



TABS™ Update Technology And Brands

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Beware - the National Consumer Agency cometh!

Companies involved in unfair, misleading, aggressive and prohibited commercial practices should note recent developments which indicate that the National Consumer Agency (the "Agency") is not afraid to use its powers.

Established in May 2007, the functions of the Agency are to promote and protect the interests and welfare of consumers. On 17th July 2008, the Agency published a list known as its "Consumer Protection List". In this list, the Agency names and shames those against whom it has taken action in the last year. So far, 33 companies are on the list which the Agency intends to publish twice a year.

One company that has incurred the wrath of the Agency is the Galway based company, Arch Motors Limited. The Agency found that the company had engaged in misleading commercial practices by selling or offering for sale used motor vehicles with altered/reduced odometer readings - a practice known as "*clocking*". During its investigation, it identified three cars for sale with reduced mileage. The Agency obtained an undertaking from the company that they would refrain from selling clocked cars in the future. The company also undertook to compensate consumers affected by the practice. It would appear that this is the second case this year involving car dealers.

The Consumer Protection Act 2007 prohibits unfair, misleading, aggressive and prohibited commercial practices. Parties engaged in these practices should beware because not only are they acting illegally but they are also liable to fines of up to €3,000 for the first summary conviction and/or imprisonment not exceeding 6 months and on any subsequent conviction, €5,000 and/or imprisonment not exceeding 12 months. If a person is convicted on indictment, the fines increase to €60,000 and/or imprisonment not exceeding 18 months, for the first conviction and for any subsequent conviction, €100,000 and/or imprisonment not exceeding 24 months. If a person continues to act illegally after being convicted, fines for each day the offence continues will apply. In addition, they may face the wrath of the Agency who has wide powers including the ability to issue prohibition orders.

Companies should review their operations and ensure that they are operating within the law. Otherwise, the Agency may decide to pursue you and your name may appear on the Consumer Protection List for all your customers to see! The time to seek legal advice is now before it is too late!

Is that a bottle of Jameson Whiskey or not?

The importance of companies respecting the intellectual property rights of others or otherwise face the legal consequences of same was demonstrated recently by the dispute between Irish Distillers (Distillers) and Cooley Distillery (Cooley).

Distillers, the makers of Jameson Irish whiskey, issued proceedings in the High Court seeking an injunction preventing Cooley from using labels on their "St Patrick Irish Whiskey" product which, Distillers alleged, were similar to those on its Jameson product. They claimed that Cooley's actions infringed their copyright and registered trade mark rights. Distillers were successful and the injunction was granted. The High Court found that on the balance of probability, the labels on bottles of Cooley's St. Patrick Irish Whiskey which were distributed in Russia by the company, Rotor House were so similar that consumers were likely to be confused into believing that they were from the same family of whiskey as Jameson. It also held that Cooley had used a sign which was similar to Distillers' trade mark and also used it in relation to goods identical to those for which the trade mark was registered.

The above outcome means that Cooley is prevented from using the offending labels until the full hearing of the dispute takes place. Watch this space for further updates on the case. The lesson for other companies is that they should take care not to infringe the intellectual property rights of third parties because failing to do so can have not only legal but financial consequences. If in doubt, talk to your legal advisors today!



Unsolicited text messages and the Data Protection Commissioner

Companies involved in the telecommunication industry should monitor the outcome of the action taken by Realm Communications (Realm) against the Irish Data Protection Commissioner, Billy Hawkes (the Commissioner).

Realm has issued proceedings against the Commissioner to prevent them from being prosecuted for sending unsolicited text messages as direct marketing for commercial purposes. Realm is facing prosecution arising from complaints by 14 people concerning unsolicited text messages. It was the subject of a dawn raid by the Data Protection Office last year. Realm argues that the Commissioner was obliged to seek an amicable resolution to the complaints before proceeding to prosecution. Under the European Communities (Electronic Communications Network & Services) (Data Protection & Privacy) Regulations 2003 (the Regulations), it is an offence to send an unsolicited communication (including SMS message) for the purposes of direct marketing by electronic mail where the person to whom the unsolicited communication is sent has not consented to receiving that communication. Fines of up to €3,000 per offence can be imposed on those found to be in breach of the legislation.

Those who carry out marketing by SMS should beware as the Commissioner has indicated (and shown) that he is not afraid to take action against companies who act illegally. Mistakes could prove costly as an SMS marketing campaign undertaken contrary to the Regulations could result in significant fines for the offending party. To ensure that your operations are legal, immediate legal advice should be sought.

In the Press

Maureen Daly, Partner and Head of the Technology & Intellectual Property Unit was the author of an article entitled "*Private Property*" in Business & Finance's quarterly publication, Enterprise Insight. The article examines the importance of intellectual property rights for all businesses (irrespective of their size).

If you have queries on the issues raised in the article, please contact Maureen Daly (m.daly@beauchamps.ie) or any member of the Technology & Intellectual Property Unit.

And Finally....

The Technology & Intellectual Property Unit will be hosting a Breakfast Seminar entitled, "*Show me the money! The Importance of Intellectual Property for Businesses*" at our office on Wednesday 10th September 2008. We are honoured to have Dr Robert Perryman Co-founder and CEO of AltaScience as one of the speakers. Dr Perryman will explain AltaScience's view on intellectual property rights. Having worked in the past with Irish BioVentures as well as Merrion Stockbrokers, Dr Perryman will also examine the investors' view of intellectual property rights.

For details of the programme or to register for the seminar, please visit the events section of our website at www.beauchamps.ie.

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