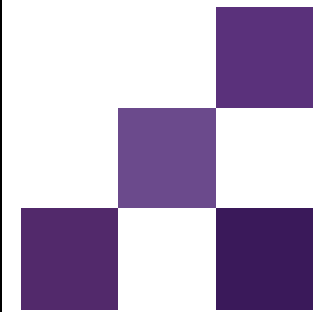


Legal issues: running an on-line business

Wednesday, 27 May 2009

Warren McKeon Dickson
Lawyers





Contents

- Contracts generally
- On-line contracts
- Rights and responsibilities
- Intellectual property issues



Contracts

- 4 key elements
 - Offer
 - Consideration (price)
 - Intention to create legal relations
 - Acceptance
- Where is the contract formed?
 - The place it is signed/accepted
 - The server where the acceptance is acknowledged
 - Jurisdiction contained in the (on-line) terms



Contracts

- Who am I contracting with?
 - How much involvement is there?
“vending machine” -v- personal contact
 - Create an account
- How does the buyer accept my offer?
 - Making payment
 - Scroll boxes with terms and “click here” to accept
- Retaining control
 - Pay then ship
 - Deposit and balance on delivery
 - Send account



Terms of trade – the usual bits

- What are the terms of our contract?
- Policies on a website (for returns, privacy, protecting IP) are not always terms of the online contract
- **All** terms must be notified to the buyer **before** they can be accepted
- “Scroll and click” is the next best thing in the absence of an original signature
- Standard provisions:
 - Describe the goods or services
 - The price or how it is calculated
 - Shipping or delivery details



Terms of trade – clauses missing?

- Jurisdiction
- Interest on overdue accounts / recovery costs
- Security for payment / retention of title to goods
- Risk and insurance
- Warranties and indemnities
- Delegation / agency
- Limitation of liability / force majeure
- Intellectual property
- Dispute resolution

(This is a non-exclusive list. Your business has particular issues to consider)



Rights & Responsibilities

- A work in progress – update terms as required
- Your site is accessible worldwide
 - secure your site – hacking / fraud
 - misleading claims – watch what you say
 - infringement of IP – consider risks
- Are my suppliers bound to supply me the goods I have just sold online to my customers?!
- Get good advice



Intellectual Property

- Confusion about protections given (eg. TM)
- © Copyright
 - exists without registration
 - lasts for 50 years after the death of the author/creator
- ® Trademarks TM
 - exists through use (“use it or lose it”)
 - Registration is not compulsory, but advisable
 - 10 years duration
- Patents - 20 year duration for standard patents
- Designs - 5 years duration



Intellectual Property

- Infringement:
 - Products – inferior copies from O/S
 - Business name – too similar
 - Website content – slabs of text
 - Passing off (even if unintentional)
- Employment contracts – assign IP to you



Risk management generally

- Contract
- Tort (eg. Negligence)
- Statute
- Structuring
- Asset Protection / Insurance
- Employment Issues

For details, see the booklet:

“WMD Seminar Series

Risk Management for Small Business”

Warren McKeon Dickson Lawyers

www.wmdlaw.com.au

(02) 9525 8688

