

New Lawsuit Highlights Risks of Using User-Generated Content

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In 2014, Anheuser-Busch ran a contest on Facebook in which consumers were invited to submit photos of themselves “acting natural.” The contest rules stated that entrants could only submit their original works, and that the photos could not infringe anyone else’s copyrights, privacy rights, publicity rights, or other rights. Moreover, the rules stated that entrants granted Anheuser-Busch a broad license to use their photos in any media. After the contest ended, the company started using some of the photos on materials for its “Every Natty Has a Story” campaign, including coasters and posters that were distributed in bars.

So far, this story is fairly typical, and could represent any number of contests that are run in the US every year. What makes this story different,



though, is that the owner of one of the photos Anheuser-Busch used filed a lawsuit against the company for copyright infringement, invasion of privacy, and violation of her right of publicity. Kayla Kraft argues that she owns the copyrights to a photo of her drinking beer while wearing a fake mustache that Anheuser-Busch used in its campaign, and that the company used the photo without her consent. She is seeking unspecified damages.

It’s difficult to piece together what may have happened. According to press reports, Anheuser-Busch says that Kraft’s picture was submitted as a contest entry. The company hasn’t answered the complaint yet, though, and the complaint doesn’t specifically mention the contest, so we don’t have a lot of details. Obviously, the case is going to turn on facts that we don’t have, including who submitted the picture. But although it’s too early to draw clear lessons from the case, the suit still highlights some important issues related to the use of user-generated content (otherwise known as “UGC”).

Companies can – and should – put provisions in rules that (among other things) tell people what they can and can’t submit, specify what rights the company has to submissions, and release the company from any liability. Keep in mind, though, that not everyone will read the rules, and that submitters

may not even have the authority to grant the necessary rights. There are some things companies can do to address these risk. For example, it might make sense to highlight key provisions outside of the rules. And although you may be able to rely on online releases for some things, there are instances – such as when you want to use content offline – in which an offline written release make more sense.

Almost every campaign that includes UGC involves a careful balancing of risks. Because a “perfect” solution may be cumbersome in many cases, most companies will accept some level of uncertainty. But lawsuits like this serve as good reminders of what can go wrong.