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Showdown Coming In Court Over Amazon.com Sales Tax For Online Purchases

As a number of cash-strapped states look at ways to fill shrinking coffers, an upcoming New York state court decision is set to rule on the legality one especially rich source of revenue generation: mandating the collection of state sales and usage tax for online purchases.

The case, *Amazon.com v. New York State Department of Taxation and Finance*, stems from a NY law (in effect just since 2008) requiring online retailers to collect sales tax if they have marketing affiliates in the state. The definition of affiliates includes third party web sites that run ads that direct users to another e-commerce site, such as Amazon.

In anticipation of this ruling, and what its effects may mean for other states, we suggest a conversation with Venable LLP partner John F. Cooney. Mr. Cooney, a former Assistant Solicitor General and Deputy General Counsel at the Office of Management & Budget, was the author of an amicus brief in the Amazon case for the Performance Marketing Alliance, a trade group representing online affiliate marketers and arguing that the law is unconstitutional.

Mr. Cooney notes that Joseph Wanamaker, an iconic retailer whom many consider the father of American advertising, famously complained that "half the money I spend on advertising is wasted; the trouble is I don't know which half."

The affiliate advertising model at issue in the Amazon lawsuit has solved Wanamaker's dilemma, at least in e-commerce. Since a web site that runs an electronic banner ad for a merchant is compensated only if a sale is completed, the seller knows exactly which advertiser generated the sale. It can thus afford to have a large number of sites advertising its products without having to pay out money up front that might be wasted.

Mr. Cooney notes that the revenues provided to on-line advertisers whose viewers click-through and make a purchase provide a secondary income stream that has helped many smaller e-commerce sites expand the amount of content they can run and thus made more information available to the public.

NY State claims that these affiliates operate like sales agents, allowing the state to claim that Amazon and other sites have a geographic nexus in the state. Amazon and other retailers submit these affiliates are more akin to advertising channels and that without a physical presence in the state they should not be compelled to pay New York sales tax.

In January 2009, a trial court found in favor of the state. The Appellate Court has had the case since September 2009 and many observers expect a decision in coming weeks.

Retailers argue that the law violates the Commerce Clause as it “improperly discriminates against the performance-based marketing model of electronic commerce.” In its brief, the Performance Marketing Alliance submits that “in essence, under the performance marketing business model, the affiliates provide a form of Internet-based advertising that is analogous to traditional print advertisements distributed by a catalog retailer.”

PMA argues that the affiliates do not directly sell any product to web users or have a sales force that affirmatively solicits potential customers for the retailer. The affiliate functions exclusively as a publisher of an electronic advertisement. Nor do the affiliates receive payment from customers who purchase an advertiser's products or services.

“The electronic advertisements displayed on third-party web sites inform the web user of the name and in some instances the contact information of the advertiser that is offering a product,” PMA contends. “This is no different from the contact information that a reader receives from a magazine advertisement and does not give the electronic advertiser a greater ‘physical presence’ in the state than a traditional hard-copy advertiser.”

Mr. Cooney notes that Rhode Island and North Carolina have also adopted similar affiliate taxes, while at least six states - including California, Illinois, Connecticut and Virginia - are considering their own versions of a tax on online sales.

Mr. Cooney has extensive experience in regulatory policy-making and litigation. He served as Assistant to the Solicitor General in the Department of Justice and as Deputy General Counsel for Litigation and Regulatory Affairs in the Office of Management and Budget in the Reagan Administration. He processed President Reagan's original Executive Order on Federalism. In addition, Mr. Cooney also served as counsel for the OMB's Office of Information and Regulatory Affairs and was involved in policy disputes involving legal interpretation of most major federal regulatory statutes.

Online Ads Leave Web Users At Risk To Viruses

Researchers at ALWIL Software, providers of the avast! antivirus program, have discovered a widespread campaign that is infecting Web site advertisements served up by leading online advertising services.

The infected advertisements are placing malware and viruses on the computers of people visiting leading Web sites such as Google and Yahoo.

“The poison ad infiltration method is growing in popularity because it does not require users to click on anything,” explains Jiri Sejtko, avast! Senior Virus Analyst. “Users can get infected just by reading their favorite newspaper or by doing a search on popular topics; the infection begins just after the infected ad is loaded by the browser.”

The most compromised ad delivery platforms are yieldmanager.com (Yahoo) and fimserve.com (FOX Audience Network) that cover more than 50 percent of on-line ads. The list of poisoned ad services is extensive and includes advertangel, bannering, jambovideonetwork, myspace, vestraff and zedo. Doubleclick, an advertising server affiliated with Google, is ranked fifth in the avast! Virus Lab list of infected servers by rate of infection.

Avast! Virus Labs have named this attack vector JS:Prontexi. It's a JavaScript code which acts as a channel for malware attacks on vulnerable software such as Adobe and a range of zero-day exploits.

“JS:Prontexi highlights the lack of care shown by advertising service providers to actively screen the content they are distributing,” comments Sejtko, “Serving up infected content like this is a double hazard for advertising companies. In addition to reducing consumer trust in their services, they run the risk of being flagged or even blocked by antivirus programs as a source of malware.”

“Consumers shouldn’t immediately accuse their antivirus program of a false positive when a familiar site gets blocked. There can be a real danger,” explains Sejtko. “avast! and Kaspersky Labs, a competing antivirus product, both blocked yield manager earlier this year because of these attacks. If these advertising services get too infected, the easiest way to protect our users is to block them completely.”

New Multibrand Hormel Promotional Campaign Goes On Air

Broadcast marketing company CRN International is launching a new promotional campaign called "Look What You Can Do(TM)" for some of Hormel's best-known, best-loved products. The campaign, which consists of local radio, television and digital media, will run in 56 markets across the country for a total of four weeks.

Products covered by the promotion include SPAM(R) varieties, DINTY MOORE(R) stews, HORMEL(R) Chili, HORMEL(R) MARY KITCHEN(R) Corned Beef Hash, HORMEL(R) Canned Chicken and HORMEL(R) Bacon Bits. This marks the first time Hormel has marketed such a wide swath of its brands under a single umbrella campaign.

"With leading shares in all these categories, this is also a great platform to partner with our retail customers to drive long-term category growth," says Swen Neufeldt, Group Product Manager for Hormel Grocery Products. Campaign markets were selected based on Hormel sales and the locations of participating retailers, which are featuring the Hormel products and providing displays in exchange for being tied into the campaign.

The "Look What You Can Do" campaign is designed to increase sales of Hormel products by promoting examples of product usage. "Across our portfolio, we have a great number of core and occasional consumers," explains Neufeldt. "Our goal is to provide both with simple, great tasting recipes that continue to build the on the breadth and frequency of the way they use our brands."

The campaign is using national and local radio and television personalities in innovative ways to bring this concept to life. Local television personalities are making meals on the air using Hormel products, and radio announcers are taking the products home and talking on the air about how easy it is to make simple meals using them.

"Having well-known local personalities talk about their experience with using the product in the context of their real lives is very effective," explains Barry Berman, president of CRN. "Especially when it's someone you identify with, respect or admire."

Nationally known radio personalities such as Sean Hannity and country star Kix Brooks are also talking about the products in their own words on the air in ways that fit the style of their broadcasts.

In addition to the on-air buzz, CRN also created local and national broadcast contests, local events programming, websites, coupon page contests and more. "The strategy is to surround people with a range of messages delivered in ways that engage, entertain, inform and excite them--where they live,

work, shop, and, of course, cook and eat," says Berman.

Neufeldt agrees. "CRN has played an integral part in our ability to surround our consumers with the message in an impactful, relevant and local way."

CRN's expertise includes customizing its clients' marketing to be super-relevant to local communities. "We've found that the more relevant you can be to consumers, shoppers and retailers in the local markets, the more impactful the campaign," explains Berman. "This campaign helps position Hormel as an integral part of local communities."

The campaign will air in two flights, March 1–14 and March 29–April 11, 2010. CRN is collaborating with Hormel agencies on the campaign, including BBDO and NSight Connect.

In-flight Catalog For Private Jets Attracts New, Unique Luxury Products

A direct marketing firm expands with new vendors and products to offer private flyers as business aviation activity rises

PRIVATE SHOPPES, LLC (<http://www.privateshoppes.com>) announced Wednesday that six new luxury vendors have signed deals to distribute their products through their in-flight and online catalog for private flyers.

Creative Director and Lifestyle Editor Deedee Morrison selected products from Bubbies Homemade Ice Cream, Elan Residences, Heritage Shortbread, Turbosonic, Waggoner Chocolates and Wine Soiree to be featured immediately on the PRIVATE SHOPPES website and in print beginning with the Summer '10 issue. Each item has been handpicked to perfectly complement the shopping patterns of the private aviation consumer.

PRIVATE SHOPPES executive David Bannister says the new vendors "are all great vertical category leaders, come from different regions and their products have a wide price range: from gourmet Hawaiian ice cream for \$15.00, to sophisticated Health & Wellness Machines up to \$15,000. We're proud to have them on board."

The range and quality of goods offered by these vendors, from fine, family-made shortbreads to lavish coastal and mountain homes, perfectly match the character of PRIVATE SHOPPES, whose editors have flown around the globe searching for top-choice products and services to offer on their website and feature in their catalog. Both the PRIVATE SHOPPES website and catalog are uniquely designed to match the discerning tastes of the private flyer with the biggest collection of select products, and to allow readers to shop while on the go.

As business aviation activity and demand for charter aircraft steadily climb, PRIVATE SHOPPES and its new vendors are strategically partnering to better serve the private flyer market and drive sales. PRIVATE SHOPPES is the only in-flight shopping website and catalog targeted toward general aviation passengers.

Inter/Media Advertising Launches Tax Season Campaign

Inter/Media Advertising® (<http://www.Intermedia-Advertising.com>) has launched a flight of direct response commercials this month for Roni Deutch Tax Centers designed to acquaint tax payers with the

company's easy, no-hassle tax preparation services including over the phone tax preparation.

After spending 19 years helping clients resolve their IRS tax problems, Roni Deutch, the owner of the nation's largest tax resolution law firm, has successfully expanded her brand into tax return preparation services. She launched her Roni Deutch Tax Center (<http://www.rdtc.com>) franchise business in 2007 and now has 77 franchisee-owned tax centers servicing the market. Entrepreneur Magazine has ranked Roni Deutch Tax Center as one of the fastest growing franchise companies in the nation in 2009.

The tax preparation TV spots are running in Sacramento, where Roni Deutch Tax Center is headquartered, as well as Las Vegas. Franchisees are also airing the TV commercials on their local cable systems. Radio spots are airing in 10 markets, including in Phoenix and Miami. The commercials urge customers to maximize their refunds and to call or visit their local Roni Deutch Tax Center.

Roni Deutch and Inter/Media have had a hugely successful relationship over the years. Deutch came to the agency in the 1980s with only \$3,000 to invest in an ad campaign that has ultimately turned her Law Firm, Roni Deutch, A Professional Tax Corporation, into the most powerful TV brand for IRS tax debt resolution. She naturally turned to Inter/Media to help launch and grow her franchise company, Roni Deutch Tax Centers, which has gotten off to a rapid start thanks to the agency's creative spots and media buying clout. Deutch continues to be the on-air spokesperson for her companies.

"Roni has developed a trusted brand over the 15 years that she has been with us and stewarded that brand brilliantly," says Robert Yallen, CEO of the Inter/Media Group of Companies. "She has remarkable credibility with consumers as demonstrated by her high Q scores. By extending into tax preparation, she created one seamless brand that focuses on helping consumers with all of their tax matters. Besides being an astute lawyer, she is a brilliant marketer. We are proud to have been a part of her past success and look forward to helping her escalate the success of Roni Deutch Tax Centers."

DMA Testifies On Opposition Of Proposed Expansion Of FTC Authority

Direct Marketing Association's (DMA) Executive Vice President, Government Affairs, Linda Woolley, testified before the Senate Commerce Committee's Consumer Protection, Product Safety, and Insurance Subcommittee in opposition to the proposed expansion of the Federal Trade Commission's (FTC) rulemaking and enforcement authority.

Woolley testified that the "FTC does a commendable job in protecting consumers against unfair or deceptive acts or practices through its existing enforcement actions under the more than twenty statutes it currently administers."

"We do not believe providing the FTC with broad new authority of the type included in the "Wall Street Reform and Consumer Protection Act", and as requested by the Commission, is a necessary or relevant response to the causes of the current financial crisis," said Woolley. "The kind of additional authority that the FTC seeks is in no way related to 'credit default swaps' or 'subprime mortgages,' and would have far-reaching effects on a multitude of businesses outside of the financial services area."

DMA recently joined with nearly thirty other major trade associations, representing virtually every industry, in sending a letter to the Senate Commerce Committee expressing concerns about the proposed repeal of statutory protections that currently govern the FTC's rulemaking ability. "We do not believe that a complete elimination of important procedural safeguards is necessary, or that it will ultimately be in the best interest of businesses and consumers," stated Woolley.

DMA is particularly concerned that the Commission would use expanded rulemaking authority to regulate areas where its involvement would hinder new and emerging business practices, such as Internet commerce, one of the continued key economic drivers and areas of job growth. Woolley stated that DMA's Power of Direct Marketing, 2009-2010 Edition "...Recently forecast that the Internet marketing workforce has the potential to grow 6.1 percent over the next five years, with 11 percent growth in the social networking medium alone, generating more than 2.6 million new jobs. Growth of the mobile marketing workforce was projected at more than 30 percent by 2014. Instead, new rules could limit market innovation, and jeopardize the corresponding jobs and products that flow from such innovation."

For more information please visit (<http://www.dmaaction.org>).

News Makers:

DMA Unveils Dynamic Hall Of Fame Website

The Direct Marketing Association (DMA) (<http://www.the-dma.org>) unveiled its newly upgraded Hall of Fame Award website, (<http://www.dmahalloffame.org>). The Hall of Fame Award, considered the most prestigious award bestowed in the direct marketing community, is presented annually. The 2010 award will be given at a luncheon ceremony on Tuesday, October 12, 2010, during the DMA2010 Conference & Exhibition in San Francisco, California. The Advisory Committee is currently accepting nominations for the 2010 Hall of Fame Award. Deadline for submissions is Friday, April 30.

Visitors to the new site can view videos from the 2009 awards ceremony where Shelly Lazarus, chairman, Ogilvy & Mather Worldwide, was inducted into DMA's Hall of Fame. Video clips include: an introduction speech given by Ron Bliwas, president/ceo of A. Eicoff & Company, 2005 DMA Chairman, and 2007 DMA Hall of Fame Inductee; a video montage featuring prominent leaders from Ogilvy & Mather, American Express, IBM, and more; and the 2009 acceptance speech given by Shelly Lazarus.

DMA's Hall of Fame award was established in 1978 as a permanent recognition of individuals who have contributed significantly to the theory and practice of direct/interactive marketing and whose outstanding career contributions have led to the practice, growth, and stature of the direct marketing community.

Every year, DMA assembles an advisory committee of scholars, marketers, creatives, and entrepreneurs to select individuals for recognition and induction into the Hall of Fame. Companies serving on the 2010 Advisory Committee include: The Boston Globe; TD Ameritrade; Bookspan; New York University; Meredith Corporation; Yahoo! Inc.; and Muldoon & Baer, Inc.

Domtar To Permanently Close Its Coated Groundwood Paper Mill

Domtar Corporation (<http://www.domtar.com>) will permanently close its coated groundwood paper mill in Columbus, Mississippi. The Domtar coated groundwood paper mill has an annual production capacity of 238,000 tons of coated groundwood and 70,000 metric tons of thermo-mechanical pulp. The mill currently has 219 employees. Operations are expected to cease by the end of April 2010.

"Market conditions for coated groundwood paper are challenging and despite the best efforts of our employees – and these efforts have been commendable – the mill continues to suffer from a weak cost

position,” said John D. Williams, President and Chief Executive Officer of Domtar. “With this permanent closure, Domtar is exiting the coated groundwood paper business.”

Domtar also announced the sale of its Choctaw®, Saturn® and Jupiter™ coated groundwood product lines and trademarks to NewPage Corporation. The sale to NewPage also includes the mill’s paper inventory and book of business. Domtar intends to dismantle and dispose of remaining assets as deemed appropriate.

New Orleans Advertising Agency Announces Two New Hires In First Quarter 2010

Peter A. Mayer Advertising (<http://www.peteramayer.com>) announced two new employees during the first quarter of 2010.

“We are pleased that our workload allows us to add new talent to our company and our city. We intend to continue growing and hope that this is a testament to New Orleans’ rising economy,” said Agency President, Mark Mayer.

Kristen Duffee joins Peter Mayer as Administrative Assistant. Prior to joining Peter Mayer, Duffee worked as an organizational guru at the Occasional Wife. She and her family recently returned to New Orleans after living in Memphis for several years.

Charlotte LeCorgne, a New Orleans native, joins Peter Mayer as part-time proofreader after returning from Los Angeles where she worked as an assistant to a TV sitcom director and at a small production company. LeCorgne graduated from the University of Texas in Austin in 2006 with a double major in English and French.

LogicLab Hires Tony Sherman As Director Of Product Operations

LogicLab Inc. (<http://www.logiclabinc.com>) announced the appointment of Tony Sherman as director of product operations. In his new role at LogicLab, Sherman will develop and oversee the company's software quality assurance, client support services and technology delivery platform.

Sherman joins LogicLab with an international track record of implementing large-scale systems integration solutions and initiatives for numerous organizations such as the European Commission, IBM, Charles Schwab and Kaiser Permanente. Most recently, Sherman led a team of technology and production experts at Merkle to leverage cutting-edge virtualization solutions to drive down the costs of traditional statistical solution development.

Previously, Sherman worked with Charles Schwab to roll out international trading solutions. He also helped Kaiser Permanente implement a complex systems integration solution that delivered secured electronic medical records to general practitioners' desktops. Earlier, Sherman headed the technical arm of the Network Security Services for the European Commission's Statistical office (EUROSTAT). Prior, he was a senior member of the team that implemented IBM Global Networks' EMEA-wide technology support solution for international clients.

"I am extremely pleased to welcome Tony Sherman to the LogicLab team," said LogicLab President Chris Wilson. "His expertise in large-scale systems integration and proven innovative statistically driven solutions will be important assets for the company and our growing client base."

"Sherman said, "The LogicLab Media Marketplace represents a truly unique online solution to how media is planned and bought today. This is an exciting opportunity and I'm truly looking forward to working with Chris and the LogicLab team."

Sherman will work out of the LogicLab office in Boston.

LIST NEWS

NEW LISTS..... Dunhill International List Co., Inc. (561-998-7800). (<http://www.dunhills.com/>). **Small Business Owners** – 10.5 Million names @ \$90/M one time use. \$180/M unlimited use – inquire. **Educators At Home Addresses Interested In Travel** – 800,000 names. @ \$95/M one time use. **Aliments, Diseases & Illness Sufferers** – 200 million names – Price from \$150/M one time use. Minimum, order \$750. Price from \$300/M unlimited use. Minimum order from \$1,400.LH Management Division - Leon Henry Incorporated (914-285-3456). (<http://www.leonhenryinc.com/>). **The Cottage Shop** – 30% Broker Commission on Test orders through 3/31/10. Mail order Buyers – 50,000 last 12 Month Buyers. 10,000 last 6 Month Buyers. **Holabird Sports Equipment Buyers** – 143,250/Yr @ \$95/M. **Holabird**

Sports Equipment Packages – 218,000/Yr @ \$60/M. **HDSI – New Homeowners Database** – 12 Month New Homeowners – 2,473,621 @ \$65/M. 3 Month Hotline – 624,141 @ \$70/M. 1 Month Hotline – 220,133 @ \$75/M. **HDSI – Female New Homeowners Database** – 12 Month Female New Homeowners – 1,716,621 @ \$65/M. 3 Month Hotline – 330,147 @ \$70/M. 1 Month Hotline – 110,969 @ \$75/M.....McCarthy Media Group, Inc. (<http://www.McCarthyMediaGroup.com>) (608-837-4343) **Backwoods Home Magazine Masterfile** – 137,035 Masterfile @ \$95.00/M. 50,905 Active Subscribers @ \$100.00/M. 13,612 Expires @ \$90.00/M. 72,518 Expires 2 years + @ \$85.00/M. Unit of Sale: \$24.95. Gender: 70% Male – 30% Female. Minimum Order: 5,000. Homeownership: 89%. Vehicle: 2 Plus vehicles.

Meeting Reminders:

April

14 – Hudson Valley Direct Marketing Association to hold Annual Roundtable Table session at the Fairview Country Club, Greenwich CT. For more information visit (<http://www.hvdma.org>)

21 – Mail & Express Delivery Show to be held at the Novotel London West, Hammersmith, UK. The Mail and Express Delivery Show 2010 – “A New Dawn or the Morning After?” The one day show will see a strong program of content, structured into eight themed sessions, presented by over 40 leading industry speakers. Make sure you don’t miss out on the opportunity to improve your business prospects in 2010 by [registering](#) now. For further details on sponsorship opportunities please contact [Tom Joannou](#) on +44 (0)870

950 7900. For further details about exhibiting at MEDS 2010 please contact [Vaz Tekerian](#) on +44 (0)870 950 7900.

19-21 – On Demand Conference & Expo. Conference April 19-21, Exhibits: April 20-22, 2010 will held at the Pennsylvania Convention Center, Philadelphia, PA. (<http://www.ondemandexpo.com>) Keynote Speeches: Tuesday, April 20 | 8:30 AM - 9:00 AM Future of the Industry Address: Print Opportunities in an Interactive World, Jeff Hayes, President, InfoTrends Tuesday, April 20 | 9:00 AM - 10:00 AM Opening Keynote Address: CMO Spotlight, Moderated by Gina Testa, Vice President, Graphic Communications, Xerox Corporation. Event Highlights: Mailing & Fulfillment Pavilion Application Showcase Theater Presentations. Best of Show Awards Ceremony. For more information and registration visit: (<http://www.ondemandexpo.com>).

19-21 - Global Philanthropy Forum to Host 9th Annual Conference, "Defy Barriers, Effect Change: Access to Health, Food and Water" April 2010 at the Sofitel Hotel in the San Francisco Bay Area 223 Twin Dolphin Drive Redwood City, CA 94065 The three- day event will feature philanthropists and speakers from leading foundations, corporations, and civic leaders from the developing world who have brought about social change through their individual engagement or work with nonprofit organizations. For a current agenda go to: (<http://www.philanthropyforum.org/forum/Agenda9.asp?SnID=1093293164>). For more information on the conference, please visit: (http://www.philanthropyforum.org/forum/2010_Annual_Conference.asp?SnID=1093293164) or contact Weiss directly.

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