

McSWEENEY & ANTMAN'S OCCASIONAL UPDATE VOL. 2 NO. 2

From the corporate branding and strategic communications firm **McSWEENEY & ANTMAN**.

Welcome to the latest edition of McSweeney & Antman's Occasional Update, our periodic compilation of useful information and interesting news.

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1. NEW TV AD FOR LIND-WALDOCK WAS FORTY YEARS IN THE MAKING

McSweeney & Antman recently produced a direct-response print, radio and television advertising campaign for client Lind-Waldock, a Division of Refco, LLC. The television commercial, which can be seen on CNBC and national cable programs, commemorates Lind's 40th anniversary by featuring meticulously recreated faux footage to suggest what Lind's television advertising might have looked like in 1965, the year it was founded, and in the mid-eighties (think big hair), as well as what it might look like in the year 2015. Click http://www.lind-waldock.com/vhome/vh_lindtv.shtml to view the television commercial "Come to the Source" and www.mcsweeneyantman.com/lindwaldock_barons_032805.pdf to see a sampling of the print ads.

2. WHEN PUBLIC INFORMATION ISN'T

In Kafkaesque enforcement proceedings recently, the Securities and Exchange Commission further clouded disclosure regulations when it determined that affirming publicly available information can be a form of selective non-public disclosure.

In March, the SEC and Flowserve Corporation settled an administrative proceeding and civil suit, with Flowserve neither admitting nor denying the Commission's allegations. According to the SEC, Flowserve lowered its full-year earnings guidance in September 2002 and reaffirmed the lowered guidance in a press release on October 22, 2002. On November 19, 2002, Flowserve's CEO and the investor relations officer met privately with analysts and, the SEC charged, the CEO reaffirmed the previous guidance issued on October 22. The SEC alleged that in doing so the CEO had "intentionally and selectively disclosed material, nonpublic information to securities market professionals."

The central issue of the case is how far into a quarter (or year) a company can privately reaffirm public guidance without violating disclosure regulations. The SEC's position is that as the quarter progresses, a company should have a clearer view of its performance;

therefore, at some (undetermined) point in the quarter, reaffirming previous public guidance in a private setting constitutes an illegal disclosure of material information.

This leaves public companies and their investor relations officers in a position of being liable for crossing a line they cannot see. For a detailed analysis of this murky issue, visit the National Investor Relations Institute site.

www.niri.org/irresource_pubs/alerts/ea050328.cfm

3. EXTREMELY FRUSTRATING, SLIGHTLY RIDICULOUS AND COMPLETELY UNIMPORTANT...

For a brief introduction to a form of marketing communications that can cost millions of dollars but in many instances could be done just in five minutes by a nine-year-old, see Michael Antman's take on the arcane art of corporate naming.

<http://www.mcsweeneyantman.com/index.asp?page=10&content=7> .

4. POPES FOR SALE...GET YOUR POPES HERE

B2B Magazine and the Chicago Chapter of the Business Marketing Association recently held a breakfast focusing on successful Internet marketing strategies.

<http://www.btobonline.com/page.cms?pageId=73> Participants noted that Internet marketing has a number of inherent advantages, including the relative ease with which B2B marketers can target the right customers with the right messages and can quantifiably measure results. Cindy Lieberman, Director of Marketing Communications for Zebra Technologies, for example, said that for the same spend, her company sees much higher lead generation and lead conversion for its online marketing than for traditional advertising and direct outreach and for events.

That said, presenters echoed McSweeney & Antman's philosophy that while the Internet is an indispensable component of today's B2B marketing, it is still only one component. They noted the proper integration of Internet marketing with offline advertising, public relations, and direct outreach was key to success. As Dave Cerino, General Manager of Orbitz Business said, "Even for Orbitz, one media [online] can't do all the heavy lifting."

A recent *Wall Street Journal* story reminded us, however, that Internet marketing is still a brave new world. The story

http://online.wsj.com/public/article/0,,SB111162702948688321,00.html?mod=todays_free_feature focused on the unintended results of companies promoting their wares out on the World Wide Web using indiscriminate keyword-linked advertising. We recently came across a particularly egregious example of this when, reading a story on the death of Pope John Paul II on an online news site, we noticed the following ad off to the right: "Vatican Popes for sale. Check out our great prices on new and used Vatican Popes."

5. ACTIONS ON CLASS ACTIONS

Congress recently passed, and President Bush signed into law, The Class Action Fairness Act, which among other things, would allow class actions involving amounts greater than \$5 million and plaintiffs and defendants predominantly from different states to be removed to federal court if one party so requests. Proponents of the Act contend it will prevent plaintiffs' attorneys from shopping around for the most favorable local jurisdiction in which to file a class action suit.

There appears to be little relief in sight, however, for corporations facing securities class actions, which are litigated primarily in federal courts. PricewaterhouseCoopers' annual survey <http://www.10b5.com> found that there were 203 private securities lawsuits seeking class-action status filed in federal courts against US companies or their directors in 2004, a 16% increase over the previous year and above average for the past five years.

And many companies are exposed to certain securities class actions in Delaware. In a fascinating take on this situation, professors Elliott J. Weiss and Lawrence J. White recently completed a study of merger-related securities class action lawsuits filed in Delaware Chancery Court between 1999 and 2001 entitled, *File Early, Then Free Ride: How Delaware Law (Mis)Shapes Shareholder Class Actions*. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=554761#PaperDownload They conclude that merger-related class action suits in Delaware display a pattern suggestive of "opportunistic filings, [and] of a lawyer-driven process rather than a true client-driven process..."

In short, companies, particularly publicly traded ones, are still ripe targets for class action lawsuits—suits that can cloud their reputations for months or even years as the cases wind their way through the courts. McSweeney & Antman's Issues and Crisis Communications practice helps companies mitigate the collateral damage to corporate reputation, client trust, employee morale, and shareholder value simply from being named as a defendant in a class action suit. And the best time to assess the reputation risk and take preventative measures is BEFORE an organization finds itself involved in a lawsuit.

6. "MR. ANTMAN, I'VE GOT SCARLET JOHANSSON ON LINE TWO. DO YOU WANT TO TALK TO HER, OR SHOULD I JUST PUT IT IN VOICE MAIL?"

To see North Shore magazine's analysis of who should play the principal roles in a movie version of Michael Antman's recently published novel, "Cherry Whip," click here [www.mcsweeneyantman.com/North Shore Cherry Whip.pdf](http://www.mcsweeneyantman.com/North_Shore_Cherry_Whip.pdf).

CONTACT MCSWEENEY & ANTMAN

As always, we welcome your comments, questions and suggestions. Please contact Dennis McSweeney at dennis@mcsweeneyantman.com, Michael Antman at michael@mcsweeneyantman.com and Riva Aidus-Hemond at riva@mcsweeneyantman.com.