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Crowdsourcing: What it is, How it Works, and its Implications for Corporate America

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CROWDSOURCING

What is it?

In simple terms, crowdsourcing is a method by which individuals or organizations rely upon a group to accomplish what previously had been done by individuals or by corporate employees. Crowdsourcing is about harnessing the power of group intelligence or group funds, gaining valuable insight at a low cost, or creating something as a group, by gathering contributions from a vast group of individuals through the Internet. There are four generally recognized categories of crowdsourcing: crowdfunding; crowdcreation; crowdwisdom; and crowdvoting. Although they share the characteristic that all types seek input of the crowd, the crowd's input is for different reasons.

Just as the name implies, crowdfunding means obtaining funds from a crowd through platforms such as gofundme.com, kiva.org, or Kickstarter, in which individuals describe their need, and Internet users can contribute funds to fill the need in various ways. Crowdcreation generally results from an open call to interested internet users to solve a problem or create something new. Some recent examples include Toyota's use of crowdcreation to redesign its logo, and Doritos "Crash the Superbowl" campaign. Crowdwisdom is similar to crowdcreation in that it generally seeks to solve a problem, but it is broader in the sense that, as the name implies, it seeks to tap into the thought processes of a group. This process might be used to inform corporate strategy, or predict future outcomes if certain events occur. A company may do market research this way by allowing Internet users to weigh in on what they want to see in a product or service in the future. Finally, crowdvoting, allows a consumer to review products or services to inform potential future users about the quality of those products and services. Yelp and TripAdvisor are two of the more famous crowdvoting applications in use. Collectively, these group projects are known as crowdsourcing.

Benefits of Crowdsourcing

As you can imagine, there are tremendous benefits to crowdsourcing. The most obvious benefit is that it can result in significant cost savings. It is much cheaper to have a crowd of Internet users solve a problem than to fund a research and development team. Similarly, it allows a company or individual to tap into the mindset of customers to better serve them without doing an expensive marketing survey. With crowdvoting, good reviews on Yelp or TripAdvisor are significantly cheaper than paying a marketing company or company employees to market the product or service. Crowdsourcing may also give the company access to a tremendous talent pool of individuals who can solve a problem that the company has been unable to solve. It can generate customer loyalty by creating interest in the brand and the products or services offered under those brands. The upside can be significant, as can the downside if not managed properly.

Risks of Crowdsourcing

Crowdsourcing carries with it significant risks, particularly if either the company or the users fail to follow the rules. These risks can include disputes over the ownership of the end product, or the idea if it is sold commercially. The risks can also include infringement litigation if the idea or concept developed infringes on another's intellectual property. Because it is an open forum, there is no confidentiality that prevents disclosure to competitors, and whether intended or not, disclosure of data used to solve a problem can sometimes be traced back to individuals, exposing the company to data privacy violations. In the case of crowdvoting, disgruntled customers may use the forum to post bad reviews about a company or its products or services. Recently, there have been instances of competitors posting bad reviews, or paying people to write favorable reviews for their product or service in order to increase their ratings and their business. Because crowdsourcing is generally thought to be anonymous, the users who post information are often harsher than they would be if they were completing a survey directly for the company. Moreover, situations in which a bad review is online can be difficult to fix once they occur. This can result in costly litigation, which may have the unwanted effect of increasing the attention drawn to the negative review. The law governing crowdsourcing is evolving so there are not always clear cut answers as to the rights and obligations of the various parties.

Online Reviews

One of the greatest sources of conflict arising from crowdsourcing is online reviews. Consumers place a surprising amount of stock in a stranger's reviews of a product or service, with over 60% of consumers reporting that they look at reviews before making purchasing decisions. So called "word of mouth" reputation has changed to online reputation, which means that the effect of both good and bad reviews can be multiplied exponentially.

A bad review can be devastating to a business, whereas a good review can boost business significantly. Before the Internet, if a consumer had a bad experience with a company, they told their friends and family but the impact was limited. Today, with the ability to post a negative review online, the consequences can be far greater because the audience it reaches is far greater than just a few friends and family. Similarly, if a consumer has a good experience with a product or service, a positive review has significant power to boost sales and raise the profile of the brand. According to a recent study, five positive reviews on Yelp effectively increase business by as much as 10%, but a single negative review can reduce business even more.

Negative Reviews of Service Providers

A fair amount of litigation has arisen from negative reviews posted online. Given their reliance upon their professional reputation for clients and patients, it is not surprising that much of this litigation has been initiated by doctors and lawyers who believed they were unfairly maligned. For example, a lawsuit that garnered significant attention recently involved a lawsuit by a physician in New York against a former patient. After complaining about a bill she received that she did not expect, the patient believed that she had been misled about the cost of the doctor's visit. She took her frustration out on social media by posting a negative review about the doctor including the statement "very poor and crooked practice," and accused him of performing unnecessary procedures and charging the insurance company for these procedures. She posted this review to Yelp, ZocDoc, and Health Grades. The doctor sued, claiming that these statements constituted defamation and online harassment. According to the doctor, before the negative post, he had 4 online reviews and they were all positive. Following the negative post, he received over 50 one-star reviews and multiple complaints about his business practices. The lawsuit made headlines, and the patient was widely quoted by the media claiming that she was being sued for giving the doctor a bad review. Several newspapers ran stories about the situation, only adding to the notoriety of the "bad review." Ultimately, the patient was forced to remove the negative reviews because the court found that the statements she made were not mere opinion, but were statements of fact that could lead others to believe the doctor had engaged in dishonest practices.

Similarly, in 2016, a Florida court affirmed a judgment against a former client of a law firm for a negative review posted by the former client. The law firm asserted that the disgruntled client posted false statements that accused the law firm of dishonesty on Avvo.com. The former client who posted the statements claimed that the review was protected by the First Amended right to free speech, but the court disagreed because the statements were not in the form of an opinion. The review accused the attorney of lying and falsifying information, which the evidence demonstrated were not true. As such, the former client had defamed the attorneys and were forced to retract the negative review and pay a judgment for damages.

In a similar case, the attorney subject to negative reviews on Yelp filed a lawsuit against the online reviewer seeking an injunction ordering the removal of defamatory information. The attorney obtained an order at the lower court that required the reviewer and Yelp to remove the allegedly defamatory reviews. Yelp appealed the decision to the California Supreme Court, arguing that online forums like Yelp cannot be required to remove reviews, or take action that would censor the comments from consumers. The California Supreme Court agreed, finding that Section 230 of the Communications Decency Act, 47 U.S.C. § 230, prevented the lower court from ordering Yelp to remove the reviews. This law makes it clear that websites such as Yelp are not responsible as the publisher or the speaker of third-party user posted content. Therefore, any remedy for the negative review must be against the person that posted the negative review.

A Different Approach

In each of the instances above where the doctor and the lawyers filed defamation lawsuits, although they ultimately prevailed, the lawsuits themselves generated interest in the negative reviews. Rather than immediately file a lawsuit over a negative review, some companies have decided to take the opposite approach. They have decided to take a more proactive approach to their online reputation, and use a negative post as a customer service opportunity.

Companies have grown to understand that there online presence is part of their brand development. As part of their overall brand protection, they monitor social media posts about the company, and if the posts complain about the company, or its products and services, the company can decide how to react. The company may reach out to the consumer to address the issue. One benefit from this approach is that companies can learn about failures in their processes and procedures. Paying attention to social media posts can allow the company to see if they need to change the approach they are taking—whether it means additional training for an employee that did not act according to protocol, or a change in the way the company handles certain issues. It is a view of the company from the outside that can foster change. It can also be used to generate greater consumer loyalty. If the company reaches out to the customer in response to the consumer's negative post, it shows the consumer that the company is making an effort to cure the problem and diffuse the situation. Oftentimes, this approach ends up with a loyal customer that now feels like the company cares about them. An example of this is Sprint's Social Care program, which monitors comments online about Sprint, and if a customer expresses frustration or unhappiness with a product or service, the Social Care team reaches out to solve the problem.

After the problem has been addressed, it is much easier to request that the person who posted the negative feedback update it to say that the problem has been solved, or to remove it altogether. Before instituting litigation over a bad review, companies are advised to consider whether there are things to be learned, and ways to diffuse the situation short of litigation.

Manipulation of the System

Given the power of an online review, more cases are coming to light where competitors, or nefarious actors, are engaged in manipulation of the system. There are companies that create fake reviews on Amazon, Yelp and TripAdvisor for a fee. Although these companies have mechanisms in place to identify fake reviews and have them removed, it is not always easy to identify a fake review. Whether it is a competitor having negative reviews posted about competing products or services, or a competitor posting fake positive reviews to increase its business, it is an unfair practice that misleads the consumers who rely upon the reviews.

Just recently, the Federal Trade Commission settled an action against Cure Encapsulations, Inc. and its owner for phony product reviews posted on Amazon. In an effort to boost their business, the defendants made false claims about their weight loss supplement, but also paid third parties to write fake reviews of the product on Amazon. The defendant instructed the company that was creating the fake reviews to monitor the product and to respond with multiple positive reviews if a customer posted a negative review to ensure the product remained a "five-star" product on the website. The FTC recognized that people rely upon reviews when they purchase online, and fake reviews not only hurt the consumer but the legitimate companies that are not manipulating the marketplace.

Currently, the New York Attorney General is pursuing an enforcement action against a company that sold fake "likes" and "views" on sites such as LinkedIn, Pinterest, YouTube and Twitter. Although this is a relatively new area for enforcement, it is clear that such manipulation through dishonest means violates consumer protection laws and constitutes unfair trade practices.

Conclusion

Crowdsourcing can be a powerful way to build a brand, but it can also destroy a brand. It is critical that the company understand the risks and benefits of using crowdsourcing, and be prepared to take appropriate action when its brand is threatened by negative reviews resulting from the crowdsourcing.