

Social Media: Opinions, Recommendations & Endorsements The New Regulatory Framework

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Hundreds of millions of individuals are now utilizing blogs and social media platforms, such as Twitter and Facebook, for information and recommendations on every conceivable topic, good and service. While the right to express one's evaluation of any product is unquestioned, the Federal Trade Commission (FTC) believes the rationale for such expressions should be transparent. Specifically, the consumer should be able to distinguish between a spontaneously-posted genuine-opinion and a post by a blogger or "friend" that has been engaged and/or rewarded (via money or merchandise) by a marketer. In December 2009, the FTC instituted new guidelines governing online endorsements and reviews. The nature and implications of government regulation of online commentary for commercial as well as political speech is the concern of this paper.

Field of Research: Marketing communications, E-Marketing, Contemporary Issues in Marketing, Business law

I. Introduction

Marketers have always known that “word-of-mouth” communication, especially from friends and acquaintances, is the most credible and influential mode of promotion. A product evaluation and/or recommendation from a “non-commercial” source -- a journalist’s review, a Consumer Report’s rating, an “opinion-leaders” opinion, a friend’s experience—invariably trumps the “commercial” message’s impact on purchase intent. Traditionally, marketers have leveraged this phenomenon through effective use of public relations-press releases, expert and celebrity endorsements. Albeit, mass mediated communication channels precluded the use of anonymous individuals – let alone consumers’ friends from formal inclusion in the marketing communication mix. Internet blogs and social networks have remedied this shortcoming. Among the approximately 113 million blogs (Internet, 2010) and 500 million users of Facebook (Mashable, 2010) millions if not tens of millions of individual consumers serve as advocates for businesses, brands and services of every stripe and on every level-local, national and global.

“Consumers’ reliance on word of mouth in the decision-making process, either from people they know or online consumers they don’t, has increased significantly” (Carson, 2009). In its Global Online Consumer Survey of over 25,000 Internet consumers from 50 countries, Nielsen (2009) found that nine in every ten Internet consumers worldwide trust recommendations from people they know, and seven in every ten trust consumer opinions posted online. Ergo, it is not surprising that marketers’ attention and expenditures are increasingly following this phenomenon.

2. Network Analysis & Social Media Marketing

Commensurate with the explosion in social media participation by consumers has been the development of social media analytics by marketers. Software systems like [Nodexl](#) and research companies such as [Radian6](#) and [Visible Technologies](#) proffer marketers sophisticated network analysis tools and services. For the do-it-yourselfer and in-house marketer, Nodexl enables you to produce social graphs from your own databases. More sophisticated research services not only illustrate the linkages among social network members but also allow one to evaluate the content and sentiment of the communication between members. To wit, Visible Technologies [TruINSIGHT](#) and [TruCAST](#) proffers “Network Maps” that depict the connectivity of discussions between topics, “Affinity Maps” that illustrate the volume and tone of authors talking about brands as well as a “Topic Ecosystems” that show the volume and sentiment of each topic. Another social marketing research service, [Nielsen BuzzMetrics](#) – culls “nearly 100 million blogs, social networks, groups, boards and other CGM platforms.” Indeed, a simple Google search of “social media research services” will serve-up scores of such companies and consultants.

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The number and sophistication of tools, techniques and social media marketing services have followed the growth of social networking. With social graphs and sentiment analyses in hand, marketing communication strategy and tactics can be tailored and targeted to an unprecedented degree. Accordingly, any and every marketer can now identify and engage the most central and influential members of any social network.

The consequence of having millions of consumers being able to communicate their opinions and marketers having the ability to identify those consumers-- is both empowering and problematic. Empowering, in that marketers can engage and employ those consumers who post their product experiences and evaluations; Problematic, in the consumer's inability to distinguish between a spontaneously posted genuine opinion and a post by a consumer that has been engaged and/or rewarded (via money or merchandise) by the marketer. Typical of the multitude of social media posts that are generated for commercial as opposed to communal motives include:

- A representative of the global computer hardware manufacturer was recently caught paying users to leave positive reviews for its products on Amazon and Buy.com.
- The marketing division of a textbook company was recently forced to cancel their strategy of giving \$25 Amazon gift certificates to every user who rated their textbooks positively on the site.
- Interns of a PR firm representing many makers of applications for Apple's iPhone, were caught rating its clients' products positively on Apple's Application Store.(Del Riegg0, 2009)

- Colleen Padilla, a 33-year-old mother of two who lives in suburban Philadelphia, has reviewed nearly 1,500 products, including baby clothes, microwave dinners and the Nintendo Wii, on her popular Web site Classymommy.com. Her site attracts 60,000 unique visitors every month, and Ms. Padilla attracts something else: free items from companies eager to promote their products to her readers.
- Izea, an online marketing company based in Orlando, Fla., which created PayPerPost, says it has 25,000 active advertisers ranging from Sea World to small online retailers. It feeds to 265,000 bloggers in its network, and pays, on average, \$34 a post.(Joshi, 2010)

What the new social media adds in terms of access to and dissemination of consumer opinion, it takes away in transparency. As Reigo (2009) observed: "it is virtually impossible for an online consumer to determine whether a reviewer is genuinely expressing his opinion of the product or is influenced by other motivations:

....A user confronting an anonymous, pseudonymous ("Qtee89"), or authored post ("Jane Sterling") can make few contextual inferences about the honesty of the review because the online identity of the reviewer fails to provide often-material information about the reviewer. Consumers generally consider traditional

advertisements with caution because consumers know that individuals featured in ads are likely paid, and that payment may or may not affect the reviewer's true opinion of the product. Consumers, however, are less wary of online reviews, often assuming that reviewers are not paid. Compensation is material information the consumer would likely take into consideration when making an ultimate assessment of the review."

3. New Media=New Problems=New Rules

Three decades have passed since guidance was last proffered to media regarding endorsement and testimonials in advertising and promotion. The World Wide Web, blogs, Facebook and Twitter were non-existent. Communication channels were mass mediated and the relationship between an endorser and an advertiser was clear-cut. Mass communication is a one-to-many paradigm wherein the "one" communicating to "the many" is an obvious and known entity. The new communication paradigm is open, interactive and global and "the one" communicating can be "any" one. What connections bloggers have to the entities they are endorsing and what motivations underlie a web-users recommendation are less transparent. If consumers are to discern between a genuine versus sponsored recommendations, reviewers will need to disclose any material relationship they have with the entity they are endorsing online. It is for this reason the Federal Trade Commission first addressed the issue in 2006 when it stated that "that companies engaging in word-of-mouth marketing, in which people are compensated to promote products to their peers, must disclose those relationships" (Shin, 2006). In December 2009, the FTC formally instituted new guidelines governing testimonials and endorsements designed to address online reviews. Specifically, the guidelines delineate four distinct requirements for online endorsers: 1) the advertiser has a duty to educate blogging endorsers regarding the guidelines, 2) the endorser has a duty to write an honest review, 3) the endorser has a duty to disclose any material relationship between him/her and the advertiser, and 4) the advertiser has a duty to monitor the endorser's blogs and online outlets to ensure they are not deceptive to consumers. (Del Rieggo, 2009)

Under the revised guidelines it is explicitly stated that "bloggers who make an endorsement must disclose the material connections they share with the seller of the product or service:"

"material connections" (sometimes payments or free products) between advertisers and endorsers – connections that consumers would not expect – must be disclosed... what constitutes an endorsement when the message is conveyed by bloggers or other "word-of-mouth" marketers... will be reached on a case-by-case basis, the post of a blogger who receives cash or in-kind payment to review a product is considered an endorsement. .. a paid endorsement – like any other advertisement – is deceptive if it makes false or misleading claims. (FTC, 2009)

4. Reaction to the FTC's new rules

Reaction to the FTC's new rules has been swift and mixed. Facing penalties of up to \$11,000 for violations, many are predictably adamant in their response. Within hours of the FTC's October 5 Press Release one blogger addressed what he regarded "A Dangerous Federal Intervention in Social Media:

"the rules are worryingly vague and wide-ranging. I've posted a number of Twitter tweets about Android...Where, exactly — in a post with a total length of 140 characters — should the disclosure go? ... the motives behind the FTC's rules seem to be well-intentioned. I also loathe the odious practice of using bloggers and other online conversationalists as commercial sock puppets in a sleazy online word-of-mouth operation. (Gillmore, 2009)

Others within the blogging and social media community welcomed the guidelines feeling that it will help establish more professional standards and help bloggers to be regarded as serious journalists. As one blogger argued, "the fact that we're being regulated is actually a backhanded compliment since it establishes legitimacy and shows that blogging is here to stay." (Schaefer, 2009). Albeit, on this very point, still others were upset that bloggers were being treated differently and unfairly in comparison to "traditional" journalists.

Every news organization covering technology gets freebies by the container-load. Book reviewers' offices overflow with volumes sent by publishers. Subsidized or even complimentary travel, food and other things of this sort are common but too-rarely disclosed. (Gillmore, 2009) ...they say is a double standard. The guidelines don't require disclosure of free samples for newspapers and magazines or their online counterparts..."There's the feeling that we're not as trustworthy as traditional print media and need to be policed." (Schaefer, 2009)

Apparently, from the government's perspective, the justification of singling out online reviewers from traditional media is premised on the fact that "the relationship between reviewers and product manufacturers in newspapers and magazines is different because "when consumers read a journalist's review they "presume the reviewer got paid to do his job," whereas when reading a blog or a post by a blogger, "consumers are generally not as attuned to that possibility" (Del Rieggo, 2009). More over, "published reviews by an employee for a newspaper, magazine, etc. that has independent editorial responsibility are not considered to be 'sponsored' advertising messages and are therefore not endorsements" (Gibbs, 2009).

Beyond, the concern with fairness, a number of other questions arise regarding government regulation of online bloggers. Specifically:

1. Can such regulations be enforced?
2. Should such regulations be enforced?
3. Will such regulation prove unduly burdensome on advertisers?

Bloggers and regulators alike immediately and readily acknowledged the impracticality and difficulty of enforcing the new guidelines. Indeed, it is certainly unlikely that the government is going to monitor every blogger, Facebook page, and Tweet in cyberspace. Consequently, it has been suggested that “the real purpose of the guidelines is not to police the Internet and prosecute bloggers who have violated the guidelines, but rather to educate bloggers as to proper practices and their ethical obligations when endorsing products online” and once bloggers “are aware of the guidelines will modify their behavior and err on the side of disclosure to ensure fairer commercial practices’ (Del Rieggo, 2009).

Should such regulations be enforced? By far the most prevalent and strident criticism of the new guidelines concerns the right of free speech. As one blogger protested “ they are, in the end, an attack on markets and free speech, based on a 20th Century notion of media and advertising that simply doesn’t map to the new era” (Gillmore, 2009). Again the government argues that “testimonials are regulated only when a blogger purports to be representative of all product users and when the advertiser cannot substantiate the blogger’s claims....The Supreme Court has held that .. the government (can) regulate speech if it is misleading, if such regulation furthers a substantial government interest, and if the regulation is no more extensive than necessary” (Del Rieggo, 2009).

Will such regulation prove unduly burdensome on advertisers? The answer to this concern would appear to be a clear –yes; in that under the new guidelines, advertisers are clearly “liable for bloggers’ fraudulent claims and failures to disclose any affiliations they have with the advertiser.” Indeed, it has been argued that the FTC’s recognizes the extraordinary difficulties involved in policing bloggers” and for this reason alone “should treat advertisers with some kind of leniency:”

It is simple enough if the advertiser or manufacturer knows the specific medium the blogger will use (i.e. her personal blog or OSN page), but there is an infinite number of formats available online for the endorsements, and it is unrealistic to expect the advertiser to be on the eternal look-out. This burden is exacerbated by the use of pseudonyms on the net. While it may be theoretically possible for Dentaplust Toothpaste to monitor the posts of Maggie Cooper online, it is impossible for Dentaplust to monitor ballerina425, tmnt87, and all of her other possible pseudonyms.

In the final analysis, the new FTC guidelines reflect the commission’s concern about how advertisers are using bloggers and social networking sites to pitch their products and should be regarded as simply an attempt to reminded advertisers and online commentators of their ethical responsibility to be honest and above board in their communication with consumers. To such ends, honesty in one’s marketing communications should not prove burdensome. More over, given limited the vastness of the Internet and its limited resources it is certainly the case that only the most “egregious cases” will be prosecuted as the Commission has stated “it is interested in the “black and white” cases and is “not interested in playing gotcha in the gray areas...

and only time will tell if the expenses imposed by the guidelines are acceptable” (Del Rieggo, 2009).

5. A Major Consideration left out of the Discussion

The FTC’s concern with the purity and veracity of bloggers and tweeters product and service evaluations and recommendations is understandable given its original charge to investigate and prosecute unfair and deceptive practices. Albeit, when it comes to deceptive practices that can mislead and harm consumers, there is another application and phenomenon that has burgeoned with the internet. That is the creation of “fake” websites, email campaigns, blog posts, Facebook pages and special interest networks for political (as opposed to commercial) purposes. For example:

- In August 2006, a science journalist for the [Wall Street Journal](#)^[29] revealed that a [YouTube](#) video, "Al Gore's Penguin Army", which was claimed to be an amateur work, in fact came from the computers of [DCI Group](#), a Washington, D.C.-based PR firm whose client list includes [ExxonMobil](#) and [General Motors](#).
- In September 2008, Dutch columnist Margriet Oostveen wrote about her experiences [ghostwriting](#) letters for the [McCain presidential campaign](#). Her editors at [Salon.com](#) asked her for proof that she had ghost-written letters, and she provided sample letters and lists of talking-points that the McCain campaign had provided to her
- In March 2006 [video game](#) manufacturers faced over seventy anti-games bills across the country. Embattled, they established the [Video Game Voters Network](#), “a new grassroots political network for gamers” which publicly portrayed itself as a populist effort to lobby state and federal legislators against supporting violent video game-related legislation
- Since 2005, schools and political party organizations in the [People's Republic of China](#) are recruiting paid-per-comment bloggers countering unfavorable information on websites, bulletin boards, and other internet-accessible sources; they are collectively known as the [50 Cent Party](#)

(Wikipedia- Astroturfing, 2010)

This phenomenon has come to be termed “astroturfing” in so much as it “denotes [political](#), [advertising](#), or [public relations](#) campaigns that are formally planned by an organization, but are disguised as spontaneous, popular “[grassroots](#)” behavior” (Wikipedia- Astroturfing, 2010):

The term refers to [AstroTurf](#), a brand of synthetic carpeting designed to look like natural grass. The goal of such campaigns is to disguise the efforts of a political or commercial entity as an independent public reaction to some political entity—a politician, political group, product, service or event. Astroturfers attempt to orchestrate the actions of apparently diverse and geographically distributed individuals, by both overt (“outreach”, “awareness”, etc.) and covert ([disinformation](#)) means. Astroturfing may be undertaken by an individual promoting a personal agenda, or highly

organized professional groups with money from large [corporations](#), unions, non-profits, or activist organizations.
(Wikipedia- Astroturfing, 2010)

While the term- astroturfing- may be new, the practice of the art of “political” deception is anything but new. Long before fake crowds were generated for the "[Brooks Brothers riot](#)" of November 2000, or the “town Hall” Health Care Bill meetings of 2009 there was The Boston Tea Party. Similarly, writing letters under a pseudonym or for a front organization is a centuries old practice. Fake letters, fake crowds, while dubious in character are arguably first amendment rights. Less defensible perhaps is the practice of creating “public interest” websites (that are actually funded by corporate interests) that under the guise of concerned citizens opinion is really a paid advocate for a particular commercial practice; Such as FishScam.com, a site dedicated to informing readers that high mercury levels in fish are not bad for you, as well as SunLightScam.com, which claims that tanning beds pose no health hazards or advocate that trans fats can actually *unclog* your arteries” (Graham, 2009). Would not such instances qualify as egregious cases of undisclosed “material connections” between endorsers – connections that consumers would not expect?

To date, it appears that it has primarily been a few media practitioners that have actively engaged astroturfing. Most notably Paul Young and Trevor Cook who started an anti-astroturfing campaign that has since been taken up by Public Relations practitioners and promulgated on [AntiAstroturfing Homepage](#) of The New PR Wiki; Wherein, astroturfing is defined as “evil, unethical and usually illegal” and corroding of democracy which relies on transparency.” Once more, a clear and concise “code of ethics,” that matches the spirit of the new FTC guidelines, is proffered to any and all practitioners:

- I will not fabricate a public concern by paying or coercing individuals to falsely act as concerned citizens. I will only seek to help give voice to those who already hold an existing concern and/or provide education to stakeholders that might be affected by a particular issue.
- When supporting grassroots efforts, I will ensure that I am transparent in all my actions and clearly and publicly state what actions I am taking and which organization or client I represent.
- I will never knowingly distort or falsify information to help my client/interest achieve a strategic/emotional advantage in a public debate.
- I will encourage all grassroots supporters to be open and honest in all of their communications, just as I will be open and honest in mine. (The New PR Wiki-AntiAstroturfing homepage)

Were every blogger and social media networker to adhere to this anti-astroturfing pledge, the FTC will be hard pressed to find any cases of willful and wanton deception to prosecute - – egregious or otherwise.

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