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# Brand Protection in the Evolving Social Media Environment

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# Brand Protection in the Evolving Social Media Environment

1. Generation Z and consumer decision-making approaches
2. Challenges/opportunities:
  - Increased consumer engagement
  - Legal framework made for analog world
  - Online and with social media
  - Counterfeiting
3. Practical Strategies and Solutions:
  - IP Toolkit
  - Architectural Toolkit
  - Team



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Generation Z consumer choices:  
authenticity, morality, engagement



# Characteristics of Generation Z

Strong sense of self:

92% say important to stay true to who they are



Aspire to maintain a strong morality:  
89% say they determine their own moral code



Brands serve as extension/reflection of identity:  
80% say it's important that brands fit their style  
on an individual basis



Brands should reinforce morals and values

86% say it's important that brands are accessible

85% believe brands should do good in world



Apply situational morality

48% say it's not ok to buy counterfeit products,  
authenticity is important





(But income is slightly higher than morals (47/37)  
as basis of purchasing decisions.)





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*Fandub By Moka*

MakeAGIF.com



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# Challenge 1: Increased consumer engagement in social media



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Trademarks as part of lexicon. Use of trademarks as cultural commentary, as art, as aesthetic object.







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## Challenge 2: Engagement in branding with User Generated Content (UGC) in social media





Influencer: someone who leverages a social media following to influence others and make money

Sponcon: Sponsored content

## TECHNOLOGY

# Posting Instagram Sponsored Content Is the New Summer Job

As long as you're a teen with a following.

TAYLOR LORENZ AUG 22, 2018







With “jobs you need to do a lot of training,” says a 13-year-old Pennsylvanian who asked not to be named. “Then you have to, like, physically go out and do the job for hours a day. Doing this, you can make one simple post, which doesn’t take a while. That single post can earn you, like, \$50.” Last month, she started posting brand-sponsored Instagrams for her more than 8,000 followers. So far, she says, she’s earned a couple hundred dollars.



monicaahanonu • Follow  
Los Angeles, California

monicaahanonu 🌶️💋👁️ @welovecoco  
@chanel.beauty - which bkg color do yall  
like the most?

View all 14 comments

helloavabeauty Stunning 🥰💖💖

kelzdidit 🙏

iuliannicawv I absolutely adore your  
vibe! We can team up for future  
projects, DM me! 🥰!!

285 likes

AUGUST 28

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**fashionvocals** You pick for me 💋💄😊  
Tried something new and I really liked the  
outcome 😊 Love the new Butterlicious  
range of creamy matte lipsticks from  
[@myglamm](#)

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AUGUST 14, 2018

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The St. Regis Mumbai

**fashionvocals** I was thrilled to attend the launch of lifestyle range of fans earlier today with [@orientelectric](#)  
The new range is specially designed to add a glam quotient to your home interiors which makes it more exciting for all the decor lovers out there ❤️ Orient Bladeless being their main and hero product looks elegant👌 A blog post is on the way with complete details and pictures of the products so don't forget to check this space out for more details ❤️  
[#elevatingfandecor](#) . 📸  
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sydsocal You scream, I scream 🍦  
[#chanel](#) [#welovecoco](#) [#icecreamcart](#)

mauroarangov !!!!! SWEET. !!!!



maine3000 Oh yea u look tasty 🍷🍷🍷



katerinahug 😊😊👉!!



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APRIL 26, 2018

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# Challenges/opportunities online and with social media



# Challenges/opportunities online and with social media

using social media for brand development  
and enforcement



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# Challenges/opportunities online and with social media

cease and desist letters / PR





# Starbucks' 'Christmas Blend' stirs brouhaha Local firm, monastery warned on trademark

By **William Patalon III**





Dumb Starbucks was the perfect crime,  
but Starbucks was smart to play dumb

*Lisa Borodkin*





## DEAR RED BULL

02.08.2015

POSTED IN NEWS



## The Old Ox peace offering to Red Bull

Hey Red Bull –

You seem pretty cool. You sponsor snowboarders, adventure racers, rock climbers and motocross bikers. You launch people into space so that they can skydive back down to earth. That's all really darn cool. For all I know, you're reading this while strapping yourself into a Formula One racecar that is about to be lit on fire and jumped over a large chasm of some sort. How cool would that be? Feel free to give it a try.

Here's the thing, though. You are being extremely uncool to us at Old Ox Brewery. We are a small startup brewery in Ashburn, Virginia. We're family-run, we love beer, and we love our community. For reasons that we cannot understand, you have attempted to strong arm us into changing our identity for the last 10 months because you believe folks might mistake Old Ox beer for Red Bull energy drinks. We respectfully disagree. The





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“the best C&D ever”



**ADFREAK**

# **Netflix Sent the Best Cease-and-Desist Letter to This Unauthorized Stranger Things Bar**

Even its legal warnings are creative



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# Netflix Ends Unauthorized 'Stranger Things' Bar With A Super Classy Letter



By [Mina Bloom](#) | September 18, 2017 5:05pm



OTHER 2 YEARS AGO

# Netflix Sent The Most Epic Letter Asking This “Stranger Things” Themed Pop-Up Bar To Shut Down

 253K views



LMA

Like Bored Panda on FB:



Like 15M



“Super classy” Netflix cease-and-desist letter shows how to boost goodwill while tackling infringement

**World Trademark Review**



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# NETFLIX

August 23, 2017

Emporium Arcade Bar  
% Danny and Doug Marks  
2363 N. Milwaukee Ave  
Chicago, IL 60647

Via email 

Danny and Doug,

My walkie talkie is busted so I had to write this note instead. I heard you launched a *Stranger Things* pop-up bar at your Logan Square location. Look, I don't want you to think I'm a total wastoid, and I love how much you guys love the show. (Just wait until you see Season 2!) But unless I'm living in the Upside Down, I don't think we did a deal with you for this pop-up. You're obviously creative types, so I'm sure you can appreciate that it's important to us to have a say in how our fans encounter the worlds we build.

We're not going to go full Dr. Brenner on you, but we ask that you please (1) not extend the pop-up beyond its 6 week run ending in September, and (2) reach out to us for permission if you plan to do something like this again. Let me know as soon as possible that you agree to these requests.

We love our fans more than anything, but you should know that the demogorgon is not always as forgiving. So please don't make us call your mom.

Thanks,



Director/Senior Counsel - Content & Brand IP



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# Challenges/opportunities online and with social media

## Counterfeit goods



## Explosion of online shopping



- Nearly \$220B extra in online ecommerce in 2 years
  - o \$102B in 2020
  - o \$116B in 2021
- During pandemic, global online spending \$26.7T





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# Challenge 3: Analog law in a digital era



Likelihood of confusion: *cause confusion, mistake, or deceive as to affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person*



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Be careful to abide by advertising laws!



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diddy Toast to Success  
@quavohuncho @yrntakeoff  
#BlueDotNights @offsetyrn WYA?

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ovawestant <https://youtu.be/ZE4OUlbH5as>. Check me out guys I'm a 19 year old rapper from Baltimore.  
#Support #youngandhumble

#tafozen Diddy's gonna be here you



77,277 likes

FEBRUARY 19

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kimkardashian 15h



ARE YOU GUYS INTO  
CRYPTO????

THIS IS NOT FINANCIAL ADVICE  
BUT SHARING WHAT MY FRIENDS  
JUST TOLD ME ABOUT THE  
ETHEREUM MAX TOKEN!

A FEW MINUTES AGO ETHEREUM  
MAX BURNED 400 TRILLION  
TOKENS- LITERALLY 50% OF  
THEIR ADMIN WALLET GIVING  
BACK TO THE ENTIRE E-MAX  
COMMUNITY.

#EMAX #DISRUPTHISTORY  
#ETHEREUMMAX #WTFEMAX  
#GIOPEMAX  
@ETHEREUMMAX #AD

**SWIPE UP**

SWIPE UP TO JOIN THE E-MAX COMMUNITY.



# FTC guidelines

- If “material relationship” to a product that you’re posting about on your Instagram
- You have to disclose it in the captions using words like “ad” or “sponsored.”
- #sp or #[brand]partner, or sticking their #ad disclosure at the end of a long caption are not enough! Nor is “paid partnership” at top of post.



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# Practical Strategies/Solutions





# Practical Strategies/Solution 1:

## IP Toolkit

1. Trademark Protection
  - Strong/protectable brands
  - Trade dress, non-traditional marks
  - Plan ahead
  - Invest in clearance
  - Targeted protection: key brands, key jurisdictions
2. Domain names – where rogue website with infringing name, utilize UDRP
3. Design patents
4. Copyright





# Practical Strategies/Solution 2: Architectural/Technological Toolkit

- PR
- Blockchain
- Certification programs, symbols
- Authentication technology
- Geographic market considerations
- Supply chain
- Track and trace mechanisms
- Consumer engagement



# Practical Strategies/Solution 3:

## Collaboration Toolkit

- Industry – can play key role in helping governments better understand practical implications of policy and legislation
- Police, prosecutors, and judges on enforcement front
- Legislators
- Investigators
- Professional organizations, such as ASIPI and INTA – can facilitate collaboration between brands and other stakeholders



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Thank you!