Before the
Federal Trade Commission
Washington, DC

In the Matter of

Online Health and Pharmaceutical Marketing that Threatens Consumer Privacy and Engages in Unfair and Deceptive Practices

Complaint, Request for Investigation, Public Disclosure, Injunction, and Other Relief:

Google, Microsoft, QualityHealth, WebMD, Yahoo, AOL, HealthCentral, Healthline, Everyday Health, and Others Named Below

I. Introduction

1. As consumers increasingly go online seeking advice and information about possible forms of treatment for a variety of health and medical issues, they face an array of sophisticated and non-transparent interactive marketing applications. A far-reaching complex of health marketers has unleashed an arsenal of techniques to track and profile consumers, including so-called medical “condition targeting,” to eavesdrop on their online discussions via social media data mining; to collect data on their actions through behavioral targeting; to use viral and so-called “word-of-mouth” techniques online to drive interest in prescriptions, over-the-counter drugs, and health remedies; and to influence their subconscious perceptions via pharma-focused “neuromarketing.”

1 For insight into state-of-the-art pharmaceutical marketing, see the agenda for the 4th Annual Digital Pharma East conference, scheduled for October 2010, which included sessions on such topics as “Six Steps to Becoming a Social Brand,” “Understanding the Power of Fan Culture in Healthcare Marketing,” “How Smart Is Your Phone: Leveraging Smartphones To Help With Patient Adherence,” and “Engaging Physicians Through Online Social Media to Ensure Use and Interaction.” 4th Annual Digital Pharma East Agenda, http://www.exlpharma.com/event-agenda/409. The e-Patient Connections 2010 conference, scheduled for late September 2010, offered a similar overview of contemporary health marketing, where companies could learn how:

- Novartis created a fictitious character and tapped the power of story-telling to reach those with cystic fibrosis
- Auxilium leverages the power of patient ambassadors
- Johnson & Johnson manages pharma’s largest YouTube channel and moderates comments
2. The focus on consumer protection and health/pharma marketing has traditionally been to ensure adequate risk information on drug side effects and contraindications for use. But the emergence of powerful new digital marketing techniques designed to influence consumer behavior around health conditions and medications requires a new approach to informing and protecting the public.

3. Physicians, nurses and other health professionals are also the target of powerful digital marketing practices that have a direct effect on the health and financial costs born by consumers. The growth of online “e-detailing,” “e-samples,” and other digital ad practices designed to influence health professionals to order specific pharmaceuticals and treatments raises new concerns over the role of online advertising in the healthcare arena. Data collected via e-detailing and related methods also pose privacy concerns.

4. “According to recent surveys, some 60 to 80 percent of Americans have used the Internet to find health information, and as of January 2008, the Internet rivaled physicians as the leading source for health information.” Pharmaceutical marketers are not unaware of these trends.3

5. Consumers increasingly rely on the Internet for their health information, in part to address issues connected to the increased costs they must bear to pay for medical services. The use of non-transparent, unaccountable, and unfair and deceptive marketing practices significantly adds to the financial and personal

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- Lundbeck uses social media to support rare disease communities
- Gilead use “Levels of Evidence” to measure and optimize their video marketing
- iGuard crafted a unique partner model to get over 2 million members in their program
- LIVESTRONG manages their 900,000 Facebook page members.

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2 Sarasohn-Kahn, “The Wisdom of Patients: Health Care Meets Online Social Media,” p. 3.

6. Americans aged 50 and older are increasingly online seeking “information about a condition and treatment,” and are the subject of pharma-focused health marketing research. Such research tracks and analyzes how consumers seek information depending on “the stage of the condition,” and is being used to develop digital targeting strategies to take advantage of what the industry calls the “patient journey.”

7. The FDA held two days of hearings in November 2009 on the role of the Internet and marketing for regulated drugs. Pharmaceutical marketers purposely painted a sanitized, storybook image of social media and digital marketing. Missing were data and information related to the powerful capabilities of interactive marketing to promote relationships with specific brands, including the ability to foster what has been called consumer “micro-persuasion.” “Direct-to-Consumer Digital Marketing” of pharmaceutical and health-related products requires the FTC to develop safeguards for sensitive-data-related advertising practices, and also ensure that interactive ad techniques are truthful and non-misleading.

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6 Earlier in 2009, “the FDA’s Division of Drug Marketing, Advertising and Communications sent warning letters to 14 drug makers identifying 48 different brands as being in violation of the FDA’s fair balance guidelines. The letters stated that sponsored-link advertisements for specific drugs were misleading due to the exclusion of risk information associated with the use of the drug—even though the regulatory agency’s guidelines are for print and broadcast, not online or social media.” Rich Thomaselli, “Pharma Drops Search Advertising After FDA Warning,” Advertising Age, 6 Oct. 2009, http://adage.com/article?article_id=139500 (viewed 7 Nov. 2010).

8. Digital marketing raises many distinct consumer protection and privacy issues, including an overall lack of transparency, accountability and personal control, which consumers should have over data collection and the various interactive applications used to track, target, and influence them online (including on mobile devices). The use of these technologies by pharmaceutical, health product, and medical information providers that directly affect the public health and welfare of consumers requires immediate action.

9. Both consumer spending on prescription drugs and the number of prescriptions ordered each year is growing significantly. “Spending in the US for prescription drugs was $234.1 billion in 2008, nearly 6 times the $40.3 billion spent in 1990.... The number of prescriptions dispensed in the US in 2009 increased 2.1% (from 3.8 billion to 3.9 billion).... From 1999 to 2009, the number of prescriptions increased 39% (from 2.8 billion to 3.9 billion), compared to a US population growth of 9%.... Prescription drug sales were $300.3 billion in 2009, an increase of 5.1% over 2008.... HHS projects US prescription drug spending to increase... to $457.8 billion in 2019, almost doubling over the 11-year period.”

10. “US healthcare and pharmaceutical online advertising spending will reach $1 billion this year, up 10.6% from last year,” according to eMarketer. “By 2014, online ad spending in the healthcare and pharmaceutical industry, which includes DTC and over-the-counter remedies, is expected to reach $1.52 billion.”

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8 See, for example, Kathryn Montgomery and Jeff Chester, “Interactive Food and Beverage Marketing: Targeting Adolescents in the Digital Age, Journal of Adolescent Health 45, no. 3 (2009): S18-S29.


11. Health consumers are being told that by using digital media services they have become empowered “E-patients,” but they are not being informed about the privacy and potential health risks connected with the use of digital marketing of pharmaceuticals and health products.12

12. Online marketing poses fundamental new risks to consumers of health information and services, given its powerful data collection and targeting capabilities. Consumers are faced with wide-ranging online marketing tactics designed to trigger emotional responses, including those that lead to actions related to a particular health product. Such techniques for health marketing have emerged across several platforms.13

13. The dangers of online behavioral targeting as a threat to consumer privacy have been amply chronicled.14 Online targeting, for example, enables health marketers to follow consumers online—without their knowledge and across

http://www.mediapost.com/events/?/showID/OMMAAwards.10.NYC/fa/e.awardVoting/itemID/1416/voting.html (all viewed 30 Sept. 2010).


13 For example, Microsoft Advertising markets its “multi-screen” capabilities to drug and health advertisers (among others) as “a seamless experience” across mobile, online, gaming, search and other sites that “[c]reate[s] immersive brand experiences that deliver your message across all consumer touchpoints... [and] provides sophisticated analytics that show where and how your ad is most effective.” Microsoft Advertising, “Multi-screen Advertising,” http://advertising.microsoft.com/multi-screen (viewed 4 Oct. 2010).

many different websites—gathering details on their interests and activities (and now including offline databases and employing psychographic and demographic analysis), and then plying them with marketing messages precisely honed to a particular illness or condition.

14. As Google’s health industry marketing director recently wrote, “[O]nline health information is driving users to take action...,” citing a survey Google conducted showing that 52 percent of consumers who used search services to address health issues “made a self-diagnosis; 49% started an over-the-counter treatment; [and] 46% told a doctor about a symptom I/someone else had.” While Google claims such data illustrate that “patients are using the information they gather to make better, more informed health care conditions,” the digital health marketing system poses risks in terms of misinformation and the encouragement of consumers to seek out drugs and treatment whether they require them or not.15

15. The FTC must develop clear consumer protection safeguards for sensitive information that meaningfully protects consumers’ health- and medical-related information, and also addresses the myriad digital marketing techniques described below.

16. The commission must also address the personal costs to consumers who are encouraged to seek specific pharmaceutical brand medication or treatment based on unfair and deceptive digital marketing practices. There is significant evidence that the marketing and promotion of pharmaceuticals is contributing to unneeded expenditures by consumers and taxpayers.16

17. There is ample evidence that Direct-to-Consumer marketing of pharmaceuticals,


16 Health information portal WebMD explained in its annual 10K report to the SEC that “Healthcare consumers increasingly seek to educate themselves online about their healthcare-related issues, motivated in part by the continued availability of new treatment options and in part by the larger share of healthcare costs they are being asked to bear due to changes in the benefit designs being offered by health plans and employers.” http://investor.shareholder.com/wbmd/sec.cfm. For an analysis of how the marketing of drugs for depression, anxiety, and other forms of psychological conditions has contributed to increased costs to taxpayers and consumers, see, for example, Robert Whitaker, Anatomy of an Epidemic: Magic Bullets, Psychiatric Drugs, and the Astonishing Rise of Mental Illness in America (New York: Crown, 2010), pp. 147-171.
especially on television, has contributed to significant consumer expenditures for medications and drugs. A 2005 study published in *JAMA* “showed the influence of patients’ DTC prompted requests for antidepressants—one of the drug classes most heavily advertised to consumers.”

17 “Trained actors posing as patients were sent into clinics presenting signs of either major depression or adjustment disorder. ‘Patients’ with symptoms of depression requesting Paxil (the antidepressant chosen for the study) were more likely to receive Paxil than those making a general request for medication or no request… For symptoms of adjustment disorder, antidepressant prescribing rates were 36.7%, 10.2%, and 0%, respectively (p < 0.001). Importantly, the authors report that no evidence supports the use of Paxil for adjustment disorder and minimal evidence for the use of the drug for minor depression. Thus, DTCA has the demonstrated potential to drive medically inappropriate use. This may be particularly true of ‘reminder ads,’ which mention a product, but not an indication.”


“the new generation of antipsychotics has also become the single biggest target of the False Claims Act, a federal law once largely aimed at fraud among military contractors. Every major company selling the drugs — Bristol-Myers Squibb, Eli Lilly, Pfizer, AstraZeneca and Johnson & Johnson — has either settled recent government cases for hundreds of millions of dollars or is currently under investigation for possible health care fraud.”
"pediatric and teen depression" branded pharmaceuticals. Such marketing practices involving youth health concerns require special safeguards and immediate attention from the FTC.

20. While digital and social media play an important role in providing consumers with access to in-depth information and support concerning health products and issues, U.S. health consumers should not be subjected to hidden digital marketing techniques designed to amass detailed profiles of their behavior and then target them with ads for specific drugs and treatments. Digital marketing applications for selling cars, food, and financial products have already raised privacy and related concerns at the FTC. When applied to digital pharmaceutical and health marketing, such practices call for an even higher level of scrutiny and policy intervention.

21. The growth of federal and private programs promoting personal electronic health records, such as the initiatives by Google and Microsoft, and their relationship to online health marketing and advertising tactics require FTC


analysis and appropriate action. Patients and health consumers expect their health related information to be private and confidential, under such rules as HIPAA. But the online health targeting landscape has been deliberately structured to make such information available to marketers and other outside parties.

22. While the Food and Drug Administration has begun to explore and initially address issues related to digital and interactive marketing of regulated health products, it does not have the expertise and staffing to adequately protect the public from unfair and deceptive online practices. Given the FTC’s recent work on privacy and digital marketing, it is the federal agency best positioned to address health marketing and advertising practices harmful to consumers.

II. The Parties

23. The Center for Digital Democracy (CDD) is a not-for-profit organization based in Washington, D.C. CDD works to protect the interests of both consumers and citizens in the online marketplace. Through a series of complaints and other actions at the FTC, CDD has played a leading role in encouraging the commission to investigate and address the privacy and consumer protection issues related to digital marketing and advertising.

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23 CDD’s prior filings with the FTC include Center for Digital Democracy and U.S. PIRG, Complaint and Request for Inquiry and Injunctive Relief Concerning Unfair and Deceptive Online Marketing Practices. Federal Trade Commission Filing. November 1, 2006,
24. U.S. PIRG serves as the federation of non-profit, non-partisan state Public Interest Research Groups. PIRGs are public interest advocacy organizations that take on powerful interests on behalf of their members. For twenty years, U.S. PIRG has been concerned with privacy and compliance by governments and commercial firms with Fair Information Practices (FIPs). U.S. PIRG has published investigative reports, filed complaints, petitions and amicus briefs and testified before Congress, federal agencies and state legislatures on issues including compliance with FIPs by online and offline firms, credit bureau accuracy, identity theft, security breach notification, privacy disclosures and notices and other matters concerning the uses of consumer information.

25. The World Privacy Forum is a nonprofit, non-partisan public interest research group. The organization is focused on conducting in-depth research, analysis, and consumer education in the area of privacy. It is the only privacy-focused public interest research group conducting independent, longitudinal work. The World Privacy Forum has had notable successes with its research, which has been groundbreaking and consistently ahead of trends. World Privacy Forum reports have documented important new areas, including medical identity theft. Areas of focus for the World Privacy Forum include health care, technology, and the financial sector.

26. Established in 1985, Consumer Watchdog is a nationally recognized non-partisan, non-profit organization with offices in Santa Monica, CA, and Washington, DC, representing the interests of taxpayers and consumers. Its mission is to provide an effective voice for the public interest. Consumer Watchdog’s programs focus on insurance, health care, political reform, and privacy protection.

III: Action Now Required by the FTC to Protect Consumers, Using its Enforcement Authority Under Section 5 of the FTC Act.

27. The FTC must conduct an investigation and public accounting of how pharmaceutical and online health services engage in data-collection practices,
including behavioral tracking, used for profiling and targeting. Digital pharmaceutical and medical marketers use a variety of techniques to collect personal information and data from consumers, including via so-called “free” giveaways of products tied to user registration, the distribution of online discount coupons, as well as via cookies, IP addresses, and other tracking techniques.

28. Privacy policies on health and pharmaceutical sites fail to meaningfully inform consumers of how the data collected, including those related to medical conditions and ailments, are used.24

29. Health consumers are the subject of unfair and deceptive practices as they visit medical information sites, including the use of online video purportedly independent “testimonial endorsements” that are actually sponsored by drug companies and other marketers without proper disclosure; the mechanism and practice of “condition-targeting,” in which consumers are profiled without their knowledge or consent; the use of online “lead generation” techniques to stealthily identify consumers whose health-related information is shared with other parties, including marketers; and “buzz” or viral marketing designed to generate fans of drug brands and health treatments.25

30. Pharmaceutical and online marketing companies are using neuromarketing, “immersive,” and other subliminal-related techniques designed deliberately to bypass the rational, conscious decision-making process in order to promote health products.

31. African-American, Hispanic, and other multicultural groups are being targeted for health products and medical services based on information collected concerning their ethnicity or race. While some sites claim that they have received opt-in permission to target by ethnicity, the use of online racial profiling in digital health marketing without meaningful disclosure and consumer control poses potential new concerns about discrimination.

24 This complaint will provide evidence of the far-reaching data collection and targeting schemes used by pharma and health marketers to obtain user data while hiding behind the privacy notice “smokescreen.” In addition to the inadequacies of privacy policies, there is also evidence that health-related data can be “scraped” from websites. A recent Wall Street Journal article details the practice of automated scraping of consumer health information on social networking sites. Julia Angwin and Steve Stecklow, “Scrapers’ Dig Deep for Data on Web,” Wall Street Journal, 12 Oct. 2010, http://online.wsj.com/article_email/SB10001424052748703358504575544381288117888-lMyQjAxMTAwMDEwMjExNDlyWj.html (subscription required).

25 See, for example, Good Health Media, “Good Health Media is a New Resource for Pharma and Consumer Brands to Connect with Health Audiences,” http://ghmedia.com/advertisers.php (viewed 18 Oct. 2010)
32. Ad exchanges and demand-side platforms are being used for the real-time auctioning of the right to target consumers based on their health and medical information and concerns.

33. Marketers are using forms of insurance data to target consumers without their awareness and prior consent.

IV: Practices that Threaten Consumer Protection and Privacy

Data Collection

34. Little information is currently provided on what is being collected from users of health-related sites and how such data are used. Health consumers are being targeted via “profiling systems” that serve to enable online “lead generation” for the pharma marketplace. QH Connect, for example, “continuously maintains data on 9 million members who have requested information about specific diseases, conditions, symptoms, or treatment regimens.” QH Connect conducts “continuous profiling” to help health marketers target and acquire the “most qualified consumers” using data involving:

- Diseases, conditions, and symptoms.
- Current treatments (Rx down to the brand level).
- Level of disease severity.
- Demographics.
- Geographic location.
- Lifestyle choices.  

26 “Using Healthographics, a proprietary algorithm of more than 250 individual demographic and health data points, each consumer is meticulously profiled on an ongoing basis, which gives our clients access to valuable data and insights that enrich their advertising efforts.” QH Connect also offers “High-Volume, Multichannel Solutions:

Our unique multichannel approach allows brands to connect with the Web's largest pool of health-conscious consumers. Our growing reach includes:

- 9 million existing, prequalified members.
- 1 million new leads every month.
- 4 million page views per week.
- The industry’s highest index of 45+ visitors.

Products and Services

Data-Driven Lead Generation
Our unique QH ConnectSM profiling system continuously maintains data on 9 million members who have requested information about specific diseases, conditions, symptoms, or treatment regimens. Using HealthographicsSM, a proprietary algorithm of more than 250 individual demographic and health data points, each consumer is meticulously profiled on an ongoing basis, which gives our clients access to valuable data and insights that enrich their advertising efforts.

Ask Your Doctor
Ask Your Doctor is a patent-pending program that allows you to reach patients just in time for their upcoming doctor's appointment. By enhancing communication at the most critical time during the treatment cycle—the initial prescribing visit—the program brings brand directly into the doctor/patient dialogue, and helps patients become active participants in their own health care.

Display Advertising
Our QH ExtendSM advertising solutions enable marketers to communicate their brand message to the world's largest audience of pre-qualified, health-conscious consumers. In the process, we enable our clients to enhance brand visibility, boost the effectiveness of their media campaigns, and build powerful relationships with new and existing customers.

Branded Sponsorships
With MTS's branded sponsorships, you can leverage the power of fully customizable solutions that enhance patient awareness and associate brand with condition education. Our content-rich information guides, expert interviews, condition-specific videos, and interactive tools offer multiplatform visibility and 90% percent share of that condition's voice across the QualityHealth network.

Email Marketing
Our email marketing solutions enable you to deliver your brand message straight to consumers' inboxes. Our ten million database currently includes more than 9 billion opt-in consumers, and our email offerings include condition-specific newsletters, condition-specific bulletins, sample offer updates, and more.

HealthTrak
HealthTrak revolutionizes patient-level data research, offering the first real look at how prescriber communications during the initial prescribing visit—something we like to call the Medical Moment of TruthSM—impact patient-level persistency. These data enable evaluations to truly understand patient mindsets and create more effective marketing strategies.
Consumers using leading search engines are unaware of how their information is collected, analyzed, and used for online ad targeting and data sales. Search marketing for health conditions has evolved into a highly sophisticated practice that can target information seekers through a variety of techniques, including the sale of related keywords, so-called organic search marketing, and reaching consumers through what is called “top of the search funnel.” Microsoft has numerous guides for BING advertisers to target seekers of health information, including those concerned about diseases and drugs.27

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36. Alliance Health Networks, whose social network holdings include DiabeticConnect, SleepConnect, ChronicPainConnect, HeartConnect, and DepressionConnect, offers pharmaceutical companies an opportunity to develop relationships with individual consumers using sophisticated data-mining tools.28 Alliance allows its clients to zero in on specific medical conditions thru digital marketing, including data collection. “As a healthcare marketer,” the company tells its clients, “you deserve to take full advantage of the capabilities of the Internet to engage new customers and build one-to-one relationships.... Our proprietary properties and powerful cross-selling network are built specifically for the unique needs of healthcare marketing, including our proprietary PersonaMatch co-morbidity ranking algorithm that helps place your message in front of the right customers based on the prevalence of related medical conditions.”29 “PersonaMatch ... allows us to exploit the prevalence of related medical conditions and to use predictive modeling to place correlated healthcare advertising in front of the right consumers. For the first time, healthcare advertising can be served up and driven by medical probabilities rather than simple economic models. The effect is greater relevance to the consumer and greater exposure for targeted products and services.”30


It only took the first four months of 2010 to add 100,000 more. Part of the growth has come from a proprietary algorithm that cleans up the comment section for all the sites. Unlike some special interest sites, the comments on DiabetesConnect all seem to be relevant, free of the sometimes bizarre posts that plague all UGC, and free of bad language. That’s no accident. The algorithm pushes the most relevant comments to the top of the comments and also moderates the specific words.... [A] welcome side-effect of the moderated content has been huge uptick in advertisers. Bayer is a huge presence on DiabetesConnect, partially because they get thousands of leads each month from the network, but mostly because the company feels safe with the Alliance content approach. Many more pharmaceutical companies are on the network with microsites or banners, and others are in discussion to be there.
Welcome to Chronic Pain Connect!

We're a free online community to help you:
Get support from friends who really understand.
Learn about treatments from experts and members.
Share only what you want with complete privacy controls.

Join Now or Learn More About Chronic Pain Connect

Pain Free: A Revolutionary Method for Stopping Chronic Pain

By Pete Episcopo • 147 views

Starting today, you don't have to live in pain. That is the revolutionary message of this breakthrough system for eliminating chronic pain without drugs, surgery, or expensive physical therapy. Developed by Pete Episcopo, a nationally renowned physiologist and sports injury consultant to some of today's top athletes, the Episcopo Method has...

No comments — Read more and add your comments.

Active Discussions

Chronic Back Pain

"Hello Everyone, I had an automobile accident resulting in a spinal fracture, a few broken ribs and a number of..."

Mindfulness 101: Start By Giving Up the Need to Be.

"Hey Honey, Wow, what a great post. Thanks VERY much for checking in. You said it all! It sounds to me that..."

all kinds of pain

"21 years nursing gets one several types of chronic pain. Back pain, neck pain, and bilateral carpal tunnel. I would..."

Mindfulness 101: Start By Giving Up the Need to Be.

"Very well-written, Dr. Cary! I was never able to 'conquer' my chronic pain until I began letting go. I FINALLY..."
37. QualityHealth says it is “the largest targeted customer acquisition solution for healthcare marketers” and is engaged in forms of online lead generation and other data collection and targeting. QualityHealth’s “Acquire2Convert” Platform...Identifies and Engages Prospects at Scale,” including its “QH Lead Generator:

The first, largest, and most successful approach to finding patient prospects in the industry. QualityHealth partners with brands to pinpoint the best patient prospect population to meet your business objectives and leverages our profiling system to fill your acquisition funnel — at scale.

**QH Lead Incubator:**
When enrolling new prospects to your CRM program, speed and personalization are critical to success. QualityHealth develops and sends timely email messaging to bridge new leads to your brand experience, and ensure that your brand stays top of mind until your fulfillment is delivered to their door or inbox.

**QH Lead Re-activator:**
We re-engage dormant customer contacts in your existing brand database with relevant, branded turn-key eNewsletter series to motivate them to action.31

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31 Additionally, QualityHealth claims to “expose new prospects to engaging content and branded messaging with our turn-key eNewsletter series. QualityHealth delivers twelve
weekly newsletters to your new patient prospects either to enhance your own CRM fulfillment or as a cost-effective standalone solution. This ensures your brand is top of mind when the consumer visits the doctor.

QualityHealth Removes Obstacles to Getting on Therapy
Ask Your Doctor™:
A personalized marketing solution triggered by patients’ upcoming doctor visits empowers patients with a doctor discussion guide and branded messaging immediately prior to a doctor visit. This targeted contact helps guide the exam-room conversation and reminds patients to ask for your brand by name.

Focus on Formulary™:
Focus on Formulary links consumer marketing with brand formulary access, optimizing a brand’s marketing spend and maximizing pull-through in the physician's office and at the pharmacy. Our profiling allows us to determine the formulary status of your brand, so we can design targeting and messaging strategy based on coverage, and increase patients’ likelihood to get a brand prescription.

QualityHealth, “Our Programs,” http://www.qhperform.com/our_programs.html. As the marketer explains elsewhere, Focus on Formulary “uses QualityHealth’s sophisticated technology to determine the formulary status of a brand and design targeting messaging directly to millions of profiled consumers based on prescription coverage. With this access and insight, healthcare marketers can now target and educate patients differently depending upon their prescription coverage and have confidence that if a prescription is prescribed, the patient is more likely to receive their brand versus a competitive product. In an April 2010 study using a third-party provider of authenticated prescription data, patients targeted through Focus on Formulary were proven to be 2 to 3 times more likely to get the advertiser’s brand, compared to a control group of patients with less favorable formulary coverage. “We continue to build out our Acquire2Convert™ platform to address our healthcare marketing clients’ needs,” says QualityHealth CEO, Rob Rebak. “Focus on Formulary allows marketers to improve patient economics and overcome a common barrier to conversion. We help healthcare marketers target their ad dollars more precisely and where it will most likely bring the greatest return for the brand.” “QualityHealth Launches New Integrated Healthcare Programs For Brand Marketers,” 26 Apr. 2010, http://www.qualityhealth.com/resources/campaign/news/20100426_new_products.html. Additionally, QualityHealth’s “Ask the Pharmacist is another new program that helps marketers and patients alike. ‘Studies show that as many as 30% of new prescriptions are never filled,’ adds SVP, Marketing Strategy, Elaine Boxer. Ask the Pharmacist gets the first prescription filled right from the doctor’s office and delivered to the patient’s door, making sure they get branded drugs as originally prescribed by their doctor. It also comes with an online patient education program, as well as the ability to transition current patients to new brand extensions without the need for an additional doctor visit. In addition to creating more value to marketers, this service will also help patients fill prescribed treatments and achieve better outcomes.” “QualityHealth Launches New Integrated Healthcare Programs For Brand Marketers,” 26 Apr. 2010, http://www.qualityhealth.com/resources/campaign/news/20100426_new_products.html (all viewed 14 June 2010).
38. Summarizing the aspirations of an entire industry, QualityHealth claims to “...break down barriers to conversion by delivering targeted messaging that is informed by our profiling insights and designed to drive desired actions for your brand. For example, we can reach consumers just before their next doctor visit, as well as follow up with reminders and relevant information, for maximum impact.”

39. QualityHealth’s “proprietary profiling technology” claims that “Over 20 million consumers have opted-in and registered with us to access healthcare content,”

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messaging, tools and offers.” Few consumers likely realize, however, that they have consented to become the subjects of a “proprietary profiling technology” that “captures... valuable information across over 100 individual data points,” including “consumers’ conditions and preferred treatments”; “doctor relationships and plans to visit the doctor”; and “insurance and formulary coverage.”

33 “As a result, QualityHealth has developed the largest, most comprehensive set of actionable health consumer profiles. QualityHealth enables you to target the right potential patients at the right time in their health continuum with the right programs and most effective messaging.” QualityHealth, “Profiling,” http://www.qhperform.com/profiling.html. See also, QualityHealth, “Privacy Policy,” http://www.qhperform.com/privacy_policy.html (both viewed 14 Oct. 2010).
40. Adify, whose clients include Good Health Advertising, “target[s] previous visitors to the advertiser’s site” and “deploy[s] tracking beacons, then use[s] sophisticated logic to define targetable behavioral segments.”

41. AdRx Media, an ad network comprising Britannica Health, HealthGrades, Healthy.net, Merriam-Webster Medical Dictionary, OrganizedWisdom.com, and Wrong Diagnosis, along with more than 50 other health and wellness information sites, “gives advertisers a way to reach consumers while they are engaged in seeking health information on more targeted sites beyond the largest

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health properties.” AdRx promises its clients “... access to more than 20 million health-conscious consumers, with condition-specific targeting” as well as a variation on behavioral targeting that follows patients over the course of their treatment, “by sequencing messaging to appear within the patient lifecycle, from pre-diagnosis to diagnosis to condition management.”


42. ClearSight Interactive’s ClearTarget “Healthcare & Medical Conditions” category uses databases to help generate targeting profiles of consumers. Consumers are unaware of this process, despite claims of ClearSight having received “permission” for a process where, “Using ClearProfile, Advertisers will be able to identify and deliver banner ads to prospective customers based on proven offline demographic and psychographic purchase propensities plus geographic purchase intensities…. ClearProfile models IP Address geo-locations to neighborhoods through self-submitted permission-based website registration data and integrates traditional offline aggregated data indexed at the Zip+4 and census block level....”

37 “Through exclusive data partnerships, ClearProfile offers over 180 audience targeting segments and more are on the way. Segments include demographic details ranging from the presence of children in the household and home ownership to psychographic attributes such as automotive preferences, financial investment activity and frequent travel behavior.” ClearSight Interactive, “ClearTarget,” http://www.clearsightinteractive.com/cleartarget.html; ClearSight Interactive, “ClearSight Unveils New Audience Targeting Method for Display Advertising,” 28 June 2010,
Can’t find your target market in a sea of online users?
Tired of wasting campaign dollars on the wrong audience?

ClearTarget
ClearTarget offers pre-selected audiences of online users in the top ad spending categories like Financial, Automotive, Healthcare, Travel, and more. Using powerful offline predictive data elements for targeted ad serving, we enable advertisers to achieve optimal impression and carry-up on their best prospects. ClearTarget also enables publishers by creating highly sought-after premium audiences. For both Advertisers and Publishers...more efficient ad campaigns...more sales.

ClearProfile
You've wanted to use online data to better define and target your audience. Now you can! We use our proprietary database and technology to personalize millions of IP addresses at the ZIP4 level. We then append proven demographic, lifestyle, and transactional enhancement data that has been used for years by marketers with success. We've had industry leading analytics and modeling from model over 100 purchase propensities...and more are coming. You can use our purchase propensities plus demographics to define your own audience, or you can provide us with your customer and prospect data and we will model a custom audience for you.

Good Health Media (GHM), whose pharmaceutical advertisers include Shire, J&J, Wyeth, Pfizer, Sanofi Aventis, and Merck, and also works with Wal-Mart, uses “ConditionMatch” that tracks “in-market” consumers for specific health conditions using “cutting edge behavioral targeting technology.” GHM promises medical advertisers that they can “Achieve vast reach targeting specific health conditions like Depression, COPD, Diabetes, Asthma, Allergies and more... Sites include: RightHealth.com, MedHelp.org, WomensHealthBase.com, OrganizedWisdom.com and many others.” GHM has told prospective advertisers that it “identifies groups with common sets of conditions/health-related characteristics by geographic region via insurance claims and individual ‘opt-in’ data.”

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43. Good Health Media, “Overview Presentation,” Jan. 2010, personal copy. “Pharmaceutical brands seek large, condition-specific audiences online, and we have the most precise solution available,” explains Bill Jennings, CEO of Good Health Media. The company “utilizes cutting edge behavioral targeting technology to identify and reach very large condition specific audiences like diabetes, asthma, high cholesterol, and arthritis. There is simply no better way to achieve high reach and optimization aimed at top health categories.” Good Health Media, “Welcome to Good Health Advertising,” http://www.goodhealthadvertising.com/News.html (viewed 16 Feb. 2010). GHM recently engaged TagMan for its online campaign tracking technology, enabling it to “instantly add or amend” its tracking tags so “it can now see the entire path a customer takes to conversion.” “TagMan's single page tag will house all of the tags/pixels used to track Good Health Media (GHM) online ad campaigns, including display, paid and natural search, affiliates and email. Using the TagMan interface, GHM will have a single view of the effectiveness and interaction of its online advertising campaigns and will be able to see the interaction between the consumer and all online marketing channels, enabling it to enhance...
Demand Media’s eHow website—which claims to be the “18th largest individual website in the U.S.”—tells consumers that it is “an online community dedicated to providing visitors, like you, the ability to research, share, and discuss solutions and tips for completing day-to-day tasks and projects.” eHow’s health section provides consumers information on medical “conditions and treatments,” including liver disease, depression, strokes, and sexual disorders. According to eHow’s information for health advertisers, it says 1.8 million of its users “buy prescription medications” and 1.5 million “buy over-the-counter...”

medications.”

40 eHow fails to adequately inform its users about the enormous amount of data it collects about them, including what it offers advertisers and sponsors: “behavioral targeting, retargeting, social media promotions, eNewsletters, and social media promotions,” and that it is also engaged in what it calls “Intent Targeting Advertising.”

41 According to its Securities and Exchange Commission S-1 filing, Demand Media tracks “over 1 billion discrete events per month.” Armed with such data, the company is able to deliver highly targeted ads in a variety of formats. Nor do consumers understand the integration


41 According to the eHow website, Demand Media collects the following information:

Type of Information We Collect. We collect any information you enter on the Site or give us in any other way (such as through an email, survey, or letter). The information that we collect varies depending upon how you use our Site. For example, our account registration process requires that you provide us with your user name, birthday and email address, and that you create and provide us with a password. We may also request other information, such as but not limited to, your actual first and last name, gender, and zip code. You may make changes, corrections, or updates to some PII provided through this Site which we use for communications with you, by visiting the “Edit My Profile” page on the eHow website. We may keep a record of all information that is changed (including deletions) and Disclose it for any lawful purpose. We may determine what may be changed (e.g., if we are required to keep track of certain kinds of transactions, you may not change relevant information)....

Collection of Information by Third Parties. Our Site may include third-party advertising, links to other websites, and other content from third party businesses.... These third-party websites, businesses, and advertisers, or advertising companies working on their behalf, sometimes use technology to deliver (or “serve”) the advertisements that appear on our Site directly to your browser. They automatically receive your IP address when this happens. They may also use cookies, JavaScript, web beacons (also known as action tags or single-pixel gifs), and other technologies to measure the effectiveness of their ads and to personalize or optimize advertising content. We do not have access to or control over cookies or other technologies that they may use, and the information practices of these advertisers and third-party websites or businesses are not covered by this Policy but are covered by their respective privacy policies. eHow, Inc., “Privacy and Information Security Policy,” http://www.ehow.com/privacy.aspx#ixzz0vwDahEj4 (viewed 30 Sept. 2010).


43 “During the quarter ended June 30, 2010,” Demand Media reports,
Demand Media tells prospective publishers that its “content channels” are designed to help boost ad sales: “Our algorithmically-guided approach first determines what your target audience is looking for on the Web, and suggests content titles that we believe will perform well.”

Consumers need to be given

Monetization. Our goal is to deliver targeted placements to advertisers who seek to reach consumers based on the content these consumers are seeking and discovering. Our platform generates revenue primarily through the sale of online advertisements, sourced through advertising networks and to a lesser degree through our direct advertising sales force. The system of monetization tools in our platform includes contextual matching algorithms that place advertisements based on website content, yield optimization systems that continuously evaluate performance of advertisements on websites to maximize revenue and ad management infrastructures to manage multiple ad formats and control ad inventory. In addition, our platform is well-positioned to benefit from the continued growth of advertising networks by giving us access to a broader set of advertisements we can more precisely match with our content, thereby increasing advertising yields.


Demand Media, “Content Channels,” http://www.demandmedia.com/solutions/content-channels/ (viewed 25 Oct. 2010). Demand Media also offers a social media technology called “Pluck” that is designed to engage consumers in conversations with various brands. “In fact,” the company explains, “consumers expect an open dialogue with the brands and products they purchase. We help transform traditional marketing and retail sites into two-way conversations, places where consumers can engage directly with brands and their offerings. With our wide array of social media tools and customizable content solutions, we help brands and retailers build engaging online destinations that inform consumers and empower them to evangelize their experiences to others.” Demand Media endeavors to build these two-way conversations in a variety of ways:

- Encouraging brand evangelism through category and lifestyle communities
- Detailed consumer feedback with product page recommendations and discussions
- Delivering actionable audiences with demonstrated consumer intent
meaningful notice about how content involving sensitive health concerns have been written to help draw consumers and facilitate targeted data collection.

45. An individual’s consumer’s health and medical behavior is being auctioned in real time for targeted ad delivery. Increasingly, the targeting is accompanied by what is known as “data optimization,” i.e., the use of various information resources to build up a more complete profile of a user, which allows for more

- Increased engagement with unique contests using photo and video galleries
- Direct communication with shoppers through moderated forums
- Regionalized retail initiatives through user-managed online groups.

Demand Media, “Solutions for Marketers,”
fine-grained targeting. A consumer has no knowledge that their health and medical information is part of a nontransparent and unaccountable process selling them to the highest ad bidder. For example, Google/DoubleClick’s Ad Exchange Health Focus has 36 categories, from Arthritis and Diabetes to Respiratory Conditions and Sleep Disorders.”

Another advertising exchange, CONTEXTWEB, offers dozens of health-related targeting categories, including A.D.D., HIV/Aids, Arthritis, Lung Cancer, Bipolar Disorder, Brain Tumor and Alzheimer’s Disease. Yahoo’s Right Media Exchange also targets via a health category. The Rubicon Project and Rocket Fuel offer health targeting and data optimization services, as well. Data brokers supply behavioral health-related data for targeting as well, including eXelate and BlueKai.

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46 CONTEXTWEB, “Targeted Traffic: ADSDAQ Categories,” http://www.contextweb.com/buyingdesk/categories; CONTEXTWEB, “Finding Audience,” http://www.contextweb.com/find_your_audience (both viewed 25 Oct. 2010). Ad exchanges allow advertisers to “hook into large ad exchanges and set a price they’re willing to pay for a particular audience. When a user arrives at a Web page, the exchange makes a decision based on the data available on the user and the bid submitted to find the best-matching ad. The matching is done in real time, banner by banner…. ‘It’s no longer about sections and pages, it’s about people and actions,’ said Eric Porres, CMO at Lotame, a marketing tech company with an audience data platform.” Thus Gannett has implemented technology from CONTEXTWEB “to allow advertisers to reach specific audiences, although still tied to content. In the past, Gannett could only sell broad category deals in ‘health.’ Now, with ContextWeb mapping each piece of content to more specific categories, it can sell cholesterol and diabetes content. ‘It’s another way for them to segment the inventory to provide better value to the advertiser and better value to Gannett,’ said Jay Sears, gm of ContextWeb Ad Exchange.” Brian Morrissey, “Audience: New King of the Hill?” Adweek, 24 Oct. 2010, http://www.adweek.com/aw/content_display/news/digital/e311c1499752deb3a60c1be96894a47c458 (viewed 31 Oct. 2010).


46. HealthCentral, an array of “highly targeted condition and wellness specific interactive health sites...,” offers advertising solutions across 35 condition-specific categories. “We provide an interactive platform for users to engage

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personally with ‘someone like me;’ other people encountering similar health challenges.”

In June 2010, HealthCentral announced that it was “joining with properties owned by InterActive Corporation, HealthGrades, 5Min Media, and New Hope Media to offer unprecedented targeting and reach for marketers in the health, children’s, nutritional, and over-the-counter medications categories.”


52 “Reaching parents during the back-to-school, fall allergy, and cold and flu seasons, the marketing campaigns will run across quality media and video properties reaching 50 million+ parents.” “Wellness Publishers Offer Targeted Advertising Opportunities to 50 Million+ Parents During Back-to-School and Allergy, Cold and Flu Seasons,” 28 June 2010, http://www.healthcentral.com/about/wellness-publishers-offer-targeted-advertising-opportunities-to-50-million-parents-during-back-to-school-and-allergy-cold-and-flu-seasons/ (viewed 10 July 2010). “Moms and Dads increasingly see good health as part of happy living, making food, beauty, family illness, and home products decisions with good health foremost in mind,” observes Christopher M. Schroeder, CEO of HealthCentral. “This combination of audiences reaches consumers at these key decision points: when Moms have decided this is the year when their kids must eat right at school and home; when in this worst ever year of allergies, this is the time to make their homes dirt and dust-free in environmentally and health-sensitive ways; and as they plan to stave off the flu with vaccinations or make a doctor’s visit when end-of summer colds and winter flu strikes.”

47. Caring.com tells consumers that it is “the leading online destination for those seeking information and support as they care for aging parents, spouses, and other loved ones. Our mission: to help the helpers. We equip family caregivers to make better decisions, save time and money, and feel less alone—and less stressed—as they face the many challenges of caregiving.”\(^{53}\) But to advertisers it explains that it offers “Geo-Targeting (by state, MSA, city, or zip code), Contextual Targeting, Demographic Targeting, and Role-Based Targeting.”\(^{54}\)


48. Healthline provides “precision targeting” of “over 4 million” health consumers monthly, promising pharma and medical advertisers that it has “one of the
largest inventories of condition specific content.” Among the targeting techniques and products deployed—unbeknownst to consumers—are the following:

- **Learning Centers**: For each condition or disease, brand messaging surrounds consumers as they dive deeper for clinical information, research expert second opinion, browse the latest healthy videos...
- **SymptomSearch**: Advertising Messages surround users as they create and refine a personalized combination of symptoms and narrow the list of possible causes.
- **Health Observance Packages**: Tailored to...Breast Cancer Awareness Month or World Diabetes Day... [with] condition-specific sponsorship....

Among Healthline’s clients is Yahoo Health, “... the third most visited Internet health destination, reaching over 11 million unique users each month.” Healthline partners with Yahoo, and also has relationships with ABC News, Health.com, AOL, and AARP.

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Ad Solutions

Align the right messaging with the right consumer at the right time.

Healthline offers a variety of options for display advertising on Healthline.com and the Healthline Media Network, including banner and rich media advertising on more than 1,100 condition-specific Learning Centers, thousands of physician-reviewed Health Articles, and unique health tools such as SymptomSearch and DrugSearch. Custom sponsorship packages and content integration opportunities are also available.
Health Articles

Aggregated from more than 20 content providers, premier medical and health publishers.

Brand messaging follows information seekers as they research diseases, conditions and treatments through authoritative, doctor-reviewed articles from the world's foremost medical information publishers.
"Our unique HealthSTAT advertising technology delivers precision targeting across one of the largest inventories of condition specific, quality health content. The result is improved relevancy for consumers, increased ROI for advertisers, and greater revenues for publishers."

West Shell, CEO, Healthline Networks

### Healthline.com Audience
Reaching Over 4 Million Engaged Consumers Each Month

<table>
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<th>Metric</th>
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<td>61%</td>
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</tr>
<tr>
<td>Caregiver for Member in HH</td>
<td>177 Index</td>
</tr>
<tr>
<td>Bought OTC Remedy (Last 30 Days)</td>
<td>142 Index</td>
</tr>
</tbody>
</table>
Healthline’s “new Navigator ad format allows health marketers to target ads based on terms like ‘asthma’ or ‘heart disease’ via hyperlinks in articles that launch a small window when a cursor hovers over the keyword. The window might show a drug ad tied to one of those conditions as well as links to similar content throughout the site to boost page views and engagement. Navigator is already rolling out across large sites that Healthline helps to power including Yahoo Health, AOL Health, Ask.com and Everyday Health.”

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The Healthline Media Network says its proprietary HealthSTAT technology “broadens condition-specific reach for health advertisers. By using Medically Guided semantic search technology to understand medical terms, synonyms and relationships within the health content on a partner’s web page, Healthline HealthSTAT is able to uncover a deeper set of contextually relevant advertising opportunities than any other network. HealthSTAT can recognize and deliver ads against health content in real time, across a network of top tier publishers that reaches more than 30 million consumers a month.”

Healthline SymptomSearch permits pharmaceutical companies to “Reach users in ‘explore mode’ through the web’s only search-driven symptom tool. 75% of all online health search visits start with symptom research. Advertising messages surround users as they create and refine a personalized combination of symptoms and narrow the list of possible causes.”

Healthline TreatmentSearch is touted as “The only web-based tool providing consumers a snapshot of all types of treatment options in one place. A unique opportunity for advertisers to connect with consumers as they access various treatment options, medications, medical, surgical and alternative therapies as well...”

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62 Healthline Networks, “Healthline SymptomSearch.”

62 Healthline Networks, “Healthline TreatmentSearch.”
51. Everyday Health, uses “immersive” interactive marketing techniques and an “extensive database of information” to target health consumers. It provides “consumers, advertisers and partners with content and advertising-based services across a broad portfolio of over 25 websites that span the health spectrum.” The site attracts an average of 26+ million unique visitors per month, with “over 38 million consumers [who] have registered on our websites to obtain personalized content and features, ...and over 1.7 million consumers [who] have paid for a premium subscription service.” According to the company’s S-1 Form, filed 22 January 2010 with the Securities and Exchange Commission,

... Our advertisers consist primarily of pharmaceutical and medical device companies, manufacturers and retailers of over-the-counter products and consumer-packaged-goods and healthcare providers... Our focus on customized offerings, in addition to our engaged consumer base, allows advertisers to effectively target their desired audience through highly immersive and interactive campaigns. Our suite of advertising solutions, when combined with our extensive database of information voluntarily provided by millions of registered users, can facilitate advertising campaigns that are directed at specific geographic areas, demographic groups, interests, issues or user communities. Moreover, our data-driven focus enables us to provide detailed post-campaign reporting and metrics that allow advertisers to measure their results and evaluate the effectiveness of their campaigns.64

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63 Everyday Health “Welcome to Everyday Health,”

64 Everyday Health, Inc. Form S-1, Registration Statement Under the Securities Act of 1933,
Everyday Health’s “Ad Solutions” raise privacy and consumer protection issues, especially through the use of such online marketing tactics as behavioral profiling and lead generation. The company offers the following services:
• Targeting: Maximize Efficiency. Everyday Health can deliver your message to users via strategic targeting by: Condition, Demographic, Registered User, Geography or Behavior.

• Lead Generation: A Targeted Message To Your Best Consumers. Everyday Health will pinpoint your key target in our registration process and deliver a special offer from your brand to generate qualified leads. Millions of active registered users with an average of 15,000 new registrants every day.  

65 Additionally, “Everyday Health offers over 20 newsletters focusing on everything from Asthma and Allergies to Healthy Living to Skin and Beauty. Everyday Health newsletters are delivered to over 17 million active subscribers who have signed up to receive this targeted information.” Branded applications on the site, moreover, are designed to encouraging daily visits: “Over 30 interactive Health Tools and Trackers targeted to users most popular interests like Glucose Tracker, Healthy Weight Calculator and Meal Planner to keep them coming back, every day.” In still other instances, Everyday Health offers targeted advertising in the guise of consumer education: “Building Daily Confidence among Users. Everyday Health will create a custom Patient Education Program featuring actionable content and tools that will educate, inspire and provide support.” Everyday Health, “Ad Solutions,” http://www.everydayhealth.com/advertise/ad-solutions/ (viewed 14 June 2010).
53. Online surveillance of consumer health information extends to the monitoring and analysis of users’ cut-and-paste actions as they seek health information.66

54. CPM Marketing Group uses digital marketing techniques to target health consumers through “one-to-one” strategies:

66 As the new collaboration of Tynt Multimedia and Good Health Media explains,

... if a visitor to a Good Health Media site copies a term such as ‘fibromyalgia,’ the ConditionSearch service will instantly display context-relevant links and a display ad that are directly related to the copied term. Users benefit from receiving links to useful information they are searching for, and health advertisers have a better way of reaching their target audiences.... Tynt Insight’s patent-pending technology detects copy/paste actions of website visitors, enabling online content owners to understand, with pinpoint accuracy, exactly which content their visitors find most engaging, and to immediately act on that information to improve site performance.

Personalize real-time healthcare marketing messages to individual patients and prospects via consumer touch points. Using detailed CRM data to determine the specific health needs of individuals, this interactive solution customizes the content presented to each person when they reach out to your hospital. This not only personalizes the consumer “conversation,” it creates a unique experience that boosts patient engagement, and helps to drive downstream revenue.

ICRM [Instant Costumer Relationship Marketing] is behavioral targeting technology that enables you to tailor call center and Internet communication to your current and prospective patients based on individuals’ past and present medical indications or their risk for developing future conditions. Using sophisticated data-mining algorithms for behavior identification, our system can predict health outcomes and trends in behavior by analyzing healthcare variables and co-morbidities associated with disease states. Cluster segmentation methods don’t work for targeting, because they can’t provide meaningful profiles on patients or members. Our predictive modeling techniques address this information gap by accurately predicting health needs for the next 12 to 18 months—of both patients and non-patients alike—based on the most complete, individualized data available.67

55. Medix Media Solutions, meanwhile, features its ActuatoRx “Geo-Medical Targeting” and analytics technology “that identifies online surfers and intelligently matches them to a permission-based postal and e-mail address. Through our proprietary mScores Enhanced database techniques, ActuatoRx integrates with 200 million CAN-SPAM compliant e-mail addresses and over 110 million household names and addresses.

67 CPM Marketing Group, “Technology: Healthcare CRM to Enhance Healthcare Marketing,” https://www.cpm.com/index.cfm/about/our-technology/#perceptual_profiles. “This approach is the key to delivering targeted healthcare marketing messages on behalf of your health system.

“ICRM helps you maximize the value of every customer contact by providing up-selling and cross-selling opportunities that are relevant to individual patients. Whether the customized communication is prompted by a direct mail promotion or by their health history, patients will get an online or phone experience that truly suits their personal needs.” CPM Marketing Group, “ICRM for Medical Call Center & Web Hospital Marketing,” https://www.cpm.com/index.cfm/solutions/products-services/instant-crm/. “CPM’s New Movers program leverages our proprietary Perceptual Profiles™ psychographic profiling system to help your hospital determine the most appropriate communication style for each targeted individual.” CPM Marketing Group, “Hospital Marketing: Recruit Patients via New City Residents Outreach,” https://www.cpm.com/index.cfm/solutions/products-services/new-movers/ (all viewed 29 June 2010).
Upon recognition of a surfer, ActuatoRx can initiate an e-mail or direct mail communication to the surfer through a CAN-SPAM compliant third-party e-mail or consumer household address list provider which has retained permission to market to that individual. Advertisers can trigger e-mails and direct mails within days of a behavioral action determination or disseminate e-mails and direct mail on time-delayed basis.

ActuatoRx ROI can link up with offline prescription sales databases to enable a comprehensive ROI Measurement study on your digital ad campaign.\textsuperscript{68}

\textbf{Geo-Medical Targeted Consumer Advertising}

Medicx Media Solutions provides consumer health information and technology-driven data solutions for leading OTC, Pharma, and CPG health brand advertisers to increase the effectiveness of customer acquisition, retention and branding programs across online and traditional marketing channels.

56. In the process of analyzing health consumers online, Medicx focuses on the following behaviors:

- Competitor site visit
- Targeted search query activity
- Engaged Web site visits based on page views
- Engaged Web site visits based on time spent on Web site

• Shopping cart abandonment
• Lead form abandonment
• Prescription sales, new patient starts, patient switches, etc.  

57. Medicx’s mScores targeting product, moreover, “describes evidence-based audiences using actual paid insurance claims or self-reported consumer activities.”  

58. Offline databases are increasingly incorporated into digital health marketing strategies, enabling companies to amass greater amounts of detailed information about individual consumers than they would be able to generate from online sources alone. AOL Advertising, for example, uses outside data sources for its targeting efforts on behalf of an over-the-counter pharmaceutical company: “Existing brand consumers and key competitor brand users were identified and targeted using household-level purchase data from IRI, plus AOL Advertising’s demographic and psychographic targeting solutions.”  

59. As Matthew Arnold noted in an article on ad exchanges and online video in the

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69 Medicx Media Solutions, “Analytics.”


71 “By partnering with Nielsen’s HomeScan panel and using our Target 2 Measure product, AOL’s research team was able to link online ad exposure to offline sales impact, thus demonstrating ROI.” AOL Advertising, “Case Study: OTC Pharma Leader Drives Offline Sales with AOL’s Online Targeting,” http://advertising.aol.com/sites/default/files/OTC-targeting.pdf (viewed 16 Feb. 2010).
health care arena, pharmaceutical marketers are “beginning to incorporate insurance claims data to identify patient populations.” And one way or another, such information may make its way to other marketers as well. “We expect to see many more data providers sell their advanced profiling data to brands in the upcoming year,” explains Debra Obara, Razorfish vice president for media. “For example, pharmaceutical brands can target users who are predicted to suffer from certain medical conditions based on ‘geo-medical’ data. This data includes HIPAA-compliant medical claim data that is stripped of personally-identifiable information, and targets selected condition sufferers down to the ZIP code+4 geographic level. This data can be applied not only to ad exchanges, but some networks and portals.” This is not the place to debate the efficacy of HIPAA de-identification, which has been proven over and over again to be a broken system. (See, for example, LaTanya Sweeney’s work in this area, which is widely disseminated and relied upon.) However, we do note that HIPAA de-identification is not a reliable cure for privacy of consumers at this point in time.

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60. Pharmaceutical store loyalty cards require registration before they can be used, collecting personal information at the time of registration and then tracking subsequent pharmaceutical purchases. How such data are used for marketing to the consumer and to marketing partners, including third parties, is largely non-transparent. CVS Caremark’s RxSavingsPlus card, for example, allows CVS and its partner pharmacies to collect data on consumers’ use of prescription and over-the-counter medicine.

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74 LaTanya Sweeney, “k-anonymity: A Model for Protecting Privacy,” International Journal on Uncertainty, Fuzziness and Knowledge-based Systems 10, no. 5 (2002): 557-570, http://privacy.cs.cmu.edu/people/sweeney/kanonymity.pdf (viewed 10 Nov. 2010). See Figure 1 for how the data overlay of “anonymous” and identifiable data works to identify the data set members.

Commission charges that it failed to take reasonable and appropriate security measures to protect the sensitive financial and medical information of its customers and employees, in violation of federal law. In a separate but related agreement, the company’s pharmacy chain also has agreed to pay $2.25 million to resolve Department of Health and Human Services allegations that it violated the Health Insurance Portability and Accountability Act (HIPAA).” Federal Trade Commission, “CVS Caremark Settles FTC Charges: Failed to Protect Medical and Financial Privacy of Customers and Employees; CVS Pharmacy Also Pays $2.25 Million to Settle Allegations of HIPAA Violations,” 18 Feb. 2009, http://www.ftc.gov/opa/2009/02/cvs.shtm (viewed 19 Oct 2010). Beyond these privacy concerns, the alliance of CVS (a chain of 7,000 drug stores) and Caremark (a prescription drug plan administrator for approximately 82 million Americans) has raised concerns of unfair competition. “That inherent conflict,” claims Joseph H. Harmison, president of the National Community Pharmacists Association, “apparently allows it to leverage independent community pharmacies into unfavorable reimbursement contracts for ‘in-network’ access to many patients. Then, CVS Caremark steers patients to fill prescriptions at its own mail order or retail pharmacies—effectively becoming both payors of and competitors with community pharmacies.” Joseph H. Harmison, “CVS Caremark Abuses Warrant Through [sic] FTC Investigation and Remedies,” The Hill, 25 May 2010, http://thehill.com/blogs/congress-blog/healthcare/99759-cvs-caremark-abuses-warrant-through-ftc-investigation-and-remedies (viewed 19 Oct. 2010). And here, too, as Harmison points out, the threat to consumer privacy is clear: “Sensitive patient information is apparently being accessed by the company not for valid health reasons of payment, treatment and operations, but simply to pursue an even greater market share.” CVS (which acquired the Longs Drugs chain in 2008) is also a partner with Google Health, as is Walgreen’s. Google Health, “CVS Caremark Partner Profile,” http://www.google.com/intl/en/health/about/partners/cvscaremark.html (viewed 29 Oct. 2010).
61. On behalf of a pharmaceutical product (Testim), Auxilium engaged the services of company called e-tractions to target the estimated 5 million men living with symptoms of low testosterone. The objectives for the campaign were “... to drive traffic to www.testim.com..., to encourage registrants to download a rebate coupon to stimulate demand..., to collect names and email addresses of registrants so that TESTIM could communicate with registrants through permission-based emails on a regular basis..., [and to] use the registration as a means to better understand the demographic and behavioral profile of potential TESTIM patients.”

62. Health consumers’ use of keywords is the subject of semantic digital marketing techniques. HealthCentral, for example, “uses a semantic ontology to analyze search keywords” to assign one of the following labels: Condition, Symptom, Treatment, Other. These labels, in turn, are used by HealthCentral to tell marketers “a great deal about who is coming to your site...”

63. “Samples and health offers” are being used to lure consumers into providing information, including email addresses, without meaningful disclosure of how such data are to be used. QualityHealth, for example, tells consumers they can “Get a OneTouch Ultra MiniMeter at No Charge to You,” and asks them to say whether they or someone in the home has diabetes, and also provide name, address, gender, email address and date of birth. The TRUSTe seal is used on several pages related to this technique to suggest that such practices are privacy-appropriate.

77 Health Central, “Capturing the Health ‘Long Tail,’” http://www.scribd.com/doc/25850527/Longtail-Health-2-0-Stat-Flat-site. Offering “the healthcare and pharmaceutical industry... the opportunity to cost-effectively identify valuable groups of consumers and learn how to better reach, educate and market to them,” Manhattan Research’s annual Cybercitizen Health surveys explore “topics such as the Internet, email communication with physicians, DTC advertising, health e-commerce, plans and providers, use of pharmaceutical information online, health information seeking methods, search engine use, use of blogs, podcasts, wikis, social networking and more.” Manhattan Research, “Cybercitizen Health,” http://www.manhattanresearch.com/files/PRESS/Cybercitizen_Health_Brochure.pdf (both viewed 16 Feb. 2010).

Health portals providing consumer information via so-called free “tests” fail to effectively disclose to consumers the relationship their advertisers have to the content and services offered. For example, Hearst’s “Realage.com” tells users that it’s “a healthy-lifestyle media company that helps consumers achieve a healthier, happier, more satisfying life.” But it doesn’t clarify to consumers—as it does to prospective employees—that it uses “e-mail–based advertising campaigns targeting specific segments of the RealAge membership (8 million+ members) based on their health profiles of over 150 health and lifestyle data points gathered from the RealAge Test. RealAge.com receives over 2.5 million unique visitors per month where we can incorporate Web site advertising as part of the campaign....”


79 RealAge, “RealAge Careers: Sales,” http://www.realage.com/careers (viewed 4 Oct. 2010). Real Age’s privacy policy is an example of why such approaches fail to provide
adequate safeguards. Real Age says “When you take the RealAge Test or participate in most other interactive services on our Site, you are required to register by giving us your user name, e-mail address, date of birth, gender, zip code, and password. We call that your ‘Registration Information.’ That Registration Information is recognized by all of RealAge’s Affiliates (they’re described in Section 12, ‘About Our Affiliates’). This means you can use the same user name and password to take advantage of services offered on the Web sites of our Affiliates. Please note that if you visit an Affiliate’s Web site, you will be leaving RealAge, and anything you do on those sites will be governed by the privacy policy of the Affiliate.... We display ads on our Site to our Registrants and Members based on the Personal Information provided to us when taking the RealAge Test or participating in other interactive features, as well as Anonymous Data collected via technology....” Real Age, “Privacy Policy,” http://www.realage.com/corporate-privacy-policy (viewed 7 Nov. 2010).
Welcome, nonentity@nowhere.net! If this is not you, go here.

**Privacy and Personalization**

*Birth date*
(____ D ______ M _____ Y) We use your birth date to calculate your RealAge.

*Gender*
- Female
- Male

*Country*
- United States

*Zip Code (U.S. only)*

**Free RealAge membership**

Membership is free and provides practical, personalized information to help make your RealAge younger. If you check Yes, we'll e-mail you health and wellness tips and, on occasion, information about other health topics, products, and services that are relevant to you. We will not share your e-mail address with unaffiliated third parties without your permission. If you check No, you won't receive e-mails from us, but you can still become a registered user of the Web site, where you will see health and wellness tips and information about other health topics, products, and services that are relevant to you.

- Yes
- No

**Privacy Policy | Terms and Conditions**

PLEASE READ OUR PRIVACY POLICY AND TERMS AND CONDITIONS. THEY'RE IN PLAIN ENGLISH. ONCE YOU'RE OKAY WITH THEM, CHECK THE BOX BELOW.

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**Switch to secure sockets (SSL)**
Many online newsletters purport to provide additional information about health issues, but are actually connected to the online targeted marketing of brand pharmaceuticals and behavioral online profiling. For example, a recent Health.com “Chronic Pain News and Insights Newsletter” lead story related to Fibromyalgia and entitled “10 Food Rules for Pain Patients” triggers multiple...
interactive, expanding ads for specific drugs to treat the problem. Health.com is part of a behavioral targeting network of sites operated by Time Warner.


66. Health marketers wish to harness the data collection and analysis capabilities of online advertising to foster greater demand for prescription drugs. For example, Digitas Health’s “How to Create Massive Demand for Your Drug” offers pharmaceutical companies new opportunities to reach people who are seeking health information on a wide variety of conditions and diseases: “You can now deliver information exactly when they need it most. Better yet, you can also see what they use and what they ask about. Which means you can anticipate what they’ll need next, and provide it **before they ask**... You start by listening to these people and their doctors. You watch what they do. You see what they’re looking for. You learn all you can.”

67. Health marketers are using digital data on consumers to promote medical products and services. Unit 7, for example, a marketing company working in health, explains that “Our digital solutions are connected to 360 degree data. 360 degree data allows us to understand on-line behavior, off-line behavior, and psychodemographic data. We take this data to create highly customized user experiences. Unit 7 analysts then 'slice and dice' data to reveal the psycho-

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demographics of purchasers, product experience, and online participants.”  

68. Many of the same consumer data collection, profiling, and behavioral targeting techniques that have raised concerns in the more “traditional” online world have now been brought into the mobile phone marketplace, where U.S. consumers increasingly rely on their wireless devices for a wide range of services, including sensitive transactions related to health.  

According to McKinsey & Co. research, the mobile health market currently represents a $20 billion “opportunity” in the U.S. alone, and $50 billion worldwide.  

“Mobile’s ability to provide superior targeting beyond age and gender,” notes Peter Nalen on the Compass Healthcare Communications blog, “to include location, time of day and day of week, and to facilitate two way communication between advertisers and consumers, makes it

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84 For a review of the state of mobile marketing, behavioral targeting, and related concerns, see Center for Digital Democracy and U.S. PIRG, “Complaint and Request for Inquiry and Injunctive Relief Concerning Unfair and Deceptive Mobile Marketing Practices,” Federal Trade Commission Filing, 13 Jan. 2009, http://www.democraticmedia.org/current_projects/privacy/analysis/mobile_marketing (viewed 15 June 2009). As part of a national ad campaign in England for its Breathe Right anti-congestion product, GlaxoSmithKline received 25,000 responses to a text call-to-action that ran in the last five seconds of a 20-second TV ad, exhausting the supply of product samples half-way through the month-long campaign. Once the participants received their samples, they then received periodic SMS reminders to use the product. “We were overwhelmed by the scale of response to this campaign,” declared Lee Beale, brand manager for Breathe Right at GlaxoSmithKline. “It proves the power of mobile in connecting with our customers, and provides valuable customer data capture for ongoing marketing activity with these customers.” Incentivated, Ltd., “Mobile Response to TV Campaign Shifts 25,000 Samples for GlaxoSmithKline in 2 Weeks,” 26 Mar. 2009, http://econsultancy.com/us/press-releases/4173-mobile-response-to-tv-campaign-shifts-25-000-samples-for-glaxosmithkline-in-2-weeks (viewed 30 Sept. 2010). Not surprisingly, social media monitoring now extends to the mobile platform as well. WebMD, whose social networking platform, WebMD Health Exchange, “builds on the hundreds of health communities that previously existed on our site and that now more closely integrate the social health experience throughout each of our core content areas,” has moved aggressively into the mobile arena. As the company recently reported, “Our penetration into the mobile health information market has also continued to expand this quarter. WebMD mobile for consumers was nearly 1.6 million downloads since launch, provides consumer with a vital interactive health tools to check the personal symptoms, find drug, treatment, even emergency first aid information, all on the same mobile health applications.” "WebMD Health Corp. Q1 2010 Earnings Call Transcript,” 4 May 2010, http://seekingalpha.com/article/202961-webmd-health-corp-q1-2010-earnings-call-transcript (viewed 16 June 2010).

one of the main reasons that mobile is now. Not only does Mobile have a ubiquitous presence—with us 24/7—it can also reach more people, more efficiently, and with greater targetability. By building relationships via timely, relevant and valuable interactive conversations, Mobile can form the basis for strong long term relationships.”

69. Major drug store chains, such as CVS and Rite Aid, have turned to mobile applications to drive traffic to their stores. Rite Aid, for example, recently introduced an SMS service that alerts customers when their prescriptions are ready to be refilled or picked up. In order to participate in the program, however, consumers must divulge considerable amounts of personal information, in the course of signing up for a MyRiteAid.com account and completing the required MyPharmacy online profile. CVS, similarly, has released a pair of iPhone applications, one “to let plan members manage and pay for their prescriptions using their mobile devices,” and another “that encourages shopping through the use of sales and offers.” Again, the privacy implications

86 Peter Nalen, “Mobile Marketing for Pharma: An Innovation Lab Whitepaper,” Compass Healthcare Communications, 1 Nov. 2009, http://www.compasshc.com/blog/mobile-marketing-for-pharma-an-innovation-lab-whitepaper/01/11/2009/ (viewed 16 Feb. 2010). One candidate for FTC review for mobile privacy concerns is, for example, the new iPhone application introduced recently by Bayer on behalf of its multiple sclerosis treatment, Betaseron. According to a company press release, “myBETAapp is the newest offering in Bayer’s comprehensive patient support program, BETAPLUS®. The application provides patients with injection reminders, injection site rotation assistance and injection history…. With active phone service, patients enrolled in the BETAPLUS program can dial directly to speak to BETA Nurses, who are specially trained in MS....” “Bayer HealthCare Launches First iPhone Application with Personalized Tools to Assist People on Betaseron® (interferon beta-1b) in Managing Their Multiple Sclerosis Treatment,” http://finance.yahoo.com/news/Bayer-HealthCare-Launches-prnews-2762087426.html?x=0&v=1 (viewed 10 July 2010).

“myBETAapp lets you:
- See today’s injection plan at a glance
- Know when and where your next injection is scheduled
- Track and record injections
- Get autoalerts when it’s time for your next injection
- Customize your injection site rotation plan
- E-mail your injection history to yourself and your healthcare team.


of these “convenience” applications must be examined.  

70. Companies and advertisers continue to hide behind the cloak of data “anonymization” or “de-identification,” stating that this protects consumer privacy while allowing companies to build profiles on consumers. However, as we explain below, it has proved relatively easy to link anonymized or de-identified data back to personally identifiable information of individuals.  

71. Carnegie Mellon professor Latanya Sweeney has been researching the issue of de-anonymization or re-identification of data for years. In 1998, she explained how a former governor of Massachusetts had his full medical record re-identified by cross-referencing Census information with de-identified health data.  

Sweeney also found that, with birth date alone, 12 percent of a population of voters can be re-identified. With birth date and gender, that number increases to 29 percent, and with birth date and zip code it increases to 69 percent.  

72. In 2000, Sweeney found that 87 percent of the U.S. population could be identified with birth date, gender and zip code.  

She used 1990 Census data. In 2006, Philippe Golle at the Palo Alto Research Center revisited her research, using 2000 Census data, and found that “disclosing one’s gender, ZIP code and full date

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of birth allows for unique identification,” thus revealing the identity of 63 percent of the U.S. population.93 (Note that the U.S. population in 1990 was 248.7 million and the 2000 population was 281.4 million.)94

73. In 2006, the publication of search records of 658,000 Americans by AOL demonstrated that the storage of a number as opposed to a name or address does not necessarily mean that search data cannot be linked back to an individual. Though the search logs released by AOL had been “anonymized,” identifying the user by only a number, New York Times reporters were quickly able to match some user numbers with the correct individuals.95 User No. 4417749 “conducted hundreds of searches over a three-month period on topics ranging from ‘n umb fingers’ to ‘60 single men’ to ‘dog that urinates on everything.’” A short investigation led Times reporters to “Thelma Arnold, a 62-year-old widow who lives in Lilburn, Ga.” and has three dogs. The Times also noted that the data associated with Ms. Arnold was misleading. “At first glance, it might appear that Ms. Arnold fears she is suffering from a wide range of ailments. Her search history includes ‘hand tremors,’ ‘nicotine effects on the body,’ ‘dry mouth’ and ‘bipolar.’ But in an interview, Ms. Arnold said she routinely researched medical conditions for her friends to assuage their anxieties. Explaining her queries about nicotine, for example, she said: ‘I have a friend who needs to quit smoking and I want to help her do it.’”96

74. Pace University professor Catherine Dwyer, who published in 2009 a detailed case study of behavioral targeting practices on Levis.com, found that so-called “anonymous” profiling fails to provide the targeted consumer any real privacy protection. “The vast majority of data is collected anonymously, i.e., not linked to a person’s name,” she said.97 “However, behavioral targeting does create digital dossiers on consumers with the aim of connecting browsing activity to a tagged individual. This tagging is largely invisible to consumers, who are not asked to explicitly give consent for this practice. By using data collected clandestinely,


96 Id.

behavioral targeting undermines the autonomy of consumers in their online shopping and purchase decisions.”98 Such targeting, Dwyer suggested, can also undermine consumer confidence in e-commerce: “Not asking for explicit consent, and using anonymity to sanitize the tagging of individuals are components of behavioral targeting that can destroy trust in e-commerce. Even if consumers are anonymous, ... advertising networks are silently collecting data to influence their purchase decisions.... Behavioral targeting without consent threatens the autonomy of consumers, and can undermine the trust and expectations of benevolence that customers associate with a name brand.”99

75. The advertising industry has narrow definitions of “sensitive data” and “personally identifiable information,” which do not adequately encompass the reality of consumer data collection and consumer profile creations. “Personally identifiable information,” as defined by the advertising industry, is restricted to names, addresses, ID numbers, or other traditional personally identifiable information.100

76. The marketing industry’s narrow definition of “personally identifiable information,” the rampant gathering of detailed consumer data, and the cross referencing of so-called “anonymized” data with information housed in offline databases mean that de-identified data can easily be re-identified.

Interactive Advertising

77. Pharmaceutical companies such as GlaxoSmithKline are using digital ad strategies focused on “engagement” to deepen the marketing connection with their targeted consumers. As GSK’s Julie Wittes Schiack explained at the first annual meeting of the PMRG Institute in 2007, “The deeper the engagement the richer the insights.” In marketing its diet drug alli, GlaxoSmithKline built private online communities designed to collect consumer data. “A first-of-its-kind OTC drug launch required a new approach to listening to, and understanding, weight-challenged consumers—new ways that would get at consumers [sic] hearts and minds and provide an intimate experience, which allowed the company to go deeper than ever before.”101

98 Id.
99 Id. at 8-9.
101 “GSK Consumer Healthcare partnered with Communispace spanning 2+ years to create five private online communities that became the center of gravity for the entire multifaceted market launch of alli.” Communispace, “GlaxoSmithKline Consumer Healthcare: Making...
78. Online health marketers are studying the disease and illness cycle in order to target specific consumers, including “multicultural” consumers with various health needs. SDI Health, for example, “integrates its decades of experience in disease and condition surveillance with leading-edge technology to produce highly popular, consumer-friendly portals such as Pollen.com and Azma.com, among others.”

79. Digital health marketers are simultaneously targeting consumers and doctors as part of integrated marketing efforts to assist specific brand pharmaceuticals. Klick Pharma, for example, explains that it develop “programs targeting both professional and patient audiences spanning the brand’s life.” The FTC needs to examine how the pharmaceutical industry may be taking unfair advantage of these relationships.

80. About.com’s approach to pharmaceutical brand messaging includes incorporating specific references (e.g., for a sponsor’s heartburn remedy) into larger, more general online discussions: “Because About.com holistically addresses the needs of our users, we were able to go beyond the vertical health category alone and integrate the brand message seamlessly into the daily lives of potential heartburn sufferers in the target group. About.com was able to harness Customers the Center of Gravity to Develop a Blockbuster Drug Launch,” http://www.communispace.com/clients/stories/?story=42 (viewed 16 Feb. 2010).

102 According to the SDI website,

The banner ad opportunities on our various consumer-focused Web sites offer clients a timely method of reaching their target audience when they are most likely to purchase a given allergy, cold, or flu product.

Our time-tested data forecasting methods enable us to time your media campaigns to coincide with market demand for prescription and over-the-counter products for allergies, flu, colds, etc.

We also develop customized online tools such as interactive reporting with comprehensive query functions and data feeds on diseases, conditions, and environmental factors.

SDI, “Online Programs,” http://www.sdihealth.com/online-programs/main.aspx (viewed 4 Oct. 2010). SDI’s websites include Pollen.com (“the No. 1 pollen allergy site on the Web”), PollenLibrary.com, PollenWidgets.com, and Azma.com, which appears to target youth. MyTreatment.com is a condition-specific site that will be launching soon, a portal devoted to niche markets that correspond to various illnesses and maladies. The new site is the work of Sessions Media, which specializes in online marketing and website development, with 29 other condition-specific sites (from Acid Reflux Treatment to Smoking Treatment) currently operating or in the planning stages. Sessions Media, http://www.seasonsmedia.com/ (viewed 30 Sept. 2010).

user insights to connect the brand not just to their target’s life stage, but also to their lifestyle and areas such as eating habits and hobbies that have a high penetration of the target audience.”

81. On a number of occasions, pharmaceutical marketers have made clear their intention to sway consumers when they are perhaps most vulnerable—at the precise moment, that is, when they are about to make a purchase. Thus Everyday Health, for example, stresses the need to “Influence Buying Behavior at Point of Purchase. Connect your brand with consumers as they are making their purchasing decisions with Drugstore.com, the leading online provider of over 45,000 health, beauty, vision and pharmacy products including prescriptions and refills.” Healthline, similarly, promises that “Advertisements presented in context when a consumer is ready to act will generate considerably higher conversion rates than those found at general-purpose search engines or health information sites.”

82. The e-Healthcare Network claims to be the “premier vertical Internet advertising network dedicated to the healthcare industry.” It is able to reach “niche healthcare audience segments through the aggregation of hundreds of websites and distinct content areas.” Health information and service consumers are confronted with an area of targeting techniques with such specialized ad

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networks as “Time of day (insomnia banners scheduled to run from 11:00pm 6:00am)” and “Day of week (depression banners scheduled for Monday's highlighting ‘Monday morning blues’).”

83. In an ad for the ADHD medicine Daytrana created by Unit 7, the company asks, “How do you convince moms to switch ADHD medications when things are going well and when there was so much negativity surrounding medications to begin with? Create a brand new identity that separates the condition from the child and allows you to aggressively market to the condition. Moms were then able to trust that we had their best interests in mind.”

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84. Targeting the parents of children has become a basic marketing strategy in the medical and healthcare industry, especially for those companies involved in social media marketing. As one marketer advises,

... [C]onsider the behavior of your patient. Thinking first about the behavior of your patient will guide you to the right platforms. For example, if you are dealing with an ailment that generally impacts children, what is the first thing a parent will likely do upon learning their child is inflicted with this ailment? Most parents search for answers and will head to Google to find them. The trick is to ask yourself, what type of information are they looking for in this search? If they are searching for insight on treatment options, severity and past experiences, you can gear your social media efforts to reflect that. You should also survey what online sources of information already exist. Have you considered Google Health as a source of information for patients? Better still, have you tracked down the sources of information that feed into Google Health and ensured its accuracy? If you are not proactively addressing these questions you are leaving your online presence to chance. What about a platform such as Yahoo! Answers? Have you scanned
the discussion taking place there to get a sense for the sentiment about either your brand or the common concerns of dealing with a particular ailment?¹⁰⁹

There is a failure to adequately disclose the relationship and role of advertisers and sponsors on leading health information sites. WebMD explains on its consumer site that it “provides valuable health information, tools for managing your health, and support to those who seek information. You can trust that our content is timely and credible.” In its annual report to the SEC, however, WebMD explains that they “develop sponsored programs that target specific groups of health-involved consumers, clinically active physicians and other healthcare professionals and place these programs on the most relevant areas of The WebMD Health Network so that our advertisers and sponsors are able to reach, educate and inform these target audiences. Our advertisers and sponsors consist primarily of pharmaceutical, biotechnology and medical device companies and consumer products companies. The WebMD Health Network ran approximately 1,600 branded or sponsored programs for its customers during 2009. Our public portals provide advertisers and sponsors with customized marketing campaigns that go beyond traditional Internet advertising media.... “[K]ey benefits” that the “WebMD Health Network offers healthcare advertisers and other sponsors include... our ability to help advertisers and sponsors reach specific groups of consumers and physicians by specialty, product, disease, condition or wellness topic....” WebMD also cites its “content-sharing and marketing relationships with the FDA, CDC and Yahoo!” In its review, the FTC should examine whether this mixture of government and purely commercial information may contribute to misleading consumers, and whether it is being used inappropriately.

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ADHD Guide

Overview & Facts | Symptoms & Types | Diagnoses & Tests | Treatment & Care | Home Remedies | Finding Help

Symptoms & Types
Learn all about ADHD symptoms in both kids and adults. Find out about the different types of ADHD and specific warnings signs of when to call a doctor about ADHD.

Symptoms
Symptoms of ADHD and ADD
Discover the symptoms of ADHD/ADD and how they can change over time, depending on the person’s age.

ADHD Health Check: Check Your Symptoms and Monitor Your Progress
WebMD’s ADHD Health Check can help you determine if you or a loved one might have ADHD or if your ADHD symptoms are well controlled.

Types
Types of ADHD and ADD
Learn about the different types of ADHD and how one researcher is using brain scans to categorize ADHD.

Warning Signs
When to Call a Doctor
Learn some important rules on when to call the doctor for ADHD symptoms and behaviors.

ADHD and Substance Abuse: Is There a Link?
Discover the link between ADHD and substance abuse and why alcohol and drug problems may be more common in teens and adults with ADHD.
86. WebMD says that because it and its affiliated MedicineNet.com “are licensees of the TRUSTe Privacy Seal and our private portals deployment of WebMD Personal Health Manager is a recipient of the TRUSTe EU Safe Harbor programs...,” that its practices comply with personal privacy protection.112 WebMD is named by TRUSTe as one of the companies using the “leading privacy trustmark to enhance consumer trust.”113 But TRUSTe also explains that the use of its certification can help boost online lead generation and help obtain user

112 WebMD Health Corp., “Form 10-K.”
registration data. 114 The use of TRUSTe seals for the health industry, including its use by WebMD, must be independently investigated by the commission.

87. Information on health portals, such as WebMD, is designed to enhance the role and relationship of advertisers and marketers, contributing to the lack of clear distinctions between independent editorial and sponsored content. WebMD’s “sponsored resource” disclosure mechanism inadequately provides consumers with the information they require to fully understand the relationship between the sponsored content and the financial exchange for advertising—including data collection and analysis that may be shared. 115 Consumers also need to be informed of how advertisements are placed via “roadblocks” (i.e., when an advertiser owns own 100 percent of the ad spaces on a single page of a publisher’s site) and other forms of online marketing techniques designed to promote and enhance advertiser-controlled content on health sites. 116

88. WebMD’s privacy policy for health professionals says that “sponsors or advertisers on the WebMD Professional Sites may use their own cookies, Web beacons or other online tracking technologies in the banner advertisements served on the WebMD Professional Sites. Some advertisers use companies other than WebMD to serve their ads on the WebMD Professional Sites and to monitor users’ responses to ads, and these companies (‘Ad Servers’) may also collect non-personally identifiable information through the use of cookies or Web beacons on the WebMD Professional Sites.” 117 Both health professionals and consumers need to be fully informed of who is collecting such information and how it is used, and then given the ability to control it.

89. Better Health is “a network of popular health bloggers, brought together by Dr. Val Jones, founder and CEO,” which “... reaches approximately 7 million unique users per month and is growing.” Better Health’s audience also includes “more than 3,100 influential Twitter followers” (including “health care professionals, Washington policy elites and consumers”), and generates some “26.5 million page views per month.” As an ad-driven enterprise, “Better Health accepts sponsorship for content licensing, advertising, events (including salons, debates, forums, conferences, presentations), and information-sharing with our network.


Individual bloggers receive revenue-share from licensing and advertising their content, and additional compensation for participation in events.”118

90. Health consumers are often the subject of online viral marketing campaigns. Boomerang Pharmaceutical Communications “helps many of the best-known names in pharmaceutical and over-the-counter products reach their targets.... When you want to generate awareness, drive targeted web traffic, boost repeat visitors, build a viral response or create advocate relationships, Boomerang has the experience you need.”119

91. The analysis of consumer data can include the kind of detailed psychographic profiles that identify brand advocates. “Why does brand advocacy matter?” asks Boomerang Pharmaceutical Communications? “Because there’s nothing more powerful than extreme, passionate customer loyalty to drive recommendations and testimonial, even a sense of deep ownership. Boomerang can quantify all this for you with strong, compelling metrics to ensure accurate monitoring of brand advocacy levels. Metrics can range from informal, ‘What’s the pulse of my consumer?’ searches to more complex analytics, like site-metered data to pinpoint advocacy depth. What compels consumers to reach out, recommend and talk? Find out by understanding the specific drivers behind these behaviors. Boomerang knows how.”120

92. The use of online tracking and segmentation tools by pharmaceutical marketers, especially in the digital context, raises a number of significant concerns. The segments into which pharmaceutical companies divide their audiences go far beyond standard demographic and lifestyle categories to include highly personal and sensitive information relating to one’s health. As Mark Miller, senior vice president for healthcare marketer Epsilon, explains, “Segment profiling

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119 Boomerang Pharmaceutical Communications, “Who We Are,” http://www.boomerangpharma.com/who-we-are/. Among Boomerang’s offerings is relationship marketing, designed to “Capture and hold prospects.... Turn visitors into customers.... [and] Turn customers into something better: fans.” As the company asks its pharmaceutical clients, “How sticky are you? In other words, how engaged are your site users? More engagement equals better customer retention, so Boomerang uses every tool in the online arsenal to keep them coming back. From content feeds to coupons, blogs to bookmarks, we put the power of web 2.0 tools at your disposal, at all engagement levels.” Boomerang Pharmaceutical Communications, “Relationship Marketing,” http://www.boomerangpharma.com/what-we-do/relationship-marketing-crm/ (both viewed 30 Sept. 2010).

dimensions include (but are not limited to): market size, geo-demographic characteristics, medication usage, self-care behaviors, bio-metrics, insurance coverage/usage, needs/attitudes/behaviors and media consumption." The goal of those data collection and analysis efforts is to influence consumer behavior in some of the most personal and profound decisions they will ever have to make, concerning their own and their family's health.

In some instances, online segmentation techniques are employed to help target consumers involved with a particular drug, in an effort to “drive increased adherence to therapy” (especially when a patent is about to expire, and a company is facing competition from generic and alternative products). Such was the case with AstraZeneca’s beta-blocker Toprol-XL. The company “was looking for a feasible way to increase patient adherence to the drug and to develop an extended database to support new product launches within the cardiovascular category.” AstraZeneca called on the Rosetta agency to segment its patient database into actionable categories, permitting different customer-relationship techniques for each group. “Leveraging its patented patient Personality-based segmentation insights, Rosetta developed Heart Horizons, a fully integrated, online customer relationship program about heart health designed to convert, support, and drive persistence to drug therapy for Toprol-XL.”

Unbranded and Disease-Awareness Marketing

Unbranded sites, focused on a specific disease or health condition but sponsored—behind the scenes—by a pharmaceutical company that markets a treatment for the disease or condition are at best a deceptive practice. This is especially true of those sites that purport to be user-driven communities, but that depend on paid consultants for much of their content. Dose of Digital’s Jonathan Richman describes the benefits—to pharmaceutical companies—of unbranded sites: “Unbranded experiences ... reduce regulatory risk since your brand isn’t mentioned, people can have ‘off label’ discussions where they talk about indications where your drug isn’t approved. It allows them to have the type of interaction they expect (i.e., one that isn’t constantly censored by a company worried about regulatory risks).”


Sanofi-Aventis and Intouch Solutions created GoInsulin.com, “an unbranded Web site supporting a national campaign designed to empower people with type 2 diabetes to take control of their disease. The Web site encourages well-informed decisions about diabetes and insulin and ways to overcome doubts and fears associated with taking insulin.” The producer of two insulin products, Apidra and Lantus, Sanofi-Aventis also created a YouTube channel celebrating “Insulin Success Videos.”YouTube, goinsulin’s Channel, http://www.youtube.com/user/goinsulin. The U.S. branch of Boehringer Ingelheim, a pharmaceutical company based in Germany, set up a Twitter channel, boehringerus, to make product announcements and provide links to other health-related campaigns, such as the company’s unbranded Drive4COPD effort, “a national public health campaign that aims to find the ‘missing millions’ of people who may have Chronic Obstructive Pulmonary Disease (COPD),” which also includes Facebook and YouTube components. boehringerus Twitter channel, http://twitter.com/boehringerus; Drive4COPD,
95. Too often so-called “patient communities” fail to provide meaningful disclosure of their pharmaceutical sponsor.

96. An unbranded marketing effort, “New Way RA,” is a condition-specific online talk show directed at those suffering from rheumatoid arthritis that fails to adequately disclose its sponsor relationship with Centocor Ortho Biotech, Inc. Such unbranded sites are designed to minimize appropriate sponsorship information, while simultaneously fostering data collection.124


Welcome to the Second Season of New Way RA™
An Inspiring talk Show for People Living With Rheumatoid Arthritis (RA)

Watch Both Seasons
Register now to view Season 1 and episodes of Season 2 of the New Way RA™ show.
Or, for a taste, watch the preview of Season 2.

Watch the Latest Episodes
New Way RA™, now in its second season, is a health-focused talk show all about living well with rheumatoid arthritis (RA). Meet experts from a variety of fields and people living with RA. Receive advice, be inspired, and manage life with RA.

Real People, Real Stories
Discover new inspiration as others living with rheumatoid arthritis (RA) share their stories.

Arlene, from New Jersey, living with RA for more than 15 years. When Arlene was diagnosed, she made the decision to gain control of her disease. She believes that faith, inner strength, and finding an empowered her.

Missed Our Live Video Web Chat?
Watch highlights of award-winning journalist Deborah Norville and expert panelist Dr. Laurie Ferguson as they answer viewer questions in our live video web chat.

Video web chat supported by CreakyJoints
Bringing rheumatics to the front.
97. StarttheTalk.com is an unbranded Genital Herpes site created by One to One Interactive for GlaxoSmithKline.125

98. Other unbranded condition-specific sites include Novartis’ [1in3people.com](http://1in3people.com) hypertension information site, and [Voices of Meningitis](http://voicesofmeningitis.org). “To promote awareness of meningitis, a bacterial infection that is potentially life threatening, Publicis Modem created an unbranded Web site featuring video testimonials of families that were somehow affected by the disease. The idea was to inspire parents to take action and have their children vaccinated. To drive traffic to the site, the campaign included Flash banners on key mom sites, while rich media banners showcased the testimonials. Pre-roll ads were placed on online TV services, and custom in-banner video solutions brought a mini version of the site to the user. The campaign also had its own Facebook page.”[126]

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[126] “Integrated Online Campaign: Health/Pharmaceutical: Publicis Modem; Sanofi Pasteur, ‘Voices of Meningitis,’” *OMMA Magazine*, 1 Sept. 2010, http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=135127 (viewed 30 Sept. 2010). “Pharmaceutical companies have begun creating a presence on Facebook characterized by control and caution,” explains Sara Inés Calderón on the Inside Facebook website. “Why? Despite unclear regulations in the U.S. governing their presence online, they may still be penalized for marketing materials on the Internet. The result is, in terms of their Facebook marketing content, a mixed bag of sometimes disingenuous Pages and Groups, fluffy applications and tightly-controlled discussions....

“Some companies also offer a Page or Group around a cause related to a drug. This is an especially gray area. Some examples we looked at clearly disclosed their sponsor relationship while others didn’t—either way, it appears that companies can be liable in some circumstances... Epilepsy Advocate, with 4,300 fans describes its Page as, “a community of people living well with epilepsy, their family members, and their caregivers. Epilepsy Advocates are people just like you who have shown the courage to share their stories and provide support to others.” Nowhere on the page, however, does it note that Epilepsy Advocate is a program sponsored by the pharmaceutical company UCB, which makes drugs for the treatment epilepsy. Although there are no strict laws governing pharma on social media, is it legal to promote an organization sponsored by a drug company without saying so?” Sara Inés Calderón, "Big Pharmaceutical Companies Making Cautious Plays for Facebook Users," Inside Facebook, 8 Feb. 2010, http://www.insidefacebook.com/2010/02/08/big-pharmaceutical-companies-making-cautious-plays-for-facebook-users/ (viewed 29 June 2010).
99. ShareYourPain.com appears to be a community site for those suffering from or seeking information related to cancer and pain. It encourages consumers to “share your pain” with the site’s “community,” including highly sensitive and personal concerns connected to cancer. One is encouraged to “join the community” and provide far-reaching data about oneself. Online marketer Blue Diesel developed ShareYourPain.com on behalf of Cephalon, a global biopharmaceutical company with medications that treat central nervous system disorders, cancer, pain, and addiction. To create the site, Blue Diesel analyzed how the target group of consumers browsed the Web to find their own treatments, identifying “what search engines were most frequently used, what words and phrases they searched, and what other tools were utilized in their quest for pain treatment information.” According to the company, ShareYourPain.com “allowed the client to engage the target audience and collect data to further marketing efforts for their brand... Data from the site was used to direct other marketing efforts for the brand.”

100. Pharmaceutical companies have developed many condition-specific sites, often in anticipation of the release of a new drug, fueling demand for the upcoming product. Bayer’s Thrombosis Advisor site, developed by Digitas Health on
behalf of Bayer’s new Xarelto oral clot-prevention treatment, is an example. Bayer is also a participant in MyMSMyWay, “a free resource dedicated to connecting people with Multiple Sclerosis to accessible technologies that can help them live their lives better.” Users must surrender personal information in order to participate in the network, raising data collection and related issues.

Elsewhere, MyTreatment.com is a condition-specific site that will be launching soon, a portal devoted to niche markets that correspond to various illnesses and maladies. The new site is the work of Sessions Media, which specializes in online marketing and website development, with 29 other condition-specific sites (from Acid Reflux Treatment to Smoking Treatment) currently operating or in the planning stages.

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130 As the MyMSMyWay website explains, “By sharing your information below with the MS Technology Collaborative—consisting of Bayer HealthCare Pharmaceuticals, Microsoft Corporation, and the National Multiple Sclerosis Society—you will receive periodic communications from the Collaborative or its individual partners, Bayer HealthCare Pharmaceuticals, Microsoft and the National Multiple Sclerosis Society regarding:

- The Collaborative's activities
- Survey participation
- Research opportunities and results
- Notification when new material is available on the Web site
- Information relating to multiple sclerosis and technology solutions
- Updates from individual partners.


Social Media Marketing

102. Social media marketing is a relatively new form of interactive advertising that takes advantage of a person’s social relationships online—their so-called “social graph”—for brands and other advertising. As a Rocket Fuel brochure puts it, “The phrase ‘birds of a feather flock together’ describes the power of social data—the tendency of like-minded individuals to cluster with other people just like them. These powerful demographic and psychographic traits have been proven to boost response, engagement, word of mouth and collective behavior at rates dramatically higher than other targeting alternatives. Once we identify a core audience, we can serve precision-targeted offers to friends and communities of your best customers—without risking your brand on low-quality social media inventory.”132

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103. As a recent report on consumer participation in health-related social networks makes clear, pharmaceutical marketers are closely watching social media for opportunities to influence consumer-purchasing decisions at the emotional and unconscious levels:

The drivers behind why individuals participate and why they don’t participate will help pharma marketers uncover the true opportunities within social media. The study found two overwhelming reasons why consumers participate: reassurance (“I’m not the only one going through what I’m going through”) and intimacy (“It helps me find answers to my health from people like me/with my condition”). The emotional reasons for participation far outweighed the more rational reasons; i.e. “It helps me reach my health goals.” Social media can be a powerful vehicle if marketers connect with individuals on an emotional level. While patients may be looking for foundational information, they are also looking for emotional support conveyed through a tone of reassurance and intimacy. Discussion topics that extend beyond the clinical to truly connect with what a patient is going through will resonate even further.¹³³

104. “Online social networking and user-generated content is an important part of the new media landscape,” explains Ann Friedman Ryan, senior vice president and director of CRM and interactive at CommonHealth’s consumer group EvoLogue. “It allows us to go where our customers are, and to integrate into their lives, as well as to benefit from a halo of credibility just by the nature of the medium,” she says, citing “friends” in a social network or relevant content in a contextual placement. “By using those kinds of channels, we’re able to keep our finger on the real-time pulse of what’s going on with our target audience....”¹³⁴


105. The ability of health marketers to identify a consumer’s “digital footprint,” as Razorfish Health Analytics explains, illustrates the growth of social media data mining in the pharma sector. “... [E]veryone leaves a digital footprint,” the company declares. “A footprint that is ever growing as more and more devices and data streams enter the market. But factor in all the Web users out there, and the numbers get a bit dizzying. Precisely why we apply rigorous methods and custom tools to measure and identify patterns. Icing on the mathematical cake: Our Edge tool provides you a dashboard to easily (we promise) track it all in real time...”

Armed with such knowledge, marketers can then shape consumer-buying decisions: “We can see people’s likes and dislikes, how they behave alone and in groups and we see it all on a grand scale of millions. That’s a pretty nice focus group.... And, we don’t simply react to choices users make—through our digital knowledge, advanced consumer research and deep analytics, we can create awareness, anticipate needs and drive decision.”

thanks to deceptive marketing practices that exploit the intimacy of social media, that “halo of credibility” has been severely tarnished. Especially with the revelations of questionable privacy practices on Facebook, Google, and elsewhere, many U.S. consumers are justifiably concerned—about both the security of the personal information they share online, as well as the reliability of information they receive from others. A recent study by Digitas Health suggests that this uncertainty is particularly apparent in the online health care arena: “Sixty-seven percent of European consumers say they trust the information they find in social-media venues versus only 45% of American consumers. Fifty-two percent of European physicians believe that healthcare professionals should participate in discussions in patient forums and social networks, compared to only 41% of US physicians. Similarly, 41% of European physicians believe that social media will play an increasingly important role in shaping their patient management and treatment, versus only 23% of US physicians.” Digitas Health, “Europeans More Likely to Trust Social Media with Their Health, Study Finds,” 25 Mar. 2010, http://www.digitashealth.com/pdf/Digitas_Health_Kantar_Health_Survey_Release.pdf (both viewed 16 June 2010).


Interactive ad agency Razorfish underscores the importance of “Real-time data analytics. There are two flavors of social data: the chatter itself and the behaviors that occur as a result of social activity. The biggest challenge is not collecting data—it’s having the right people and partners who can uncover the insights that come from the data and act upon them.”

The stealth collection, analysis, and use of social media information have combined to produce what some health marketers regard as an “unprompted focus group.” These marketers are focusing on “taking unstructured, unsolicited stakeholder opinions and converting them into statistically significant structured data which reveal rich actionable insights” designed to help them more effectively market drugs and other health products. This can include the use of online data tracking and analysis to identify so-called “key influencers” who are then “mapped” so they can be targeted with the goal of influencing other consumers unaware of such practices and methods. The development of social media marketing strategies for pharmaceuticals designed to create a “fan culture” for the brand raise serious questions about unfair use of digital marketing techniques.

Various “covert operations” undertaken by pharma marketers in the social media context require analysis and disclosure. “Pharma marketers shouldn’t be seduced by the bright, shiny object of ‘running a social media campaign’ when there’s so much that they can do with social media behind the scenes,” argues Aaron Gerrick, senior director of the Strategic & Analytic Consulting Group with marketing services firm Epsilon. “With the right tools and

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expertise, the social web becomes a rich source of consumer insight.”

109. New surveillance tools have been developed to monitor conversations among social network users to identify what is being said about a particular issue or product. Marketers then work to insert brand-related messages into the social dialogue, often by identifying and targeting individuals considered brand “loyalists” or “influencers,” and encouraging them to generate buzz through their networks of friends. Increasingly, advertisers are using Facebook’s marketing apparatus—which is largely invisible to its users—to develop a brand presence on its pages so it can strongly connect to the social communications of a very large pool of consumers.¹⁴⁰ “I AM NURSE,” for example, “where RNs, LVNs and related professionals exchange what’s on their minds,” is a product of i2we, which promises to help its clients “leverage the webographic algorithms that match your campaigns with the people you want to reach.”¹⁴¹ Ultimately, much of social marketing is a form of viral advertising


¹⁴⁰ That certain social media applications are simply unsuitable for the depth and breadth of information that existing pharmaceutical advertising regulations require is evident in the recent FDA ruling concerning Novartis’ Facebook widget for Tasigna leukemia drug. That product, the FDA declared, “is associated with a number of serious risks, as detailed in the Boxed Warnings, Contraindications, Warnings and Precautions, and Adverse Reactions sections of the PI” (product labeling). But the Tasigna website, the FDA explained, which “contains a ‘Facebook Share’ social media widget that generates Novartis-created information for Tasigna that can be shared with Facebook users (i.e., ‘shared content/),” does not adequately disclose those risks:

The shared content is misleading because it makes representations about the efficacy of Tasigna but fails to communicate any risk information associated with the use of this drug. In addition, the shared content inadequately communicates Tasigna’s FDA-approved indication and implies superiority over other products. Thus, the shared content for Tasigna misbrands the drug in violation of the Federal Food, Drug, and Cosmetic Act (the Act) and FDA implementing regulations....

We note that the shared content contains a hyperlink to various Tasigna product websites, which do contain risk information. However, the inclusion of such a hyperlink is insufficient to mitigate the misleading omission of risk information from these promotional materials. For promotional materials to be truthful and non-misleading, they must contain risk information in each part as necessary to qualify any claims made about the drug. Karen R. Rulli, Acting Group Leader Division of Drug Marketing, Advertising, and Communications, Food and Drug Administration, letter to Lisa Drucker, Director, Regulatory Affairs—Oncology Novartis Pharmaceuticals Corporation, 29 July 2010, http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/EnforcementActivitiesbyFDA/WarningLettersandNoticeofViolationLetterstoPharmaceuticalCompanies/UCM221325.pdf (viewed 30 Sept. 2010).

that is designed to trigger peer-to-peer support for a brand or product.\footnote{142}{One enterprising 13-year-old Facebook user, acting on behalf of his grandfather, who was suffering from cancer, managed to attract 16,000 “fans” in 96 hours. As the All Facebook blog explains, he did this by targeting cancer survivors:}

When used to promote pharmaceutical and health-related products, the practice raises particularly serious issues. While drug companies may argue that they use social networks in order “listen” to their consumers, social media marketing is a key advertising technique designed to influence perception and shape information about a brand, without a clear understanding by the public of the techniques and targeting used.\footnote{143}{For an overview of the field, see the Pharma and Healthcare Social Media Wiki, http://www.doseofdigital.com/healthcare-pharma-social-media-wiki-2/. See also Envision Solutions, “Achieving Openness: The Art of Listening, Learning, & Communicating with People Using Social Networks for Health & Wellness,” 2009, http://formersite.enspektos.com/healthsocnetworks.html (both viewed 16 Feb. 2010).}

110. A Facebook application called HealthSeeker, for example, is designed to “help people with diabetes become more informed about their disease, as well as make tangible lifestyle changes that might affect their health. The app was created in part by the non-profit Diabetes Hands Foundation, the Joslin Diabetes Center (a research affiliate of the Harvard Medical School) and Boehringer Ingelheim Pharmaceuticals, Inc.”\footnote{144}{Sara Inés Calderón, “Facebook App Aims to Help Control Diabetes,” Inside Facebook, 21 June 2010, http://www.insidefacebook.com/2010/06/21/facebook-app-aims-to-help-control-diabetes/ (viewed 29 June 2010).} But nowhere does the app explain how users are tracked and monitored or what kinds of data are

Odd that the Facebook ad system shows interest targeting as XX,XXX people “like” cancer, but that is Facebook’s generic way of showing how many people have identified with a cause. To have the word “like” broadly mean that you are a fan of a page, “like” to eat chocolate ice cream, and “like” cancer is perhaps too broad a use of this term. But as we’ve demonstrated earlier, Facebook’s terminology switch from fans to likes increases engagement rates dramatically.

The cancer survivors who responded to the ads were primarily female. And by running geo-targeted variations, Logan noticed a difference in language from cancer survivors from the Bible Belt versus California— in the former, the message of faith in God was a stronger theme than one of “fighting” against all odds. He then realized that messaging by geography mattered, so he adjusted his ad copy.

Married people with cancer were more likely to respond, so Logan created more variations, using the Facebook Responder Profile and Demographic reports to give guidance on how to segment further.

In some circumstances, health consumers must first provide information prior to accessing the online services. Facebook has an application for a health-related ADHD concern that required individuals to provide access to their profile information before they could obtain the health advice they sought.145

145 ADHD Moms, Facebook, http://www.facebook.com/ADHDMoms?v=box_3 (viewed 16 Feb. 2010). Clicking on the “Privacy Notice and Consent” link of the ADHD Moms’ Moments Facebook app (which gives visitors a “chance to share your ADHD caregiver insight”) yields
112. NetBase Solutions, whose clients include HCD Research, features automated social media monitoring technology called ConsumerBase. According to NetBase, “ConsumerBase... is the only solution that can extract actual consumer preferences from terabytes of public and private information: social media feeds, websites, and years’ worth of internal information such as survey data, call center transcripts, and other documents.... ConsumerBase mines billions of sources of information to surface new insights.... Every day, you know what your consumers are thinking and feeling, and how they’re behaving.... Unlike other semantic technologies, NetBase processes over 100 billion sentences a month, enabling marketers to tap into vast sources of public and private content.

the following statement: “Allowing ADHD Moms(TM) Moments access will let it pull your profile information, photos, your friends’ info, and other content that it requires to work.”


113. Pharmaceutical and health marketers have managed to insinuate themselves into social media conversations in a variety of ways:

114. Heartbeat Ideas’ BuzzScape “allows clients to monitor discussions that flow in and out of the tens of thousands of message boards, forums, blogs and social networks that increasingly dominate the online environment.”¹⁴⁸ ‘We translate ‘buzz’ into ROI,’ said Bill Drummy, chairman and CEO of Heartbeat. ‘In a sense, we eavesdrop on public conversations among people with a shared interest, then use what we learn to create interactive marketing campaigns that address the identified needs, wants and gaps in knowledge of target audiences.’” ¹⁴⁸ Heartbeat Ideas’ healthcare clients include Abbott Laboratories, Amgen,

Baxter Bioscience, Biogen, BD, Eli Lilly and Company, Genentech, GlaxoSmithKline, Johnson & Johnson, Lifeline Schering, Memorial Sloan-Kettering Hospital, Merck, Millennium, Organon, Roche Diagnostics, Sanofi-Aventis, and UCB Pharma.  

115. Novo Nordisk’s new ‘Race With Insulin’ Twitter page (http://twitter.com/racewithinsulin) “includes a corporate sponsorship of racecar driver Charlie Kimball, who is also a patient living with diabetes. This is the first Twitter account that aligns a patient advocate (who conceivably uses Levemir or Novolog insulin) with a specific brand (not just a corporation).”

116. Among its “Solutions for Pharma-Health Marketers,” Nielsen Online offers “BuzzMetrics services, supported by our expertise in measuring and analyzing online buzz and word-of-mouth, deliver insights to proactively manage online exposure:

- How patients and caregivers feel about your brand, product or service—in their words
- Specific issues that are being discussed around your brand, products or organization
- Events, trends and issues influencing the buzz around your brand

150 “[T]his is a step toward Pharma breaking out of its corporate experimentation phase with Twitter and moving toward some strong promotional potential. From a user experience/patient perspective, imagine that you were just prescribed a new medication (maybe Novolog insulin), then being able to follow a real patient on the product as they provide updates via Twitter related to common questions, side-effect concerns, basic disease information, and other topics of interest to help keep you engaged (and compliant) with your therapy,” Ross Fetterolf, “Novo Nordisk’s ‘Race With Insulin’ Twitter Page Blazes a New Path,” Ignite HEALTH Blog, 16 June 2009, http://ignitehealth.blogspot.com/2009/06/novo-nordisks-race-with-insulin-twitter.html (viewed 30 Sept. 2010).
• Insights into the doctor-patient relationship and analysis of doctor/healthcare professional discussions relevant to your brand
• Guidance to proactively manage, minimize or avoid potential issues surrounding your reputation
• Tools to leverage CGM to drive brand credibility and ultimately sales.\textsuperscript{151}

117. As part of its effort to market Gardasil, a cervical cancer vaccine, Merck engaged the Rapp agency to set up a branded Facebook page, Take a Step Against Cervical Cancer, “triggering news feeds and advocating our message. A destination where anyone can find out the facts about cervical cancer and how to prevent it, the page also allows visitors to feel inspired, educated, and empowered to act for themselves and to help others. A key feature is a virtual wall that visitors can ‘tag’ with a logo and message. It allows each visitor to express their own uniqueness and intent.”\textsuperscript{152}

118. The social network PatientsLikeMe (PLM), similarly, offers a new service exclusively to its industry partners, called PatientsLikeMeListen. In addition to giving pharmaceutical companies “unprecedented insight on how your brand is perceived,” the monitoring service also provides its partners with startling amounts of personal data from the online conversations, including participants’ gender, age, time on treatment, time since diagnosis, disease


progression, disease type, symptoms, longitudinal variation, and supporting therapies. So-called patient communities require complete disclosure and transparency of how and what data are collected and given to a site's financial backers or to health marketers. 

153 PatientsLikeMe, “PatientsLikeMeListen,” http://partners.patientslikeme.com/data-sheets/PatientsLikeMeListen.pdf (viewed 16 Feb. 2010). On the one hand, then, PLM protects its users from the prying eyes of social media monitoring firms, as John Mack explained in a recent Pharma Marketing News article concerning automated programs that “scrape” data from online forums: “A major issue for PLM is that the media monitoring company—probably employed by an unnamed pharmaceutical company—was not an authentic patient and violated PLM's User Agreement, which states 'You may not use any robot, spider, scraper, or other automated means to access the Site or content or services provided on the Site for any purposes.'” John Mack, “Data Mining in the Deep, Dark Social Networks of Patients,” Pharma Marketing News, May 2010, http://www.news.pharma-markting.com/pmn95-article03.htm (subscription required). At the same time, Mack adds, “Since PLM is using its own ‘scraper’ software to troll its closed communities to create reports for pharma clients..., it has a vested interest in preventing rouge [sic] pharma companies from hiring ‘scraper’ agents to mine the PLM site for the same data it is selling its own pharma clients.” PLM, in other words, actively mines its own user-generated content for marketable data. As the site’s FAQ acknowledges, “We take the information patients share about their experience with the disease, and sell it in a de-identified, aggregated and individual format to our partners (i.e., companies that are developing or selling products to patients).... By selling this data and engaging our partners in conversations about patient needs, we're helping them better understand the real world medical value of their products so they can improve them.” PatientsLikeMe, “FAQ,” http://www.patientslikeme.com/help/faq/Corporate (viewed 16 June 2010).
119. Such monitoring, both overt and covert, has become a common practice in the online marketing community. In the words of *Pharma Marketing News*’ John Mack,

> Searching online patient social networks for key words and discussions about products is something pharmaceutical companies have been doing for quite some time. A recent Pharma Marketing Blog post described one way this is done.

The post described how a BzzAgent agent (aka “operative”) was trolling social networks on behalf of Johnson and Johnson (see http://bit.ly/uZfWB). BzzAgent is a leading word-of-mouth (WOM) marketing company that solicits consumers to be their agents in exchange for free samples and other considerations. One “operative” admitted that he took a survey through BzzAgent for Johnson & Johnson, “which basically was more of a ‘contract’ where if chosen, I agreed to notify J&J if I became aware of any negative talk about their products.”

120. Another social media marketing technique involves the use of “digital stories” to sell pharmaceutical products, without adequate disclosure of techniques used to create those stories, however. Since the stories told often revolve

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154 Mack, “Data Mining in the Deep, Dark Social Networks of Patients.” Such negative talk, moreover, can be excised entirely, thanks to new content-analysis software. As D. J. Edgerton, co-founder of pharma digital marketing agency Pixels & Pills, points out, “...technology is now available—through semantic filtration as well as building applications within Facebook—to allow for the dialogue to happen but also weed out and flag conversations that might be risky.” “The Future of Pharma Advertising: DTC Goes Social,” *Social Media for Pharma Brand Managers*, June 2010, http://www.slideshare.net/oscarmirandalahoz/sermo-21-final-0 (viewed 11 July 2010).
around powerful drugs, serious illnesses, and major health issues, moreover, the use of digital media to create consumer stories demands safeguards and ethical standards.155

121. Online health marketers may be using undisclosed social media marketing strategies to promote “fans” of their products. For example, at a pharma marketing conference in October 2010, a panel discussed “Understanding the Power of Fan Culture in Healthcare Marketing”:

- Embracing and understanding Fan Culture.
- New technology platforms and social media have created fertile ground for fans to communicate and build robust communities. How can Healthcare leverage fan theory online?
- Are you treating your patients and professionals like fans? Are you providing them a portal and tools that generate trust, understanding and most importantly, results? ... Social Media Can Teach Us about the Patient Journey...
- What is the patient journey and how can it inform communications planning for pharma brands?
- How can online conversations help us understand the patient journey for a given disease?
- What are some common barriers to treatment, and how did we find them on the Web?
- How can brands identify knowledge gaps or myths and address them through patient education?156

155 One company that facilitates such narratives in the pharmaceutical marketplace is Story Worldwide, whose “transmedia editorial team tells stories across all platforms, channels, and languages, creating a multitude of entry points for consumer immersion in a brand’s story.” “Story Worldwide connects brands to customers by telling engaging and entertaining stories that audiences actually want to hear.” Story Worldwide, “Services: Creating, Telling and Spreading Stories,” http://www.storyworldwide.com/what-we-do/# (viewed 9 Sept. 2010). Or, as a session at the upcoming eyeforpharma eCommunications and Online Marketing Summit 2010 explored,

What makes your customer tick? Storytelling as a key weapon in your arsenal

- Delve deeper into the narrative aspect of your eCommunications plans to connect with the humanity of your customer
- Leverage storytelling to understand and connect with your customer more effectively
- Why storytelling is of paramount importance for a patient to get behind their disease and your product

"Eyeforpharma eCommunications and Online Marketing Summit 2010,"

122. In seeking information and advice from seemingly independent health bloggers, patients and other consumers rely on what they believe to be genuine, unsolicited testimonials. But often these statements are the products of arrangements with spokespersons who are compensated for their comments. Sanofi-aventis U.S., for example, maintains a formal program called A1C Champions, “a patient-led approach to diabetes education” involving “people with diabetes who share diabetes self-management and lifestyle strategies based on extensive training and their personal experience.” These participants are also paid spokespersons for Sanofi-aventis, who “receive a speaker fee for each presentation” they make. \(^{157}\) Such is also the case with the Facebook site, ADHDMoms, which, while acknowledging the fact that the physicians participating in the program are paid consultants, obscures the fact that several of the “moms” involved in the site are also paid by McNeil Pediatrics, a Division of Ortho-McNeil-Janssen Pharmaceuticals, Inc. The failure to disclose such sponsorship arrangements may, in fact, violate the FTC’s recently revised Endorsement guidelines, which the FTC extended to the Internet last year.

123. In light of these revised guidelines concerning endorsements and testimonial ads, it is imperative that the commission look closely at the migration of DTC pharma advertising to the online arena, especially in the area of social media, where sponsored testimony and paid endorsements often assume the guise of independent, word-of-mouth conversations. \(^{158}\) Such discussions often reflect


\(^{158}\) As described in a commission press release of 5 Oct. 2009, the following aspects of the revised guidelines are especially pertinent to the pharmaceutical and healthcare sector: “The revised Guides ... add new examples to illustrate the long standing principle that “material connections” (sometimes payments or free products) between advertisers and endorsers—connections that consumers would not expect—must be disclosed. These examples address what constitutes an endorsement when the message is conveyed by bloggers or other ‘word-of-mouth’ marketers. The revised Guides specify that while decisions will be reached on a case-by-case basis, the post of a blogger who receives cash or in-kind payment to review a product is considered an endorsement. Thus, bloggers who make an endorsement must disclose the material connections they share with the seller of the product or service. Likewise, if a company refers in an advertisement to the findings of a research organization that conducted research sponsored by the company, the advertisement must disclose the connection between the advertiser and the research organization. And a paid endorsement—like any other advertisement—is deceptive if it makes false or misleading claims.” Federal Trade Commission, “FTC Publishes Final Guides Governing Endorsements, Testimonials: Changes Affect Testimonial Advertisements, Bloggers, Celebrity Endorsements,” 5 Oct. 2009, http://www.ftc.gov/opa/2009/10/endortest.shtml (viewed 19 Oct. 2010).
the phenomenon of “fan culture,” in which entertainment or sports celebrities are called upon (often without clear disclosure) to promote goods and services far removed from their areas of talent or expertise. In advance of the launch of Yaz, for example (a low-dosage oral contraceptive approved by the FDA for treating Pre-Menstrual Disphoric Disorder, or PMDD), Bayer “created an unbranded education campaign to drive engagement with young women.”

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So-called “patient empowerment,” in which individuals are encouraged to seek information for themselves from trusted social networks online, while a notable goal, requires transparent and meaningfully accountable marketing practices. Too often, the network of alliances and sponsorship behind these sites is not fully disclosed. WEGO Health, for example, is billed as “the home of Health Activists—vigorous advocates, avid connectors, daily contributors and social media opinion leaders who bring the expertise of having been there, survived that.” The funding arrangements for such expertise, however, is not made clear on the WEGO Health website. WEGO is also active in recruiting collaborators among the more than 300,000 Ning social networks, as it announces on the Ning website:

If you are the Network Creator for an active Ning Network primarily focused on health related content and community, you’re invited to apply for WEGO Health’s sponsorship program. As a participating network, you will receive all of the features in Ning’s Plus package (unlimited membership, groups, chats, full branding control, etc.). The top navigation of your Ning Network will display a simple, “Brought to you by WEGO Health” message. In addition, you will be invited to the WEGO Health Ning Network, an exclusive community of Health Activists who can provide support for developing and extending your Network’s reach and impact. WEGO Health will be leveraging their strong relationships with leading companies in the health care industry

159 "We enlisted the band The Veronicas (21 year-old Australian twin sisters with a growing college following) to record their own version of the classic hit We’re Not Gonna Take It as the theme tune for the initiative. Simultaneously, we set up an unbranded microsite—www.wngti.com (for We’re Not Gonna Take It)—to house content about The Veronicas and the song. Visitors could download a free copy of the song, view behind-the-scenes Veronicas footage, and submit their own video version of the song for a chance to win concert tickets and a day with The Veronicas. Whenever visitors interacted with the site, they were prompted to visit another site—www.understandpmdd.com—where consumers could learn more about PMDD....” MEC, “Bayer (Yaz), http://www.mecglobal.com/bayer-yaz/ (viewed 19 Oct. 2010).

160 For an example of the “empowered patient” concept, see Klick Pharma’s “e-Patient Dave” video, http://www.klick.com/pharma/epatientdave/ (viewed 30 Sept. 2010).

to co-sponsor this program. Qualifying networks in this program will be notified of additional sponsorship opportunities as they become available.\textsuperscript{162}

125. Participating Ning health networks are emblazoned with the WEGO Health logo, and presumably follow the WEGO sponsorship model, as described by the company’s CEO and founder, Jack Barrette: “WEGO Health’s Activist Social Network is the trusted community liaison to pharmaceutical and health marketers, familiar with professional key opinion leader programs. Marketers engage the Activist Social Network through innovative sponsorships, industry advisory panels, collaborative content development, widget distribution and more.”\textsuperscript{163}

126. The use of social networks to recruit patients for clinical trials raises privacy concerns, especially if participants are not fully apprised of how their personal data might be shared with and by others. Acurian’s Click it Forward (CIF) campaign, for example, seizes upon “today’s social networking phenomenon”


as “the perfect channel for spreading the word about medical causes and research participation....”¹⁶⁴ According to Scott Connor, vice president of marketing at Acurian, the campaign hopes to spread the word about clinical trials from user to user, in much the same way the viral advertising campaigns are carried out: “The initiative invites Facebook and MySpace users to add CIF, a cause-related social marketing application, to their profile pages, in exchange for a donation to a selected health-related cause. Based on the cause or causes that each user selects, Acurian displays specific clinical trial participation opportunities on the CIF dashboard and sends IRB-approved e-mails to users who have provided permission to be contacted.”¹⁶⁵

¹⁶⁴ Click it Forward, https://ols5.acuriantrials.com/jsp/facebook/about.html (viewed 10 July 2010).

127. There is also evidence that pharmaceutical companies are using social media to take unfair advantage of patient confidentiality. “While trial sponsors are under-utilizing the tool” of social networking, explains Carmen Gonzalez, communications manager at the Health Care Communications Group, “some recruitment vendors are blatantly disregarding rules set forth by the Health Insurance Portability and Accountability Act by soliciting private health care information on social networking sites. These are ‘red flags’ of overdue FDA guidance.”\textsuperscript{166}

\textbf{e-Detailing: Targeting Physicians and Healthcare Professionals}

128. Online databases are being used by pharmaceutical marketers to pinpoint doctors, medical specialists and other health professionals for targeting with specialized sales strategies designed to encourage the adoption and promotion

of specific drug brands. Kantor Health, for example, offers a “CancerNfluence” product that “profiles physicians in the U.S. and Europe who influence treatment decisions in oncology in highly competitive cancers,” including breast, head and neck, pancreatic, and prostate cancer. CancerNfluence gives health marketers “immediate access to a wealth of information, all at your fingertips,” including “the level of influence” individual physicians have in encouraging adoption of cancer treatments.167

Physicians, including such specialists as cardiologists, as well as nurses, dentists, and pharmacists, are being targeted via the Bizo Targeting Platform for online advertisers. Editorial content for targeted health professionals is shaped by the advertising. Behavioral targeting warehouses, such as eXelate (which partners with Bizo), offer a “health care professional” category. The company explains that “This service allows a marketer to create landing pages and websites that are personalized to each visitor coming to the site. For example, if a visitor from the healthcare industry comes to a landing page, the marketer can now serve their healthcare-focused case study.”

Mobile marketers have also turned their attention to physicians and healthcare professionals. Noting the common uses for smartphones among health care providers—“Checking Email (85%) Jotting down notes and memos (72%) Prescription drug reference (50%)”—Augme Mobile Health enables “instant communication for patients and health care providers to receive product information, samples, or educational materials through any mobile device. Plus, our exclusive behavioral tracking, analytics, and database targeting capabilities are designed to work seamlessly with pharma brands’ physician and patient databases.”


131. Noting that 81 percent of physicians will have smartphones by 2012, HCPlexus targets doctors with “personalized products... designed to make physicians’ lives easier, so they can focus on healing patients.” In the process, HCPlexus focuses on delivering targeted ads, with its Brand Launch Program (“Advertising can drive qualified physicians to the brand contact center, drive eSample fulfillment and access to branded and unbranded websites”) and through its Physician Relationship-Building program.172

132. Pharma marketers even use flash drives providing drug information and distributed to doctors to foster digital advertising. HCPlexus explains that “[e]mbedded advertising options across the Flash Suite applications allow marketers to have their message present throughout the physicians’ day, offering multiple opportunities for direct contact. Activity metrics ensure that messaging efforts are measurable. Physicians must register to download the suite of applications to their system. As a registered user, a physician is invited to receive automatic online updates for all the applications. Content and brand messaging will stay current.”173

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Flash Suite: Marketer Benefits

Embedded advertising in each application:
- Drives physicians to contact center
- Creates frequent exposure to brand message

Physician activity reporting: search, page views, sample and patient ed requests, by specialty and geography

Accountability: Detailed Metrics

Daily reporting available for every physician activity

- Clicked on ad
- Viewed a PI
- Performed advanced search
- Contacted a pharmacy
- Called a manufacturer
- Answered a survey
133. Physicians Interactive (PI) offers “A Full Menu of Digital Marketing Tactics— ... behavior-based, integrated campaign strategies with the right blend of tactics. Tried-and-true formats mingle with innovative new ideas for a mix of creative that’s always true to your brand message, credible to your audience, and mindful of your targets’ behavior patterns.”174 Among Physicians Interactive’ offerings are the following:

134. “Physicians analytics analyzes your target list to identify and recommend segments of opportunity. With a set of unique proprietary tools and methodologies, we can estimate the cost of each tactic by segment to predict breakeven values based on the latest new prescriptions (NRx) and true prescriptions (TRx) data from your customer universe. Using physician detailing analytics, Physicians Interactive tailors campaign tactics to the right audience segments and maximizes the potential return. In addition, with the low cost-per-call of many eMarketing initiatives, we have been able to identify new segments of opportunity within low- and mid-decile groups.

"From the start of any program Physicians Interactive measures and tracks prescribing performance and trends, makes recommendations, and provides feedback that allows a brand to make actionable targeting and tactical campaign decisions. This data provides Physicians Interactive customers return-on-investment (ROI) insight, allowing them the advantage of aligning investments to campaign performance strengths.”175

135. “SmartRecruit™ allows you to begin targeting in a smarter, more organized fashion. Physicians Interactive can help you set up a targeted campaign that penetrates your customer base at the right decile level with the right economic value for the best ROI. Based on our 13+ years of experience in understanding physician behavior coupled with the industry’s best data partners, we can help you model the most effective direct response campaigns.”176

136. “Mobile Media Platform: Reaching Physicians via Mobile—PI now offers a mobile media platform that helps you engage physicians. This trusted

A physicians resource is available through our recent acquisition of Skyscape, Inc. and is uniquely designed to help you build brand awareness, engage with physicians on their terms, and ensure you build a long term relationship that extends well beyond each encounter with your physicians."\textsuperscript{177}

137. “As the average physician migrates health care administrative needs to the digital world,” explains Robert Kadar, vice president of sales for Physician Interactive’s mobile division, “a number of companies, including Physicians Interactive, are finding ways to reach health care providers seamlessly within their workflow. This might take place while a doctor is researching a drug on a smartphone or engaged in an electronic patient record. Or it could be when a doctor is sending an electronic prescription or ordering a drug sample online.”\textsuperscript{178}

138. PI is also targeting nurses in an effort to drive prescriptions: “Physicians Interactive launched a multi-channel recruiting campaign targeting nearly 5,500 Oncology Nurses, PAs and NPs. All communications contained branded messages and instructions for accessing the interactive program hosted on the Physicians Interactive Platform…. Non-MD targets have a higher participation rate and are highly responsive. Recruiting to non-MDs was more cost effective in this program than MDs. NPs and PAs have prescribing ability in all 50 states, 80\% of NPs polled in a 2004 study claimed their prescribing habits were directly influenced by pharmaceutical details.”\textsuperscript{179}

139. Another physician-targeting technology is Aptilon’s AxcelRx:

Give targeted physicians 24/7 access to your message with online content including peer education programs, virtual details and interactive case studies.

- Engage targeted physicians for an average of 16 minutes
- Achieve multiple interactions with key content through a simple, compelling branded “dashboard”


• Access physicians through the most effective professional recruiting channel available today

Generate multiple interactions via an extended range of supplemental services through your brand’s service dashboard.  

140. Claiming to deliver “more audience for your programs and services,” Aptilon’s ReachNet promises to “Drive your sales and marketing campaigns by reaching online and hard-to-see PCPs [primary care providers], specialists, or industry-shy physicians.”  


141. Good Health Media’s use of medical advertising to support a “free Electronic Medical Records (EMR)” system, working with Practice Fusion, raises privacy issues for both consumers and health professionals alike. A top executive at Good Health Media claims that its EMR “advertising programs give a small medical practice the chance to add a time-saving, life-saving technology solution—for free. It’s a benefit for the advertiser, the doctor and the

patient.” But given its “ConditionMatch” and other behavioral targeting data profiling model, there are privacy and consumer-protection implications for ad-based EMR’s. The FTC should also examine Practice Fusion’s relationship to federal stimulus funds related to physician adoption of EMRs.

142. In 2007 Pfizer forged a partnership with Sermo, the nation’s largest online physician community, “designed to redefine the way physicians in the U.S. and the healthcare industry work together to improve patient care.... Through this collaboration, Sermo’s community of physicians will have access to Pfizer’s clinical content in tangible ways that allow for the transparent and efficient exchange of knowledge. With access to comprehensive and up-to-date information on Pfizer products, physicians will be able to find the data they


need, when they need it, to make informed decisions.”

143. As Sermo tells its prospective clients, “Now you can engage 115,000 verified physicians on Sermo for promotion, awareness, and lead generation campaigns. In addition to its market research services (surveys, online focus groups) Sermo has developed a new set of promotional offerings that leverage its social media platform for faster, more measurable results.” Sermo’s Dashboard interface, moreover, allows marketers to “take the pulse of the entire Sermo physician community,” providing “a looking glass into what over 115,000 practicing physicians are saying about drugs, devices and treatment options....

With the Sermo Dashboard, you can:

- Find, track and capture brand and market information
- Create customized Watchlists to monitor MD discussions for relevant content
- Analyze a range of data within your Watchlists for quick assessments
- Set email alerts to get up-to-the-minute intelligence

Clients use the Dashboard to:

- Monitor MD discussions around specific brands, competitors and therapeutic categories
- See what physicians were talking about on a specific day

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185 “Pfizer Engages with Nation’s Physicians Through Sermo to Improve Patient Care,” 15 Oct. 2007, http://www.sermo.com/about-us/pr/10/october/1/pfizer-engages-nation’s-physicians-through-sermo-improve-patient-care. The key to social networks such as Sermo, as Newsweek makes clear, is the ready access they provide to the latest trends in the medical community, insight that pharmaceutical companies are more than willing to purchase. “These sites may be free for doctors,” Newsweek explains, “but they are not nonprofits. Sermo makes money by selling access to doctor talk, mostly to Big Pharma. Lately the data has become so rich that the financial industry has taken interest. Bloomberg inked a deal with Sermo this fall that allows Bloomberg subscribers to see comments by Sermo members related to particular companies and products. WebMD similarly gives its paying clients tools like a trend graph reminiscent of Google Trends, which tracks keywords hot on the lips of its physicians. With a few clicks, WebMD’s clients can deconstruct the clinical chatter via detailed demographic profiles, zooming in on threads by practice years, specialty, geographic area and so on. Purchasing access is a no-brainer for drug marketers.” Ford Vox, “When Doctors Talk...” Newsweek, 10 Mar. 2009, http://www.newsweek.com/id/188604 (both viewed 16 Feb. 2010).

Identify KOLs [key opinion leaders] in your therapeutic area.\footnote{Sermo, “Learn What Over 115,000 Physicians are Saying,” http://www.sermo.com/client/product/client-center (viewed 29 June 2010).}

Other Sermo promotional and data-gathering services include Sermo Surveys ("Target MDs on-demand and instantly gauge clinical opinions"), Sermo Postings ("Spark discussions with MDs across 68 specialties"), and Sermo Panels ("Get qualitative insights from the right physicians—in real-time").\footnote{Sermo, “Get Insight, Input and Feedback in Real-time,” http://www.sermo.com/client/product/overview (viewed 29 June 2010).}

144. \textbf{DoctorDirectory.com} is another example of a patient and doctor health portal in which there is insufficient disclosure that marketing is taking place. Although ostensibly a “powerful search engine [that] has matched thousands of patients seeking medical services with the right Healthcare Professional,” the site is also an aggressive healthcare marketer:

DoctorDirectory.com is an information-resources and marketing-solutions company for patients, physicians, and industry clients who need access to high-quality information and virtual, innovative, interactive programs. We provide a flexible, results-focused platform that improves decision making resulting in better care and optimal use of available resources. Our expertise and solutions include: Market research, eSampling, eDetailing, physician recruiting, e-mail messaging and targeted online advertising. IncreaseRx, our flagship solution, is a virtual sales and marketing solution for brands that need to increase physician reach and maximize untapped market share potential thereby generating incremental revenue. What makes this solution unique is that IncreaseRx employs a gain-share model that guarantees a positive return on investment. The bottom line is guaranteed results of increased incremental revenue and a positive impact on relative market


The use of online videos to influence consumer decision-making can have a much greater impact than traditional TV advertising. According to Yahoo, its new Enhanced Interactive Video Ads maximized engagement for an unnamed “pharmaceutical giant,” delivering a “click-through rate more than two to three times that of traditional video ads throughout the 10-week campaign. Additionally:

- More than 40 percent of those users who saw the interactive ad canvas stayed for the entire 60-second video
- 58.8 percent interacted with the supplemental content rollover
- 8.3 percent interacted with the scrollable disclosures module
- 3.6 percent clicked on the call to action button.

189 “Packaging & Sample Fulfillment,” Pharmaceutical Marketers Directory, http://order.pmdcentral.com/PMDselectiondetail.asp?PMDSection=PackagingO. A DoctorDirectory job posting makes clear the company’s marketing aspirations: “Join our fast paced, growing company to develop and deploy advanced predictive models to improve ROI and optimization of sophisticated alternative sales and marketing programs/campaigns deployed for our fortune 500 clients,” http://seeker.dice.com/jobsearch/servlet/JobSearch?op=101&dockey=xml/7/3/730736cad5b1a8b7c0a3a568ff91ab6f@endecaindex&c=1&source=20&src_divjobs=1283356373&divkey=03207a1e2b58e5d779b1b57b192d8784&utm_campaign=diversityjobs&utm_source=diversityjobs (both viewed 30 Sept. 2010).

190 In December 2009, for example, Tremor Media launched “Rx In-Stream, the first in-stream advertising solution created to address the unique needs of the pharmaceutical industry.” Among those unique needs is the FDA’s fair balance requirements, which “… require that the benefits and risks of prescription drugs are displayed equally.” Tremor Media’s technology appears to allow pharmaceutical to meet the minimum requirements of the fair balance law, while ensuring that the focus of the video messages remains squarely on the brand and its purported benefits: “With Rx In-Stream, Tremor Media provides the only solution in the market that gives pharmaceutical advertisers the means to satisfy these requirements in online video advertising without having to rely upon long-form video ads to communicate Important Safety Information (ISI). Rx In-Stream allows advertisers to create shorter-form, pre-roll advertising because they can utilize the companion banner for ISI while using the video to focus on product messaging and branding.” “Tremor Media Launches Rx In-Stream to Help Pharmaceutical Advertisers Meet FDA Guidelines,” 9 Dec. 2009, http://www.tremormedia.com/about-us/news-room/press-releases/december-9th-2009/ (viewed 30 Sept. 2010).

146. There are roughly 36,000 videos on YouTube devoted to some aspect of surgery.\textsuperscript{192} The popularity of healthcare videos on YouTube in particular is clear:

- Of YouTube’s 180 million viewers, 32\% watch health videos—more than food or celebrity....
- Of those viewers 79\% of health consumers have watched videos about their specific health condition
- 93\% take action after viewing health information
- 69\% conduct further online research as a result of the video they watched
- And 60\% interact with their doctor.\textsuperscript{193}

147. A number of pharmaceutical companies have established YouTube channels for marketing purposes, including Abbott, AstraZeneca, Bayer, Boehringer Ingelheim, Concerta’s ADHD Channel, Excedrin, GlaxoSmithKline, Allergan’s Lap-Band System, Janssen-Cilag’s Living with ADHD Channel, Lilly, Lunesta, Novartis, Pfizer, Sanofi Pasteur, and TevaNeuroHealth. While the issues of advertising ethics and adherence to existing DTC ad standards are raised by these promotional outlets, of even greater concern are the unbranded (or covertly branded) YouTube channels that a number of pharmaceutical companies have introduced:

- Help Prevent Cervical Cancer is part of a cervical cancer awareness campaign sponsored by GlaxoSmithKline.


InBedStory is Bayer Schering Pharma’s effort to use animated comic strips to explore erectile dysfunction, with links to a similarly unbranded website, InBed.

MyTreatmentDecision, a channel devoted to breast cancer, is actually designed to promote Genomic Health’s Oncotype DX Recurrence Score test.

FluFlix Video Contest, launched in 2007, is Novartis’ effort to attract user-generated content on behalf of its various influenza remedies.

GrowthHormoneTherapy is Genentech’s channel in support of its Nutropin prescription drug.

Parkinson’s Matters is Boehringer Ingelheim’s effort to raise awareness and understanding of Parkinson’s Disease.

Stroke Prevention, similarly, is another Boehringer Ingelheim production.

Stay Smart Stay Healthy is a “new-media venture designed to deliver guidance, and to support awareness and understanding of the healthcare industry,” produced by Humana.

UC Success is an unbranded site promoting Asacol as a treatment for ulcerative colitis.
The use of online video, such as YouTube, for interactive pharma marketing, requires greater transparency about the data targeting process. Few users know, we believe, that companies are being encouraged to buy ads: “If a person enters ‘chemotherapy’ into the YouTube search bar, your ad can pop up alongside the latest video from the NHS or eHow Health.”

Related Research

According to a recent linguistic analysis of websites for the 100 most popular drugs of 2009, the record of the pharmaceutical industry for sending clear and appropriate messages to consumers is spotty at best:

- Was safety information given at least as much space on the home page as benefits? 74%
- Was safety information visible without having to scroll down? 54%
- Was safety information chunked into manageable paragraphs? 81%
- Were key items in safety information bulleted? 49%
- Were research sources provided? 16%
- Was a physician’s opinion provided? 0%

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• Were benefits stated in a detached, non-hyped tone? 39%
• Was condition/ailment information prominent? 79%
• Was condition/ailment information kept distinct from product info or promotion 18%

150. The study also found that pharma websites tend to mix “information and promotion … unpredictably. Content, verbal style, visuals, and paralinguistic features (font, layout etc) served sometimes to distinguish and more often to fuse the two.” Safety information, moreover, “commonly in small font and in poorly chunked blocs below each page’s scrolling ‘fold’, was subordinated to promotional text and visuals.”195 “Communicating via a website is common practice today,” explains one of the authors of the study, Lewis Glinert, professor of linguistics at Dartmouth, “and consumers are very savvy about doing their own research on the Internet. The FDA has rules about direct-to-consumer print and television drug advertising, so we think it makes sense to also regulate websites and other marketing tools when it comes to prescription medicine. Consumers need consistent and balanced information.”196

151. More recently, Prof. Glinert has observed that “…it is by now clear that the hype of drug promotion has migrated to the Web; and there, far from being fenced off as with labeling or print ads, it mingles in an unstable and unpredictable manner with serious content such as risk and safety information. Combining with the intrinsic cognitive difficulties of the Web, this kind of discourse may be jeopardizing the effectiveness of risk information and undermining the credibility of the whole.”197

152. Unfortunately, as U.S. consumers are becoming increasingly vulnerable to unfair and deceptive practices from the pharmaceutical and health products industry, the FDA has failed to offer adequate protection. Studies have recently shown, for example, that the FDA has inadequately addressed both the approval and marketing of drugs—many of which can have fatal consequences to consumers. As Dr. Marcia Angell of Harvard Medical School recently asserted, “there is growing evidence that the Center for Drug Evaluation and

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Research (CDER), the part of the [FDA] that regulates prescription drugs, has become the servant of the industry it regulates. This has resulted in the sale of drugs of uncertain benefits, some with serious side effects, and in the agency’s failure to respond promptly to evidence that a drug is dangerous.... CDER also does not fulfill its obligation to oversee the marketing of prescription drugs, thus permitting misleading drug ads and illegal practices....” The stakes for the public ensuring their health and safety from the potential and real dangers from unfair marketing to both consumers and medical professionals are enormous.198

Multicultural Marketing

153. It is incumbent upon the FTC to monitor non-English-language pharmaceutical marketing as well, to determine whether forms of racial and ethnic profiling and data collection are being used, as well as whether a site fairly provides Spanish-language consumers with accurate information.199

198 Dr. Angell notes that “[m]ost people over age sixty-five take at least three prescription medications daily,” as 3.9 billion prescriptions for drugs were written last year for “an average of 12.6 per person.” The FDA also faces serious understaffing in the Division of Drug Marketing, Advertising, and Communication, which is responsible for evaluating the marketing of drugs and medical products. Dr. Angell underscored the inadequacy of this FDA division: “How... can only fifty-one people ensure that tens of thousands of ads and promotional campaigns accurately convey the balance between risks and benefits of prescription drugs?” Marcia Angell, “This Agency Can Be Dangerous,” review of Daniel Carpenter, Reputation and Power: Organizational Image and Pharmaceutical Regulation at the FDA (Princeton, NJ: Princeton University Press, 2010), New York Review of Books, 30 Sept. 2010, http://www.nybooks.com/articles/archives/2010/sep/30/agency-can-be-dangerous/ (subscription required).

154. As Hispanic marketing specialist Terra points out, “...7,601,000 unique visitors, or 40.2% of the US Hispanic online audience has visited content in the health category, of which 29.4% have visited content within the health-information subcategory, and 6.7% have visited content within the pharmacy subcategory...” Terra also singles out the Stop & Shop chain, which “has announced that all of its Pharmacies now offer Spanish language prescription labels and information. Every day more and more marketers are recognizing the importance of advertising to this market.”

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155. Media D’Vine, for example, claims to be “the leader in online marketing solutions for professionals around the world looking to target the diverse Hispanic population…. Whether it is within the cosmetic, plastic or anti-aging arena, or within the legal, dental or insurance industry, our team of marketing experts work together to determine how best to promote and increase the visibility of our clients to the Latinos in their particular marketplace.”201 As the “largest Hispanic Online Advertising network for Medical Doctors, Plastic Surgeons, Lawyers and Insurance Agents combined,” Media D’Vine’s engages in online lead generation, “to attract and convert online visitors into high quality potential customers,” including on major search engines Google, Yahoo and Bing.202

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Neuromarketing

156. Neuromarketing is increasingly employed to research, design, and implement online advertising campaigns—including those for health and medical products.203

157. NeuroFocus, a firm that specializes in the application of brainwave research to advertising, programming, and messaging, uses “neurological testing [that] delves down to the subconscious mind,” far below such “corrupting factors” as education, language, and cultural variances.204 Measuring as many as 64-128 sectors of the brain at 2,000 times per second, NeuroFocus promises results that are “unambiguous, accurate, and actionable.” In the words of NeuroFocus CEO A.K. Pradeep, because each response is “subconscious” and delivered in one-third of a second, the result is “a scientific measurement without biases and pitfalls.”205 In 2008, the Nielsen Company made a “strategic investment” in

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203 See, for example, the Advertising Research Foundation’s Engagement Council, http://www.thearf.org/assets/engagement-council (viewed 16 Feb. 2010).


Pradeep has described the research in support of his company’s approach to neuromarketing:

…[W]e have identified 67 specific ‘best practices’ that should be implemented when words and images are presented on a screen (any screen, from a TV or PC to a mobile phone or movie theater). They are the result of advanced neurological research into various brain functions, and especially research that has delved into the mysteries of diseases like Alzheimer’s, and brain conditions like ADD/ADHD, obsessive/compulsive behavior, and bipolar disorder.

Among the pharmaceutical companies that have turned to NeuroFocus for assistance is Alcon, which sought help with a 30-second DTC TV spot for Pataday, a new prescription eye drop. “They wanted precise neuroscientific measurements of exactly how allergy sufferers responded to this new DTC

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207 A.K. Pradeep, “Absorption: How Messages Morph into Meaning and Value in the Mind,” Sept. 2008, http://www.neurofocus.com/pdfs/NeuroFocusWhitePaper_Absorption.pdf (viewed 16 Feb. 2010). More generally, NeuroFocus’s Pradeep has spoken of his company’s Social Operating System: “Until now, the focus has been on hardware (three screens) and media distribution channels, but that perspective misses the larger phenomenon that is altering marketing on a worldwide and permanent basis,” said Dr. A. K. Pradeep, Chief Executive Officer of NeuroFocus. “Companies would be wise to stop dwelling on these silos and shift their attention to this new ‘Social Operating System’. It is remaking marketing, and through brainwave measurements and analysis we are quantifying the effects on consumers’ subconscious responses across multiple platforms. The medium is no longer the message; instead, it’s context that influences how consumers conceive of your brand.”

“The brainwave-based research revealed the power of social media as a marketing communications platform. Topline findings are:

- Highest overall effectiveness for the ad, especially with women: Facebook
- Purchase intent generated by the ad: highest on both Facebook and TV
- Messaging carried by the ad strongest on: Internet platform, with Facebook stronger than website
- Highest attention-getter: Internet.

Specifically, Alcon asked NeuroFocus to use its proprietary methodology to answer:

- What are the most influential and most distracting components of this DTC ad?
- Which demographic is impacted most strongly? Least? Why?
- Did the audience act—did they make doctors appointments to obtain a prescription? Why or why not?
- What is the longevity of its influence/motivation?

Subconscious Resonance testing revealed how strongly or weakly the spot communicated client-determined attributes (such as “relief” and “fast-acting”). These unconscious attributes are revealed neurologically at a pre-verbal level and would have been impossible to obtain using traditional verbal self-reporting measures. Gender differences revealed in the brainwave response also gave Alcon critical information about its consumers’ deepest responses to their product. Recommendations were made to emphasize some attributes in subsequent print and online spots, and to de-emphasize others, in accordance with Alcon’s campaign goals.

160. The use of “subconscious-response” neurological metrics, such as “Evoked Response Potential” and other measures focused on “attention, emotion, memory, [and] engagement,” analyzing how consumers react to particular ads in order to create new ads that appeal directly to consumers’ subconscious raises questions about fairness and deception in marketing. Instead of a rational discussion of the potential advantages and risks associated with a particular drug, pharmaceutical neuromarketing can be used to deliberately bypass the rational decision-making process.209

161. Other companies have turned to similar techniques, including functional magnetic resonance imaging (fMRI) and eye-tracking studies, in an effort to assess the effectiveness of various advertising campaigns. Google, Microsoft and Yahoo and others have all conducted research involving neuromarketing.210 The ad firm Draftfcb, whose pharmaceutical clients include

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Lilly, Merck, and Pfizer, is increasingly focusing on neuromarketing, through its new “Institute of Decision Making.”211 And researchers in the User Experience department at Digitas Health have created psychological profiles to “recognize and capitalize on the needs and values of health information seekers:

In recent research conducted with 21 participants explicitly interested in specific health-related topics, we mapped their behaviors to three distinct personas and formulated a strategy for each... In persona-driven design, research-based profiles are used to find and illuminate the path to success, rather than to define it. While defining a campaign objective based upon a demographic profile establishes measurable goals, referring to personas throughout the design process allows the creative and media teams the opportunity to evaluate or test content, interaction, creative, and placement before the campaign goes live....”212


- Directly measure brain response using EEG (measures brain activity in milliseconds, before conscious “deliberation”)
- Eye-tracking, pupil dilation, and GSR (or skin response) further tracks attention and emotional reactions
- Diagnostic-level measurements show precise identification of participants’ attention, memory, retention, and emotional engagement

Google and MediaVest, “Research in Biometric Engagement with InVideo Overlay Ads,” WebEx event, n.d.


212 “Subjects were first asked to just ‘surf the Web’ to establish their eye-tracking patterns (and rapport with the facilitator). Once the device (an SMI iView X RED) was calibrated, the unit remained unnoticed by the participants and enabled the recognition of scanning and reading behavior for each participant... Analyzing the entire population, we distilled three distinct personas [‘Allen,’ ‘Christina,’ and ‘Vivian’] with similar needs but significantly different values that inform the content, design, and placement of ads... The best strategy to reach Allen is through a sponsored partnership... The best strategy for engaging with
Quantemo ("OTOinsights's NeuroMarketing Research Lab that offers a scientific approach to measuring a target audience’s engagement with a brand") uses neuroscientific techniques to measure engagement, including for health marketers.213

Christina is the use of quizzes, polls, and the promise of interactive content that will allow her to express.... The best strategy for Vivian is to appeal to her empathy with the promise of personally relevant content on a topic of personal interest....” Dante Murphy and Georgia Spangenberg, “e-Marketing: Awareness and Engagement in Online Health Advertising,” Med Ad News, Oct. 2009, http://pharmalive.com/magazines/medad/?issueid=154 (subscription required).

213 “Quantemo helps brands understand how consumers engage with them by measuring an individuals perceptual, pre-cognitive, and cognitive emotional responses when interacting with products, interfaces, advertising, etc. Data collected from these modalities are captured real-time and displayed via the Quantemo Player, a robust data analysis dashboard. Finally, this data is processed through OTOinsight's patent pending algorithm, the Quantemo Engagement Index (QEI), to provide a single quantitative measure of engagement.” One to One Interactive, “What is Quantemo,” http://www.onetoeoneinteractive.com/otoinsights/quantemo/what-is-quantemo/ (viewed 30 Sept. 2010). See also, One to One Interactive, “One to One Health—Allergy Webinar,” 8 Apr. 2010, http://www.slideshare.net/OnetoOneInteractive/otoinsights-one-to-one-health-allergy-webinar-apr-8-2010 (viewed 30 Oct. 2010).
About One to One Health

One to One Health is a specialized practice group within One to One Interactive dedicated to delivering innovative, transformational healthcare and life sciences marketing strategies, programs and creative. Building on a broad base of category experience (including pharmaceuticals, devices, health information and healthcare delivery) combined with deep interactive channel, digital media, CRM, and social media marketing experience, we help clients chart the right path for them in what we call the "Digital Health Information Ecosystem".

### Sampling of Therapy and Focus Areas:

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<td>Critical Care</td>
<td>Neurological/CNS</td>
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<td>Health Field Sales Support</td>
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### Offering Solutions for:

- **Hospitals**: Pharmaceuticals/Biotech
- **Health Networks**: DTC - Branded, Unbranded
- **Device/Diagnostics**: Professional/HCP
- **Health Information**: Lead Generation/CRM/email
- **Pharmacy Retail**: Media – Display, Search, Social
- **Widgets/Mobile**: Research Organizations & Foundations

www.otoihealth.com
Examples of Quantemo’s neuromarketing research include the following topics:

164. "Prompting the desired emotional reaction is core to connecting with prospects and providing the interaction that naturally leads to positive experience, customer conversion, and client retention. Quantemo measures this emotional connection in users and identifies the core cause(s) of both positive and negative engagement; based on an"
advanced algorithm, which takes into account perceptual, pre-cognitive neurological, and cognitive emotional reactions.”214 “The benefits of applying Pre-Cognitive Emotional Engagement techniques to consumer research is the ability to gather feedback on a customers emotional state or level of arousal, without disturbing their experience with distractions. Findings from Pre-Cognitive Emotional Engagement research provide useful indicators towards consumers’ preference for a particular brand or product.”215

165. According to Olson Zaltman Associates, a leading firm focused on promoting subconscious connections for marketers, whose pharmaceutical clients include AstraZeneca, GlaxoSmithKline, Immunex, Johnson & Johnson, McNeil, Merck, Oticon, and Pfizer, “Only 5% of thought occurs consciously. It's the other 95%—the ‘hidden knowledge’—that we uncover and understand to shed light on the challenges organizations face today. Olson Zaltman Associates combines patented scientific processes with sharp business acumen. Using these resources, we delve into the hidden meanings that drive human behavior and affect people's decisions about the actions they take, the views they hold, and the products they buy.”216

V. Legal Analysis

The FTC’s Section 5 Authority


215 One to One Interactive, “Pre-Cognitive Emotional Engagement,” http://www.onetoooneinteractive.com/otoinsights/quantemo/pre-cognitive-emotional-engagement/ (viewed 30 Sept. 2010). Quantemo also specializes in "Pre-Cognitive Measurement: Even before visual perception has reached a customers conscious awareness, it has already been emotionally tagged and may initiate bodily responses such as increased heart rate, smiles, etc. In order to capture this pre-cognitive activity Quantemo utilizes a state of the art 16 channel, high resolution, neuro-signal acquisition and processing wireless neuroheadset. A proprietary algorithm calculates direct EEG output, this research instrument allow Quantemo to measure affective measures such as excitement, engagement/boredom, meditation, and frustration on a second by second basis." One to One Interactive, “What is Quantemo,” http://www.onetoooneinteractive.com/otoinsights/quantemo/what-is-quantemo/ (viewed 30 Sept. 2010).

166. The companies named in this complaint, as well as others involved in real-time tracking and bidding—including those that provide data optimization services for profiled targeting—are engaged in unfair and deceptive practices.217

167. A trade practice is unfair if it “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.”218

168. The injury must be “substantial.”219 Typically, this involves monetary harm, but may also include “unwarranted health and safety risks.”220 Emotional harm and other “more subjective types of harm” generally do not make a practice unfair.221 Secondly, the injury “must not be outweighed by an offsetting consumer or competitive benefit that the sales practice also produces.”222 Thus the FTC will not find a practice unfair “unless it is injurious in its net effects.”223 Finally, “the injury must be one which consumers could not reasonably have avoided.”224 This factor is an effort to ensure that consumer decision making still governs the market by limiting the FTC to act in situations where seller behavior “unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decisionmaking.”225 Sellers may not withhold from consumers important price or performance information, engage in coercion, or unduly influence highly susceptible classes of consumers.226


218 15 U.S.C. § 45(n); see, e.g., Fed. Trade Comm’n v. Seismic Entertainment Productions, Inc., Civ. No. 1:04-CV-00377 (Nov. 21, 2006) (finding that unauthorized changes to users’ computers that affected the functionality of the computers as a result of Seismic’s anti-spyware software constituted a “substantial injury without countervailing benefits.”).

219 FTC Unfairness Policy, supra note 113.

220 Id.; see, e.g., Fed. Trade Comm’n v. Information Search, Inc., Civ. No. 1:06-cv-01099 (Mar. 9, 2007) (“The invasion of privacy and security resulting from obtaining and selling confidential customer phone records without the consumers’ authorization causes substantial harm to consumers and the public, including, but not limited to, endangering the health and safety of consumers.”).

221 FTC Unfairness Policy, supra note 113.

222 Id.

223 Id.

224 Id.

225 Id.

226 Id.
169. The FTC will also look at “whether the conduct violates public policy as it has
been established by statute, common law, industry practice, or otherwise.”\textsuperscript{227} Public policy is used to “test the validity and strength of the evidence of
consumer injury, or, less often, it may be cited for a dispositive legislative or
judicial determination that such injury is present.”\textsuperscript{228}

170. The FTC will make a finding of deception if there has been a “representation,
omission or practice that is likely to mislead the consumer acting reasonably in
the circumstances, to the consumer’s detriment.”\textsuperscript{229}

171. First, there must be a representation, omission, or practice that is likely to
mislead the consumer.\textsuperscript{230} The relevant inquiry for this factor is not whether
the act or practice actually misled the consumer, but rather whether it is likely
to mislead.\textsuperscript{231} Second, the act or practice must be considered from the
perspective of a reasonable consumer.\textsuperscript{232} “The test is whether the consumer’s
interpretation or reaction is reasonable.”\textsuperscript{233} The FTC will look at the totality
of the act or practice and ask questions such as “how clear is the representation?
How conspicuous is any qualifying information? How important is the omitted
information? Do other sources for the omitted information exist? How familiar
is the public with the product or service?”\textsuperscript{234}

172. Finally, the representation, omission, or practice must be material.\textsuperscript{235}
Essentially, the information must be important to consumers. The relevant
question is whether consumers would have chosen another product if the
decception had not occurred.\textsuperscript{236} Express claims will be presumed material.\textsuperscript{237}

\begin{itemize}
\item \textsuperscript{227}Id.
\item \textsuperscript{228}Id.
\item \textsuperscript{229}FTC Deception Policy, supra note 112.
\item \textsuperscript{230}FTC Deception Policy, supra note 112; see, e.g., Fed Trade Comm’n v. Pantron I Corp., 33
F.3d 1088 (9th Cir. 1994) (holding that Pantron’s representation to consumers that a
product was effective at reducing hair loss was materially misleading, because according to
studies, the success of the product could only be attributed to a placebo effect, rather than
on scientific grounds).
\item \textsuperscript{231}FTC Deception Policy, supra note 112.
\item \textsuperscript{232}Id.
\item \textsuperscript{233}Id.
\item \textsuperscript{234}Id.
\item \textsuperscript{235}Id.
\item \textsuperscript{236}Id.
\item \textsuperscript{237}Id.
\end{itemize}
other areas with which the reasonable consumer would be concerned.” The harms of the online marketers outlined above are within the scope of the FTC’s authority to enforce Section 5 of the FTC Act and its purveyors should face FTC action for these violations.

173. A 2009 consent order by the FTC highlights an example of bad-faith data collection with substantially inadequate notice to consumers similar to the acts committed by the online marketers named above. The FTC filed a complaint in June 2009 against Sears Holding Management Corp. concerning the company’s dissemination of “a software application for consumers to download and install onto their computers” and charged that Sears Holding had violated the FTC Act. The Commission said in its complaint that Sears Holding:

failed to disclose adequately that the software application, when installed, would: monitor nearly all of the Internet behavior that occurs on consumers’ computers, including information exchanged between consumers and websites other than those owned, operated, or affiliated with respondent, information provided in secure sessions when interacting with third-party websites, shopping carts, and online accounts, and headers of web-based email; track certain non-Internet-related activities taking place on those computers; and transmit nearly all of the monitored information (excluding selected categories of filtered information) to respondent’s remote computer servers. These facts would be material to consumers in deciding to install the software. Respondent’s failure to disclose these facts, in light of the representations made, was, and is, a deceptive practice.

174. The consent order required that Sears Holding “clearly and prominently … disclose: (1) all the types of data that the Tracking Application will monitor, record, or transmit, ... (2) how the data may be used; and (3) whether the data may be used by a third party …”

VI. Prayer for Investigation and Relief

175. As the country’s leading consumer protection agency, with growing expertise

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238 Id.


240 Id. at 5.

in digital marketing, including mobile advertising, the FTC has a critical leadership role to play in this important marketplace. It should immediately conduct a thorough investigation and analysis of contemporary Digital Direct Marketing to Consumers of drug and health-related products and information. In addition to seeking the appropriate injunctions and other relief, we also urge the FTC to issue a report and recommendations designed to inform consumers and health professionals of the issues raised by interactive ads for medical products and services. Specifically, the FTC should promptly undertake the following:

176. Examine and analyze the data collection and usage practices of pharmaceutical advertisers to assess the extent of consumer information collected through websites, social networks, online video sites, and other interactive means. This should include personal information, IP addresses, cookies, flash cookies, Web bugs, tracking pixels, Web analytic tools, conversational and sentiment analysis, and any other “data-mining” applications. We urge the FTC to resist suggestions that such data collection methods are appropriate because they can help identify risk-averse-related information. The FTC should provide the public with information on what data are collected and how they are used. (For example, what is considered by pharmaceutical marketers to be so-called non-personal information?)

177. Require companies engaged in digital marketing of health products under its purview to provide information on the kinds of online targeting techniques and methods they utilize, especially behavioral advertising and retargeting. Consumers need to know whether and how they are being tracked and targeted—including via “condition-specific” channels. This should include information on specific targeting and data collection and analysis techniques undertaken by companies’ own or “unbranded” sites, as well as on health-oriented and ad-supported sites, other online advertising networks, and ad exchanges. The FTC should specifically ask whether companies are profiling and targeting consumers based on racial and ethnic data.242

178. Conduct its own review of the privacy policy pages on websites and services, including the leading social networks promoting health products under its purview. It should immediately require health marketers to provide adequate information on privacy policies, instead of incomplete or relatively inaccessible content (and work with the FDA to develop new rules for consumer privacy related to health information marketing online).243

179. Analyze how health-related social media marketing influences consumer behavior and attitudes on drug use and about medical conditions. The agency should examine social media marketing applications for the health market designed to foster "viral" marketing approaches, including the targeting of specific consumers in order to influence their own network of relationships.244

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243 See, for example, MyMSMyWay, “Privacy Policy,” https://www.mymsmyway.com/privacy_policy/index.php. Nor should consumers have to provide pharmaceutical companies with access to additional information in order to access privacy information via Facebook. The FDA should review, for example, ADHD Moms, Facebook, http://www.facebook.com/ADHD Moms?v=box_3; ADHD Moms Moments, Facebook, http://apps.facebook.com/adhdmoms moments_prod/terms.html#privacy (all viewed 16 Feb. 2010).

180. Investigate whether there is a violation of the FTC’s Endorsement guidelines (which the FTC has extended to the Internet) when advice is given to patients or consumers from seemingly independent health bloggers who do not disclose that they are paid or sponsored by pharmaceutical or other companies.245

181. Obtain from pharmaceutical companies a list of the keywords used for paid search campaigns. The companies should also be required to inform the FTC of the techniques and applications they may use in so-called organic search to show up prominently in the results. U.S. consumers should be informed by the FTC of the implications of search marketing practices when they are looking for information and advice.246

182. Evaluate the role of Web design, including the use of eye-tracking and so-called “A/B” testing for landing pages to influence how consumers react to content on pharmaceutical and health-ad-supported sites and services. The issue of how best to present risk information and other important disclosure information needs to be understood in the context of work by digital marketers on engagement, including design.247

183. Investigate the use of so-called “unbranded” sites funded by pharmaceutical companies, in order to assess whether such sites are structured and designed to support the promotion of specific drugs. The agency should also analyze whether the interactive environment created for such sites provides a balanced and honest reflection of the health risks and condition-specific issues.

184. Conduct an inquiry on the use of neuromarketing-related techniques

245 See paragraph 118 for more information.


designed to influence or measure subconscious responses.248

185. Work with the Food and Drug Administration and other appropriate agencies to develop a set of policies for regulating the use of behavioral targeting, data collection, and other digital techniques in the marketing of drugs and health-related products.

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