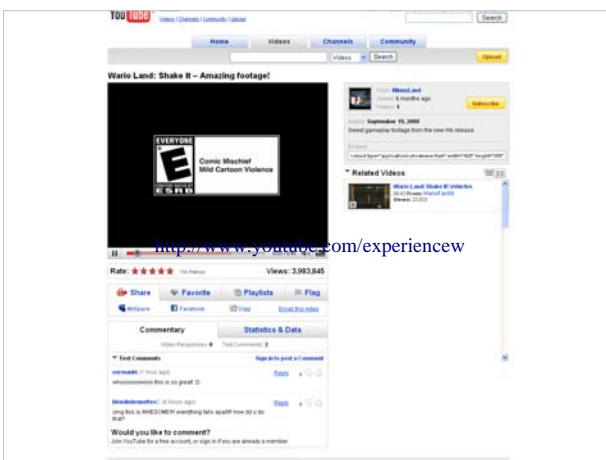


## Advertising in a Digital Environment

Jan Trzaskowski  
Associate Professor, Ph.D.  
Copenhagen Business School

## Legal Risk Management and commercial practices

- Risk identification
- Risk mitigation
  - Information solutions
    - Identification and good faith
    - Community information requirements
  - Contractual solutions (terms of use)
    - Related to information
    - Mandatory regulation
  - Technical solutions
    - Age verification
    - Geo-targeting



<http://www.youtube.com/experiencew>

## What kind of advertising?

- Viral advertising
  - Communities
    - Websites
    - Blogs and »micro blogs«
    - Social media (Facebook etc.)
    - Computer games
    - »Virtual worlds«
  - Semi-private / semi-public spaces
- Degree of consumer involvement
- Active and passive advertising

4

## User generated advertising

- Viral advertising
  - Enthusiastic fanbase
    - E.g. LEGO Ambassador Program
    - Online communities
  - Entertained users
    - Status seeking users?
- But why?
  - Mirror neurons?
  - Dopamine?
    - »reward prediction error«

5





## Legal issues

- Marketing law
  - Unfair competition
- Unfair commercial practices
  - Misleading advertising
    - Identification of commercial communication
    - Price indications
  - Aggressive marketing
    - Unsolicited advertising
    - Abuse of social relations (loyalty?)
      - The human heard instinct
- Viral: consider »best case scenario«

## The regulatory framework

- Unfair commercial practices directive (05/29)
  - The Internal Market
  - Legal standard
    - Contrary to professional diligence
    - Likely to distort economic behavior materially
  - Misleading and aggressive practices
    - Blacklisted commercial practices
- Misleading and comparative advertising directive (06/114)

## Children, young people and advertising

- Clearly identifiable group of consumers
  - Unfair commercial practices
  - ICC code on advertising and communication practice
- Supplement to contract law
  - 28) exhortation to buy products
- Age verification
  - Presentation, refusal and re-login
  - FTC guidelines on age verification

## Identification of advertising

- Misleading omission not to identify commercial intent
  - 11) Advertorial (also blogs etc.?)
  - Consumers' reasonable expectations
- Product placement
- Undue influence (»aggressive«)
  - Timing, location, nature or persistence
    - Active advertising in computer games
- Identification of the advertiser
  - E-commerce and invitation to purchase





## Price indications

- Invitation to purchase (UCP)
  - Price inclusive of taxes or price model
- Must not be misleading
  - Own currency
    - Which services are bought?
    - Children (e.g. Habbo Hotel)
  - E-commerce directive (00/31)
- Distance selling directive (97/7)

15

## Unsolicited advertising

- E-privacy directive (2002/58)
  - What is »electronic mail«?
    - Sent by who?
    - Opt in or opt out
  - Concealing the identity
  - Omit reply address
- Aggressive commercial practice
  - 26) persistent and unwanted solicitations
- Get a consent from the user!

16

## (Ab)use of social relations

- ICC code
  - »Relevant factors likely to affect consumers' decisions should be communicated in such a way and at such a time that consumers can take them into account.«
    - Children: »not undermine positive social behaviour, lifestyles and attitudes« and »not exploit inexperience or credulity«
    - »... not suggest that possession or use ... will give ... physical, psychological or social advantages ...«

17



## Neuroresearch in advertising law

- Misleading advertising
  - Gut Springenheide (C-210/96)
    - »... presumed expectations which it evokes in an average consumer ...«
    - Does not preclude consumer poll or *expert's report* as guidance for judgment
- Unfair commercial practices
  - Undue influence: exploit power ... limits ability to make an informed decision
- Are humans rational?
  - Subliminal influence (»priming«)



## Non-commercial activities

- Degree of encouragement
  - Who is responsible?
- Examples
  - Tobacco directive (2003/33)
    - Private or public sponsorship
  - Audiovisual Media Services Directive (2007/65)
    - Surreptitious audiovisual commercial communication is prohibited
      - »intended by the media service provider to serve as advertising«
      - ¶¶ particular if consideration



## Thank you for your attention

Jan Trzaskowski  
CBS Law Department  
jt.jur@cbs.dk / +45 25370205  
www.legalriskmanagement.com

This presentation is made in OpenOffice.org

