

Public Relations Issues Monitoring Report

ISSUES UPDATE AND OPINION FROM COUNCIL OF PUBLIC RELATIONS FIRMS MEMBERS

JUNE 2008

FTC Takes On “Greenwashing”

CONTRIBUTED BY PORTER NOVELLI

According to the 2008 Green Gap Survey, conducted by Cone LLC and The Boston College Center for Corporate Citizenship, over 75 percent of Americans support the government taking action to ensure the accuracy of environmental messaging in product marketing. In response to public concern, as well as recommendations from the House Select Committee on Energy Independence and Global Warming, the Federal Trade Commission (FTC) has undertaken a series of “Eco in the Marketplace” public workshops to examine the commission’s current “Guides for the Use of Environmental Marketing,” commonly known as The Green Guides.

The voluntary guidelines were created by the FTC to help companies

avoid breaking laws prohibiting deceptive marketing (Section 5 of the FTC Act). The Green Guides have not been updated since 1998, well before the recent “green” marketing boom, which has sparked a growing concern for consumer protection from unchecked environmental claims.

The commission’s first workshop kicked off this past March and focused on carbon offsets and renewable energy certificates (RECs). The discussion led to one conclusion, the carbon emissions market is complicated and hard to define. “With the rapid growth of green programs like carbon offsets, there’s a heightened potential for deception,” said Deborah Platt Majoras, then chairwoman of the commission. Shortly after

the workshop, Louise Story of *The New York Times* labeled those programs as “greenwashing,” claiming more and more companies are using carbon offset programs “to create an environmental halo over their products.”

Current FTC Chairman William E. Kovacic opened the second workshop on April 30, addressing green packaging claims and third party certification labels with a passionate speech on the commission’s history of consumer protection. Chairman Kovacic vowed to seek out companies that do not comply with green marketing regulations and take away their freedom to advertise. According to *The New York Times*, the new hearings “suggest that it is only a matter of time until the market faces greater scrutiny from the government.”

However, with the unprecedented momentum of all things green over the

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Keeping current is a hallmark of the public relations business. This means being informed on issues that may impact clients or firms directly. If there are issues you would like covered or would like to cover, please contact the Council of Public Relations Firms.

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Government Relations: Trends and Mandates for Trade Associations

CONTRIBUTED BY XENOPHON STRATEGIES

With the general election just six months away, the strategy behind any public affairs campaign is being adjusted with an eye toward the new Administration and the new Congress.

For an understanding of how Washington’s trade and professional associations are assessing the political landscape, we turned to Jim Clarke, Senior Vice President of Public Policy at the American Society of Association Executives (ASAE), which is the trade association that serves as the voice of the association community in Washington DC. Clarke shared his thoughts on the political forces driving the political activity of associations, the clients of many public relations firms.

Looking Ahead to Next Year

Although the presidential election has frequently overshadowed other races, associations are keeping a close eye on congressional races because the outcome of those elections will have an enormous impact on the nature of the congressional agenda in the 111th Congress.

“Obviously numbers do matter in this town,” Clarke said. “Bigger margins in the House and Senate mean a more expansive agenda.”

Congressional activity will also be shaped by the new President’s relationship with the House and Senate. That relationship will largely determine the fate of the initial flurry of new legislative proposals

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The Likelihood of Increased Regulation in the Financial Markets

CONTRIBUTED BY APCO WORLDWIDE

Historically, financial turmoil and crises have led to increased Congressional oversight and, inevitably, a slew of new regulations and laws.

Most everyone who pays attention is now familiar with at least some of the following facts regarding the current financial turbulence in the U.S.:

- Home foreclosures have hit a new all-time record and are likely to reach a staggering 2 million by the end of this year. Vacant houses in the U.S. already are at a post-World War II record with the International Monetary Fund estimating losses related to subprime troubles “in the neighborhood of one trillion dollars.”
- Consumer debt has climbed to a record high at over \$2.5 trillion, with nearly \$1 trillion of that in revolving debt – a great deal of that from credit card use.
- And sovereign wealth funds – owned by countries like China, Russia and Dubai – are raising some concerns by investing heavily in the U.S. financial services sector to recapitalize some of our best-known institutions, including Citigroup, Morgan Stanley and Merrill Lynch.

U.S. Senate Banking, Housing and Urban Affairs Committee Chairman Christopher Dodd and House Financial Services Committee Chairman Barney Frank are committed to passing legislation this year to reduce foreclosures and restore liquidity to the mortgage market. Regardless of the outcome of these proposals this election year, the shake-up in today’s capital markets already has produced a wave of new regulatory and legislative initiatives.

Federal and state legislators and regulators now are contemplating new regulation of financial institutions across a broad area of lending practices. They include loan origination and underwriting standards; risk management; capital adequacy; leverage and debt management; and transparency and better disclo-

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sure of off-balance sheet commitments of assets on-and-off their books.

Indeed, combating abusive, predatory and subprime lending practices by regulation or legislation is at the top of both executive (including independent agencies) and legislative branch agendas this year.

Among those targeted for reform efforts: Government-sponsored housing finance agencies like Fannie Mae and Freddie Mac and the Federal Home Loan Banks; the credit card industry; credit rating agencies; foreign investment and sovereign wealth funds; the convergence of international accounting standards; an optional federal charter for the insurance industry; and possible taxation and registration of hedge funds.

Congress has also been actively overseeing the actions taken by the Federal Reserve Board and Treasury to commit \$30 billion to help facilitate the sale of Bear Stearns to JPMorgan Chase and considering what this may mean for future regulation of the banking community

A comprehensive report – “Blueprint for a Modernized Financial Regulatory Structure” – issued by the Treasury in early March may be a good illustration of why far-reaching reforms are so difficult to achieve in presidential election-years.

The Treasury plan, among other things, aims at dramatically consolidating the functions of six existing financial regulators – the Federal Reserve, Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), Securities and Exchange Commission (SEC), and the Commodity Futures Trading Commission (CFTC).

The six would be compacted into: a market stability regulator replacing the Federal Reserve; a prudential financial regulator; and a business conduct regula-

tor, overseeing consumer and investor protection. The proposal aims at streamlining the oftentimes excessive, duplicative regulation by these government agencies and making the U.S. financial services system more competitive globally. While highly unlikely to be enacted anytime soon, the Treasury plan nonetheless presents numerous challenges to virtually every sector of the financial services community.

Many of the plan’s recommendations have been around for years and enjoy bipartisan support, and opposition. Current economic conditions, however, give these potential reforms momentum that will spur considerable debate amongst a number of constituencies. Among them:

- Mortgage originators will fight the inevitable legislation and regulation likely to be directed their way resulting from the current subprime and predatory lending crisis.
- The savings and loan industry will fight the elimination of their charter and regulator.
- The insurance industry is deeply divided within its own ranks with respect to an optional federal charter with major insurance associations both supporting and opposing a significantly increased federal role.
- Institutional investor, pension fund, and labor organizations are likely to fight the proposed merger of the SEC and CFTC because they oppose the generally perceived more lax investor protection standards of the CFTC.
- State regulators – wanting to retain their own territorial imperatives – will oppose the federal preemption provisions throughout Treasury’s proposal.

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FTC Takes on “Greenwashing”

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last three years and an inevitable administration change in November, gauging the FTC’s course of action in updating and enforcing the Green Guides is a daunting challenge. If April’s workshop is any indicator, the road will be long and winding.

What’s Green is Grey

The task the FTC is taking on is anything but easy. For example, the April workshop consisted of 23 panelists examining trends in green packaging claims, whether the packaging components of the Guides should be revised, and what constitutes substantiation of claims. The panelists represented a multitude of stakeholders including third-party certification bodies, government agencies, environmental NGOs, industry trade organizations and retail corporations.

The first panelist, John Kalkowski, a representative from *Packaging Digest*, presented a PowerPoint slide covered with a plethora of certification labels and logos to show how consumers are inundated and overwhelmed by claims they cannot differentiate or decipher. “Right now, the emphasis is on the packaging itself ... but I think the next phase will emphasize the process being used to make the packaging,” he added.

Michelle Harvey of the Environmental Defense Fund (EDF) urged the FTC to focus on prohibiting vague environmental claims. The EDF works with corporations to ensure transparency and accuracy, something they say Wal-Mart is currently taking seriously. Amy Zettle-moyer-Lazar of Wal-Mart’s Sustainable Packaging Value Network and Sam’s Club Packaging, listed the terms reduce, reuse and recycle as some of Wal-Mart’s Principles of Sustainability. But the “three Rs” barely scrape the surface of green terminology the FTC is trying to put a net around. Brenda Platt, speaking on behalf of the Institute for Local Self-Reliance recommended the Guides put a stop to broad claims – in particular “sustainable” – without proper standards in place. Other key words whose meanings

were subjected to debate included “compostable,” “biodegradable,” “recyclable” and “renewable.”

Panelist Steve Mojo of the Biodegradable Products Institute (BPI) recommended tightening guidelines for claims surrounding plant-based products, in particular suggesting the percentage of products labeled as “renewable” and/or “biodegradable” should be specified, if those traits apply to less than 95 percent of the total product. Mojo also suggested it be made clear that not every renewable resource is biodegradable.

Cheryl Baldwin from Green Seal and National Recycling Coalition (NRC) representative Kate Krebs discussed the benefits of their organizations’ respective symbols and their impact on consumers. Sustainable Forestry Initiative (SFI) President and CEO Kathy Abusow illustrated the importance for validating certification labels, outlining SFI’s series of Product and Chain of Custody labels and noting that each is subjected to a third-party auditing system.

NRC representative Krebs added that clarity of a certification symbol has a direct impact on brand value. Environmental Protection Agency (EPA) panelist Sara Hartwell emphasized the need for flexibility when addressing new packaging materials to allow the marketplace to take advantage of recovered/recycled materials.

Based on comments from several panelists, it is clear that the FTC needs to better educate the business sector on the existence of the Green Guides as well as provide a realistic roadmap for marketers to follow to ensure compliance. The NRC panelist emphasized the need for the FTC and businesses to work together in a transparent process.

Some speakers suggested the best way to sort this out is to develop standard checklists for individual products to stay within the Green Guides’ framework. The grey area lies in establishing where the onus of clearing up consumers’ misconceptions should fall. Should consumers do more research to validate claims or should packaging feature more certification background information? Zettle-moyer-Lazar of Wal-

Mart noted the difficulty finding this balance, pointing out that challenges in educating consumers grow as packaging sizes shrink.

According to the 2008 Green Gap Survey, 70 percent of Americans say quantifying the actual environmental impact of a product or service is influential in their purchasing decisions. Out of those surveyed, 54 percent of Americans look for that information on company’s Web site, 51 percent on third-party Web sites, 48 percent on a search engine and 45 percent on a product’s packaging.

Kelly Tullier, speaking on behalf of the Grocery Manufacturers Association (GMA) suggested broader claims about a company’s “green” philosophy should remain outside the Guides. Other retail panelists expressed concerns that complications will occur if any updates are made to the Guides.

State regulation on the subject is also in its infancy. California recently began considering legislation to set “truth-in-advertising standards” for carbon offsets, becoming the first state to do so. A *San Jose Mercury News* editorial in May supported the need for government intervention, warning: “The fast-growing market for carbon offsets is confusing and lightly regulated. There’s no clear way to tell if your money makes a difference. Let the buyer – and the planet – beware.”

The first two public workshops have been viewable via Webcast for those unable to attend. FTC has not disclosed the date or other details for the next workshop.

Note: *If you did not attend the Council’s “Ethical Decision-Making in a Complex Communications World” and are interested in learning more about the FTC rules that govern many public relations activities, please contact the Council at 1-877-773-4767 about attending an upcoming program.*

Regulation of Media

CONTRIBUTED BY OGILVY PUBLIC RELATIONS WORLDWIDE

FCC and Media Ownership

In December 2007, the Federal Communications Commission (FCC) partially lifted a 32-year-old ban that prevents common ownership of a daily newspaper and television or radio station in the nation's top 20 markets. The cross-ownership rule met with criticism from five senators (Sens. Barack Obama (D-Ill.), John F. Kerry (D-Mass.) and Olympia J. Snowe (R-Maine), House Energy and Commerce Committee Chairman John D. Dingell (D-Mich.) and some anti-consolidation groups. All agreed the rule

would lead to fewer local voices in news and information.

On March 13, 2008, a group of bipartisan lawmakers filed a legislative veto (similar to the resolution of disapproval introduced in the Senate by Byron Dorgan, D-N.D, earlier in March) to undo the FCC's decision.

U.S. Rep. Jay Inslee, D-Wash., the resolution's primary sponsor and a member of the House Commerce Committee, stated, "Consolidation already has brought us to the point where two companies control 70 percent of market revenue in an average

radio market. We need to use every tool available to prevent further weakening of media ownership rules."

On April 24, 2008, The Senate Commerce, Science and Transportation Committee voted and approved a resolution that would roll back the FCC's rule, despite promises of a veto from the White House.

The Senate panel's action took place as Rupert Murdoch's News Corp. reportedly reached a tentative deal to acquire *Newsday* from the Tribune Company; this acquisition has since been abandoned. News Corp. currently controls two newspapers (*The Wall Street Journal* and *The New York Post*) and two television stations (WNYW and WWOR) in the New York area.

Government Relations

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put forth by the new Administration, but it could also have a profound impact on the degree of collaboration between the two chambers and the efficient flow of legislation to the President's desk.

State v. Federal Activity

New national leaders are not the only source of political activity. With many state legislatures and even city councils tackling issues once thought to be the exclusive province of the federal government, the educational and advocacy initiatives undertaken by many associations have, by necessity, expanded to include one or more state capitols and city halls as well as Washington DC.

For example, "Do Not Mail" legislation, which is modeled after the federal "Do Not Call" registry, has been introduced in more than a dozen state legislatures. The measures would prohibit organizations from sending unsolicited mail. According to ASAE's Clarke, "We're following those bills at the state level. We view direct mail as a matter of communicating with our members, and philanthropic organizations have concerns about their ability to raise money."

Activity at the state and municipal levels can be triggered by a political stalemate in Washington, but the reverse is

also true. "There's political acrimony at the state level, too," said Clarke. Issues can be pushed up – or pushed back – from the state level to the federal level.

Some state legislatures, for example, have grappled with an issue but were

Senator Charles Grassley's ongoing investigation of nonprofits.

The most recent example of nonprofits providing more information about governance is the revised Form 990 – the IRS form filed by nonprofit organizations each

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unable to find a solution, effectively pushing it back to Washington. Such was the case in January of this year when the California state legislature rejected a proposal to provide nearly universal health insurance coverage. This development was widely seen as the death knell for state-initiated efforts to the problems of containing health care costs and extending health insurance to the uninsured.

Governance of Nonprofits

While individual associations are pursuing their own unique public policy objectives, the association community as a whole is also keenly interested in issues affecting nonprofit and tax exempt organizations.

A movement toward greater transparency in the governance of nonprofits began about five years ago and was sparked in large part by the advent of

year. Until this year, the form hadn't changed in 30 years. It now requires nonprofits to disclose:

- How much money was raised and from what sources;
- How much money the nonprofit spent on management of the organization, carrying out its core mission, and fundraising;
- The identity of board members;
- The salaries of key staff members;
- Whether the nonprofit engages in lobbying; and
- Whether the acquisition, sale, or use of any of the nonprofit's assets during the tax year could benefit the organization's personnel or a board member.

"We favor disclosure," Clarke said "but we want to make sure that it isn't duplicative, unnecessary, and exhaustive."

How to Copy “Right” and How Not to Copy “Wrong”

CONTRIBUTED BY MICHAEL C. LASKY, SARA EDELMAN AND SHIRIN KEEN, DAVIS & GILBERT LLP

Every day, public relations firms distribute copyright-protected material. You may be unintentionally violating the federal copyright law when you photocopy a magazine article and share it with your clients by e-mail, post an industry newsletter on your company’s intranet site or distribute a research report at a client presentation. As technology makes distributing works easier and easier, it is even more important to be mindful of copyright issues because the penalties can be severe – no matter how innocent the infringement may seem. This article provides a brief overview of copyright law and some tips about how to copy “right” and copy “wrong.”

What is Protected by Copyright Law?

Copyright law protects “original works of authorship,” and includes a wide variety of creative materials such as:

- books, magazines, newspapers and blogs;
- music and lyrics;
- videos, movies, and television broadcasts;
- photographs and other artwork;
- games and software;
- charts, graphs and maps.

Copyright law protects works created in all media such as print, electronic and digital formats. A work enjoys copyright protection from the moment it is created. Contrary to popular belief, a work does not need to contain the copyright symbol © in order to be protected by copyright law. .

What Are the Rights of the Copyright Owner?

Under copyright law, the owner of a work has a number of exclusive rights, including the rights to:

- reproduce the work;
- distribute copies of the work;
- create a new or derivative work based on the original work;
- display the copyrighted work;
- perform the copyrighted work.

Generally, therefore, you must obtain permission from the copyright owner of a work before you can reproduce, display or distribute that work inside or outside of your company.

With this background, here are two practices to avoid and two practices to follow. In other words, two “DO’s” and two “DON’T’s”:

Don’t #1: Duplicate Copyrighted Works Without Permission

The making of a copy of a copyrighted work by any means (such as photocopying, scanning, digitizing, ripping, or downloading) constitutes a “reproduction.” Likewise, the unauthorized “posting” or “uploading” of creative material may implicate the “display” and “distribution” rights granted by copyright law.

Digital, electronic and online materials are subject to the same protections as non-digital, traditional or paper-based

works. However, there are further legal risks associated with using digital content. Many publishers of copyrighted works distributed electronically have embedded tracking software that detects each time the work is downloaded, printed, forwarded, shared or copied. *PR News*, and several other PR trade newsletters, have embedded this software. Tampering with this software can lead to a finding of willful copyright infringement and should not be attempted.

Widespread copying that deprives the copyright owner of the opportunity to sell, license or exploit a work – such as routinely copying issues of a subscription publication to increase the number of copies available to your firm – is strictly prohibited. Only limited copying of a lawfully-owned copyrighted work for personal use may be allowed. For example, printing out a copy of an electronically-distributed publication to read at your leisure away from your computer.

Don’t #2: Distribute Copyrighted Works Without Permission

You can share a legally-owned copy of a copyrighted work, such as by circulating a hard copy of a printed publication by a routing list. However, distribution of a copyrighted work to the public for commercial purposes is exclusively reserved to the copyright owner.

Likewise, posting material on the Internet may also violate a copyright holder’s exclusive right to publicly display, or in the case of audiovisual works, publicly perform the work.

Isolated distribution of a limited portion of a copyrighted work (such as press clippings) on an *occasional and infrequent* basis may be allowed, but should be avoided. In short, systematic distribution, especially to a large audience, should not be done without authorization.

And now, here are the two practices to follow:

Do #1: Make Authorized Uses and Use Authorized Distribution Methods for Your Firm

Most publications such as newsletters and magazines are available by paid subscription. That subscription or license agreement describes how many copies of a work may be made or distributed. Review these agreements carefully before reproducing a copyrighted work. You should purchase the necessary number of subscriptions or obtain a company-wide subscription to ensure that the appropriate number of your company’s employees have access to a printed publication.

The correct practice for circulating printed materials is by distribution list. While this may seem cumbersome, it is necessary to avoid an infringement claim.

Information found online can be appropriately shared by providing the web address or a hyperlink to the original source – as long as the source referenced is not an infringing work (for example, do not share links to pirated videos or music).

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How to Copy “Right” *(Continued from page 5)*

Providing a web address or a link which directs the user to the original source is **not copyright infringement** because the address itself is not copyrighted. In this instance, no copies are made and the distribution, display or performance of the work itself remains within the control of the copyright owner.

Aggregators such as NEXIS or Google can also aid in sharing information and copyrighted works by referring clients to these services, without incurring a risk of infringement. For example, NEXIS obtains licenses from publishers to make their content available to its clients, and “Google Alerts” provide limited excerpts of recent content on particular subjects along with a link to the original source in a manner it has determined is compliant with fair use.

Do #2: Obtain Permission

If it is necessary for business reasons to make or distribute copies of a particular copyrighted work such as an entire article or research report, obtain written permission in advance from the copyright owner. Stick to the permitted uses, or go back for further permission if needed.

Conclusion

By complying with copyright law in an informed way, copyright owners who create original content receive fair compensation for the use of their work and organizations gain access to the content they need to assist their clients while avoiding litigation and potential damages. However, public relations firms face substantial risk when they fail to educate employees about copyright law.

Increased Regulation in Financial Markets *(Continued from page 2)*

- As a general proposition, associations representing large business interests, such as the Chamber of Commerce, Business Roundtable and the National Association of Manufacturers will be opposed by associations supporting smaller business interests such as the Independent Community Bankers, Conference of State Bank Supervisors, Credit Union National Association, and Independent Insurance Agents and Brokers of America.
- And consumer groups are likely to oppose any initiatives which they see as impinging upon their rights at the state level.

There is no doubt that the ongoing storms in the U.S. housing and credit markets, together with the demise of Bear Stearns, have triggered ripple effects that are being felt worldwide. There is also no doubt that these reforms will change our system of financial regulation forever.

If, as many predict, a number of reform initiatives are carried over to 2009, public relations firms should be well positioned to assist many interested parties involved in the debate.

Are You Reading... **THE FIRMVOICE**

The Council now has a weekly online publication for PR Firm executives. If you don't receive it every Wednesday morning, here's what you are missing:

- Go Digital or Go Home — Why Your Firm Should Start a Digital Division
- Should Clients Keep PR Efforts Going at Full Speed in Today's Economy?
- An Inside Look at Procurement
- One-on-One with Harold Burson: PR's Role in Driving Corporate Social Responsibility
- PR 3.0 — The Era of Disruptive PR
- Is Internal Communications the New Media Relations?

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