

BY LIONEL TAN

DEALING WITH DIGITAL DISRUPTION

Know the law to get ahead in the era of sharing economy and social media

THE disruption of existing ways of doing business is gaining momentum. Uber and Grab have changed the mindset of transport services, and AirBnB has disrupted the holiday accommodation experience. Underpinning much of this disruption is the adoption of technology together with the “sharing economy”, whereby networking and social contacts are leveraged in new and innovative ways.

Small and medium-sized enterprises (SMEs) need to embrace the opportunities being offered by such disruption. While startups will pose some threat to incumbent businesses, the reality is that in the long term, it is customers’ demand for alternative ways of obtaining goods and services that will drive businesses to either adapt or decline into irrelevance.

Before adopting any strategy to embark on a disruptive business model, businesses should be mindful of several legal issues: (a) dealing with regulations (b) ensuring data protection, and (c) intellectual property rights.

Finally, businesses who adopt social media platforms to widen their reach must be mindful of the concurrent legal risks which need to be addressed.

DEALING WITH REGULATIONS

Before embarking on any digitalisation or disruptive strategy, businesses should first survey the regulatory landscape. In many cases, disruptive innovation – especially those offered by new startups – seek to offer services which are either directly in breach of an existing regulation or leverage some grey area of existing regulations.

It is necessary for businesses to be familiar with all the key regulations that may cover their industries. A survey should be conducted on any regulations that may potentially impinge on any new initiative. Any feedback from incumbents on the new entrants business model should be noted. This may provide a good gauge of whether the new business model may be circumventing existing regulations. For such cases, it is imperative for the businesses to take some extra

caution and fully commit only when it is clear that the regulators will either give their approval or that the regulations will be amended.

DATA PROTECTION

With innovative technology being adopted, there is an awareness that much data is being collected. Data of customers’ preferences, their shopping habits, the sites that they visit, the profile of customers etc are being aggregated. Through the use of data analytic technology, it is possible to obtain useful insights that may give businesses some advantage. However, with the aggregation of data, there is a risk that personal data may be collected in breach of personal data protection laws. The collection of the personal data may have been secured or processed without the proper consent of the individual in breach of personal data protection regulations, such as the Personal Data Protection Act (PDPA) in Singapore.

Many times, most businesses may assume that as the data they collect does not appear to be able to identify individuals, they are exempt from personal data regulations. Nevertheless, it is necessary to remain vigilant. While much of aggregated data may deal with non-identifiable data, it is possible that with some triangulation of the data points, an individual may still be identified. Hence, it will be necessary to ensure that aggregated data complies with personal data protection regulations.

With the almost daily news of organisations being breached, it is crucial for businesses to safeguard the personal data that they collect. Under the PDPA, businesses are required to adopt reasonable security measures to protect the personal data under their control. These would include adopting secure passwords,

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encryption of sensitive data, preventing unauthorised downloads, implementing detailed information technology (IT) security guidelines, ensuring that firewalls and security measures are updated, and conducting regular audits.

INTELLECTUAL PROPERTY

For any business embarking on a new innovative strategy, it is important to ensure that any related intellectual property rights have been secured. It would be imprudent to invest heavily in a new system if it is later uncovered that the system infringes on another party’s intellectual property rights. Hence, it would be advisable to perform some due diligence to ascertain if there are any potential

intellectual property claims. It is possible to check public databases for patents that may have already been registered that may pose a risk. If so, then either an adequate licence should be obtained from the intellectual property rights owner or a work around should be devised.

If the system is being obtained from a third party vendor, it is advisable that a full indemnity should be obtained from the third party vendor. In this way, should any claims for intellectual property infringement arise, there will be some recourse.

SOCIAL MEDIA

In today’s digitalised world, the natural forum to gain publicity and marketing advantage is engagement through social media. However, SMEs should be aware of the legal issues that arise when promoting their products or services on social media. Knowledge of such legal issues could prevent an unfortunate incident which may give rise to adverse publicity or a lawsuit.

In Singapore, cases such as the Lavastone Steakhouse saga stirred negative publicity when its owner responded on social media to customers who gave a poor review. Potentially defamatory comments were exchanged online and further aggravated when photographs of the customers were posted without prior consent.

Local travel and lifestyle portal The Smart Local sparked criticism when it posted a video “Singaporeans Try Indian Snacks” on YouTube. Many netizens frowned upon their hurtful connotations and cultural insensitivity.

On the whole, when businesses choose to use social media platforms, they need to be mindful of legal issues such as defamation laws, sedition laws and also adhere to industry good practices and not denigrate customers or competitors.

A somewhat lesser known issue would be the guidelines issued by the Advertising Standards Authority of Singapore (ASAS) for advertising and marketing communication that appear on interactive and social media. One important aspect is the use of social media to promote a company’s products through third party influencers. In such cases, there is a need to inform of the sponsorship. Some simple messages to be included in the posts would be “This post was sponsored by . . .”, “I would like to thank (client) for their invitation”, “The featured products were provided by . . .” Where there are length constraints, then some simple tags could be “#adv” or “#sponsored”. These messages would allow consumers to make more informed choices on the promotions they view on social media.

CONCLUSION

Before embarking on a strategy to adopt a digital role or disruptive model, SMEs should be mindful of regulatory constraints, data protection, intellectual property rights and proper engagement on social media. When such issues are properly addressed, the exponential growth from adopting such business models may finally be realised. ■

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