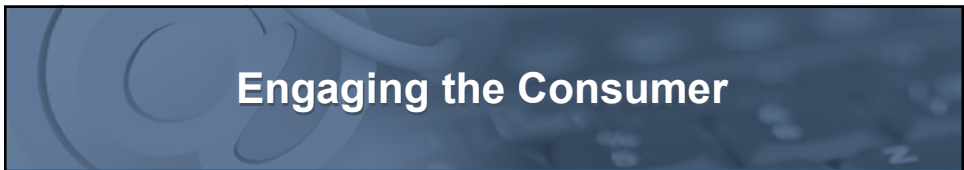


Where Did That Content Come From?

Implications of Promotional Marketing User-Generated Content and Online Behavioral Targeting

Katherine Wallace
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Engaging the Consumer

Common Messages From the Marketing Team:

- We want to engage the consumer where the consumer is.
- We want to drive traffic to the site.
- We want the site to be edgy and sticky.
- We want the consumer to have “fun” interacting with the site.
- We want to get better distribution through viral means.
- The functionality is available, and we want to use it.

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Where Do They Want to Engage?

BLOGS

SOCIAL NETWORKING SITES

TWITTER

WIDGETS

RSS FEEDS

PRODUCT PLACEMENT

ONLINE INTEGRATED MARKETING

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Let's Set the Stage

New Website for Launch of New Product

- Website will have blog/comments features and RSS Feeds.
- Website will have functionality to allows users to develop and post content and send that content to a friend.
 - Functionality to create short song and include text/lyrics
 - Functionality to upload picture or image into a static scene
 - Functionality to tag/modify a website and capture the screen image
- Website will have functionality to allow users to submit ideas for new applications/features for the website.

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AND . . .

Contest Promotion to Coincide with Product Launch

- Consumers (18 and older) in the US are to submit a video with proposed idea for a commercial for the company's new product. Entrants are encouraged to make prominent use of the company's brand in the video entry.
- Entries are to be submitted to the company website, where they will be posted for judging and comment by website users as public rating is an element of the judging criteria.
- To help encourage their friends to visit the website to vote for their entry, entrants are encouraged and provided functionality to submit their videos for posting on their Facebook pages.
- Winning entry will become the basis for new advertising campaign in print, on television, radio and internet.
- Winner receives trip for winner and friend to Las Vegas for a few nights to attend party, photo shoots, etc. in connection with launch of the product and winner is to use Twitter to keep fans of the site posted regarding the events.

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Areas Of Concern

- Major Areas of Legal Risk and Concern
 - Intellectual Property Concerns
 - Copyright infringement
 - Trademark infringement
 - Idea misappropriation
 - Rights of Publicity / Privacy Issues
 - COPPA
 - Defamation, Libel and Slander
 - False Advertising / Unfair Competition
 - Tort Liability
 - State Law Claims

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What Legal Protections Are There?

- Digital Millennium Copyright Act
- Communications Decency Act
- Affirmative Defenses for Copyright Infringement
- Fair Use Defenses
- Terms and Conditions

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Steps to Help Mitigate the Risk

- **Determine up front how you want to use the content that you receive.**
- **Determine up front limitations on who is able to participate.**
- **It's OK to be conservative.**
 - Provide for specific and comprehensive terms and conditions and official rules to which users/entrants must affirmatively agree.
 - Consider making certain functionality available only to registered users of the site.
 - Consider obtaining written releases and consents up front.
 - Implement monitoring, filtering and screening procedures.
 - Use disclaimers and notices, as appropriate.
 - Provide "neutral tools" and pre-cleared content for use with tools on the site.
- **Be in a position to take advantage of the laws that protect you.**
- **Confirm terms of use for other sites to be used in connection with the promotion.**

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So How Else Can We Engage the Consumer?

Target your content and advertising to their interests

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Online Behavioral Targeting

- **What is it?**
 - Practice of tracking an individual's online activities *over time* in order to deliver advertising tailored to his or her interests
 - Implemented through means such as "persistent" cookies and network advertising

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Examples

- **Example #1 – Browser-Based Marketing** - Consumer visits a website regarding automobiles and conducts a search for sports cars and specific manufacturers. Consumer does not purchase a car or contact a dealer, but later visits a local news website. On the news website, the consumer is shown an advertisement for a sports car from a particular manufacturer.
- **Example #2 – Location Based Marketing** – Implemented through location aware devices, such as wireless devices with GPS. Consumer is vacationing in Los Angeles for the first time. At the hotel room, he pulls out his wireless device, logs onto the web and searches for “Thai restaurants in Los Angeles.” Fifty results come back. So he clicks the "location-based" feature on the device which triggers a GPS satellite feed to pinpoint his exact location within the city. Now only three restaurants, relevant to his physical location show up in the search results based on coding data implemented in the web site.

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Current Regulatory Framework

- **Primarily Self Regulation**
 - NAI (Network Advertising Initiative)
 - Mobile Marketing Association
 - CTIA-The Wireless Association
 - Certification processes (e.g. TRUSTe)
 - Marketing and Trade Associations (DMA, IAB, BBB)
 - Individual Advertising Network policies
 - Privacy Statements and Practices
- **FTC has published revised Self-Regulatory Principles for Online Behavioral Advertising**
- **Goals of Self-Regulation**
 - *FTC’s guidance - “Address practices that raise genuine privacy concerns without interfering with practices – or stifling innovation – where privacy concerns are minimal.”*

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Can Self-Regulation Work?

- Lessons of history
- Challenges of enforcement
- Need for consumer education
- Free-Riders
- Is the “industry” aligned with same goals?

Therein lies the challenge for the industry, the lawyers and the policy professionals

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