



Bloggers or Floggers? Undercover advertising exposed

RESEARCH REPORT

by Option consommateurs, Avril 2012

OPTION CONSOMMATEURS

MISSION

Option consommateurs is a not-for-profit association whose mission is to defend the rights and interests of consumers and to ensure that they are respected.

HISTORY

Option consommateurs has been in existence since 1983, when it arose from the *Associations coopératives d'économie familiale* movement, more specifically, the Montreal ACEF. In 1999 it joined forces with the *Association des consommateurs du Québec* (ACQ), which had already pursued a similar mission for over 50 years

PRINCIPAL ACTIVITIES

Options consommateurs has a team of some 30 employees working in five departments: Budgeting, Energy Efficiency, Legal Affairs, Press Room, and Research and Representation. Over the years, *Option consommateurs* has developed special expertise in the areas of financial services, health, agrifood, energy, travel, access to justice, trade practices, indebtedness, and the protection of privacy. Every year, we reach 7,000–10,000 consumers directly, conduct numerous interviews in the media, participate in working groups, sit on boards of directors, carry out large-scale projects with key partners, and produce research reports, policy papers and buyers' guides, including the annual *Toy Guide* in *Protégez-vous* magazine.

MEMBERSHIP

In its quest to bring about change, *Option consommateurs* is active on many fronts: conducting research, organizing class action suits, and applying pressure on companies and government authorities. You can help us do more for you by becoming a member of *Option consommateurs* at www.option-consommateurs.org.

SUMMARY

Since 2006, there has been an explosion in the use of social media. A 2011 study¹ confirms that social media have become an important source of information for consumers. Everything points to the fact that companies are turning to social media in addition to other more traditional modes of communication in an effort to attract consumers' attention.

However, a number of questionable business practices are current in the social media. Among these are “flogging” (creating fake blogs) or “astroturfing” (using a pseudonym and a false identity to interact with consumers). Increasingly, companies are resorting to these practices as marketing and publicity tools. They pass themselves off as private citizens, and in so doing, mislead consumers. This is the main reason why such practices are condemned by marketing and public relations experts.

The aim of this study is to identify the phenomena of flogging and astroturfing, to determine their legitimacy and ethical value, to analyze their impact on consumers, and finally, to make recommendations to legislators to ensure that Canadians are protected against such practices.

At the end of this study, Option consommateurs draws the following conclusions:

- The flogging and astroturfing phenomena are quite widespread: they are used even by major companies.
- No tool has yet been developed to detect these practices. Consequently, the only way to recognize flogging or astroturfing is to carry out a lengthy investigation.
- The U.S. and the UK have regulated these practices; Canada, meanwhile, has passed a law that has not yet been implemented. The only law applicable today is the one respecting false or misleading advertising.
- There is no jurisprudence in Canada related to flogging or astroturfing.
- There is no formal process in Canada, for externally processing complaints related to flogging and astroturfing, nor is there any body that specifically handles such complaints.

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¹ Beyond, M. Booth and Lexis and Next Fifteen Communications. The Science of Sharing, an Inside Look at the Social Consumer. December 2011, 16 pp. Available on the Internet at: <http://bynd.com/wp-content/uploads/2011/science-of-sharing.pdf>

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INTRODUCTION

Background and problem

Since 2006, social media have been experiencing exponential growth. Today, these media rival the telephone in importance as means of communication. According to the report *Wave 5*, there can no longer be any doubt: “Currently, nearly 3 quarters of the active internet universe claim to have ever managed a profile on a social network. If the current trend continues, a social networking profile will become as fundamental a part of our daily lives as our telephone number.”² A 2011 study conducted by the firms Beyond, M Booth and Lexis and Next Fifteen Communications³ added that social media have become a major source of information for consumers, who also use them to search for advice and criticism to guide their purchases. Sites such as tripadvisor.com are already setting new standards for travelers. Clearly, companies wishing to attract the attention of consumers will from now on be turning to social media in addition to the other more traditional communication channels (newspapers, radio, and television).

However, certain business practices that already use social media (such as blogs, Facebook or Twitter) are suspicious, to say the least. Year in, year out, Web commentators widely decry them as reprehensible. Prominent among these practices are “flogging” (creating fake blogs) and “astroturfing” (using a pseudonym and a false identity to interact with consumers – also called “sock puppeting”). These practices, which are condemned by the vast majority of Internet users, and especially by marketing and public relations experts, consist of promoting an organization, a company or a product while posing as a private citizen.

Each occurrence of this phenomenon raises the ire of users and that of the media even more. Option consommateurs is also concerned about these practices. It’s safe to say that flogging and astroturfing are practices that give rise to misleading advertising and are a means of dishonestly influencing a large number of consumers. These practices are already condemned by several public relations and marketing professional codes of ethics.

The aim of this research is to understand the phenomena of flogging and astroturfing, to assess their effects on consumers and, ultimately, to find possible ways to minimize the occurrence of these practices and their negative impact on consumers.

² Wave 5, the Socialisation of Brands, Social Media Tracker – 2010

³ Beyond, M Booth and Lexis and Next Fifteen Communications. *The Science of Sharing, an Inside look at the Social Consumer*, December 2011, 16 pp. available on the Internet: <http://bynd.com/wp-content/uploads/2011/science-of-sharing.pdf>

Methodology and objectives

Our methodological approach is to better understand the phenomena of flogging and astroturfing, to study their legitimacy and ethical value and to analyze their impact on consumers, and then formulate recommendations to assist legislators at the federal and provincial levels⁴ to better protect consumers against such business practices.

With this aim in view, we identified and studied cases of flogging and astroturfing in order to understand their origin, their mode of operation and their reception in the media and in society in general. We also conducted a literature search on American and British regulating initiatives to protect consumers against these practices. A literature search was also conducted to determine the existing regulations in Canada that might apply to the context of the research.

We also conducted structured interviews with experts from government, industry, law and academia who are interested in one way or another in flogging and astroturfing to obtain their points of view on the phenomena. In doing this, we were interested in the legitimacy of these practices, their ethical value, their impact on consumers and ways of protecting the latter.

This report presents the results of these efforts and while highlighting problems and possible solutions

The Participants

To ensure the sound basis of the study, it was vital to collect the opinions of several experts. The participants were many and varied. We met with academics, lawyers, government officials and industry representatives. Here is the complete list: Sophie Boulay, doctorante à la Faculté de communication de l'Université du Québec à Montréal (UQÀM). Sa thèse de doctorat porte sur les pratiques d'*astroturf* en publicité et en politique.

- Sophie Boulay, doctoral candidate in the communication department at Université du Québec à Montréal (UQAM). Her doctoral thesis focuses on astroturf practices in advertising and politics.
- Christian Désilets, professor, department of information and communication at Université Laval. His research centres primarily on advertising.
- Manon Niquette, professor in the department of information and communication at Université Laval. Her research interests include astroturf advertising in the pharmaceutical industry.

⁴ Provinces that have adopted relevant legislation.

- Jeff Hancock, associate professor of communication at Cornell University in the United States. He is working on developing a program capable of detecting astroturf-type interventions on websites that review products and services.
- James Musgrove, a lawyer for the Toronto firm McMillan. He specializes in competition law and advertising law.
- Dominique Gervais, a lawyer for Option consommateurs. She is specialized in the field of consumer law.
- Laureen Kapin of the Counsel for International Consumer Protection, Division of Enforcement and Stacey Ferguson, a lawyer in the Office of Consumer Affairs, Division of Advertising Practices, both at the Federal Trade Commission in the U.S.A.
- Danielle Lefrançois, Director of Communications, Advertising Standards Canada.
- Guillaume Brunet, Vice President, Social Media, at Cossette Communications, an advertising agency.
- Michelle Sullivan, director, digital communications at Hill+Knowlton Strategies, a public relations firm.
- Me Nathalie Jackson, a lawyer at the Office de la protection du consommateur, the government entity responsible of the application of the Consumer Protection Act.

After an initial contact with their media representative, the Sid Lee advertising agency confirmed that it would participate in the study. After numerous reminders by phone and email, Sid Lee ultimately did not grant Option consommateurs an interview.

We also contacted the Chartered Institute of Public Relations in the UK. After sending us an email saying that they would participate in our study, they no longer responded to our calls and emails.⁵

Structure of the report

This report is divided into four parts. The first is devoted to understanding flogging and astroturfing: defining the terms, their origins, the history of the phenomenon and the most striking cases.

The second part will focus on the current situation. We will emphasize the difficulties inherent in measuring the scope of the phenomenon. We will also attempt to identify who creates flogs and astroturf and why they do it. In addition, we will report on the potential impacts of these practices on consumers.

⁵ Stéphane Guérin, a blogger interested in Web marketing, helped us to shed a little light on a competition launched by Nissan that intrigued us during our research. This contest was not added to our case list, owing to a lack of information.

The third part is devoted to ethical questions and legal issues related to the phenomena of flogging and astroturfing. We will see in particular that, from an ethical standpoint, there is unanimity among our participants, but there is a divergence of opinion when it comes to legal and regulatory considerations. We will also review the relevant domestic legislation and analyze the initiatives adopted in the United States and the United Kingdom aimed at curbing such practices.

In the fourth part of this report, we will explore other avenues for preventing the possible adverse effects of these practices, including the application of existing laws and raising awareness among consumers.

The report will close with the conclusions and recommendations of Option consommateurs.

CHAPTER 1: DEFINITION, HISTORY AND INSTANCES OF ASTROTURFING AND FLOGGING

Astroturf (ou sockpuppeting)

The term “astroturf” has its etymological roots in the world of politics. Spontaneous movements of political support are frequently dubbed “grassroots movements”; the term is used to define groups of supporters who champion a cause or a campaign of their own accord, in parallel with a formal political campaign. The term “astroturf” is as an antonym of “grassroots” drawing its inspiration from the name of the artificial turf used frequently in sports stadiums, Astro Turf ©. According to Sophie Boulay⁶, a doctoral student in communication at UQAM, although the origin of “astroturf” is not confirmed, its first reported use was by U.S. Senator Lloyd Bentsen in his campaign of 1985.

Astroturfing is not a new phenomenon nor is it confined solely to the electronic social media. Whenever one poses as a citizen when one is not, or conceals a potential conflict of interest, that is astroturfing. One particularly notorious case was that of the National Smoker’s Alliance (NSA), founded in 1993. The group described itself as a citizen’s group that advocated the rights of smokers opposed to U.S. anti-smoking laws. The problem? It was funded by the tobacco industry⁷. This example is also often cited as one of the biggest fiascos in the history of public relations.

There is another term used to refer to astroturf-like practices: sockpuppeting. “Sockpuppeting” is defined as the act of creating a false identity on the Internet in order to create an illusion, to praise or defend one’s company, one’s self or one’s allies. It is not known when or why the term “sockpuppeting” was coined. One source proposes that the term sockpuppeting was chosen because it is as easy to create a computerized sockpuppet as a real sockpuppet, i.e. a puppet made from a sock⁸.

Despite the hazy origin of these terms, using a false identity in electronic social media is a fairly common practice if we are to believe Paul Kedrosky, a venture capitalist⁹ from San Diego¹⁰ and author of the blog *Infectious Greed*.

The most widely publicized case was that of John Mackey, CEO of Whole Foods Markets, a U.S. grocery chain. Under the name Rahodeb, he published comments on the site of a rival company, Wild Oats, and

⁶ The interview with Sophie Boulay took place on October 14, 2011 at the Option consommateurs offices.

⁷ Gerry McCusker, *Talespin: Public Relations Disasters - Inside Stories & Lessons Learnt*, Kogan Page, London, 2005, pp. 13-15.

⁸ <http://www.wisageek.com/what-is-a-sock-puppet-website.htm>

⁹ *Venture capitalist*: A speculator who makes money available for innovative projects (especially in high technology).
<<http://www.thefreedictionary.com/venture+capitalist>>

¹⁰ Brad Stone and Matt Richtel. "The Hand That Controls the Sock Puppet Could Get Slapped - New York Times." *The New York Times - Breaking News, World News & Multimedia*. July 16, 2007. Web 2.0, Sept. 2011.
<http://www.nytimes.com/2007/07/16/technology/16blog.html?scp=1>

revealed information about a possible acquisition that Whole Foods was attempting to make. Mackey also posted some 1400 messages on the Yahoo! Finance Boards website¹¹.

A fairly recent case was that of Conrad Black, CEO of Hollinger International. At his criminal trial for fraud, the prosecutor submitted into evidence e-mail messages showing that Black had suggested to one of his senior employees that he go onto the Yahoo Finance chat room and blame the poor performance of his company's shares on short selling. When the employee refused to write the message, the prosecution alleged Black wrote the message himself, using the name "nspector."¹²

The case of Sony Pictures

On June 4, 2001, the Sony Pictures film studio admitted having created bogus positive reviews to promote certain of its movies¹³. These reviews were written by one of Sony's marketing executives who, under the fictitious name David Manning, posed as an employee of the *Ridgefield Press*, an actual Connecticut weekly. The management of the newspaper were unaware that Sony Pictures had used its name. A few days later, Connecticut Attorney General Richard Blumenthal reported that he was investigating the case and confirmed that he had received several complaints on the subject. He also stated that it could be considered false advertising¹⁴. Furthermore, Sony Pictures admitted two weeks later that a couple of fans featured in the ad for the movie *The Patriot* were not real fans, but employees who worked in the Sony Pictures marketing department¹⁵. On March 13, 2002, nine months after admitting publishing the false reviews, Sony Pictures paid \$325,000 in fines to the State of Connecticut. Sony representatives also agreed to stop inventing positive reviews of their own movies and having their employees pose as fans in their ads, but claimed that other studios were doing the same. Universal Pictures, 20th Century Fox and Artisan Entertainment have subsequently admitted that they had used their employees in ads posing as moviegoers making comments¹⁶.

On March 2, 2004, a group of moviegoers brought a lawsuit against Sony Pictures for using a fake critic to promote their movies. Lawyers for Sony Pictures claimed it was protected by free speech, a defence that Judge Ortega of the Court of Los Angeles rejected. The judge also said that if the lawsuit was successful, everyone could from that day on rely on the truth and accuracy of movie ads¹⁷.

¹¹ Érik Rhey. "Corporate Sock Puppets." *PC Magazine* 26.19 (2007): 2-3. Print.

¹² Brad Stone and Matt Richtel. "The Hand That Controls the Sock Puppet Could Get Slapped - New York Times." *The New York Times - Breaking News, World News & Multimedia*. July 16, 2007. Web 2.0, Sept. 2011. <http://www.nytimes.com/2007/07/16/technology/16blog.html?scp=1>

¹³ "Sony admits using fake reviewer," BBC News, June 4, 2001.

¹⁴ "Inquiry into fake film critic," BBC News, June 7, 2001.

¹⁵ "Sony admits fake fans on ad," BBC News, June 18, 2001

¹⁶ "Sony admits fake fans on ad," BBC News, June 18, 2001

¹⁷ "Legal fight over fake film critic," BBC News, March 2, 2004.

On August 3, 2005, the judge finalized an out-of court settlement in which Sony agreed to pay moviegoers \$5.1 million. Everyone in the United States who had seen a movie promoted by the false critic was then paid compensation of \$5, the price of a ticket. In the out-of-court settlement, however, Sony did not admit its responsibility, stating that the company simply wanted to close the file and to avoid the cost and uncertainty of litigation¹⁸.

La Folle: A case of astroturfing unearthed by Option consommateurs

While conducting research on penny auctions¹⁹, our colleague, lawyer Dominique Gervais, took part in discussion forums devoted to that topic²⁰, and came across an interesting case of astroturfing. On the site, *sosencheres.ca*²¹, the activities of a contributor going by the name of “lafolle” raised doubts in the minds of some participants concerning her identity²². In the discussion forums visited, “lafolle” either sang the praises of *bidou.ca*²³ or criticized other penny auction sites. In light of “lafolle’s” comments, several participants suspected her of working for *bidou.ca*.

Postings by “lafolle” such as: “Unbelievable: this morning on Bidou, a 3D TV worth \$2,100 sold for 93 cents!” (see Appendix 1, entitled “Télé 3D vendu 0.93\$ sur Bidou”²⁴), constitute clear examples of astroturfing. Finally giving in to accusations, “lafolle” confessed “her” identity in a long text published on the forum *sosenchere.ca* (see Appendix 2 entitled “Toute la vérité sur lafolle et Le_Héros.”) “lafolle” was, in fact, Eric²⁵, a co-owner of the site *bidou.ca*. One striking feature of the “lafolle” confession is how Eric attempts to justify his undercover activities. His comments are surprising at the very least and worth quoting here:

Why use this nickname and remain anonymous? I realized during Bidou’s first year of operation that several other sites were invading the market and that they had bad intentions. Bidou’s smash debut prompted several people to get into the penny auctions business and it started to look like a gold rush.

¹⁸ “Sony pays \$1.5m over fake critic,” BBC News, August 3, 2005.

¹⁹ These are online shopping sites that operate along the lines of an auction in which the bidding starts at one cent. Participants buy chances to bid on an article they wish to acquire.

²⁰ These visits took place in the context of a research study on penny auctions entitled *Les enjeux reliés aux sites d’enchères à un sou sur Internet*.

²¹ This is a site where penny auction participants discuss their experiences.

²² Appendix 1: Screen shot of *sosenchères.ca* webpage in which “lafolle” intervenes.

²³ *Bidou.ca* is a penny auction site

²⁴ Please note that passages from books, articles, interview transcripts and web comments that were originally in French have been translated in English.

²⁵ The name he used in the apology.

Thinking they could become millionaires by buying a \$400 script, these individuals were soon disenchanted and many realized that if you're not one of the top players on the net, you may not be able to make a profit. This led some of these sites to defraud their customers and break a few rules.

Then came the discussion forums specializing on the topic. So I used the opportunity to advise people interested in auctions to be careful about whom they deal with. I then decided that it was unnecessary, even preferable, if people didn't know that I owned Bidou.ca, because if they did, they would give less importance to my warning because they would think I was biased.

So I decided to become lafolle and adopt a rather eccentric personality so as not to arouse suspicion. (See Appendix 2 entitled "Toute la vérité sur lafolle et Le_Héros")²⁶

Thus, the creator of "lafolle" says he created the astroturf for the common good. However, as discussed in the chapter on the legality of these practices, the law does not echo the sentiments of this messenger. At the time of writing, no complaint has yet been lodged against him.

Other examples

Not all examples of sockpuppeting and astroturfing come from the business world. Cases have also been noted in the domains of literature and politics.

In April 2006, the *Los Angeles Times* withdrew Pulitzer Prize winning author Michael A. Hiltzik from its blog because he was arguing with readers under a false name²⁷. The same situation occurred with writer Lee Siegel of the *New Republic* magazine who blogged under the name "sprezzatura"²⁸, and with author John Lott, who between 2000 and 2003, blogged under the name "Mary Rosh"²⁹. Historian Orlando Figes was also caught indulging in similar activity³⁰.

²⁶ Please note that we transcribed all the interventions from the forums word for word. No errors were corrected.

²⁷ Brad Stone and Matt Richtel. "The Hand That Controls the Sock Puppet Could Get Slapped - New York Times." *The New York Times - Breaking News, World News & Multimedia*. July 16, 2007. Web 2.0, Sept. 2011. <http://www.nytimes.com/2007/07/16/technology/16blog.html?scp=1>

²⁸ Maria Aspan. "New Republic Suspends an Editor for Attacks on Blog - New York Times." *The New York Times - Breaking News, World News & Multimedia*. September 4, 2006. Web 2.0, Sept. 2011. <http://www.nytimes.com/2006/09/04/technology/04republic.html?ex=1315022400>

²⁹ Richard Morin. "Scholar Invents Fan To Answer His Critics." *Washington Post* [Washington] February 1, 2003: C01. Print.

³⁰ Richard Lea and Matthew Taylor. "Historian Orlando Figes Admits Posting Amazon Reviews That Trashed Rivals | Books | The Guardian" *Latest News, Comment and Reviews from the Guardian | Guardian.co.uk*. April 23, 2010. Web 2.0, Sept. 2011. <http://www.guardian.co.uk/books/2010/apr/23/historian-orlando-figes-amazon-reviews-rivals>

Tad Furtado, policy director for New Hampshire Republican Representative Charles Bass, wrote on Democratic Party blogs that the Democrats had no hope of winning the election race, and consequently, should place their energies elsewhere^{31, 32}.

In 2007 Peter Ragone, press officer for San Francisco Mayor Gavin Newson, allegedly made pro-Newson pronouncements under the fictitious identities of "John Nelson" and "Byorn"³³.

In England, Councillor Ben Grower used multiple aliases such as "OmegaMan" to praise the work he and his team were doing³⁴.

In short, astroturfing and sockpuppeting seem to be used by numerous individuals in a wide range of fields to influence people's opinions about a product, a company or a person. The cases of the NSA, Whole Foods and Conrad Black are only some of the more notorious cases³⁵.

Flogging

The term "flog" is a neologism created by combining the words "fake" and "blog." Flogs may be created by advertisers, political parties, advertising agencies or merchants who pose as ordinary citizens. It is an advertising tool designed to attract readers' attention to a product or service.

The term "flogging" also denotes a certain type of behaviour. For instance, a blogger who, because he received gifts or invitations from companies, speaks highly of these companies on his blog, is practicing flogging. The same goes for the person who fails to mention that he received a gift or an invitation.

There are several cases on record. Here is a tour of the most prominent, starting with the one that occurred closest to us.

³¹ Anne Saunders. "Bass Aide Resigns for Fake Website Postings | Concord Monitor." *New Hampshire Area News, Sports, Opinion & Photos | Concord Monitor*. September 2006. Web 2.0, Sept. 2011. <http://www.concordmonitor.com/article/bass-aide-resigns-for-fake-website-postings>

³² Brad Stone and Matt Richtel. "The Hand That Controls the Sock Puppet Could Get Slapped - New York Times." *The New York Times - Breaking News, World News & Multimedia*. July 16, 2007. Web 2.0, Sept. 2011. <http://www.nytimes.com/2007/07/16/technology/16blog.html?scp=1>

³³ Susan Sward. "Tough times for Peter Ragone / Newsom's Press Secretary Has Had the Mayor's Scandal to Deal With, plus His Own Woes of Deceptive Blogging." *San Francisco Bay Area — News, Sports, Business, Entertainment, Classifieds: SFGate*. February 2, 2007. Web 2.0, Sept. 2011

³⁴ Stephen Bailey. "Website Praise for Bournemouth Councillor Comes From... Councillor! (From *Bournemouth Echo*)." *Bournemouth Echo News, Sport, Leisure, Bournemouth Air Festival, Jobs, Homes in Dorset and*. January 13, 2009. Web. 2.0, Sept. 2011.

³⁵ In the interests of clarity, "astroturf" and "socketpuppeting" will both be referred to as "astroturf" or "astroturfing" throughout this study. These are the terms most commonly employed by the experts.

The Bixi affair (Stationnement Montréal)

In 2008, the blog “À vélo citoyens” was created by three Montreal cyclists: Melanie Gomez, Jean-Michel Simoneau and Penelope Riopelle. This blog, supposedly born as a result of a chance encounter by three cyclists, was intended to promote cycling as primary mode of transportation. It was updated often, included pro-biking clips and dealt with several other topics. Melanie, Penelope Jean-Michel also participated in other blogs and created a Facebook page to make the blogosphere more aware of “À vélo citoyens.”

In July 2008, the blog featured an exclusive photo, supposedly sent by an informant, of the prototype of the Bixi, the shared-use bicycle sponsored by the City of Montreal. Just days later, Alain Ayotte, vice president of Parking Montreal, the agency responsible for developing the Bixi, confirmed that it was indeed the Bixi prototype.

A year later, in May 2009, the blogosphere learned that “À vélo citoyens” was actually a fake blog created by the marketing firm Morrow Communications, one of whose clients was Parking Montreal. Morrow Communications and Parking Montreal subsequently acknowledged that the blog was a total fabrication, with the sole objective of promoting the introduction of the Bixi bike.

André Morrow, founder of Morrow Communications, claims that their advertising strategy was merely viral marketing set up to familiarize Montrealers with the principle of the Bixi bike and to spark public interest. He claimed not to see any problem with this type of marketing. He added that false identities are used elsewhere on the Internet, for example on Twitter and YouTube. Michel Philibert, director of marketing and communications at Parking Montreal rejects any mention of manipulation. He maintains that the aim of manipulation is mercantile and, in this case, the firm’s aim was to get through to people in order to promote a public service³⁶.

According to Jacques Nantel, a professor at HEC and marketing specialist, the strategy adopted by Morrow Communications is clever, albeit ethically borderline. In his view, such behaviour is not reprehensible and we can expect to see it used more often. Harry G. Frankfurt, a professor of philosophy at Princeton University, says that with the growing importance of marketing in society, we are becoming less concerned with distinguishing the true from the false³⁷.

Columnist Patrick Lagacé, however, views the problem differently. For him, the public has been fooled. Furthermore, he reminds us that this practice is prohibited by the code of ethics of the Public Relations Society of America³⁸. Journalist Patrick Dion is of the same opinion. For him, this is a clear case of

³⁶ P. Lagacé, “Bixi, blogue et bullshit,” *La Presse*, May 12, 2009.

³⁷ *Ibid.*

³⁸ *Ibid.*

manipulation. Having actually praised the blog without knowing it was false, he now complains that “À vélo citoyens” used his name “at [his] expense and without [his] knowledge.”³⁹

Author Michelle Blanc believes Québec should have learnt something from the French experience. In fact, Vichy (discussed below) used the same strategy in France and was caught⁴⁰. Surely Morrow Communications should have taken that into account.

Blogger Dimitri Gourdin states that social media are interesting but are not suited to every client, or relevant to every problem. He recalls that transparency and authenticity must be respected by all companies who want operate over the Internet⁴¹. In a similar vein, Michelle Sullivan, in her article of May 12, 2009⁴², points out that the code of ethics of the Québec Society of Public Relations Professionals (QSPRP) applies in this instance. She maintains that municipal institutions and professional communications firms should respect ethical standards when they operate within the blogosphere.

For bloggers Fagstein and Normand Miron⁴³, when a company creates a fake blog, it shakes consumer confidence. They believe that businesses can be creative while remaining honest.

Patrick Tanguay’s reaction is the most marginal. Even though he says he was shocked by the behaviour of Morrow Communications, he believes that it is the users’ responsibility to determine the source of each blog. He says they should not blindly trust whatever is circulating in the blogosphere⁴⁴.

Wal-Marting Across America (Wal-Mart)

September 27, 2006 saw the creation of a blog called “Wal-Marting Across America.” The blog relates the journey of a couple, Laura and Jimi, in their recreational vehicle (RV). The couple crossed the United States, from Las Vegas to Georgia, recounting their adventures along the way. All along the journey, they parked their RV for free in various Wal-Mart parking lots. Every Wal-Mart employee Laura and Jim met said they loved their work.

Suspecting a hidden campaign, Web surfers finally figured out that it was a fake blog set up by Working Families for Wal-Mart (WFWM), an organization launched by Edelman, a public relations firm working for Wal-Mart. They also learned that WFWM was responsible for all of Laura and Jim’s expenses, had changed their original route, and had affixed the Wal-Mart logo to their RV. Unlike Melanie, Jean-Michel

³⁹ P. Dion, “Bixi, blogue et bullshit” (mon point de vue), May 12, 2009.

⁴⁰ M. Blanc, “Morrow Communications, communications de morons,” May 12, 2009.

⁴¹ D. Gourdin, “Bixi ou la dictature des médias sociaux,” May 12, 2009.

⁴² M. Sullivan, “Blogue Bixi: Shirley Steinberg met du vinaigre sur la plaie,” May 12, 2009.

⁴³ Fagstein, “Why do marketing companies hate themselves?” May 12, 2009 ; N. Miron, “Un faux blogue pour une vraie cause,” May 12, 2009

⁴⁴ P. Tanguay, “Quelques questions d’même en passant,” May 12, 2009.

and Penelope in the Bixi affair, Laura and Jim were real people. In fact, there was a banner on the blog that mentioned that the website was sponsored by WFWM. However, there was nothing indicating that the organization was responsible for all the couple's expenses and that WFWM was funded by Wal-Mart.

In February 2006, months before the fake blog was created, Edelman had hired Steve Rubel, a blogging expert, to help it use blogs more effectively. On October 16, 2006, less than a month after the creation of the fake blog, Richard Edelman confessed publicly on his own blog saying said that the whole thing was his fault. Messrs Edelman and Rubel also declared their support for the ethical standards of WOMMA (Word of Mouth Marketing Association).

In acting as it did, Edelman indeed violated the WOMMA code of ethics, which it had helped draft. The firm was not transparent about its role in the blog. WOMMA therefore placed Edelman under 90 day-review. WOMMA asked it to carry out six corrective actions, which including writing a report to the organization explaining the incident and making a commitment to participate in future ethics programs offered by the organization.

Kailey Astor's⁴⁵ article published in *Strumpette*, the public relations industry's leading journal, even called for the resignation of Richard Edelman and Steve Rubel on October 17, 2011, following Edelman's apology. Astor also expressed the view that public relations professionals have no business using the blogosphere.

However, according to columnist Li Evans, the social media industry is young and the rules are as yet ill-defined. It's only natural that mistakes will be made; the important thing is to promise not to repeat them and to develop strategies to avoid them. He points out that every company is different and reacts differently to the errors it makes. In this case, Edelman was slow to respond but admitted its mistakes, apologized and pledged to work on ethical standards⁴⁶. Nevertheless, Evans says, the reputation of public relations firms had just taken a hit⁴⁷.

Columnist Pallavi Gogoi, reporting the remarks of Paul Rand, an associate of the public relations firm Ketchum, points out that no one can hide anything in the blogosphere today. If you try to hide something, it will come out eventually and you will be excluded. This is why, Gogoi says, Edelman may end up suffering from the scandal even more than Wal-Mart⁴⁸. Similarly, Tom Siebert judges that

⁴⁵ K. Astor, "Call Goes Out for Edelman and Rubel to Resign," October 17, 2006..

⁴⁶ L. Evans, "Reflections: Edelman, WalMart & Flogs," October 22, 2006.

⁴⁷ L. Evans, "Edelman Takes Ownership of Walmart Blogging Mess," October 16, 2006.

⁴⁸ P. Gogoi, "Wal-Mart vs. the Blogosphere," *BusinessWeek*, October 17, 2006.

flogging became a disastrous means of communication for both the client (Wal-Mart) and the agency (Edelman)⁴⁹.

Columnist Dave Taylor, wonders how it is that after violating WOMMA's code of ethics, Edelman is still a member. He points out that in an organization like the National Speaker's Association, once a violation of ethical standards is noted, exclusion of the offending party is automatic. Dave Taylor is especially surprised at the speedy forgiveness by the blogosphere. He recalls that despite Edelman's apologies, the firm is still accountable under the WOMMA Code of Ethics. WOMMA members who violate the association's ethical standards must suffer the inevitable consequences if ethics and transparency are to be promoted in the blogosphere, he says⁵⁰.

Finally, blogger Jérôme Serre argues that ultimately, it was an anti-Wal-Mart blog, funded by trade unionists, who unmasked the fake blog⁵¹.

Le journal de ma peau (Vichy)

"Le journal de ma peau" (diary of my skin) is a case of a flog that appeared in France. On April 27, 2005, Euro RSCG 4D created the blog *Le journal de ma peau* for Laboratoires Vichy, the makers of L'Oréal. The blog was presented as the diary of "Claire," who every day of a twenty-day treatment, posted her reflections on her experiences with a product for rejuvenating the skin. Claire was actually a fictitious character.

A week after the blog was launched, suspicions were aroused that it was actually a concealed form of advertising. Vichy owned up that the blog was theirs and apologized. Around the month of June 2005, bloggers suggested getting real women involved in testing the product. Vichy got together a dozen bloggers who tested the product and posted their comments freely on the same blog. Although the blogosphere seems to have approved of these tactics, this example once again shows that the client and agency started out by neglecting three basic rules that govern the blogosphere: authenticity, transparency and freedom of expression.

In one of his articles⁵², Loic Le Meur says that although creating a blog for your company is certainly one way to expose yourself to potential criticism, its primary purpose is to make the world more aware of your company's existence. Having your own blog also allows your company to prevent negative comments made by bloggers topping the list on search engines. He points out that by using a blog, just one client can influence many consumers and that blogs have no borders. The author also stresses that the company should be seen as taking consumers' problems into consideration and being prepared to discuss them in public. To do this, the company must intervene directly when bloggers post negative comments. In so doing, the company is making itself available to the public and is open to comments

⁴⁹ T. Siebert, "Edelman Apologizes For Wal-Mart 'Flog'," *Media Daily*, October 17, 2006

⁵⁰ D. Taylor, "Edelman screws up with duplicitous Wal-Mart blog, but it's okay?" October 16, 2006.

⁵¹ J. Serre, "Wal-Mart, le blog et les petits malins," October 24, 2006.

⁵² L. Le Meur, "Blog de marques et de chefs d'entreprise," September 11, 2005.

and is therefore demonstrating transparency. Le Meur sums up by declaring that although there are risks associated with the use of blogs, they are very useful when they are authentic and transparent and may help reap significant benefits.

Mcdmillionwinner and 4railroads (McDonald's)

In 2006, McDonald's launched two fake blogs, "mcdmillionwinner" and "4railroads," to promote its Monopoly contest. There was no indication that these blogs were connected to McDonald's. The first blog, "mcdmillionwinner" was maintained by Marcia Schroeder, the 2004 Monopoly winner. Marcia blogged about her daily life while subtly slipping in remarks about McDonald's and their Monopoly contest. The second blog, "4railroads" was allegedly maintained by a certain "Stanley Smith" who wrote about his quest for the four winning Monopoly pieces. Actually, "Stanley Smith" never existed; the blog was set up by the public relations firm JSH & A.

Kristin Zanini, who works for JSH & A, confirmed that her agency had been hired by McDonald's and had created the two fake blogs. Also, she revealed that Marcia Schroeder, unlike "Stanley Smith," was the real-life author of the first blog.

Blogger Scott Howard argues that, when honest, blogs can be beneficial public relations vehicles. They allow consumers to get involved⁵³, he says. Blogger D. Trac says that companies create blogs to promote their products and services, but also to allow their employees to respond to consumers. Howard emphasizes however that websites must remain transparent and clearly show they are owned and operated by a company. If not, they are guilty of a deceptive practice, which is expressly prohibited by the Public Relations Society of America code of ethics.

All I Want for Christmas Is a PSP (Playstation)

"All I Want for Christmas Is a PSP" is another example of a marketing campaign disguised as a blog. The website presented the blog of Charlie, who wanted to help a friend, Jeremy, to get a PlayStation Portable (PSP) game console for Christmas. The site was developed by Sony and the URL was registered under the name of the marketing firm Zipatoni, which was hired by Sony. It was Zipatoni that proposed to the idea of a fake blog to its client. When the flog was revealed, Sony posted its apology on the same website and admitted that the characters were fictitious.

⁵³ Howard Scott, "McDs go down the flog route with Stanley Smith and 4railroads," November 1, 2006.

Blogger Jennifer Laycock sees nothing wrong with using a blog to promote one's services provided it is done in a transparent way⁵⁴. However, she says, using a flog to promote one's services or products is definitely inappropriate⁵⁵. Noelle Weaver recounts in one of her articles that the mounting debate over dishonorable marketing practices was brought up once more by the FTC in Washington in December 2006. The FTC proposed that companies and endorsers clearly reveal their relationship. According to Ms. Laycock, this change goes along tune with consumers' feelings on the issue⁵⁶.

In conclusion

Based on this review of the most widely publicized cases of flogging and astroturfing, we have two observations to make:

First, it is clear that this practice is condemned by the media, the blogosphere and by the codes of ethics of the advertising and public relations professions. In fact, everyone sees these practices as misleading and counterproductive. Such practices abuse the trust of readers and tarnish the reputation of the profession.

Second, it seems that the philosophy, both within the blogosphere and on social networks, should be transparency, authenticity and freedom of expression. Every instance of flogging or astroturfing violates one or more of these characteristics.

That said, should we assume that there has been a slow-down in flogging and astroturfing activity since these large companies were caught red-handed? Let's take a closer look at what's happening today.

⁵⁴ D. Trac, "Flogging," November 1, 2008,

⁵⁵ J. Laycock, "Zipatoni and Sony Slammed for 'Flogging'," December 14, 2006.

⁵⁶ N. Weaver, "What We Should Learn From Sony's Fake Blog Fiasco?" December 16, 2006.

CHAPTER 2 – THE CURRENT SITUATION

The scope of the phenomenon

It is very difficult to assess the current extent of the phenomenon. Sophie Boulay is a doctoral student in the Faculty of Communication at UQAM⁵⁷, doing research on astroturfing. Her data shows that in the vast majority of astroturf strategies, the primary means of communication chosen are new information technologies (Web and Web 2.0). There seemed to be a resurgence of astroturfing with the arrival of social media. Earlier, this type of practice required many resources. The new media have made it far easier.

Laureen Kapin and Stacey Ferguson of the Federal Trade Commission (FTC)⁵⁸ say, “It is really hard. It is better to always see things with a grain of salt on the Internet (...) Before, it was very clear what was advertising. Now, the lines are blurred.” Indeed, on the Internet, it’s sometimes difficult to distinguish fact from fiction since most web contributions can be made anonymously.

In the same vein, Manon Niquette, a professor in the Department of Communication at Université Laval, argues in her article “Marketing pharmaceutique et médias sociaux : Analyse critique du discours d’une page FacebookMD sur le TDA/H”⁵⁹ (pharmaceutical marketing and social media: a critical discourse analysis of a FacebookMD page on ADHD) that “for communication researchers, the work needing to be done in an interactive context as hybrid and specious as Web 2.0 is to develop analytical tools that will enable them to see how slipping between the registers of social information, social support and advertising actually occurs “(Niquette, 2010, p.108). Indeed, the medium being what it is, actually determining an instance of flogging or astroturfing is no easy task and, to date, no tool has been developed to identify these practices beyond the shadow of a doubt.

Ms. Boulay agrees. She says we have no chance, as citizens, of recognizing these practices every time they occur. There is no sure-fire technique. Those who can recognize them are experts, computer wizards and, often, competitors who are alert to what is being said about them and their competitors. There are also community managers who are able to recognize the words and expressions used in astroturfing.

⁵⁷ The interview with Ms. Sophie Boulay, doctoral candidate in the department of communication at UQAM, took place at our offices on October 14, 2011 .

⁵⁸ The interview with Mss. Kapin and Ferguson of the FTC took place by telephone on October 27, 2011.

⁵⁹ NIQUETTE, Manon. “Marketing pharmaceutique et médias sociaux: Analyse critique du discours d’une page FacebookMD sur le TDA/H” in *Revue Internationale sur le Médicament*, vol.3, 2010.

As part of his research, Jeff Hancock, a communications professor at Cornell University⁶⁰, is attempting to develop a computer program capable of recognizing astroturfing on sites that review products and services, such as tripadvisor.com. This is what he says of his research:

When we asked people questions about when people lie and when, they had a strong bias that deception takes place more on the Internet, but a lot of our work shows that in everyday lives, they're quite honest in online media. So there is this sort of disjunct. Now, the problem arises when they encounter other sorts of spaces where people are being maliciously deceptive. For some reason, their skepticism that comes up on a customer survey doesn't make them able to detect deception. If you try to detect deception relying on some set of cues that you think is always going to detect deception, you will fail. The reason for that is that there are no cues that humans can use regularly across all perception contexts. Particularly face to face, but also online.

In fact, Dr. Hancock says that detecting astroturf requires an in-depth investigation that the individual consumer is unable to perform:

You have to be able to detect that all these tweets, for instance, are coming from the same IP address or are coming from two tweeters that only follow each other, and follow no one else and nobody else follows them. There are some efforts in the US. There is a group called the Truthy Project in Indiana University, I believe, and they're trying to use a combination of crowd sourcing and algorithms trying to detect social network patterns of astroturf.

Since the science is not yet sufficiently developed to detect false instances, it is impossible to accurately measure the magnitude of the problem.

Hancock says that there are nonetheless certain assumptions that can be made about the percentage of astroturf on travel review sites. In an interview, he estimated the percentage of astroturf on the "tripadvisor" site at 20% of the contributions. That's quite a lot! On the other hand, he stated that his own research points more to an average of 10% of astroturf on these sites. The fact remains that, for any given hotel, out of 50 contributions, between five and ten are false. Quite enough to confuse the issue.

As for flogs, Michelle Sullivan⁶¹ of the PR firm Hill + Knowlton Strategies believes the signs for recognizing fake blogs are not stylistic in nature, "I can't give you any specific clues to help you recognize fake blogs." In the past, in the case of L'Oreal in France, we said that we could recognize the fake blog: it was too beautiful, too well written. "I think that's a misunderstanding of the bloggers who really apply themselves" Ms. Sullivan added. "Quality is not an indicator for recognizing a fake blog." She believes it is easier for the community, the blogosphere, to recognize fake blogs since they know each other so well. In contrast, the average consumer has no access to this network. Anyway, as in the case of astroturf, a formal investigation is needed to prove beyond a shadow of a doubt that a blog has

⁶⁰ The interview with Dr. Hancock took place by telephone on October 13, 2011.

⁶¹ The interview with Ms. Sullivan took place by telephone on December 9, 2012.

hidden advertising intentions. Ms. Sullivan did state, however, that she had met with members of PR agencies who admitted they made blogs or astroturf.

Who makes flogs and astroturf?

Many people and organizations resort to flogs or astroturf. While the people interviewed believe that anyone with Internet access can set up this kind of strategy, there is still some speculation as to who actually makes flogs and astroturf.

Most of the cases of flogging that we identified were by public relations firms or advertising agencies who created them for the benefit of large corporations. However this proves only that the most publicized cases involved well-known companies.

Anyone can create astroturf. Moreover, according to Ms. Boulay, astroturfing occurs in every domain: government, political parties, corporations. It aims, among other things, to influence the public agenda, and often makes its appearance in association with a draft legislation or regulation.

A review of the cases reveals that anyone wishing to participate in a forum or create a character on a social network can do so with ease. Consequently, the creators of astroturf may be writers, hotel owners, press officers, marketing firms or many others.

Guillaume Brunet, Vice President, Social Media at the advertising agency Cossette Communications⁶², considers that a small percentage of those who make fake blogs or astroturf do so by mistake or because of a poor knowledge of the medium. He believes, however, that the excuse of clumsiness can only be used rarely, since in his view, those who indulge in flogging or astroturf cannot be unaware that such practices are unwelcome.

Why do they do it?

All the experts we spoke with in the context of this study already agree that flogging and astroturf are inappropriate. So why do people use one or the other of these methods to advertise their products, services or businesses? Are the motives always bad?

Some see no harm in flogging or astroturfing. Ms. Michelle Sullivan, of the PR firm Hill+Knowlton Strategies, says that some companies and firms who create astroturf or flogs feel quite comfortable about employing such practices. She relates her meeting with members of the PodCamp Toronto social media community who created astroturf or blogs for clients without disclosing their identity. "For those people, there was no real difference between writing press releases in which you insert quotations and making astroturf or fake blogs. I personally think there is a big difference," Ms Sullivan said.

⁶² The interview with Mr. Guillaume Brunet took place by telephone on January 17, 2012.

Guillaume Brunet of the advertising agency Cossette Communications also believes that some forms of flogging or astroturf can be ascribed to ignorance or clumsiness. “There are clumsy practices in which certain individuals lacking in transparency attempt to apply the old model to new media.” According to Brunet, applying the old advertising and public relations model means controlling the message, controlling what is said of a company or a product. While that kind of information management was possible before the advent of electronic social media, one cannot control everything that can be said on the Internet. Mr. Brunet believes that any person or company wishing to engage in social media has to set this model aside. “One of the most important criteria that we emphasize to our clients when it comes to social media is transparency,” he said. “And transparency is totally opposed to the spirit of creating a fake blog.”

However, Brunet believes that there are few people who would not see dishonesty in this kind of practice. After all, creating astroturf or flogging is fundamentally lying about one’s identity. This is one point on which the experts are unanimous.

We should add that the relative ease of astroturf or flogging, coupled with the fact that these practices are difficult to identify, certainly encourage some people to embark on the enterprise. Whether they are malicious or just misinformed, those who set up a fake blog or use a false identity in social media run little risk because, as we will see further on, there is no specific regulation on this practice in Canada. On the other hand, a great effort needs to be made toward education and regulation.

What are the effects on the consumer?

According to Sophie Boulay, people know more about astroturfing and flogging than they think. They might not know the name of the phenomenon or how widespread it is, but they are familiar with scenarios in which someone pretends to be a citizen in order to influence the public (on travel review sites, for example). In return, as we have seen, it is virtually impossible for the average consumer to distinguish real contributions from fake contributions when surfing through social media. Since the consumer can rarely identify the mercantile intentions of astroturfing and flogging, we wonder what the effects of these practices might actually be.

At first sight, these practices may have important consequences for consumers who have been fooled, Brunet says. “It is clear that there can be adverse effects for the vulnerable consumer,” he said. “For example, he can choose a hotel that features extraordinary comments on the review sites. However, upon arrival, he finds that the facility is really not up to par, he paid too much, there is no service, or the pool he saw on the Internet is being repaired, etc.” These are all things that could have been mentioned on the review sites, but if the consumer did not do any extensive research, he cannot know. “This consumer has not taken advantage of all the benefits social networks offer. Obviously, in this context, he is going to be disappointed.” So at the individual level, such practices do victimize consumers.

According to advertising theorist Jean-Pierre Teyssier, such practices have been part of our lives for a long time. Consumers know that advertisers want to sell them something. By learning to recognize the stylistic codes of advertising, they can make informed choices because they use their judgment to

determine whether they are being sold a dream or reality⁶³. When the intentions of the advertisement or the mercantile message are concealed, the distance that the consumer can maintain in relation to the message is destroyed.

However, flogging and astroturf may have even more disastrous consequences for the practice of public relations and advertising. According to Sophie Boulay, the consequences can actually be quite serious. They are in fact clandestine, deceptive practices. People and organizations that indulge in astroturfing and flogging may see no short-term consequences, but it remains to be seen what kind of wider, systematic impact they can have over the long term. “From the perspective of the relationship between the consumer and the industry”, she says, “a certain degree of cynicism is setting in, even a total rejection of the credibility of citizens’ comments in the social media and the Internet in general. The citizen’s voice will no longer be trusted.”

Jeff Hancock of Cornell University supports Sophie Boulay’s opinion, but adds his own two cents. He points out that if the relationship between industry and the consumer is worn away, the credibility of the review sites themselves is in danger:

All of these systems – whether it’s advertising, or recommending systems, or reviewing – are based on trust. Any system that is based on trust has a signal to noise ratio. If the noise – which is deception – gets too high, people stop using the system. Whereas the user systems such as hotel reviews are still widely used, everybody uses hotel reviews now. The signal clearly is valuable enough. Is there deception? Yes. But there is apparently sufficient signal in there so people find it useful to spend hours looking through hotel reviews before making an investment of their vacation dollars, for example.

Thus, in Hancock’s view, the proportion of fake contributions is not yet high enough for users to no longer trust this kind of platform. However, we believe it is crucial that these practices be controlled before fake contributions make such sites obsolete. In the words of Guillaume Brunet, the added benefit of social media over other media is that they allow dialogue between the consumer and the company. Communication is no longer one-way, as was the case with print ads, radio and television. Advertisers, public relations people and by extension, the company, can take the pulse of consumers. At the same time, consumers not only have access to far more information than ever in making judicious purchasing decisions, but this information is easily accessible. It would be unfortunate if a system that is so useful for the industry and the consumer were to collapse as a result of poor supervision and pollution by bogus posts.

Whether to protect consumer rights, to ensure the survival of these useful platforms, to maintain the relationship of trust between advertiser and audience or simply to maintain the credibility of the advertising and public relations industries, all our experts believe that these practices should be avoided. They all support this opinion by emphasizing ethical considerations and codes of ethics.

⁶³ Jean-Pierre Teyssier. *Frapper sans heurter. Quelle éthique pour la publicité ?* Armand Colin, Paris, 2004, 330 pages, p. 102

CHAPTER 3 – ETHICAL AND LEGAL CONSIDERATIONS

Unanimity among the experts with regard to ethics

The participants we interviewed, whether they are academics, industry representatives or lawyers, all agree that the creation of flogs or astroturf is unethical. In one way or another, they all expressed the feeling that these practices are misleading or deceptive. Most also told us that these practices are dangerous for the advertising or public relations professions. While these practices exist and are widespread, they are clearly unethical in the eyes of the professions and the codes of ethics they are required to observe. The expert opinions on advertising ethics that we consulted have helped to clarify why these practices are considered inappropriate.

Historically, the tendency in advertising ethics has been to clamp down swiftly on false and misleading practices. According to Jean-Pierre Teyssier, author of *Frapper sans heurter. Quelle éthique pour la publicité?*⁶⁴ The first self-regulatory efforts of the profession were motivated by the desire to establish a relationship of trust with the public:

It was the professionals themselves who first expressed the desire to regulate their practices. They did so to better organize and discipline a profession that needed more solidarity between the press, the brokers and the agencies. But, as the specialized press of the day revealed, the first goal for this developing activity was to build confidence among the public, by eliminating any misleading practices that might alienate them. It was the respect owed to the public that was at the origin of self-regulation in advertising. (Teyssier, 2004, p. 88)

It was in 1937 that the first self-regulatory advertising initiative took place in France. The first paper, inspired by *Truth in Advertising* that appeared in the United States in 1911, is entitled *Code de pratiques loyales en matière de publicité* (issued by the *Office de contrôle des annonces*, founded in 1935). The very first professional code of ethics for advertising already stressed that misleading or deceptive advertising must be avoided in the interests of maintaining the trust of consumers.

Teyssier even goes so far as to say that hiding its intentions is the worst crime an advertisement can commit:

Quite definitely, the worst lie is for an advertisement not to present itself as such because it induces the public to drop its guard. As when it slips out of the space reserved for it and hides inside editorials or in radio or television programs. This is why the basic rule of advertising is clearly that it should announce itself as such in the spots that it bought for that purpose. Self-identification is the first rule of ethical advertising; we repeat, it is the golden rule (Teyssier, 2004, p. 101)

Thus, practices such as flogging and astroturf not only constitute misleading advertising because they conceal their identity, but because they violate the golden rule of advertising ethics.

⁶⁴ Jean-Pierre Teyssier. *Frapper sans heurter. Quelle éthique pour la publicité ?* Armand Colin, Paris, 2004, 330 pages

Claude Cossette, a Canadian pioneer in advertising, in his book *Éthique & publicité*⁶⁵, feels the same way as Mr Teyssier. He criticizes advertising professionals quite severely, stating in particular that they are only concerned about the ethics of what they do in terms of their impact on the credibility of the client. His views on questionable advertising practices are harsh, to say the least. He especially criticizes the relationship between advertisers and their audience:

In fact, the consumer/marketer relationship is more akin to a transaction. Often, it resembles a game of cat and mouse: as the consumer begins to understand how a manipulative strategy works and how to find a loophole, the marketer will invent a new one. However, the more educated society becomes, the harder it will be to bamboozle the customer. [...] Advertisers constantly search for the trick that will elude the consumer's vigilance and judgment, usually playing on aspects other than rationality. It is only under such a condition that an ad has a sure chance of persuading. (Cossette, 2009, p. 89)

Cossette believes that as long as advertising is directed towards persuasion at all costs, it will never be taken seriously, respected or even considered a real profession. He also questions the obsession with navigating the fine line between ethics and unfair advertising.

In addition, some participants warned us of the importance of being constantly on the lookout for flogging and astroturf. In fact there is often a fine line separating an ad from a personal blog. Lauren . Kapin and Stacey Ferguson of the FTC and Guillaume Brunet, of Cossette Communications⁶⁶ are also of the opinion that if a blogger receives gifts, invitations to events or money from a company for talking about a product or service, it is essential that he should say so on his blog. If the blogger does not disclose the donations he receives for talking about a product, service or business, that is flogging.

Among bloggers themselves, the ethics of the issue are not so cut and dried. Gina Desjardins is a techno-journalist and one of Québec's best-known bloggers. She speaks of the enticements offered to bloggers and their relationship with public relations and marketing agencies:

Ever since companies recognized the influence of social media, there has been abuse. They try to buy off bloggers by sending them products and invitations. It's understandable that some bloggers would find it difficult to keep things in perspective. Several blog for free in their spare time because they have a real passion for the topic and lose their heads a little when the gifts start coming in. Some even take pride in being recognized by their favorite companies.⁶⁷

So even if bloggers write with the best intentions, they are likely to be lured because the advertising world is actively seeking their support. Lynne Faubert, blogger, copywriter and Secretary of the Board for the Association canadienne pour la presse gastronomique et hôtelière, talks about the ethical issues bloggers face:

⁶⁵ Claude Cossette. *Éthique & publicité*, Presses de l'Université Laval, Québec, 2009, 146 pages.

⁶⁶ The interview with Guillaume Brunet of Cossette Communications took place by telephone on January 17, 2012.

⁶⁷ Gina Desjardins. *L'éthique, les médias sociaux et la faute des agences de marketing*. Consulted on August 12, 2011 at <http://blogues.radio-canada.ca/triplex/2011/08/12/ethique-medias-sociaux-marketing/>

I have one observation to make: besides a few exceptions with an appetite for controversy, many bloggers are reluctant to be negative in their reviews, for fear, let's not hide it, that they will stop being solicited and receiving invitations. This is where the banana peel of integrity awaits. Some that I know and respect have one simple guideline: if they don't like it, they don't talk about it. You know the restaurants they enjoyed, but rarely the ones they hated.⁶⁸

While hardcore bloggers are proactive in broadcasting in their blogs the invitations they receive and do not hesitate to say what they like and don't like, the pressure of no longer being invited or receiving any gifts leads others to modify the tone or orientation of their blogs. In fact, these two bloggers confirmed that certain agencies completely cease to invite or "spoil" bloggers who have made negative comments. Other agencies will even formally express their dissatisfaction with certain reviews. This shows that even if we are not talking about actual flogging, there still exists some bias in these posts.

All the experts agree that the identity of the advertiser should always be disclosed. For them, it's a question of showing one's credentials, even when the commercial link is tenuous. The real world of blogging and social media however, paints a slightly different picture. Bloggers sometimes feel pressured. It is therefore all the more important to think about ways of avoiding being ambushed by advertising on blogs and other social media. The healthy relationship between the consumer and the advertiser depends on it.

While there is consensus on the notion of ethics in relation to flogs and astroturf among all the participants in this study, the same cannot be said of their attitude toward the law. We include below some examples of laws and then present the divergent legal opinions of our experts in considering what could be done in Canada in this regard.

The law as it stands in Canada

First of all, the federal *Competition Act*⁶⁹ concerns false or misleading representations in competition-related offenses. This law prohibits promotions that employ false or misleading representations on a material fact. One of the points considered in determining whether a representation is false or misleading is the general impression conveyed. The law also prohibits other questionable practices, such as making false or misleading representations by means of telemarketing.

The *Consumer Protection Act*⁷⁰ (CPA) prohibits merchants from making false or misleading representations to consumers. The Act also prohibits other behaviour. For example, a merchant may not falsely claim that a product or service will result in pecuniary benefit, meet a particular standard or that it is offered as a result of a specific circumstance. Nor may a merchant make false representations concerning the profitability of a business opportunity or distort the meaning of any opinion or testimony. Although these other behaviours do not appear directly related to flogs and astroturf, the way they are dealt with demonstrates the law's requirements with regard to truth and honesty. In

⁶⁸ Lynne Faubert. *De l'éthique des blogueurs*,. Consulted on August 11, 2011 at <http://lynnefaubert.com/fr/2011/08/11/bloggers-ethics-in-french-only/>

⁶⁹ R.S.C. 1985, c C-34, ss. 52(1), (4), 52.1(3), (4) and 74.01(1)a)

⁷⁰ R.S.Q. c P-40.1 (hereinafter "CPA"), ss. 219-222, 225, 229, 238, 239 and 242

addition, Section 242 of the CPA explicitly prohibits a merchant from omitting to mention his identity and the fact that he is a merchant, in any advertisement. The *Regulation* respecting the *Consumer Protection Act*⁷¹ prohibits misleading representations in advertising directed at children.

Ontario's *Consumer Protection Act, 2002*⁷² prohibits any unfair practice and associates false, misleading or deceptive statements with unfair practices. The Act gives several examples of such statements, such as when a consumer is misled with respect to the purpose or intent of a solicitation or communication. This may be applicable to the context of fake blogs and astroturf because the consumer is in fact misled as to the purpose of the communication.

The Act also associates unconscionable representations with unfair practices. Unconscionable representations are established taking into consideration factors such as the vulnerability of the consumer and the issuance of a misleading opinion.

British Columbia's *Business Practices and Consumer Protection Act*⁷³ prohibits any deceptive presentation or practice made with regard to a consumer. The Act specifies that a representation made in the form of an editorial, for example, whose primary purpose is to sell products or services, must be clearly identified as an advertisement. Otherwise, the representation will be considered to be deceptive. A fake blog would thus seem to be a deceptive representation. When a consumer alleges that a supplier has engaged in a deceptive practice, the burden is upon the supplier to prove that he has not done so.

The law also prohibits any unconscionable act or practice made with regard to a consumer. Unconscionability is evaluated in terms of all the circumstances that the supplier knows or should know. Again, when a consumer alleges that a supplier has engaged in an unconscionable practice, the burden is upon the supplier to prove that he has not engaged in the said practice.

Alberta's *Fair Trading Act*⁷⁴ prohibits all unfair practices. The Act defines an unfair practice as taking advantage of a vulnerable person or using exaggeration or ambiguity with regard to a material fact related to a consumer transaction, i.e. a fact that affects the consumer's decision. It is also an unfair practice to issue a misleading opinion. Specifically, the law prohibits the publication of an advertisement for a product or service if the advertisement contains an unfair practice.

Codes of ethics and professional conduct

Advertising Standards Canada⁷⁵ advocates truth, clarity and accuracy in advertising. It states that an advertisement should not be presented in a manner that conceals its commercial intent. This seems very similar to the situation in fake blogs. Testimonials and other expressions of opinion must reflect the

⁷¹ R.R.Q., c. P-40.1, r. 3.

⁷² S.O. 2002, c. 30, Sched A, ss. 14, 15, and 17.

⁷³ S.B.C 2004, c. 2, ss. 4, 5, 8 and 9.

⁷⁴ R.S.A. 2000, c. F-2, ss. 6 and 9.

⁷⁵ *Advertising Standards Canada*, ss. 1-8, consulted at: <http://www.adstandards.com/en/>

actual people who made them and be based on a true experience of the product or service being promoted. They must not be misleading. This would also apply to opinions expressed in blogs or on social networks.

For the *Better Business Bureau*⁷⁶ it is the responsibility of the advertiser to ensure that an advertisement is truthful and not misleading. It prohibits the use of any misleading, deceptive or fraudulent advertising. In line with these principles, an advertisement may be judged to be misleading due to the omission of a material fact, even if each statement considered separately is true.

One of the stipulations of the *Code of Advertising* is that the prices and descriptions of an advertised product must be clearly stated, without leaving the consumer with a misleading impression. The Code refers to the Federal Trade Commission's⁷⁷ guidelines on testimonials and endorsements, which require the practice of good faith, truth and transparency.

The Law in the United States and the United Kingdom

The example of the United States

The *Federal Trade Commission* (FTC) is the U.S. government body responsible for the application of competition law that regulates the *Federal Trade Commission Act*. The purpose of the Act is to regulate unfair competition, including deceptive practices⁷⁸. The part of the FTC Act that is relevant in this context is section 5. The FTC introduces Section 5 with the words, "Section 5 of the *FTC Act prohibits 'unfair methods of competition'* and was amended in 1938 also to prohibit 'unfair or deceptive acts or practices'."⁷⁹ The FTC developed the *Endorsement Guides* as an adjunct to the Act.

The *Endorsement Guides* provide a good illustration of how the application of section 5 of the *FTC Act* concerning professional and citizen endorsement. In an interview⁸⁰, Ms. Kapin and Ms. Ferguson said that these guides clarify and contextualize the content of Section 5. They are intended for the use of both the consumer and of industry, the former to understand how it protects them and the latter to know what they can and cannot do when issuing professional or citizen endorsements.

The revised guides are presented on the page entitled "The FTC's Revised Endorsement Guides: What People are Asking":

The revised Guides – issued after public comment and consumer research – reflect three basic truth-in-advertising principles:

- Endorsements must be truthful and not misleading;

⁷⁶ *Code of Advertising*, ss. 6, 7, 9-11 and 15, consulted on 10/13/11 at: <http://www.bbb.org/us/code-of-advertising/>

⁷⁷ 16 CFR Part 255, *Guides Concerning the Use of Endorsements and Testimonials in Advertising*, ss. 255.0 to 255.5, consulted on 10/20/201 at: <http://www.ftc.gov/os/2009/10/091005revisedendorsementguides.pdf> .

⁷⁸ <http://www.law.cornell.edu/uscode/text/15/41>

⁷⁹ <http://www.ftc.gov/opp/gpra/append1.shtm>

⁸⁰ The interview with Ms. Kapin and Ms. Ferguson of the CTF was conducted by telephone on October 27, 2011 .

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- If the advertiser doesn't have proof that the endorser's experience represents what consumers will achieve by using the product, the ad must clearly and conspicuously disclose the generally expected results in the depicted circumstances; and
 - If there's a connection between the endorser and the marketer of the product that would affect how people evaluate the endorsement, it should be disclosed.⁸¹

The third principle presented here is the one that most concerns us at present, as it relates to the connection between the person who endorses a company or product and the advertiser. It is exactly this connection that is not divulged in flogs or astroturf. This connection between endorser and advertiser has always been prohibited under Section 5 of the *FTC Act*. However, as Ms. Kapin and Ms. Ferguson explained, the FTC deemed it necessary to make a new version of their guides specifically and directly to target prohibited practices on the Internet – thereby avoiding any ambiguity.

The same document, “The FTC’s Revised Endorsement Guides: What People Are Asking” clearly explains the reason for revising the guides.

Why did the FTC revise its Endorsement Guides to include social media?

The FTC revised the Guides because truth in advertising is important in all media – including blogs and social networking sites. The FTC regularly reviews its guides and rules to see if they need to be updated. Because the Endorsement Guides were written in 1980, they didn't address social media. The legal principles haven't changed. The FTC revised the examples to show how these standards apply in today's marketing world.⁸²

Incidentally, Ms. Kapin added during the interview that the FTC intends to take into account all the practices referred to in the guide and to keep up to date on the latest developments. In fact, since the guides were conceived in the 1980s, it was impossible to foresee the changes brought about by the Internet.

It is nevertheless important to know that the *Endorsement Guides* were specifically designed to raise awareness among industry and consumers. Section 5 of the *FTC Act* is the law that is applied in the context of flogging and astroturf. However, these practices have been added to the *Endorsement Guides*, since, in the eyes of the FTC, they are illegal.

According to Ms. Ferguson and Ms. Kapin, there are several factors that have to play together for the system to work: education and awareness, self-regulation of industry, law enforcement and prosecution. Just one of these factors is not enough. As they say, “It's a tried and true package. It worked in other areas.”

Ms. Ferguson and Ms. Kapin presented one of the best examples of the application of Section 5 in the new context of the Internet and social media. The company Reverb Communications had engaged their employees in promoting applications for smart phones. This was realized when each of the applications

⁸¹ <http://business.ftc.gov/documents/bus71-ftcs-revised-endorsement-guideswhat-people-are-asking>

⁸² *Ibid.*

related to a particular developer received a large number of positive comments. The comments were too flattering. Legal proceedings were initiated against the company, but ultimately, an out-of-court settlement was reached⁸³.

The example of the United Kingdom

A set of regulations in the UK, *The Consumer Protection from Unfair Trading Regulations 2008*⁸⁴, prohibits certain types of business practices similar to flogging and astroturfing. This regulation was adopted under Paragraph 2(2) of the *European Communities Act 1972*⁸⁵, the law that followed the United Kingdom's entry into the European Economic Community.

The Consumer Protection from Unfair Trading Regulations came into force on May 26, 2008⁸⁶. This regulation prohibits any unfair business practices under Paragraph 3 (1). Paragraph 3 (4) states that the practices listed under Paragraphs 5, 6 and 7 and in Schedule 1 of the *Regulation* constitute unfair business practices.

Paragraph 5 deals with misleading actions. Specifically, Paragraph 5 (2) states, among other things, that the overall presentation that misleads the average consumer and upon which the consumer has relied is taken into account in determining whether a commercial practice is misleading. Paragraph 5 (2) also states that a commercial practice that contains false or misleading information relating, for example, to the identity of the merchant, deceives the average consumer since the latter trusted it in reaching his contractual decision with the merchant.

Paragraph 6 deals with misleading omissions. Commercial practices that hide their true commercial nature are included in Paragraph 6 (1) d). Paragraph 6 (1) also covers business practices that conceal or fail to disclose material information. Paragraph 6 (4) states that when a commercial practice is regarded as an invitation to purchase, the merchant's identity is material information.

Paragraph 7 deals with aggressive commercial practices. A commercial practice is aggressive when, placed in context, it unduly influences the average consumer's decision whether to purchase.

Schedule 1 deals with commercial practices that are considered unfair in every circumstance. Paragraph 11 of the schedule refers to using editorial content in the media to promote a product when the merchant does not clearly disclose that he was behind this promotion.

⁸³ <http://www.ftc.gov/opa/2010/08/reverb.shtm>

⁸⁴ No. 1277, available on line at:

http://www.bailii.org/cgi/bin/markup.cgi?doc=/uk/legis/num_reg/2008/uksi_20081277_en_1.html&query=consumer+or+p+rotection+or+misleading+or+unfair+or+trading+or+deceptive+or+false+or+untrue+or+deceiving&method=boolean#Legislati on-ExNote.

⁸⁵ C. 68, available on line at: <http://www.legislation.gov.uk/ukpga/1972/68/contents>.

⁸⁶ Para. 1 of the *Regulations*.

As mentioned previously, all these business practices are unfair and prohibited under Paragraph 3. Any merchant who engages in these types of practices is guilty of an offense⁸⁷. The merchant can then be fined⁸⁸.

What needs to be done in Canada: divergent opinions

Our experts reacted to the issue of regulations rather differently than to the issue of codes of ethics. While they were unanimous in condemning the practice of flogging and astroturfing, opinions were sharply divided when it came to introducing federal or provincial regulations to curb the problem.

Of our participants from the world of advertising, only Guillaume Brunet of Cossette Communications believed regulation might be a good solution.

I think there are definitely advantages to regulating. Currently, we don't really have any formal tools in the profession. Here in Québec, we've had the example of Bixi, and fortunately, media people like Patrick Lagacé intervened. If such practices are known to two or three bloggers who talk about them with each other, they could remain active for much longer. Right now, we're relying more on public pressure, but I think, as a matter of fact, that regulation might be a very good thing.

This view surprised us. Claude Cossette, in his book *Ethics & Advertising* gives a very different portrait of the profession of advertising and its attitude toward the law:

Survey after survey on the morality of professionals, advertisers can be found at back of the pack with politicians and other hucksters. Advertisers are disappointed about being so discredited by the public. Why this implacable judgment on them? It's partly because, until now, they have acted more to defend their privileges than to defend the public interest. [...] Advertisers have yet to sanction their colleagues for their ethical breaches, which is one more reason why the advertising trade is not considered a true profession. If advertisers want to enjoy the consideration (and privileges) of professionals, they must understand that this also comes with its duties. And the greatest of these is duties are rectitude of mind, integrity, and ethics. (Cossette, 2009, p. 94)

This is harsh, even bitter criticism, but it nonetheless reflects the attitude of experts in the industry - with the exception of Mr. Brunet, of course. In an interview, lawyer James Musgrove said he believes such practices are expected of advertisers. "I'm pretty cynical, so I don't believe much that I read anyway. I'm not really surprised about it. I could see how people could be mildly frustrated if they thought it was real and it turns out it wasn't. I think most people approach life with some scepticism. I can't really believe that anyone would be shocked and appalled by that sort of publicity."⁸⁹ Musgrove's comments echo most consumers' suspicious attitude towards advertising.

⁸⁷ Paras. 9, 10 and 11 of the *Regulations*.

⁸⁸ Para. 13 of the *Regulations*.

⁸⁹ The interview with James Musgrove, a lawyer specializing in competition and advertising law at McMillan in Toronto, took place by telephone on December 19, 2011

Michelle Sullivan, of the agency Hill+Knowlton Strategies is perhaps a little more representative of the attitude toward advertising depicted by Mr. Cossette. “These practices are definitely negative, but you don’t want government interference, on the Internet,” she says. “The government must be aware that we love their support, but as soon as it begins to want to dictate, to regulate, it could spark a reaction.”

Since he has inhabited the advertising community for many years, we can imagine that Claude Cossette knows whereof he speaks. Danielle Lefrançois, of Advertising Standards Canada, assures us that the organization’s code is sufficient, since questionable practices are a rarity in Canada. She claims that Canadian advertisers are already very aware of such practices and do not accept or encourage them. She also believes that when there is growing awareness in the media, it makes consumers more alert. Claude Cossette, meanwhile, does not have much confidence in Canadian advertising standards and codes of conduct.

So we have organizations that make sure that we eliminate the worst excesses in advertising, but these same organizations are more like pet pooches than guard dogs because they are controlled by the advertisers themselves. Thus Advertising Standards Canada (or Normes canadiennes de la publicité in French) is made up of 170 members, all advertisers, agencies, media and suppliers. Where are the people, the politicians, the ethicists, the consumer advocates? Advertisers still refuse to submit to any kind of external control; they want to remain judge and jury. (Cossette, 2009, p. 71)

As Claude Cossette suggests, this code of ethics does not rely on any perspective external to the profession to ensure that it is implemented with no doubt as to its objectivity. Might it be the solution? Should we consider setting up an external, objective entity to ensure that a code of ethics is enforced? It would certainly be an idea to consider. Especially if Canada decides not to regulate.

As for our neighbours to the South, Ms. Ferguson and Ms. Kapin, of the FTC report that their organization saw fit to add an item on fake blogs and astroturf in its *Endorsement Guides* to let consumers and the industry know that these practices are illegal under U.S. law. Jeff Hancock of Cornell University believes that Canada should take a lesson from the U.S. and introduce regulation in this area.

Several participants raised the issue of jurisdiction over the Internet. The Internet knows no borders. Anyone browsing the Internet can visit websites all over the world. However, we know that with an IP address, investigators can find out where the messages are coming from. The question of jurisdiction, while relevant, should not deter us from limiting their occurrence on Canadian soil. Moreover, as we have seen, these practices are already prohibited in the U.S. and the UK. Musgrove, while conceding that constantly adding new laws can be counter-productive, says:

I always think that it’s wise to look at what the Americans are doing because our economies are so interrelated. In so far as you can keep on the same page, it just makes life simpler and easier – and frankly, especially as far as the Internet is concerned, the border is almost completely irrelevant. If someone puts on a fake blog about some product, it doesn’t really matter if they are in New York, Toronto or Montreal. And most products are available in all of these places. So, this is an issue where keeping more or less on the same page as much as we can makes sense.

Moreover, from the legal standpoint, lawyers Dominique Gervais of Option consommateurs and James Musgrove agree that these practices are already illegal in the eyes of Canadian law. They are misleading

advertising. Dominique Gervais even adds that the practice contravenes Section 242 of Québec's Consumers Protection Act, which states: "No merchant may fail to mention his identity, and the fact that he is a merchant, in any advertisement."⁹⁰ According to Nathalie Jackson of Québec's Office de la protection du consommateur⁹¹ (OPC), if such a practice becomes the subject of a formal complaint and is judged as possibly involving a prohibited practice, the OPC will assess the situation. If the practice does seem to be prohibited, it will be investigated and will result in appropriate action, ranging from issuing notice to correct the situation all the way to criminal prosecution. Ms. Jackson also informed us that section 316 of the *Consumer Protection Act*⁹² permits a consumer advocacy organization to seek an injunction. She warns, however, that such an order could incur significant costs.

However, our research revealed no case in Canada in which an injunction has been filed against a company for flogging or astroturfing. We know that consumers can also lodge a complaint with Advertising Standards Canada. However, Ms. Lefrançois, the agency's Communications Director, said she had received no complaints in this regard. We know that the Competition Bureau can also receive such complaints, yet our research did not turn up any relevant judgment.

Case law is often an effective deterrent against questionable business practices, as James Musgrove and Dominique Gervais confirm: "When a judgment is rendered against a company in a class action suit, or when a government entity, such as the Competition Bureau, imposes sanctions *and* the damage is severe, it can have a deterrent effect on other companies with regard to a particular practice," Gervais says. Musgrove supports this view by providing a compelling example:

A high profile case does a great deal in two respects. One: It gets public attention. Two: It gets the attention of advertisers. So, it not only does the enforcing in a particular situation, it also gets a lot of attention. When Bell got fined a few million dollars this year, it focused a lot of attention on "no disclaimers" and "proper pricing." I don't think it is the only way to get attention, but I think it is one important way. Taking a case or two that are extreme and pursuing them, is one way.

In short, Canadian law already prohibits this kind of advertising practice, albeit indirectly.

On the other hand, we believe that the rules are not sufficiently clear at present. We consider that the current codes of ethics are not regulated enough, as they do not specify the sanctions and they are not applied by an objective judge. We also believe that introducing specific regulations on this kind of practice would definitely have a powerful deterrent effect.

Our university participants agreed that there is a need for regulation. However, Sophie Boulay raised an important question. She says the legal, regulatory route is interesting, but what would constitute evidence? Who would be accused? The ramifications are immense and the scenarios are endless. That said, the big companies are more difficult to catch because they have the means to ensure that their strategies are extensive and well developed. Also, how does one determine what is astroturf and what is not? Who does one accuse? The initiator, the manager, the one who sends the message? Sophie

⁹⁰ R.S.Q., c. P-40.1, s. 242.

⁹¹ The interview with Mtre Nathalie Jackson took place on April 2, 2012.

⁹² L.S.Q., c. P-40.1, s. 316.

Boulay also raised the point that banning one specific practice does not ban another. She believes that companies would adopt a more backdoor approach if there were legislation.

Hence, we believe that if we do regulate, these are the questions that need to be asked and the best regulation is one that can encompass the widest possible range of astroturfing and flogging. The example of the United States, in fact, would be a good starting point. In addition, specific rules defining and prohibiting astroturfing and flogging would effectively eliminate uncertainty among honest bloggers about what they can and cannot do.

We also believe, as Ms. Kapin and Ms. Ferguson pointed out, that a good regulation is never applied in isolation. The FTC believes that the law must be applied, industry and consumers must be educated, and the whole process must be supported by a system of industry self-regulation. We agree.

CHAPTER 4 – OTHER SOLUTIONS?

Our participants showed no lack of imagination in coming up with ideas to improve the flogging and astroturf situation. The solutions they proposed are all aimed at preventing such practices and informing and protecting consumers.

Informing consumers, developing healthy Web search practices

In discussing solutions, the participants placed great emphasis on education and awareness. These aims can be achieved formally, but also by increasing coverage of the most problematic cases in the mass media. James Musgrove, Lauren Kapin and Stacey Ferguson believe that media attention always makes people a little more reluctant to indulge in the objectionable practice. Furthermore, when there is a lot of discussion in the media about a particular problem, consumers' suspicions are aroused. Danielle Lefrançois of Advertising Standards Canada added that there should perhaps be more education and awareness-raising among young people, as it is they who rely most heavily on social media. In their report, *The Science of Sharing, an Inside Look at the Social Consumer*⁹³, the firms Beyond, M Booth and Lexis and Next Fifteen Communications, found that the most intensive users of social media are young people. By the same token, they are more often exposed to practices such as flogging and astroturfing. However, they are also the most clued in about what is practiced on the Internet. We therefore believe that less committed users should be made aware of these phenomena as well.

That said, we wonder how consumers should be educated. While further investigation is definitely required to find the pedagogical means for educating the public, our experts nonetheless came up with some possible answers. "I think you always have to think critically, even with journalists," says Michelle Sullivan, of the agency Hill+Knowlton Strategies. "I am someone who believes that you should never trust a single source. You have to develop a critical stance towards both newspaper articles and blogs." How does one develop a critical stance toward flogging and astroturfing? Guillaume Brunet of Cossette Communications has two suggestions:

- Do your homework, do more research.

- When we finish shopping around and we've made our choice, why not use the social networks where our friends are? It's a good idea to use social networks to profit from the opinions and experience of those around us before making a final choice. In this way, we're in a sphere much closer to home, inside our own network, one that's less biased.

Users of social media use these channels regularly. For example, they can post a picture of such-and-such a camera to get the opinions of friends who are more into photography or may even be photographers. We can therefore use the reviews and comments sites to help us shop, but once we have made our choice, why not use our social networks?

⁹³ Beyond, M Booth and Lexis and Next Fifteen Communications. *The Science of Sharing, an inside look at the Social Consumer*, December 2011, p. 10, available on the Internet at: <http://bynd.com/wp-content/uploads/2011/science-of-sharing.pdf>

Michelle Blanc likes to talk of a network of brothers- and sisters-in-law. Social networks are a bit like that: You go to the people you know who are most informed about the topic you're interested in. In a sense, we already have our network of specialists around us. You can use the social media to talk about more than just the last hockey game; you can use them to get expert advice from people you know.

Mr. Brunet also told us that consumers should know more about how the social media and comment forum platforms work.

One tip: rely on trustworthy bloggers with a proven reputation or go to more formal, journalistic sites such as *Protégez-vous* in Québec, *Que choisir?* in France and *Consumer Reports* in the United States.

As for the format of these educational tools, some suggested a more conventional approach, such as a guide. Sophie Boulay of UQAM had a most innovative idea for developing an awareness campaign. "It would be better yet to use astroturf to point out how easy it is to be fooled," she said. "For example, someone clicks on a link and is told he was just fooled by false advertising."

James Musgrove and Michelle Sullivan believe that consumers and advertisers would both benefit from an accreditation system for blogs and social media and comment forum platforms. In their view, a government entity or an independent agency could grant flog-free or astroturf-free accreditation based on a number of criteria and ensure follow-up. "I think that bloggers might also respond well to this kind of initiative because they care so much about their reputation," Michelle Sullivan says. "For real bloggers who devote themselves, body and soul, for years, to their blogs, reputation is important. Personally, I would have nothing against this kind of initiative and would encourage my clients to adopt the seal." She adds that when consumers encounter someone who is not included in the register, they might be a little more wary or do a little more research on that person.

According to Jeff Hancock of Cornell University, informing consumers is just part of a package of measures capable of protecting consumers. He adds that there are also technological means for preventing such practices. These are presented below.

Preventive tactics

Jeff Hancock told us of programs that are able to detect "abnormal behaviour" on an electronic platform. "There is a technical part, there are tools - and we should be developing tools - that enable us to look at systems and detect anomalous behaviour. Credit card companies do this, banks do this, and the same sort of approach can and should be done for consumers."

Guillaume Brunet takes the idea of detection even further, saying that there could perhaps be a Web 2.0 type site where one could go to report, for example, the exaggerated contributions that one has found. He explains: "A site where the community could both flag sites and blogs where the interventions are questionable and also those that are trustworthy - by clicking on something similar to the *like* function in Facebook. That would give us a type 2.0 indication of where the fake comments are." Guillaume Brunet adds a caveat, however: "It's a very interesting idea, but then, these sites could be undermined by people posting false denunciations."

Sophie Boulay offers a similar solution, which could work well if the system is managed properly:

Users should also be encouraged to denounce instances of astroturfing and flogging, she says. For example, setting up a program for informing on astroturfing just like the ones for offenses such as fraud. Maybe this could be done by a consumer advocacy organization. It could be a tool that includes a blog, an interactive website, and a “Wall of Fame/Wall of Shame.” There is already an “# astroturf” hashtag on Twitter. This kind of tool could serve as a catalyst to get things moving, raise awareness and educate consumers about the phenomenon.

We even believe that this kind of tool could be a powerful deterrent.

Michelle Sullivan of Hill+Knowlton Strategies believes that it would help if bloggers could adopt a code of business ethics and follow it. “It would also be interesting to have a blogging policy. Some bloggers are already encouraging others to adopt one – for products, for example.” she said. “In blog groups and panels, the point is often raised that we absolutely must have a blogging policy to make it very clear how we want to deal with agencies, brands, what we are willing to accept or not, whether we want to be compensated or not.” We think that this personal initiative is very interesting if its authors respect it.

Finally, Guillaume Brunet believes that if the industry had a better understanding of these platforms, such practices would diminish. He explains:

I went to talks on “tripadvisor,” where it was emphasized how poorly educated people are. In these talks the view was expressed that in 33% of cases, negative comments could be turned into positive ones if the advertiser dealt with them. For example, if I posted a comment that said “What a bad experience I had at the Hôtel Germain!” The advertiser who responded by apologizing and offering a solution would have a 33% chance of my returning and posting a positive comment such as: “The hotel people have solved my problem and now I love the Hôtel Germain.”

Mr. Brunet believes that because some advertisers do not understand the platform, they never think to go online and reply to consumers. They are more inclined to add their own positive comments, whereas if they discussed directly with consumers, it could end up with the consumers themselves posting positive comments.

So we recognize that an education campaign on the electronic social media industry could help alleviate the problem. Mr. Brunet believes that when a consumer comes across a negative comment on one of the company’s platforms (whether it is Facebook or Twitter), it is akin to a proof of love. “I am very worried about the consumer who does not say anything or tells his friends not to do business with a company,” he says. “Someone who has expressed his dissatisfaction with one of our platforms is someone who is giving us a second chance - a chance to fix the situation.”

In conclusion, at the present time neither consumers nor the industry are sufficiently familiar with the operation, opportunities and risks associated with the use of blogs and social media. An education campaign should thus be considered for each group. In addition, a monitoring and complaint handling system must definitely also be considered.

CONCLUSION AND RECOMMENDATIONS

Now for the conclusions of this study.

First, we are able to see that the phenomenon exists and is sufficiently widespread to provide clear examples from major companies such as Wal-Mart, and PlayStation. On the other hand, because there is no way of detecting these occurrences without a thorough investigation, we cannot identify flogs and astroturf every time they occur and we have no way of accurately measuring the extent of the phenomenon. However, we can deduce that these practices are sufficiently common for the mass media to talk about them and that most people have at least some notion of what flogging and astroturfing entail.

We also found that there is currently no formal tool capable of recognizing these practices with certainty. A lengthy investigation has to be conducted to detect flogging and astroturfing every time they are suspected.

Some countries such as the U.S. and the UK have seen fit to regulate these specific practices, but not Canada. The only Canadian law currently applicable is the one respecting false or misleading advertising. Moreover, according to our research, this law has not yet been enforced to individuals or companies accused of flogging or astroturfing, which means that the case law is nonexistent, as is any persuasive deterrent. In Canada, there is no formal process for handling external complaints nor any organization specifically mandated to do so.

Among the avenues to be considered, we have selected the following:

We believe it essential that there be specific regulations to govern these practices and ensure that the industry complies with their provisions. Incidentally, at the time of writing, we found that there is a law sanctioned by the Canadian federal government. It is important to note that this law - *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*⁹⁴ - is not yet in force. We attempted, in the Table of Public Statutes and Responsible Ministers, to find the date of entry into force, but found nothing in that regard. It simply states that the entry into force will be by decree.

Here is what the Table of Public Statutes states:

Efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act, An Act to promote the — 2010, c. 23

⁹⁴ <http://laws-lois.justice.gc.ca/eng/acts/E-1.6/page-1.html>

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- *Introduced by the Minister of Industry*
 - *s. 6, 2010, c. 23, s. 68*
 - *Transitional, 2010, c. 23, ss. 66 and 67*
 - *ClF, 2010, c. 23 (assent: 15.12.2010), ss. 12(1), (3) and (4), 12.1, 12.2(1) and (3) of the Personal Information Protection and Electronic Documents Act, as enacted by s. 83, and ss. 84, 85, 86(1) and 87 in force 01.04.2011 see SI/2011-22; ss. 1 to 82, ss. 12(2) and 12.2(2) of the Personal Information Protection and Electronic Documents Act, as enacted by s. 83, ss. 86(2) and 88 to 90 come into force on a day or days to be fixed by order of the Governor in Council see s. 91 – Not in force⁹⁵.*

We also found a set of regulations related to the law that applies directly to the field of flogging and astroturf: The *Electronic Commerce Protection Regulations (CRTC)*⁹⁶. However, since the above-mentioned Act is not yet in force, the *Electronic Commerce Protection Regulations (CRTC)* are not in force either.

In reviewing its contents, we found that Section 2 of the Regulations require “the name by which the person sending the message carries on business, if different from their name, if not, the name of the person.” It should be noted that in reading all of Section 6, it appears that the section applies to electronic messages with an email address. According to Section 1 of the Act, the definition of an email address is as follows:

“electronic address” means an address used in connection with the transmission of an electronic message to

- a) an electronic mail account;
- b) an instant messaging account;
- c) a telephone account; or
- d) any similar account.

We applaud this initiative and hope that it comes into force in the shortest possible time. We also hope that the law is enforced quickly so that justice is served, and at the same time, the media and industry are aware of the existence of an effective deterrent⁹⁷.

⁹⁵ <http://laws-lois.justice.gc.ca/eng/acts/E-1.6/page-1.html#h-1>

⁹⁶ <http://laws-lois.justice.gc.ca/eng/acts/E-1.6/page-1.html#h-1>

⁹⁷ The case in the U.S. of the company Reverb that manufactures iPhones applications provides a convincing example.

We also believe that an external complaints body with disciplinary powers such as the Radio-Television and Telecommunications Commission (CRTC) should be set up to address a range of other telecommunications-related phenomena. This body could be equipped with tools of detection and allocate resources to monitoring occurrences of flogging and astroturfing.

Finally, we believe it is essential to develop training and educational tools - both for consumers and industry. Chapter four of this report outlines several avenues to consider in this regard.

Just the tip of the iceberg?

When we began our interviews, Christian Désilets, professor of communications at Université Laval, whose research focuses primarily on advertising, surprised us by saying:

We're beginning to realize that advertising on social networks is already a bit outdated. It needs to be targeted directly at individuals by tracking their behaviour on the Internet. Advertisers now talk directly to the consumer. Ultimately, they will be able to do without "influencers."⁹⁸ Social networks are just one medium among many others⁹⁹.

In a way, Christian Désilets is warning us that Internet advertising has many faces and that flogs and astroturf are only part of this huge phenomenon.

In fact, relationship marketing is increasingly gaining ground. Jacques Nantel and Ariane Krol have just published a book on the phenomenon: *On veut votre bien et on l'aura*¹⁰⁰. Over time, marketing techniques have become highly sophisticated. Advertiser now find out about the needs of consumers directly at the source: by spying on their behaviour. While consumers are often concerned about fraudsters and hackers who could use their information to fill their pockets, they should also know that, unbeknownst to them, marketing firms are steadily accumulating information about them. Their interests and their behaviour on the Internet are a godsend for advertisers. They use it to entice consumers with the products they are most likely to buy. This is what authors Jacques Nantel, Professor at HEC, and Ariane Krol, columnist at *La Presse*, say in their latest book, in which they review the major advances in marketing and their impact on Western consumers: consumerism, over-indebtedness and diminished savings.

Ariane Krol insists that marketing strategies have not fundamentally changed. "They are merely applied differently, with new means and new technologies." Traditionally, marketing firms conducted market research to identify the needs of a certain group of consumers. Today,

⁹⁸ An influencer is a familiar figure in social networks. Users consider the opinions and information they give to be interesting and important.

⁹⁹ The interview with Christian Désilets took place by telephone on October 11, 2011.

¹⁰⁰ Jacques Nantel et Ariane Krol. *On veut votre bien et on l'aura: la dangereuse efficacité du marketing*, Les Éditions Transcontinental, 2011, 152 pages. It should be noted that the following section on personalized marketing is taken from an article by Geneviève Grenier of *Option consommateurs*. The original article is available at: <http://www.option-consommateurs.org/journalistes/chroniques/377/>

technology allows them to paint a portrait of each consumer based on their behaviour on the Internet.

Jacques Nantel believes that marketing has gone too far. “In the past, consumers had time to think between the moment the product was offered and the moment of purchase,” he says. “Now, marketing firms know exactly what you crave and can sell you the precise object of your desire at just the right moment, thereby inciting you to impulse buying and over-consumption.”

Manon Niquette also made us aware of certain suspicions about another form of astroturfing that has some striking similarities with its original incarnation, namely, hiding commercial interests behind a private citizens’ organization. In fact, it seems that this game of Russian dolls is on the rise on the Internet. Ms. Niquette informs us that such practices have been used by certain pharmaceutical companies funding groups of patients. A conflict of interest is possible if these citizens groups’ messages on the social media are skewed by the mercantile intentions of a company or industry. This new phenomenon certainly merits further research in order to better understand it and limit its spread.

In addition, social media are now shooting up everywhere like weeds, and every new platform is vulnerable to the dangers of astroturfing. Indeed, the *Globe and Mail* of March 29, 2012, drew attention to the proliferation of hidden advertising on the new electronic social network Pinterest. This site where people create a kind of billboard of their favorite images was suddenly invaded by companies who sometimes hid their mercantile motives. Fortunately, this practice would be prohibited by the *Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*. In addition, transactional sites such as Payment and Social Storefront are starting to appear directly inside the enormously popular Facebook.

In short, if we are only seeing the tip of the iceberg of suspicious or misleading advertising practices on the Internet, it is high time we coordinated our energies by implementing regulation, monitoring and prevention.

Recommendations

At the end of this study, Option consommateurs makes the following recommendations:

1. *Implement the Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act, the Telecommunications Act and the Electronic Commerce Protection Regulations (CRTC) in the shortest possible time.*

2. Enforce this legislation quickly so that abuses can be prevented

3. Set up an external complaints resolution body invested with disciplinary powers - such as the Canadian Radio-television and Telecommunications Commission (CRTC) for telecommunications - and equip it with detection tools.

4. Develop training and outreach materials for both industry and consumers. These tools could be developed by the CRTC or the Competition Bureau in collaboration with a consumer association such as Option consommateurs.

APPENDIX 1: SCREEN SHOT OF THE SOSENCHERES.CA WEBPAGE “3D TV SOLD FOR 93 CENTS ON BIDOU”

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APPENDIX 2: SCREENSHOT OF THE SOSENCHERES.CA WEB PAGE “TOUTE LA VÉRITÉ SUR LAFOLLE ET LE_HÉROS”

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