

Promoting and Defending Fragrance in the Media

IFRA North America explores the benefits and pitfalls of media engagement and how industry and the public view risk and safety

“Media—traditional and new—is the conduit to the public,” said Jennifer Abril, president of the International Fragrance Association North America (IFRANA), during the organization’s fall symposium. Fortunately, she said, “The industry has a good story to tell, and we’re getting better at telling it. We’re visible and forthcoming, now more than ever.”

Abril went on to warn that the fragrance industry is often approached by media that has already constructed a narrative that skews negative. Media outlets, required to fill an ever-growing content void, are fed these negative stories by nongovernmental organizations (NGOs). Recent examples include the “Hall of Shame” cleaning product database launched by the Environmental Working Group, and the Silent Spring Institute’s faulty report, “Endocrine Disruptors and Asthma-Associated Chemicals in Consumer Products.”

Bad science notwithstanding, media follow-ups on such projects present great challenges for industry. While the symposium speakers did not argue that messages can be controlled, they did explain that *how* industry responds before and during a crisis can positively affect the outcome.

While fear sells and some in the media will use unethical practices in extracting damaging quotes, Tom Clare and Elizabeth Locke, litigation partners at Kirkland & Ellis LLP, explained that brands and industries can be defended through an integrated approach of proactive press engagement by industry representatives and anti-defamation action by industry counsel. Clare noted that individuals and businesses have the right to not have damaging falsehoods about them published and that journalists enjoy no special legal status in investigating their stories—trespassing, theft of documents, wiretapping and other practices are in no way permitted.

When should a company call a lawyer? Locke noted that counsel should be contacted when a media inquiry comes in the form of an ambush interview or whenever a journalist is using a biased source such as an ex-employee or competitor. Lawyers can work with media representatives to educate and inform, discredit false allegations and discredit biased sources, in addition to preventing the proliferation of falsehoods. Counsel can also, if necessary, create a paper trail that can later show a media outlet displayed a reckless disregard for the truth, which Locke defined as reporters willfully ignoring information contrary to their original premise.



From left, Jennifer Abril (IFRANA), and Elizabeth Locke and Thomas Clare (both Kirkland & Ellis LLP)



Robert Weinstein (Robertet), left, and Kevin Devine (Renessenz)



Peter Lombardo and Melanie Williamson (both Robertet)



Mark Duvall (Beveridge & Diamond), left, and Kevin Renskers (Takasago)

Building that written record is crucial, Locke and Clare stressed.

At the same time, counsel can appeal to “cooler heads” within media organizations, including executives, general counsel and ombudsmen. By speaking to these dispassionate stakeholders, pro-industry counsel can leverage media ethics, including news outlets’ own guidelines. Pro-industry lawyers can send letters to these stakeholders, laying out issues with the negative report. This avenue can lead to a story being killed, or, after the fact, the publication of a retraction/correction. If a story does go to press, this same documentation can be used to delegitimize a story with news organizations that might pick up the original story or any awards organizations.

A World of Risk

Complicating the job of pro-industry voices is the concept of risk and safety and how they are viewed by the public. “We’re not talking about a world of zero risk,” said Mark Duvall, principal at Beveridge & Diamond. Following Locke and Clare’s presentation, Duvall outlined the complications of what, precisely, it “means to be safe.” The difficulty, he explained, lies in the discrepancy between how the public and industry and regulators define the concept. For some, safe is equivalent to “inherent” safety, said Duvall. Yet, under regulatory frameworks such as the Federal Food, Drug, and Cosmetic Act, conditions of use are critical. In that context, safety is determined by probable consumption, cumulative effect and other factors. Risk is calculated by hazard, use and exposure. But there is no zero risk. Given this, Duvall said, how much risk is acceptable? And who makes that decision? The idea that safety assessments should take into account financial consequences is a controversial one, Duvall added, which complicates pro-industry efforts for balanced regulatory efforts. In discussing industry efforts, Duvall praised IFRA’s transparency list and code of practice, and urged that they continue to be consistently updated to ensure their positive reputation—crucial equity for the fragrance industry.

While much remains uncertain regarding the future of regulations and the ways in which industry is portrayed in the media, the IFRANA fall symposium showed that there are legal, tactical and other tools at hand to defend the reputation and future of fragrance.

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