

Word of Mouth Marketing

The Legalities of Selling things the Old Fashioned Way?

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Is it true that the simple act of telling your friends and family about a product - something we do everyday without even thinking - is gaining momentum as the most popular form of marketing strategies being used by advertisers everywhere ?

That's what Patrick Thoburn thinks. He is the co-founder of Matchstick Inc., a Toronto-based company devoted to 'word of mouth marketing', which has resurged to become a popular form of marketing to consumers, even replacing other traditional forms.

Word of mouth marketing works by putting a product or service in the hands of an individual and gets them talking about the product or service to others to create 'buzz' about the product or service. It's gaining popularity over traditional glitzy expensive ad campaigns as a more effective means of persuading consumers about a product or service, and is being used by such companies as Nike, Chrysler, Sony/BMG and Fuji.

Thoburn, along with legal expert Beryl Green, partner at Miller Thomson, Toronto, spoke about this new paradigm shift in marketing strategies to a group of marketing and advertising lawyers in late January at the Canadian Institute's Advertising and Marketing Law Conference in Toronto.

Thoburn is not the only advocate of word of mouth marketing. Malcolm Gladwell says in his book, *The Tipping Point*, "Word of mouth appeals have become the only kind of persuasion that most of us respond to". He asks how else can you explain how a few East Village kids helped start the Hush Puppy epidemic. Gladwell explains that most phenomena are caused by a few individuals, supporting his theory of 'power in the few'. It's the reason that marketing companies across the country are refocusing their efforts on giving new products to trendsetters to create excitement and buzz.

Why caused this power shift? Quite simply, technology has given the consumer a voice where emails, blogs and Web sites allow a consumer to spread a message quickly and efficiently.

The basic premise underlying word of mouth marketing is that the product or service is placed in the hands of certain individuals who have the power and ability to shape public opinion. The individuals who are targeted as influencers depend on the product or service and market for that particular product or service - whether it is trying to sell new digital cameras, promoting a new band or introducing a new luxury vehicle. These individuals spreading the news are hand picked because they have the ability to shape the opinion of their peers.

Word-of-mouth marketing includes techniques such as:

- Brand blogging: Creating blogs and sharing information;
- Buzz marketing: Using high-profile entertainment or news to get people to talk about your brand;
- Conversation creation: Interesting or fun advertising, e-mails, catchphrases, entertainment, or promotions designed to start word of mouth activity;
- Influencer marketing: Identifying key communities and opinion leaders who are likely to talk about products and have the ability to influence others;
- Product seeding: Placing the right product into the right hands at the right time, providing information or samples to influential individuals;
- Viral marketing: Creating entertaining or informative messages that are designed to be passed along in an exponential fashion, often by e-mail.
- A 'street rep' is an agent who hands out flyers and goodies for a particular event, and a 'tastemaker' is a trendsetter whom people look to or listen to in terms of what's in fashion.

Word of mouth marketing is effective because the message is more believable when it comes from a testimonial of an individual who is not paid or asked to do so by the company selling the product. It is a more credible way to communicate the truth about a product or service. Thoburn says, "76% of consumers don't believe advertisers the most powerful endorsement of a product is the consumer. It can't be faked." When a consumer gets an objective unbiased opinion - whether positive or negative - others are more likely to believe that a product or service will deliver on its promise - because it is coming from an objective source who has no stake in the outcome.

In fact consumers look to independent sources for advice on new products, trends and restaurants. Sweetspot.ca is one such source for the women in Toronto, Montreal and Vancouver to find out about new beauty products, restaurants, clothing stores and services. It describes itself as "the place to be in-the-know about all that's fun, fashionable and just plain fabulous in your city". Women get an email every day with a report on a new product or service that the writers have independently tried out. Women forward the emails on to their friends and more women sign up and it goes on and on.

The reason for the resurgence of word of mouth marketing is due to a shift from the power in the advertiser to power in the consumer in delivering powerful marketing messages - resulting in more honest and truthful advertising - great news for consumers. But still leaves open the question that if such messages and advertising are not being reviewed by advertisers or their lawyers beforehand, how does one ensure that their campaigns are not offside the law?

Word of mouth marketing is independently regulated by the Word of Mouth Marketing Association (WOMMA), the self-regulating body for word of mouth advertising. It ensures that trust is created between the marketer and the consumer and that ethical and fair practices are followed by marketers. Its members follow a code of ethics to ensure the integrity of word of mouth campaigns, which includes such principles as consumer protection being paramount, honesty of relationship, opinion and identity, respecting the rules of the venue, managing relationships with minors responsibly, promoting honest downstream communications and protecting the privacy of individuals.

A marketer using word of mouth marketing has to abide by statutes such as the Ontario Consumer Protection Act, privacy laws, the Competition Act, and the Criminal Code. The *Ontario Consumer Protection Act* prohibits any representation that misrepresents or exaggerates the benefits that are likely to flow to a consumer if the consumer helps a person obtain new or potential customers. The Act also makes it an unfair practice to make a false, misleading or deceptive representation. Privacy laws would also apply in the collection of consumer personal information. A marketer should also be aware and comply with the *Competition Act* and the *Criminal Code*. These include provisions on misleading advertising, performance claims and promotional contests. An advertiser would also have to take into account any special consideration for Quebec residents and advertising to children. The WOMMA code of ethics prohibits engaging children under the age of 13 in word of mouth campaigns. In fact, it is strongly advisable that marketers obtain parental consent if retaining anyone 13 and over but under the age of majority.

Green recommended to conference attendees that there be proper disclosure of all terms and conditions of a word of mouth campaign which could be done on a Web site devoted to the campaign. All aspects of a campaign should mention the Web site. She also recommended that all consumer advocates identify their connection with the advertiser and product in any communications with marketers or consumers. Also, a written agreement with the 'influencers' should set out the parameters of what they can and cannot say or do in connection with the product or service was also advisable.

It is important to ensure that it is clear to consumers that the 'influencers' are speaking completely independently and sharing their opinion without any compensation of any kind. They should not be viewed as speaking on behalf of the advertiser or as an agent or rep. If an advertiser does hire or compensate an 'influencer' in any way, the advertiser may be liable for claims, misrepresentations or any defamatory remarks by the 'influencer'. Therefore, an advertiser should ensure that any 'influencer' be fully aware of all product claim, product representations and company claims and sign an agreement to that effect. They should also disclose whether they are an independent third party and whether they but are being paid by the firm to sell the product. Also, one has to be careful where the 'influencer' shares their information. Certain online chat forums may prohibit endorsements of any product.

An advertiser may also be able to use the 'influencer' in future campaigns if they find the 'influencer' spreads the word about a product in a positive light. That's what happened with the Subway chain. An individual independently lost a lot of weight by regularly eating Subway subs, and then wrote to Subway to provide his testimonial. Subway decided to hire him as its rep after the fact. Therefore, a written release of publicity and rights from the influencer to use their testimonial in future media campaigns should be obtained.

It seems rather paradoxical that as technology grows, marketers are reverting back to basics - where selling the old fashioned way has become big business.