Why Is It Okay to Deceive the Public: Should Public Relations Firms and Ad Agencies Be Required to Disclose the Sponsors of Astroturfing and Other Masked Persuasion Practices?

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Astroturfing and other masked persuasion practices beg the question of whether public relations firms and ad agencies that hire crisis actors, arrange false flag events, or otherwise engage in attempts to deceive should be held to the same disclosure standard imposed by the FTC on other forms of commercial communication. To the extent that sponsors of these deceptive practices benefit in material ways at the expense of "reasonable" and unsuspecting consumers, should the actors and their sponsors be required to disclose the sponsorship? Alternatively, would attempts to increase consumer awareness of the practices, to eliminate the deception, obviate the need for regulation?

INTRODUCTION AND BACKGROUND

Astroturfing is a form of staged public relations event designed to convey the false impression of an authentic, naturally-occurring political, social, or consumer-based grassroots movement, when in fact the effort is covertly subsidized by an undisclosed person or organization, and participants are often either nonexistent, or paid actors with no real stake in the movement. The term is attributed to Texas senator Lloyd Bentsen, who, observing a "mountain" of mail favorable to the causes of insurance companies, said, "A fellow from Texas can tell the difference between grass roots and Astroturf®. This is generated mail" (Sager, 2009).

While the term itself may be relatively new, the practice of failing to reveal, or falsely attributing, a source of communication, is not. Letters to the editor and letters to representatives in Congress are long-standing low-tech conduits for astroturfing that have existed since long before the invention of Astroturf® (the substitute grass) in 1964. Even Shakespeare's Cassius engaged in a sort of astroturfing when he tossed forged handwritten claims of Caesar's ambition and tyranny, written "as if they came from several citizens," into Brutus' window to trick him and to provoke him to assassinate the Roman ruler (*Julius Caesar.* 1.2.321).

Governments and corporate entities have routinely deployed the deceptive practice that involves false source disclosure or source nondisclosure. "False flag" events, for example, are a particular type of astroturfing, generally associated with swaying public opinion to gain support for planned military action, with the term derived from the practice of pirates, who laid traps for their enemies by flying friendly flags until they were close enough to successfully board and attack unsuspecting victim ships (Dolan, 2017).

One such event designed as a pretext for war, code-named Operation Northwoods, was an elaborate 1960s-era plan detailing a laundry list of actions, considered by the U.S. Department of Defense Joint

Chiefs of Staff and described in a top-secret memorandum given the subject heading "Justification for US Military Intervention in Cuba" (Lemnitzer, 1962).

The Northwoods plan, also referred to as the Cuba Project, involved staging a number of events and publicly blaming Cuba for them. Suggested courses of action included developing "a Communist Cuban terror campaign in the Miami area, in other Florida cities, and even in Washington," noting that "exploding a few plastic bombs in carefully chosen spots . . . also would be helpful." Another suggestion involved "an incident which will make it appear that Communist Cuban MIGs have destroyed a USAF aircraft . . . in an unprovoked attack," faking an attack on a USAF F-101 aircraft and disbursing F-101 parts in the vicinity of the alleged attack for search ships to find, and staging an incident "which will demonstrate convincingly that a Cuban aircraft has attacked and shot down a chartered civil airliner en route from the United States . . ." suggesting that "the passengers could be a group of college students off on holiday." For this course of action the plan entailed swapping out the passenger jet for a drone to complete the mission and transmitting a "MAY DAY" message before exploding the plane via radio signal, while the passengers, "all boarded under carefully prepared aliases," would be safely evacuated. The memorandum notes that the suggested list of actions would have the desired effect, in that "world opinion, and the United Nations forum, should be favorably affected by developing the international image of the Cuban government as rash and irresponsible, and as an alarming and unpredictable threat to the peace of the Western Hemisphere" (The National Security Archive at The George Washington University, 2017).

While ultimately none of the plans described in the Operation Northwoods memorandum materialized, accusations against governments for engaging in false flag operations are not in short supply. History is replete with examples of government-run false-flag operations (Elbein, 2013).

In the commercial arena, corporate engagement in astroturfing as false source attribution is reputed to have begun, at least in the U.S., as early as 1909, when Hugh Moore, co-founder of the Public Cup Vendor Company, which later became Dixie Cups, began publishing "The Cup Campaigner," to create a movement to oppose the practice of using shared cups in shops, schools, train stations, and other public places (Lee, 2010). The widely-adopted practice of using public drinking cups occurred prior to the general public's understanding of the link between germs and illness.

In this early example of astroturfing, Moore never disclosed his connection with the paper cup company when he wrote in his articles and reports about the "loathsome disease[s]" contracted by vulnerable young women who unknowingly used cups contaminated by a TB sufferer's "sweeping mustache" after a coughing fit. While Moore may have helped to create a healthier and better-educated populace, he also enjoyed enormous profit by persuading the public to change its habits.

LEGALITY OF DECEPTIVE SOURCE ATTRIBUTION

What the plans of Cassius, the Joint Chiefs, and the Dixie Cups co-founder have in common is the intentional masking of the true source of a communication, action, or set of actions, in order to manipulate attitudes, beliefs, and behaviors for the purpose of personal or organizational gain.

While the described practices are clearly intended to be deceptive in nature, various actors engaging in source nondisclosure have received differential treatment under the law. The U.S Government has been granted the right of source nondisclosure, nondisclosure by corporate entities is prohibited in specific circumstances, and the equivalent failure to disclose for purposes of political gain remains virtually unaddressed by regulators.

GOVERNMENTS AND SOURCE NONDISCLOSURE

Governments in wartime have exercised virtual free reign where propaganda is concerned, and lying about the source of information is an essential part of wartime strategy. American and British military forces coordinated propaganda efforts during World War 2 through The Psychological Warfare Division (PWD) of the Supreme Headquarters Allied Expeditionary Force (SHAEF). The PWD considered the

source of a message to be such an important determinant of its influence that it clearly delineated three categories of propaganda on the basis of their reference to source (PWD, SHAEF, 1951). "White propaganda" was defined as "propaganda whose source is clearly indicated." "Black propaganda" was designed "to cause the target audience to believe that the source is something other than it really is," and the source of "gray" propaganda was "not indicated."

Following the war, President Harry S. Truman signed the National Security Act of 1947, establishing the Central Intelligence Agency (CIA) as the United States' first independent peacetime intelligence agency, and giving it broad-ranging powers to conduct clandestine activities in foreign countries to protect national security. The CIA demonstrated that their covert operations would be kept secret even from domestic entities during the 1950s, when the Agency refused to comply with Senator Joseph McCarthy's demands that agents, and even the CIA Director himself, testify in hearings (Talbot, 2015). Despite entreaties of the Senate, the CIA was successful in claiming immunity from Congressional oversight on the basis of national security, and the national security justification for nondisclosure and for "black propaganda"-style false disclosure continues to protect the CIA today.

CORPORATIONS AND SOURCE NONDISCLOSURE

The Federal Trade Commission (FTC), established in 1914 to prevent unfair business practices, is the federal agency charged with regulation of deceptive advertising, which was defined in 1983 as advertising in which a "representation, omission, or practice" is likely to mislead a "consumer acting reasonably" and to influence the consumer's decision making about products and services (Federal Trade Commission, 1984). While the Dixie Cups co-founder was allowed to publish favorable reviews of the Public Cup Vendor Company in 1909 without disclosing his ownership of the company as well as his guaranteed profit from sales of the cups, current regulation that addresses deceptive advertising practices would prevent him from doing so.

Failure to disclose the material connection between advertisers and endorsers is one of the practices that meets the FTC's "deceptive advertising" standard, as personal, noncommercial influence on consumers can be considerable (Arndt, 1967; Friestad and Wright, 1994; Kumar, Petersen, and Leone, 2010). In a 2015 policy statement, the FTC makes clear its position that a source being compensated to endorse a product is perceived to be less credible than one who genuinely, without payment or other compensation, endorses a product, and that failure to disclose compensation of the source is deceptive in nature and is prohibited by the agency: "When there exists a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement . . . such connection must be fully disclosed. . . . clearly and conspicuously" (FTC, 2015). The FTC defines an "endorsement" as "any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the advertiser, even if the views expressed by that party are identical to those of the advertiser" (16CFR pt. 255.0(b), 2009). An "endorser" is defined as a "party whose opinions, beliefs, findings, or experience the message appears to reflect and may be an individual, group, or institution" (16 CFR pt. 255.0(b), 2009).

The most recent examples of duplicitous failure to disclose the receipt of financial or other types of compensation in return for favorable review of a product occur in "native advertising," online advertising that is designed to look like editorial content rather than sponsored content. Particularly in today's electronic environment, where multitudes of bloggers post product reviews on social media, the FTC has been forced to be especially aggressive in determining whether endorsers clearly and conspicuously disclose financial and other types of compensation they receive for the favorable reviews.

Furthermore, the FTC has determined that full responsibility for the disclosure lies with the advertiser. The advertiser must inform the endorser to disclose the connection to the advertiser and ensure that the FTC Guidelines are met (Jones Day, 2010). One well-publicized case involved Warner Brothers and a popular video game reviewer named "PewDiePie." The FTC settled the complaint against Warner

Brothers, charging that the company, rather than the reviewer, failed to adequately disclose that it paid influencers to post the reviews (Federal Trade Commission, 2016). The FTC made it clear that "consumers have the right to know if reviewers are providing their own opinions or paid sales pitches" and that "companies like Warner Brothers need to be straight with consumers" (Spangler, 2016).

NONGOVERNMENTAL, NONCOMMERCIAL INTEREST GROUPS AND SOURCE NONDISCLOSURE

Under current law, public relations firms are exempt from FTC regulation when executing campaigns for politicians or other public interest groups that are not directly related to consumer products and services. Attempts to sway public opinion to advance the goals of politicians or politically motivated interest groups do not fall under the jurisdiction of the FTC. When a political candidate hires actors to pose as supporters on the campaign trail, or pays for crowds of actors to show up for campaign rallies and pretend to be loyal supporters, there is no law or regulation that requires the actors to disclose that they are being paid to appear (Schneider, 2015).

Interestingly, the Public Relations Society of America (PRSA) Code of Ethics does require its members to disclose its sources. In support of the PRSA Core Principle that "open communication fosters informed decision making in a democratic society," the organization states that "a member shall . . . reveal the sponsors for causes and interests represented" (PRSA Member Code of Ethics, 2017).

The organization elaborates on its requirement by providing specific examples. Conduct considered "improper" under the disclosure provision would not have approved Cassius' behavior: when individuals "[implement] 'grass roots' campaigns or letter-writing campaigns to legislators on behalf of undisclosed interest groups" they are in violation of the PRSA Code of Ethics. Hiring actors to pretend to be supporters at a political rally would also be considered improper under the disclosure provision.

Similarly, individuals who deceive the public "by employing people to pose as volunteers to speak at public hearings and participate in 'grass roots' campaigns" are in violation of the Code (PRSA Member Code of Ethics, 2017).

While PRSA members are asked to pledge their allegiance to the code of ethics, methods of enforcement of the code are nebulous. "[T]o have punitive power, PRSA must have additional authority conferred on the Society by a government agency, public legislative body, or judicial decision, instruction or opinion" (Lukazewski, 2017). So, while even PRSA considers source nondisclosure unethical, it is not deemed illegal.

In fact, the PRSA argues that it is neither socially nor economically wise for the organization to punish malpractice, unethical behavior, or violations of the PRSA Code, because "PRSA has never been successful at sanctioning members," and "every potential case to be prosecuted . . . brought with it significant financial risk to the Society," such that the "two or three members who were actually convicted" left on their own initiative while other members "left in a huff" (Lukaszewski, 2017).

The Society's considerations appear ultimately to be self-protective and pragmatic rather than ethical, as the final question posed is: "Do we want to be known for the number of practitioners we try to kick out each year?" (Lukaszewski, 2017).

Other researchers concerned with the role of interest groups in politics have concluded that the public would benefit by requiring disclosure of sources of astroturfing (Lyon and Maxwell, 2004). To the extent that public opinion results in economic benefit to corporate entities via legislation, the only question left appears to be whether either, or both, the sponsors of the message (the politicians, the corporations, or the nongovernmental organizations) and/or the intermediaries (the public relations firms or ad agencies that hire the actors) would be responsible for the disclosure. A Los Angeles-based company called Crowds on Demand, for example, paid actors $15 per hour to show up for events in support of a political candidate during his bid for mayor of New York City in 2013 (Schneider, 2015). While the unsuccessful candidate did not benefit materially from the transactions, Crowds on Demand certainly enjoyed a material benefit, which begs the question of why Crowds on Demand should not be required by FTC regulations to disclose the sponsor of its actions. Crowds on Demand engaged in activities intended to influence public

opinion without disclosing that the activists were shills. To paraphrase the FTC's Director of Consumer Protection, Jessica Rich (Spangler, 2016), don't consumers have the right to know if activists are providing their own opinions or paid sales pitches?

SUMMARY AND CONCLUSION

Section 5 of the FTC Act prohibits "unfair or deceptive acts or practices in or affecting commerce." As a result, the FTC has regulated advertising to prevent false and deceptive advertising which contains representations, omissions or practices likely to mislead a reasonable consumer and influence the consumer's decision making.

Failure to disclose the material connection between an advertiser and an endorser is one of the practices that meets the FTC's "deceptive advertising" standard, and the agency has been aggressive in filing complaints against companies whose endorsers fail to acknowledge the sponsor of the message, as in the "native advertising" case in which Warner Brothers was named for failing to require its online game reviewers to disclose compensation from Warner Brothers.

Knowing the source of a communication is such a significant determinant of its influence that the SHAEF Psychological Warfare Division designated types of propaganda on the basis of whether or not the source of a message was disclosed. "Black propaganda" was defined as that which deceives the target audience into believing the source "is something other than it really is." It has been used in wartime to garner public support for planned government actions, in the way that "Operation Northwoods" was intended to deceive the public using faked provocations as a pretext for war with Cuba.

While black ops of the US Government are not the focus of this paper, it is clear that in many cases the purpose of source nondisclosure is to deceive a target audience and therefore have an impact on the audience's subsequent perceptions, attitudes, beliefs, and behavior.

When endorsers misrepresent themselves in claiming that their favorable reviews of a product are genuine, rather than originating with the corporate benefactor who pays for the message, the FTC charges the corporation with misleading consumers. In the Warner Brothers case, Warner Brothers paid an ad agency to hire influencers to write favorable online reviews (Spangler, 2016).

Yet when an endorser hired by an ad agency or PR firm fails to disclose that their apparent exuberant support for a politician or a social cause is fake and paid for, the firm that hired the endorser, as well as the third party individual or organization that paid the agency to engineer the deception, are immune. Why?

INTENT VS. EFFECT: THE IMPORTANCE OF IMPACT

It appears that the only question remaining ought to be the extent to which reasonable consumers' purchase decisions are influenced by astroturfing and other similar attempts to deceive. Consumers who have knowledge of the persuasion attempt are likely to be more skeptical and less vulnerable to deception (Friestad and Wright, 1994). For that reason, the FTC does not regulate "puffery" in advertising because it is a tactic that is commonly understood by reasonable consumers, who are unlikely to be deceived by it. How susceptible are consumers to astroturfing-type tactics? How widely understood are the practices? The impact of the practice on consumer belief and behavior, rather than the intent of the sponsor of the message, may be a more important criterion for regulation. Perhaps a better understanding of the extent to which astroturfing and similar masked persuasion practices actually result in deception is the key to determining the need for regulation.

Clearly, as more PR firms and ad agencies become involved in attempts to influence public opinion through astroturfing, it becomes more important for regulatory bodies to investigate their impact. Even minor astroturfing events, rebroadcast to a mass audience, may have significant impact on consumer attitudes, beliefs, and behaviors if consumers are unaware of the true source's attempt to deceive. On the other hand, widespread education campaigns to increase awareness of the nature of astroturfing and novel masked persuasion attempts may be preferable to government regulation. In either case, astroturfing and

other masked persuasion practices should constitute a future focus of query for both scholars and practitioners.

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