

# Renovating Social Media to Avoid Risk

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**Panelists:**

**Melissa J. Krasnow**, Partner, Dorsey & Whitney LLP, and Certified Information Privacy Professional

**Bruce Brown**, Associate Counsel, Darden Restaurants, Inc.

**Jaime Spencer**, Vice President, Frank N. Magid Associates, Inc.

**Moderator:**

**Gary Petrangelo**, Chief Financial Officer, Japs-Olson Company

## Corporate brand and reputation

- Consistency between real and virtual worlds
- Goals

## Social media metrics

- Outputs
- Outcomes
- Business results

## Recent and newsworthy\*

- General Mills
    - Impostor / crisis management / public relations
  - Whole Foods
    - Communications by executive officer / social media backlash
  - Target
    - Corporate governance / social media backlash / public relations
- \* involving 2 of the 21 Fortune 500 companies in Minnesota

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## Boycott Whole Foods is on Facebook

Sign up for Facebook to connect with Boycott Whole Foods.



## Boycott Whole Foods

[Wall](#) [Info](#) [Discussions](#)

### Basic Info

Name: Boycott Whole Foods  
 Category: Common Interest - Politics  
 Description: John Mackey, CEO and co-founder of Whole Foods wrote an op-ed in the Wall Street Journal on August 12, 2009 quoting Margaret Thatcher and suggesting that healthcare is a commodity that only the rich, like him, deserve.  
<http://online.wsj.com/article/SB10001424052970204251404574342170072865070.html>

Privacy Type: Open: All content is public.

### Contact Info

Email: facebookboycottwholefoods@gmail.com  
 Office: You won't find us in over 250 Whole Foods locations in North America

### Recent News

News: [HOW TO CONTACT WHOLE FOODS](http://www.wholefoodsmarket.com/company/national.php)  
<http://www.wholefoodsmarket.com/company/national.php>

(Don't forget to "un-become" a fan of Whole Foods on Facebook and encourage your friends to do the same.)

<<<<<<<<< TWITTER >>>>>>>>

Follow @Markeros and use the #BoycottWholeFoods tag :  
<http://twitter.com/markeros>

### Information

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Whole Foods has built its brand with the dollars of deceived progressives. Let them know your money will no longer go to support Whole Foods' anti-union, anti-health insurance reform, right-wing... [\(read more\)](#)

Privacy Type: Open: All content is public.

### Admins

- Nancy
- Steven
- Mark (creator)

### Members

6 of 30,387 members [See All](#)



Tekle Bobbie Karunya



Allen Doug Victor

## Legal considerations

- Social media is regulated by a variety of regulators, including:
  - Federal Trade Commission (FTC)
  - Financial Industry Regulatory Authority (FINRA)
  - Securities and Exchange Commission (SEC)
- Regulation of social media will increase

## Example of recent social media regulation

- FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising (2009)
  - Do not make false or unsubstantiated statements
  - Fully disclose material connection between advertiser and the endorser that might materially affect the weight or credibility of the endorsement (for example, advertiser providing endorser with free products, employee of advertiser, etc.)
  - Recent FTC enforcement actions

## Social media policies

- Often not publicly available
- Some common elements of social media policies:
  - Identify yourself and make it clear when you are speaking on behalf of or about the company
  - Employee versus individual capacity
  - Seek advice from the legal department or management when necessary
  - Information that can be disclosed
  - Information should be accurate
  - Personal liability for content
  - Disclaimers are advisable, but not a shield from liability
  - Do not disclose company confidential or financial information (for instance, material non-public information)

## First steps in formulating a social media policy

- Review existing company policies and agreements – is a separate policy necessary or advisable?
- What are legal requirements and what does guidance say?

## Some other issues to consider

- Privacy / security - spam, malware and phishing through social media sites
- Litigation / e-discovery - use of social media in litigation
- Record retention - impact on companies; did you know that all public tweets since Twitter's inception are digitally archived at Library of Congress?

## Determine and weigh the benefits and risks of company use of social media

- Benefits
  - Facilitates communication between company and its customers
  - Provides information about what is being said about company and its competitors
- Risks
  - Potential for disclosure of company confidential information by employees and service providers (could be an unintended consequence of communicating information via social media)
  - Are there policies and, if so, are policies being implemented and enforced?
  - What do confidentiality / non-disclosure agreements and provisions say?

## Social media monitoring

- Entry into social media likely involves monitoring by
  - Company
  - Outside provider
- Court cases
  - Any expectation of employee privacy? (for example, 2010 U.S. Supreme Court case in Quon)

## Overall recommendations

- Take into account strategic goals for social media
- Consider and work together with all areas implicated by social media
- Review company procedures and revise or establish new policies as needed
- Make sure company policies are consistent and integrated
- Train and educate employees and others that handle social media (for instance, marketing, customer service, human resources, investor relations, legal department, etc.)

## Any questions?

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