem
 - motorsmith.co.uk is currently available
- But can be expensive
 - Consultancy fees, costs of rebranding offline business
 - Loss of existing trade marks
 - Loss of goodwill?



Search engine optimisation

- Numerous techniques to make sites and pages rank highly
 - But arms race between search engines and optimisers
 - May only work temporarily
- Potential legal pitfalls
 - Use of competitors' names in metatags
 - Possible trade mark infringement
 - Certain act of unfair competition in e.g. Germany, Belgium
 - Need to understand and control what your optimiser is up to

The virtual enterprise



Relationships with service providers

- Key relationships
 - Web hosting
 - Fulfilment services
 - Logistics
 - Payment
- These are *services*, not products
 - Performance of the enterprise is dependent on performance of these services
 - Need to define clearly services and their quality
 - Service levels
 - Remedies for performance shortfall
 - Exit from relationships
 - Lessons from outsourcing

Location in the virtual world

- Regulation, taxation and liability are based on connections with the physical world
 - Premises, people, servers
 - These are controllable via design, outsourcing and contracts
 - Effects of online activities
 - Less easy to control, and may be uncontrollable
- Overall, the virtual enterprise has a remarkable degree of choice of regulatory regimes
 - Important to recognise and exercise that choice

Trading in a borderless environment

- The online business is visible everywhere in the world
- Global compliance is not possible
- The game is risk management
 - Risk avoidance is not achievable
- Techniques
 - Refusal to do business
 - Ring-fencing assets
 - Avoidance of dangerous jurisdictions
 - Object lessons from online gambling

Other issues

- Effective online contracting
- Contracting regulation
 - E.g. E-Commerce directive requirements
 - Consumer protection
 - Distance selling regulation
- Taxation
- Regulated sector activities

Web 2.0

- Semantic Web – deeper connection and more intelligence
 - This *will* be important, but we don't yet know how
- New social and collaborative activities
 - Already usable by online businesses
 - But differences from “normal” commerce need to be understood

Ways of using Web 2.0 commercially

- Selling current products and services
 - E.g. Music downloads and concerts via MySpace
- Selling new types of thing
 - E.g. Second Life goods and services
- Marketing

The image shows a screenshot of a Myspace profile for 'RAINN Benefit Concert Tour' and a music player interface. The profile page includes a header with the name 'RAINN Benefit Concert Tour', a profile picture of a woman, and text: 'Folk Rock / Rock / Indie', '"Come For The Music... Stay For The Cause."', 'United States, United States', 'Profile Views: 12237', and 'Last Login: 11/10/2007'. Below the profile is a 'Contacting RAINN Benefit Concert Tour' section with options: 'Send Message', 'Add to Friends', 'Instant Message', 'Add to Group', 'Forward to Friend', 'Add to Favorites', 'Block User', and 'Rank User'. To the right is a music player for 'When She Takes' by 'RAINN Benefit Concert Tour', showing 'Total Plays: 11621', 'Downloads Today: 0', and 'Plays Today: 13'. Below the player is a list of other tracks: 'When She Takes' (Plays: 3339), 'Beautiful Wreck' (Plays: 1260), 'Wildflower' (Plays: 295), and 'Mad World' (Plays: 628). At the bottom right is a 'Latest Blog Entry' section with links to 'AMY COOK + RAINN on Fox: 5 Atlanta', 'Check out new pictures from the RAINN Benefit Concert Tour!', 'The Road to New Hampshire', 'TICKETS ON SALE!', and 'Cybill Shepherd speaks on behalf of RAINN...'.

Marketing benefits and pitfalls

- A new route for your marketing
- Your customers can market for you
- But others can use the same route to benefit from your marketing or infringe your rights
- And you can't effectively control the community's other activities which might affect your marketing

What new laws must you comply with?

- Development of “community” norms and standards
- Contract law will be the initial form of legal governance for emergent user activities
 - Web 2.0 provider’s ToS acting as rulebook
 - Express and implied licences for collaborative activities
- Law and regulation based on behavioural standards will develop together with community norms
- How good is your lawyer with a crystal ball?