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THE LAW OF SOCIAL MEDIA AND DOMAIN NAMES

Burshtein and Turco
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This publication considers the commercial and legal realities of how trademarks and domain names are used and perceived on the Internet in the context of established trademark and related legal principles. It sets out the history of the technology underlying, and the legal issues relating to, the international domain name system. The publication analyzes whether a domain name is property or some other type of right, and it considers the WHOIS database directory of domain names. The text comprehensively deals with the acquisition and violation of trademark and related rights on the Internet. It also analyzes the many practices and techniques that have emerged on the Internet that, when effected in association with a trademark, trade name or individual name, pose fundamental challenges to the essence of trademark and related laws. These practices and techniques include references to trademarks which are typically the subject of national rights on websites which are available on a global basis.

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What's New in this Update:

This release features the addition of a new chapter: User-Generated Content: Political Advertising. This chapter covers online political advertising and other political content. These topics are controversial in light of bots, microtargeting and other techniques. Many jurisdictions are considered within the chapter, including Canada, the United States, the United Kingdom, Australia and a number of European countries.

Highlights:

- **Chapter 4F—User-Generated Content: Political Advertising—II. Online Political Advertising—C. Microtargeting—5. Cambridge Analytica Scandal—** This chapter considers the Cambridge Analytica Scandal, a watershed event in online political advertising and microtargeting, in great detail. The chapter provides background information on the scandal and considers the legal consequences of the scandal from the perspective of multiple jurisdictions including the United Kingdom, the United States and the European Parliament. The effects of the scandal in Canada were significant, for example, the legal consequences relating to Meta alone are as follows:

In 2019, the Office of the Privacy Commissioner of Canada (OPC) and the Office of the Information and Privacy Commissioner for British Columbia (BCOPC) commenced joint investigations into compliance with federal and British Columbia privacy laws by Meta and another business in relation to the Cambridge Scandal.

The first investigation focused on the consent of those who installed an app and their FACEBOOK Friends, whose information was disclosed by Meta to app developers, safeguards against unauthorized access, use and disclosure by app developers, and accountability for the information under Meta's control.

The investigation found that Meta failed to obtain valid and meaningful consent of users. Meta relied on the app developers to obtain consent for Meta's disclosures to those developers.

However, Meta was unable to demonstrate that the TYDL app developer actually obtained meaningful consent for its purposes, including political purposes, or that Meta made reasonable efforts, in particular by reviewing privacy communications, to ensure that the app developer was obtaining meaningful consent from users.

Meta relied on overbroad and conflicting language in its privacy communications that was clearly insufficient to support meaningful consent. That language was presented to users, generally on registration, in relation to disclosures that could occur years later, to unknown app developers for unknown purposes.

Meta also failed to obtain meaningful consent from Friends of its users. The regulators found that Meta unreasonably relied on users to provide consent on behalf of each of their Friends to release the Friends' information to an app developer, even though the Friends would have had no knowledge of that disclosure.

Meta had inadequate safeguards to protect user information. It relied on contractual terms with app developers to protect against unauthorized access to users' information, and put in place superficial, largely reactive and ineffective monitoring to ensure compliance with those terms.

Meta was unable to provide evidence of enforcement actions taken in relation to privacy-related contraventions of those contractual requirements.

Meta failed to be accountable for the user information under its control. It abdicated its responsibility for the personal information under its control, ef-

fectively shifting that responsibility almost exclusively to users and app developers.

Meta unsuccessfully sought judicial review of the decision by the Federal Court.

Numerous actions, including class actions, were launched against Meta by individuals who alleged injury by the scandal. The OPC also pursued an investigation on behalf of individuals.

- **Chapter 4F—User-Generated Content: Political Advertising—II. Online Political Advertising—F. Platform Operators**—Online platform operators play a significant role in elections and social media platforms are often at the center of political issues. This chapter discusses the role of platform operators in political advertising, artificial intelligence, and election-related violence and major platform operators, including FACEBOOK, GOOGLE, TWITTER and OPENAI. FACEBOOK's approach to political advertising has changed over time and this chapter considers the approach at specific time periods, including the 2017 political advertisement policy, the 2018 European Union elections, the 2020 United States elections and the 2023 Australian Indigenous Voice Referendum.
- **Chapter 4F—User-Generated Content: Political Advertising—VII. Canada—B. Election Law**—Election law in Canada is considered at both a federal and provincial level in this chapter. In relation to federal law, this chapter includes discussion of Elections Canada, election advertising and numerous pieces of federal legislation. The Canada Elections Act is considered in depth and discussions include advertising, microtargeting and foreign influences.