

# BLUEPRINTS

## THE PRODUCE PROFESSIONALS' QUARTERLY JOURNAL

### Blue Book Services

Phone: 630-668-3500 Fax: 630-668-0303 E-Mail: [info@bluebookservices.com](mailto:info@bluebookservices.com) Web Site: [www.producebluebook.com](http://www.producebluebook.com)

LEGAL-EASE

## Exposure and Disclosure

Harnessing the benefits while avoiding  
the perils of online marketing

BY M.B. SUTHERLAND

A quick Internet search of the phrase “If you’re not online...” produces results like “you don’t exist,” “you have no business,” and “you’re missing the boat.” While not everyone agrees with these assertions, it’s hard to argue with the power and reach of the worldwide web.

And though it may be tempting to stay ‘old school’ and avoid the complications of the online revolution, a search of your company name will undoubtedly come up with something. Rather than cede this control to others, many produce buyers and sellers are wading into the murky waters of Facebook, LinkedIn, Twitter, Pinterest, and other social media to tell their stories. We decided to take a look into the lesser known aspects of a web presence—the hidden dangers and potential risks—and find out how to protect your company, your products, and perhaps most important, your reputation.

### BIG AUDIENCE = BIG RISKS VS. BIG REWARDS


Remember last year’s scandal involving lean finely-textured beef? A combination of YouTube clips, an online petition, and an ABC News story demonized “pink slime” and resulted in the near ruination of its manufacturer. Or the controversy surrounding clothing retailer Abercrombie & Fitch, which erupted after discriminatory comments by the company’s chief executive—made seven years ago—came to light?

These debacles are prime examples of just how powerful the Internet can be, and marketers must be mindful of the potential downside of 24/7 exposure. Big Brother is indeed watching—along with customers, competitors, employers tracking workers, colleges eyeing applicants, and even debt collectors trolling Facebook. Yes, the digital

### Key Elements

Although there are risks when using social media to promote your business, it is an excellent venue to reach current and potential customers:

- millions use Facebook, Twitter, and other social media on a daily basis
- disclaimers exist for a reason: to protect you and your company
- not all feedback will be positive, but negative comments must be addressed
- be aware of federal “Green Guides” when describing commodities or products.

To learn more about each key element, look for the  symbols throughout the article.

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uncomfortable or difficult.”*

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landscape can be perilous, but there are ways to control the negatives and accentuate the positives.

✍ According to eMarketer.com, one out of every five people on the planet used social media at some point in 2012. With Facebook subscribers in North America soaring towards 200 million, and the same number of active worldwide Twitter users, social media is a land of plenty. So how does the produce industry measure up? Well, most buyers and sellers have websites, but a recent *Growing Produce* poll found 92 percent of respondents felt their companies were not using social media to its full potential.

Dan'l Mackey Almy, president and CEO of Texas-based DMA Solutions, Inc., says the digital world continues to evolve and isn't what it was just a few years ago. Back then, Almy says the conversation with clients revolved around setting up a website; today, it "starts with 'who do you want to reach?' and what content do you have or can you create to keep audiences engaged?"

Mike Oelhafen, director of media at Wisconsin's Charleston Orwig, says companies should think of a website as the "perfect employee" capable of performing a myriad of tasks, 24/7. Yet having the website isn't enough; it needs to have a range of interesting, up-to-date content—and a person responsible for making sure content "isn't alienating prospective clients."

## DEFINING TERMS

✍ You're probably familiar with various disclaimers. Privacy policies are designed to protect you and your site's visitors, defining what if any information you collect. Your "Terms of Use," on the other hand, spells out limitations, liability, payment terms (if applicable), ownership of intellectual property, and restrictions on the use of information provided by the site.

Jason R. Klinowski and Andrew L. Goldstein, attorneys at Freeborn & Peters, LLP in Chicago, say all of these can be summed up or posted as "Legal Terms." Klinowski warns, however, that companies should have terms customized to their particular needs and stay general or broad in scope, to avoid the "it's not

listed so it's not covered" loophole. But "no one is too big or too small," he says, "to take the risk of not doing it appropriately."

Further, Klinowski clarifies that the "application of these rules to a food company is going to be different from a company that produces anything else, just because of the way the U.S. Food and Drug Administration (FDA) Food, Drug, and Cosmetic Act is written." Citing the example of food bloggers, Klinowski says the FDA is paying closer attention to the kinds of information disseminated.

Goldstein stresses the importance of a clearly defined privacy policy, detailing the types of information you collect from website users and how you plan to use it. Some states, including California, require such policies. One such example is letting users know their email address will be added to a marketing list; more often, Goldstein says, it's about granting permission for cookies to track or store information about web browsing.

The good news, according to Goldstein, is that legal terms on websites are being upheld by the courts. "If you go to a website and see 'Terms of Use'—by using that website, you agree to those terms. Those click-through 'I Agree' boxes that nobody reads—those are binding too." Such terms, however, do not protect you from everything: "You're not going to be able to use a disclaimer to get past your own gross negligence or misconduct," Goldstein explains. Liability can be limited, however, by using such terms as "as is" for downloads like recipes, which means use is at the visitor's own risk.

## SOCIAL MEDIA AND INTERACTION

✍ While social media can have many positive effects, there are certainly negatives. "No doubt about it," Almy promises, "social media will open the door for interactions that are uncomfortable or difficult." And "the number-one pitfall" according to Almy is a company's failure to address negative feedback. While there are sometimes legal reasons why a company is unable to respond, particularly to food safety issues, she says there are a number of ways to acknowledge a complaint or concern, and timing can be criti-

cal. "Working with our clients, we've dealt with very negative feedback and been able to turn people into advocates for our product."

Oelhafen says it is important to learn "how to partake in the [online] conversation to properly defuse customer angst and provide solutions in a public forum. If you have a customer who goes on Facebook to complain, you tell them you want to fix it, and 'please call me'."

## INTERNAL AND EXTERNAL CONTROLS

From a legal standpoint, Goldstein says social media has an internal and an external component, both of which should be considered. Internally, there must be a policy for employees. "You want to be sure employees are using social media in a proper way, not disclosing trade secrets, and not saying anything derogatory about competitors."

External policies deal with what you allow the public to post to your website in terms of comments, pictures, 'Likes,' etc. Some firms have an "Acceptable Use Policy" which prohibits posting "anything obscene, defamatory, harassing, etc." and requires users to only post things for which they have rights, or that don't infringe on trademarks or rights to privacy. For example, a photo posted by a user that was taken from someone else's website without permission, would violate Acceptable Use.

Roger Pepperl is marketing director at Washington-based Stemilt Growers, LLC, which has an extensive online and media presence. Though he has often been surprised and buoyed by positive feedback, Pepperl believes criticism or complaints also have their benefits. "Three people is enough of a trend," he stresses. "If they didn't like something, we send it off to production, to R&D, and to our president. We use it as a tool to get stronger."

## WATCH YOUR LANGUAGE

It's important to be mindful of language when talking about products on the Internet—whether yours or competitors. Goldstein warns that "a claim on a website is the same as any claim in an advertisement"—open to criticism and fair game for being labeled 'deceptive' or

‘unfair.’ ‘Puffery,’ he notes, is acceptable, such as stating “We’re America’s favorite lettuce” or “Kids love our carrots” because the claim it isn’t provable. However, if you’re trying to claim “four out of five kids like our carrots” or “our product has 42% less fat than the next guy”—you must have data to back it up.

Goldstein also advises avoiding words like *wholesome* or *guaranteed* “unless you have gone through the process of proper testing and have the data to support it.”

🔑 If you wish to use terms like *organic*, *sustainable*, *natural*, *biodegradable*, *green*, etc., be sure to consult the Federal Trade Commission (FTC) “Green Guides” which spell out the types of ‘environmental claims’ the agency might consider deceptive. If you happen to be a publicly traded company, another federal agency—the Securities and Exchange Commission—recently ruled it was acceptable to use social media to communicate with shareholders, as long as investors know in advance which media portals will be used to disseminate information.

## BEWARE OF BLOGGERS AND CHILDREN

Yes, be aware of social perceptions...or at least beware of how you deal with them. Bloggers can be a huge source of publicity for your products. Pepperl says Stemilt has tried to attract health-oriented bloggers to get the word out about their specialty products and brands. Buzz related to the release of Stemilt’s trademarked Piñata apples had people asking grocers for them by name.

But Goldstein advises caution as the FTC recently revised its policies on testimonials and endorsements “specifically with blogs in mind.” One regulation requires bloggers to reveal if they have received products free of charge. Goldstein says having a “Blogger Policy” can help ensure writers follow rules and are transparent, so your company isn’t exposed to liability.

Another concern is when your website attracts and deals with children. The Child Online Privacy Act (COPA) stipulates that companies with web pages that appeal to kids under the age of thirteen must obtain parental consent to collect any data. This can come into play if your site has interactive games or educational information, but is only relevant if you collect data about the kids visiting your website.


“If it’s just ‘Hey kids, vote for your favorite: apple slices or carrot pieces’ and there’s no other data gathered,” Goldstein says, it will not trigger COPA. “But if you start collecting names, emails, and addresses, it’s absolutely covered by COPA. A couple of states have held that even collecting a zip code is personal information.”

## FINAL WORDS

While the worldwide web has vast potential, it does, as Pepperl asserts, leave one exposed. Almy concurs, adding that “being present digitally is fairly permanent. You print a brochure, you spend the money for creative, that works for a while and then it goes away”—not so with today’s media—cue Abercrombie & Fitch.

Regardless, the general consensus is that the risks are well worth the benefits. Oelhafen says the “net” benefit is a constructive dialogue with your customers. They can either “talk about you behind your back, or you can be willing to have public conversations with them.”

Pepperl agrees, stating “the downside isn’t much of a downside—you’re better off with information so you’re armed and dangerous.”

The bottom line is to consult both legal and marketing experts, have policies and legal terms in place, and a plan to deal with negativity or any and all curveballs that will, inevitably, be thrown your way. “To the experts, worrying about what might go wrong isn’t necessarily the main issue,” Almy notes. More important is discovering how digital media can increase produce consumption; mining these opportunities, Almy says, “is a better use of our time.” 

M.B. Sutherland is a Chicago-based freelancer with twenty years experience writing for business and news publications.

## ONLINE

For more information on related topics, please see the following article in the Blue Book Online Services Learning Center:

“Building A Following: Tweet, Blog, and Promote...”  
– April 2011

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