



BY FIONA POSELL

WHEN IS THERE SUCH A THING AS TOO MUCH PUBLICITY?

Most Internet companies crave publicity, and rightly so. Public relations (PR) is one of the most cost-efficient ways for a young company to tell its story, and build its corporate profile. But when a company chooses its bankers and files for an Initial Public Offering (IPO), it enters a "quiet period", a time which often heralds its own set of headaches for marketing and PR departments.

At the beginning of October, Webvan delayed its much anticipated IPO, after the Securities and Exchange Commission (SEC) cited apparent violations of restrictions on what companies can say during their "quiet period" prior to an IPO. Webvan pushed the communication boundaries, as many companies have done before it, but this time its actions had serious repercussions. It sent an important message to pre-IPO companies: "manage your communications strategy during your quiet period and respect the reasons for it."

The purpose of the quiet period is to ensure that investors evaluate a company based on information that is publicly available in SEC filings rather than through more subjective information such as advertising, press releases, editorial coverage or ad hoc comments made to select audiences. It protects both potential investors and the company.

But who is responsible for managing this process? "It is critically important for companies to pay attention to their legal counsel," advises Ian Campbell, Executive Vice President, Abernathy McGregor Frank, Los Angeles, an investor relations firm. All too often, the communications issues surrounding a company's pre-IPO quiet period are tackled by a combination of the Chief Financial Officer and Chief Executive Officer, as well as in-house and external legal counsel, none of whom have all the answers and, all too often, few of whom have any prior experience in such matters.

Ironically, the whole area of corporate communications is one that many companies only consider seriously once they are publicly traded. It is interesting to note that the SEC provides only broad guidelines about marketing and PR activities since what they are really concerned about, and what they do offer guidance about, is

disclosure. A pre-IPO company needs a senior-level, seasoned communications professional who can interpret and enforce the SEC guidelines in a meaningful manner, while ensuring that the company and its management acknowledge and take seriously their responsibilities as a soon-to-be, publicly-traded company.

Santa Monica-based eToys Inc. experienced a longer than usual quiet period due to the acquisition of BabyCenter and the subsequent need to re-file documents with the SEC. From January to May 1999, the company was noticeably low-key on the marketing front. "Respecting the quiet period was a top priority for us and something that we made sure to reinforce frequently and at all levels during the process", notes Steve Schoch, Chief Financial Officer, eToys Inc. "Companies need to realize that an ounce of prevention in the way of maintaining a discipline here is a pound of cure if you violate the quiet period and have to delay the IPO."

Corporate communications is an important corporate function, and knowing when to keep quiet is not child's play, as Webvan recently learned. Evidently, in the case of Webvan, interviews took place between senior management and the press at a time when the company should not have been commenting on its business above and beyond the information that was already publicly available. In its revised prospectus, filed a week after the SEC initially slapped it on the wrist, Webvan cites an article in the October 18th issue of Forbes magazine. In this article, Webvan's CEO, a former chief of Andersen Consulting, was quoted making a comment that could have been interpreted as likening Webvan's business to Andersen Consulting's business. Providing such an interesting sound bite to a journalist during the quiet period was deemed inappropriate. It implied that the two businesses were comparable and therefore had valuation and market perception implications.

This begs the question as to who was advising the CEO in this instance. Pointing the finger at the PR firm is not the answer. "PR people get all the pressure before a company goes public," notes Ina McGuinness, Director, Investor Relations, QAD, a leader in enterprise resource planning, "but SEC rules are mysterious to most marketing people." She added, "An investor relations person



should be involved so that the PR industry and the media can respect the purpose of the quiet period."

Finally, it is worth noting that being in a quiet period is not a single occurrence that a company only endures prior to its IPO. Quiet periods typically occur every quarter, usually for a couple of weeks prior to earnings being released, although this varies from company to company. The intent of a quiet period remains the same throughout its life as a public company. So, too, does the need for management to uphold its responsibilities.

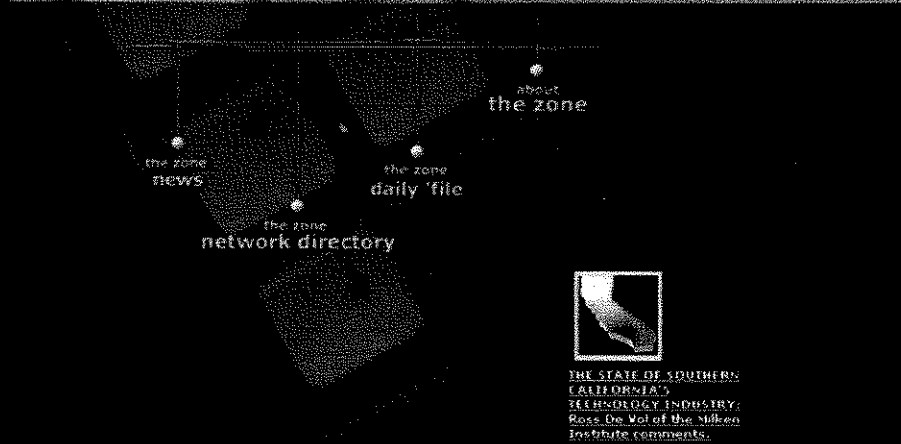
Internet companies are especially challenged when it comes to coping with their pre-IPO quiet period since most have a limited operating history and recognize the need to brand themselves in their market. Many think they simply can't afford to spend 3 to 4 months lying low. Perhaps after the Webvan debacle they will think again.

Hiring corporate communications expertise is the best

way to ensure that someone is responsible for coordinating marketing, PR and financial communications plans. Addressing internal communication and developing an understanding of the quiet period among key employees is also important – not least to avoid employees unwittingly leaking information. Companies will be well advised to take a good hard look at their communications needs as they consider going public. By so doing, perhaps more of them will be able to strategically plan for their inevitable quiet periods and will seek to establish strong, sensible and meaningful patterns of communications behavior that will allow them to flourish at all times. ■

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