

Trademarks in Crisis: Protecting the Brand Before, During and After a Disaster

"One should never allow chaos to develop in order to avoid going to war, because one does not avoid a war but instead puts it off to his disadvantage." (Machiavelli.)

Introduction

In our presentation at the Annual Meeting, we will look at some of the principles of crisis management as applied to corporations and their brands, and we will examine some of the more well known brand disasters (and recoveries) of recent years. In this paper we identify some of the essential principles and issues in advance of that presentation

Over the years famous brands and names in virtually every industry have encountered some form of unexpected crisis which has threatened to overwhelm the brand itself and in some cases the entire company. Although these stories have seemed to dominate the landscape in the US, there have been many similar instances around the world.

Problems have ranged from product defects (or perceived defects) to defects in the way the company does business to the way that key personalities in the company conduct their professional or personal lives. In all cases, the problem grew from a potentially containable issue to one which engulfed the brand or its owner.

It has not been a phenomenon which has been confined to small and under-resourced companies. Unexpected crises have engulfed household corporate names that have been part of the business scene for decades. Institutions that have stood through centuries have been shaken, as what originally seemed to be an isolated incident quickly cascaded into a series of ever greater and more damaging revelations.

Brands which once stood for solid respectability and which were seemingly invincible crumbled under the weight of intense scrutiny.

Reputations – corporate, individual and brand - are much more vulnerable today than they ever were before. The cause is at least in part because bad news now travels so quickly that it is very difficult to respond to a negative story in a similar time frame, whilst being certain that the response will not itself compound the problem.

Although it appears that rapidly building and unexpected crises are more prevalent today than even a decade ago, they have in fact always been a part of the corporate world. The greater problem today is that a story (whether fact or fiction) can be produced and disseminated very quickly and indiscriminately by electronic media, and in a way that gives even a rumor the appearance of being solid fact. It is that speed which usually causes the lasting damage, and accordingly it is more important than ever to recognize the need to be prepared to deal with an unanticipated crisis and to know what to do before it gets out of control.

Even the best products in the best run companies can be susceptible to a crisis. And even though the crisis can be founded on incorrect information, or it can arise from misuse of a product by a consumer, the way that the news is treated can adversely affect the product in both the short and the long term unless the crisis is managed properly and effectively from the outset.

Being prepared for a crisis

Very few professionals (aside from those who practice crisis management) would really know what to do if they were suddenly and quite unexpectedly presented with a rapidly unfolding crisis which threatened the future of the company.

That is not to say, of course, that most people wouldn't have an inherent sense of what steps a company probably ought to take, and indeed no doubt they could devise an appropriate set of responses and actions given adequate time and resources. The real problem, however, is that the speed of events and the speed of the media reporting of them usually denies people the luxury of careful reflection, and thoughtful evaluation of what to do next.

Most often, unless the basic steps and the basic protocols have already been determined in advance and everyone (whether in the legal, operational or PR departments) knows exactly what to do, it is unlikely that anyone within the company will react as quickly or as appropriately as its shareholders will subsequently wish that they had.

Critically, since many companies today rely heavily on branding to assure consumers that their product is different and better and safer than other seemingly identical products, damage to the brand can occur in a matter of hours and that brand and its goodwill and equity value may never be recovered.

Since few products or services today are truly unique, a consumer faced with the choice of a damaged or suspect brand, as opposed to one with no stigma or identified problems, will likely take the easier option.

That is why it is essential to respond to negative news quickly and in a way that inspires trust.

The primary problem that consumers had with the Bridgestone/Firestone Company during the recent crisis concerning the involvement of FIRESTONE tires on Ford Explorers was a lack of substantive and credible information from the company about what was causing the problem and what the company was doing to solve the problem. That meant that no-one (no lay person anyway) knew whether it was some or all FIRESTONE tires that were defective, or whether in fact it was the Ford Explorer that was defective and not the tires at all, or whether it was the combination of the Explorer and only certain FIRESTONE tires that was actually the problem. And the result of that confusion was that there was little reason for the consumer to risk trying to find out the truth for himself.

The easier option - by far – and the option that seemed to carry no risk at all was simply to stop buying FIRESTONE tires. There are plenty of other well regarded tire brands on the market. Tires are amongst the most critical user selected replacement component on a vehicle. They are the only contact point between the vehicle and the road and so most reasonably well informed consumers are going to take notice when a tire is the subject of speculation as to its construction and safety.

It therefore seems obvious (certainly with the benefit of hindsight) that if a company manufactures a product which, on the face of it, is virtually indistinguishable from other similar products on the market and yet whose safe functionality is an extremely important component to the buyer, there is a clear need to be well prepared in advance for any negative publicity, and to communicate a good solid message as soon as possible.

Reputation and sales are bound to be hit rapidly if people believe – however wrongly – that there is a problem with a safety oriented product, especially when alternatives are freely available from the same outlets.

Any company in a safety-oriented market needs to plan in advance for what is - in reality – a “predictable” crisis. Although the specific crisis that engulfed the FIRESTONE brand would not necessarily have been predictable, nor would the timing of the crisis, the fact that tires are such a critical component of every vehicle on the road would have made it

likely that at some point there would be some negative publicity about a tire, and it's involvement in a high profile crash or series of crashes.

A crisis of some sort in that industry is always going to be sufficiently predictable that some advance planning can – and must – be done. The more planning that is done in advance (even without knowing what the actual crisis will be) the greater is the ability of the company to respond to the public in a reassuring and timely manner. Indeed, that is true in almost any industry. Big brands are vulnerable to a crisis – that much is always going to be predictable. And so planning needs to be carried out no matter how secure the brand seems. Any problem (which a few years ago might never have been known outside of a small number of people) will become public knowledge very quickly today. Since most brands deliberately project some kind of an image (a positive one, usually), the internet and then the more traditional press devour any story which suggests a different (or negative) image.

KRYPTONITE makes one of the best known and popular range of bicycle locks.

KRYPTONITE locks have always been regarded as amongst the strongest locks in the business. Indeed KRYPTONITE makes a series called the “New York” lock, which is supposed to be strong enough to defeat Manhattan's bicycle thieves, themselves reportedly the best in the world.

So when, in the summer of 2004, a young man posted on the internet a home video of him opening a KRYPTONITE lock in a few seconds using only the plastic outer casing of a cheap pen, the news – and the crisis - spread quickly.

In its response to the crisis, which seemed to take the company by as much surprise as it did the lock-buying public, Kryptonite did little to garner support or to take advantage of the significant goodwill that up until then had existed in the Kryptonite name. Although it was “predictable” that at some point the efficacy of Kryptonite locks would be challenged (any product which asserts that it is effectively foolproof is vulnerable to someone publicly seeking to disprove the claim) Kryptonite seemed as unprepared as Firestone was for its “predictable” crisis, and it seemed as unwilling or unable to adapt to the exploding PR disaster as was Firestone.

But – with a little advance planning and forethought - both companies could have put themselves in much stronger positions much earlier on in their respective crises.

There are a number of golden rules in planning for the unknown (but probably predictable) crisis that is somewhere in the future, and in implementing a crisis strategy if the crisis does indeed come.

Strategies and Tactics in Crisis Management

Statistics show that most business crises today are non-event related or smouldering crises, and that they originate mostly with management inaction and/or neglect.¹

There is, accordingly, a growing recognition among corporations that crisis management must be institutionalized and that all key business functions must address crisis prevention and management formally as part of business planning.

In today's world, organizations must take a holistic view and establish solid Business Contingency Plans (BCP), of which Crisis Management is but one element. To be effective, Crisis Management must be embedded into the organization's corporate management system.

Integration

Although a number of organizations have existing crisis management plans in place, they generally need to enhance this capability. There is a clear need for them to be better prepared to respond to new and as yet un-imaginable risks as well as to manage the ever growing number and diversity of stakeholders, many of whom have conflicting agendas. This is even more critical when considering the increasing complexity of organizations, with regular restructuring, mergers and acquisitions and divestments taking place. Effective crisis management systems can only be achieved by working in an integrated way across the whole organisation.

Business Contingency Planning gained momentum with Y2K. The tragic events of September 11 made it a reality. So how does Crisis Management fit into BCP?

When the risk and issues management processes are integrated in the business contingency planning activity of the organization, the crisis prevention capability is noticeably enhanced. This is particularly the case for “smouldering crises” referred to above. Identifying and evaluating risks and issues is the first step, but it is the management of the risks and issues which is critical and most challenging for the organizations, especially when dealing with intangible issues.

Not all crises are preventable, of course. But having effective risk and issues management processes in place helps organizations plan and be more proactive. It helps the organisation decide on whether to take, treat, transfer or terminate the risk. Actual crisis management planning deals with the loss when it occurs, just as Disaster Recovery and Business Continuity planning deal with the situation after the loss. Crisis Management is about being prepared to handle adversity, minimizing the impact most effectively and facilitating the management process during chaos.

Whatever form a crisis takes, and whether it is the company, an individual or a key brand that is at risk, the advance planning process that should have occurred will be the same.

Planning Best Practice

This integrated and holistic approach to crisis management is being adopted by multi-nationals across various industries. A crisis custodian is appointed and is tasked to assess, plan, and implement a comprehensive and professional crisis response system bringing

together key business functions including, operations, human resources, legal, IT, health safety & environment, sales & marketing, communications & reputation, security, etc.

The process must begin with an in-depth assessment of the corporation's risk and issues management capability, emergency and crisis response plans and procedures, local competencies as well as facilities, resources and equipment.

The findings of this assessment will highlight strong and weak areas. The objective going forward is to close the gaps. An action plan with specific completion targets is then formulated to revise, expand and integrate processes, train management and staff. Those are then tested. Thereafter, monitoring and maintenance are critical for the organization to sustain its state of crisis preparedness, which includes the ability to anticipate, prevent, mitigate and recover from a crisis effectively.

Winston Churchill famously stated "plans are useless, but planning is everything". Ultimately, only practice makes perfect. Organizing regular exercises such as desktop and simulation drills is the only way to discover gaps and address them and to make sure the plans are workable.

Looking After the People

Managing public, family and employee communication is an increasingly important component of overall business contingency planning and of crisis management. In the event of casualties, this becomes the priority.

Psychologist and Director-Owner of the Korzybski Foundation, an international training institute in Solution-Focused Grief Therapy, Louis Cauffman says: “Facing and supporting grieving individuals effectively is difficult. It requires awareness, sensitivity and skills. When a crisis involving injuries or fatalities occurs, the way a company manages its communication with victims and next-of-kin is critical to minimizing potentially devastating and long-lasting impact on the affected parties. It also helps to protect corporate and brand reputation.

Whilst the airlines had procedures in place to manage next-of-kin and employee communication on September 11, most companies in New York's World Trade Centre had little in place to deal with the extent of the human tragedy facing them.

Since September 11, companies in the oil & gas, financial and property sectors have considerably expanded their family support programs. Teams of volunteers are being trained to handle next-of-kin telephone inquiries effectively in the event of an emergency or crisis involving casualties, and a formal telephone response capability is being routinely tested as part of crisis simulation exercises. The management of victims and next-of-kin is often linked with enhanced security procedures.

Crisis Leadership

As Fortune Magazine noted, in a crisis, ‘leaders serve as a repository for people’s fears. Leaders can also act as a mirror reflecting a groups’ anger, grief, resolve or joy on a much larger stage than is available to most. Leaders say in effect ‘I hear you’

Leaders are essential to lead their organization through a crisis, and provide their audience with a vision of the aftermath of the crisis. They provide focus and overview, and rally their team under a mission.

Managing a crisis by consensus does not work. Short time, threat and the surprise elements of most crises imply that tough decisions need to be made and made quickly. The Crisis Management Team (CMT) must command and control and not get lost in endless debates in order to make decisions.

Organizations across industry sectors are undertaking Crisis Leadership training for their CMTs so that they can be better prepared to lead under stress, and manage the situation proactively and strategically. During such training programs, executives are invited to experience the difference between consensus-based and command and control style of management by working through scenarios and applying strategic decision-making and business continuity planning.

The best Crisis Management Teams are built according to suitability and not simply functionality.

Skills and experience at all levels of the crisis response structure are critical, from the switchboard response to callers, to the leadership and strategic planning skills of the

CMT, to the ability to provide support to next of kin and victims, and of course to communicating with the media effectively and protecting reputation.

Protecting Corporate and Brand Reputation in A Crisis

Managing reputation in a crisis is still one of the most challenging aspects of effective crisis management. The multiplicity and diversity of stakeholders, many of whom have conflicting agendas can give management the impression they are gaining on one side and losing on the other. Nevertheless, it is vital not to lose sight of stakeholder perceptions, and work with a solid communication strategy based on corporate values and principles, which are best captured in a crisis mission statement. This mission statement, which the CMT should formulate at the onset of the crisis, provides the organization with a guiding strength, a focus and a vision of the aftermath of the crisis.

Once this vision is established and the organization can rally around it, it acts as the foundation for any and every message communicated to stakeholders. However, communicating with stakeholders is only half of the equation. Listening to them and their concerns is essential to ensure that the organization's internal operational view of the way the crisis is being managed is as close as possible to the external perception of stakeholders.

It is a fact: good or bad communication can still make or break a crisis.

Top Tips in Crisis Management

- A. Establish a bright and decent image for the corporation in advance of any crisis.
- B. Develop an early warning system.
- C. Conduct a crisis “audit” and anticipate a crisis based on the likely risks associated with a given industry.
- D Create a crisis management team or structure, with a written manual (which is a dynamic and constantly evolving document) which clearly defines roles (especially those of PR and lawyers) and establishes what the CEO should do in a crisis and who the crisis spokesperson should be.
- E. Study and learn from past crises, whether your own or others.
- F. Allow time and effort to restore the brand after a disaster - eventually people can usually be persuaded to forget.

Above and beyond all, though, it is essential to bear in mind that nothing beats an organization’s commitment to doing the right thing, strong leadership, and effective communication.

The TYLENOL crisis

Nowhere was this demonstrated more effectively than in the TYLENOL story of the early 1980's

For many commentators, it remains the best example of how to handle a totally unexpected crisis well, and to emerge from it with grace, respect and commercial success.

The background

In 1982, seven people in Chicago died over the period of a few days and in unusual circumstances.

The police soon noted that all the victims had one thing in common – they had all died within hours of taking Extra-Strength TYLENOL.

Capsules from each of the bottles which had been used were examined and each were found to contain considerable quantities of cyanide.

As soon as it was realized that bottles of TYLENOL had been adulterated with lethal quantities of cyanide, the news broke rapidly in newspapers and on national television.

The FDA advised that TYLENOL capsules should not be taken until the deaths in Chicago had been clarified.

For a trusted household brand like TYLENOL to be associated with such gruesome and tragic events was unbelievable, and the future of the brand seemed grim.

Although it was quickly ascertained that the tampering could not have occurred at the plants where the particular TYLENOL capsules had been made and packed, and it seemed likely that the capsules must have been tampered with in stores in Chicago, the news of the deaths was shocking and frightening, and it made little difference to consumers where the capsules had been contaminated. The only fact that mattered was that people had died after taking TYLENOL capsules, and understandably no-one was now inclined to risk being another victim.

Johnson & Johnson now faced an entirely unheralded crisis of massive proportions. Few people in the industry imagined that it was a survivable crisis, and most believed that J&J's most profitable product - TYLENOL - was utterly doomed.

How did Johnson & Johnson prove the world wrong?

We intend to look in detail during our presentation into how Johnson & Johnson achieved this feat. But in advance of that it is worth noting that there were several key areas that were decisive:

1. Building relationships with outside agencies (who might otherwise have been hostile) such as the FDA and the Chicago police.

2. The scope and timing of the national alert to health professionals
3. The massive, speedy and voluntary national recall of TYLENOL
4. The reaction of the media to Johnson & Johnson's responsible actions. (Such as "what Johnson & Johnson executives have done is communicate the message that the company is candid, contrite, and compassionate, committed to solving the murders and protecting the public.")
5. The product was able to make a strong come back after the recall through the interplay of several factors, but crucial ones were the introduction of the then novel tamper-resistant bottles, a pricing strategy, careful advertising, reliance on cultivated and good media relationships, the support of the medical profession, and an overall general sense that Johnson & Johnson had showed appropriate concern for the public from the outset, and perhaps the most telling of all – a strong and established corporate credo.

“ Failure to plan is planning to fail”

During our presentation, we will look at some real life examples where things did not go so well, and (based on the lessons and strategies set out above) will reflect on what might have been done differently to avoid or to recover the situation

Every crisis is different. But, in reality, the basic lesson that emerges from just about all of the recent real-life crises which struck well-known brands is that the public only wants to know three things:

what went wrong

how it will be fixed, and

what will happen to make sure that it cannot happen again.

And in reality, if those three questions can be answered honestly, quickly and in a believable way, there is a very good chance that the disaster can be controlled.

Conclusions

Each crisis generally begins in the same way – a relative small way - and it is only through escalation that it becomes a disaster.

Uncontrollable escalation can be achieved by trying to ignore the problem or by trying to deal with it in a way that is dishonest or deceptive.

Once it has been allowed to escalate it is usually incapable of being controlled and the company is then at the mercy of an unforgiving press and public.

The key is in taking the right steps at the right time.

A crisis plan should be assembled long before a crisis ever arrives.

If and when a crisis arrives the company should be ready for it and can deal with it without it ever escalating.

If the crisis escalates anyway, then the plan will give the company tools to enable it to seek to regain control of the problem and to regain the trust of the consumer.

The only sure thing is that a failure to plan for a crisis is to plan for failure. But most crises take a fairly similar path, and if you know that and you know your own industry you can make most crises predictable and capable of being dealt with through advance planning.