

Put Your Boots On: Preparing For The Product Crisis

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Claims about product defects or failures – whether based on safety or performance – are fodder for media scrutiny, regulatory action, political grandstanding and, inevitably, lawsuits. Thanks to the Internet, both legitimate and bogus claims spread with the speed of a mouse click. It is essential, therefore, that every manufacturer have a crisis response plan in place *before* a blogger's rumor becomes a manufacturer's crisis.

Product Crises Take Many Forms

Recalls premised on alleged product defects are perhaps the most visible form of product crisis, and they subject manufacturers to some of the harshest media, regulatory, and legal scrutiny. In a notorious recent recall, Menu Foods recalled 60 million cans of pet food after wheat gluten in its products was linked to pet deaths across the nation, costing the company tens of millions of dollars.

Menu Foods is an example of a crisis whose alleged cause was internal—its quality control measures allegedly failed to keep out tainted ingredients. But, sometimes, events outside a company's control trigger a crisis. The "external" product crisis can grow out of urban legends, hoaxes, and even criminal product tampering. The Tylenol tampering scare of 1982 is a textbook case. In that tragic episode, criminals injected Tylenol capsules with cyanide, causing the deaths of several people. Johnson & Johnson's reaction to the crisis is generally offered as an example of how a company *should* react. The company got in front of the issue, using its CEO to lead a widely hailed public relations campaign. Ian Mitroff, *Managing Crises Before They Happen* 16 (2001). Johnson & Johnson quickly began working with the Food and Drug Administration ("FDA") to recall the lots from which the poisoned capsules had come. Ignoring the advice of even the FDA – which argued for a more modest recall – the company recalled *all* of its Tylenol bottles worldwide at a cost of nearly \$100 million. *Id.* Johnson & Johnson suffered short-term damage but ultimately regained the public trust and its dominant market position. *Id.* at 17.

The Product Crisis Goes Viral

It is hard to comprehend life before e-mail, but there was a time when letters carried by horse, train and boat were the principle form of communication. And that was when Mark Twain reputedly quipped that "a lie can get halfway around the world before the truth even

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gets its boots on." Today, a lie or rumor about a company's product can circle the globe and cross every time zone before the company's CEO even gets out of bed. Rumors now "go viral" and spread across continents at breakneck speed. The unprepared company is on the fast track to a global crisis when that happens.

An example of a viral product rumor is the 2005 "severed finger in a bowl of Wendy's chili" story, in which a Nevada woman claimed that she had found a severed finger in a bowl of Wendy's chili. The Internet – with its special interest bloggers and gossipers – gave the story wings. Before long, everyone had heard the story, and its ubiquity gave it credibility – because it was everywhere, it had to be true. Well, as it turned out, the story was not true at all. It was a work of fiction concocted to make a quick buck at Wendy's expense. But by the time the story was exposed as fiction, it already had done enormous harm to Wendy's.

Rumors and urban legends about products are nothing new – remember the one about "Mikey" and pop rocks in the '70s – but the Internet gives rumors an instant and enormous audience that was not possible before. In the Internet age, everything is faster, bigger and more immediate, and accusations and rumors about products are no exception. Responses to product crises also need to be faster, bigger and more immediate.

Product Crisis Plans

Before a company can respond to a product crisis, however, it must have a plan for doing so. While product crises take many forms, one thing is for certain: every manufacturer faces the risk of a product crisis. The prudent company is the prepared company. Below, we offer some guidelines and considerations.

The Three Cs: Caution, Communication, And Coordination

A successful plan should be premised on the three Cs: caution, communication, and coordination.

Caution

Caution dictates that the company carefully evaluate the appropriate response to the crisis before it starts talking in public. The company must have a firm grasp on what kind of crisis it is dealing with and what course of action it



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will take. Will the company aggressively seek to disprove the rumors, or will it take a more conciliatory approach? Knowing what the issues are and how you are going to address them *before* talking about them is absolutely critical.

Communication

Next, the company must effectively communicate its message to the various stakeholders, which may include customers, investors, politicians, and employees. After all, "[c]risis management is storytelling." Eric Dezenhall, *Damage Control: Why Everything You Know About Crisis Management Is Wrong* 4 (2007).

The company employees who will have a role in dealing with the product crisis must know what message they are to communicate, and they must consistently communicate that precise message. To that end, it is often a good idea for the company to nominate one of its senior officers to serve as the face and voice of the company. Often, the CEO is the only person for the job. *See id.* at 4.

Regardless of who is elected to be the face of the company, it must be somebody who knows how to speak to the public and the camera. At the risk of making an inside joke, someone like *The Office's* Michael Scott (played by Steve Carell) is probably not the best executive for the company's make-or-break YouTube video. Otherwise, your crisis response may consist of handing out giant novelty checks to unhappy customers and making "apologies" in which the executive claims to be an "escape goat." If the company's crisis response winds up as a punchline on *David Letterman* or *The Tonight Show*, it is probably not working well.

A public relations consultant can help. But retaining a PR consultant does not mean you are ceding control. Everything the PR consultant says must be evaluated through the prism of the company's goals. As one public relations consultant put it, "[t]he advice crisis consultants give is often designed to benefit the consultant, not the client." Dezenhall, *Damage Control*, at 2.

Finally, an Internet communications strategy must be part of the overall strategy. There are many tools for exposing the Internet's liars and gossipers. Use them. But use them intelligently. Web-savvy public relations advisors and lawyers can help.

Coordination

A product crisis has many moving parts. Mixed messages mean lost credibility. Where the company's reputation has taken a beating, the company cannot risk losing that which remains.

Caution and coordination go together. The Menu Foods pet food recall case offers a good example. The company hired claims adjusters to call affected customers and offer settlements. The adjusters, however, called some of the *named plaintiffs* in the pending class-action litigation. That was improper. The media exploited the episode, suggesting that the company was trying to prevent bereaved pet owners from having their day in court. The entire snafu could, perhaps, have been prevented if only the company and its advisors had done a better job coordinating their efforts. As the cliché goes, the right hand should know what the left is doing.

Coordination and caution dovetail in other ways. Public relations consultants will often push corporate representatives to make a statement as early as possible to ease the fears of consumers, while the lawyers may insist that such a statement could open up the corporation to future legal liability. Neither public relations nor legal strategy can be allowed to trump business considerations – a balance must be struck.

Care must also be taken with confidences and privileges. The extent to which the attorney-client privilege applies to discussions with the public relations consultants is not settled. Case law is divided over whether the company or its law firm should retain the public relations firm in order to protect the privilege and whether discussions with public relations consultants are protected from disclosure. Careful evaluation of the laws of the relevant jurisdictions should be undertaken.

What You Can Do Now

Planning ahead is critical; planning for every contingency is impossible. There is no "crisis textbook" to guide you through every conceivable crisis. But a crisis *handbook* can help, and it should include a few components.

First, it should describe the protocol for dealing with various crises, including the chain of command for bringing a potential crisis to the attention of company officials; instructions to employees on handling media and public inquiries; and synopses or summaries of the regulations and rules governing product recalls.

Second, it should contain a "contact" list, identifying the key individuals in the company responsible for coordinating the company's crisis response; contacts at the potentially responsible government agencies (CPSC, NHTSA, etc.); and contacts at the company's public relations and law firms.

Third, the handbook should include an "FAQ" section, identifying questions that are likely to arise, including to whom questions from the media should be referred and dos and don'ts when dealing with a boiling crisis.

Fourth, the handbook is a good place to store template, or exemplar, documents, such as "litigation holds," notices, and instructions to employees.

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