

**Intellectual Property Scholars Conference 2008
Stanford Law School**

Identity and Endorsement in Social Network Advertising

William McGeveran

Associate Professor, University of Minnesota Law School

ABSTRACT

Marketing experts have long understood that many purchasing decisions are driven by recommendations from people the buyer knows. The increasing pervasiveness of online social networking makes it much more feasible for merchants to encourage such trusted referrals from customers to their friends. Inevitably, merchants will seek to exploit this mouth-watering marketing opportunity to engage in “reputational piggybacking” – relying on a customer’s identity and reputation among peers to validate an endorsement of the advertiser and its wares. So far, the best example of this evolution is Facebook’s Beacon and Social Ads programs (e.g., “Your friend Meagan Marks just rented *Home Alone 2* at Blockbuster Video. Click here to do the same!” – accompanied, perhaps, by Meagan’s picture and the BLOCKBUSTER logo). Surely, more sophisticated versions will emerge over time. This paper will consider potential problems and solutions related to this new form of advertisement.

Reputational piggybacking will transform – and perhaps distort -- what Eric Goldman has called “online word of mouth.” The nature and extent of the problems will depend crucially on just how these programs are implemented. Most obviously, overly aggressive reputational piggybacking might raise privacy concerns based upon the disclosure of personal information directly to those with whom a customer has personal relationships. Distinct problems could emerge related to the quality and quantity of the advertising messages that result, implicating possible trademark, unfair competition, and consumer protection issues. The paper will explore these problems, compare them to the more familiar difficulties of targeted behavioral advertising, and consider what features of reputational piggybacking might increase or reduce their seriousness.

No existing legal framework applies neatly to the future of social network advertising. I believe it will be illuminating, at least as a thought experiment, to consider application of three different forms of law to the situation: privacy, trademark, and right of publicity. Put another way, the standard legal response differs when an advertisement suggests (accurately or not) endorsement of a product by (a) an ordinary customer; (b) another brand; or (c) a famous person. All of these models have something to offer an analysis of social network advertising and its complex interaction with concepts of identity – personal identity, brand identity, celebrity identity. And they should help generate ideas about whether and how to regulate this emerging form of advertising in the future.