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Are Marketing Systems Worth the Pain?

By Leslie Kusek, Marketing Consultant

Time sheets and expense reports are burden enough, but do we really need to worry about track-

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Treasury, IRS Issue New Proposed Cafeteria Plan Regs

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On August 3, 2007, the Treasury Department and the IRS issued new proposed regulations for employee benefit plans under Section 125 of the Internal Revenue

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Car Insurance Myths Debunked

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A lot of rumors and misconceptions exist when it comes to car insurance. To help you separate fact from fiction, we compiled a list of car insurance myths and realities,

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Dealing with Mr. Handshake

The following material is provided for informational purposes only.

Before taking any action that could have legal or other important consequences, speak with a qualified professional who can provide guidance that considers your own unique circumstances.



You are no doubt familiar with the stereotypical Mr. Handshake; the highly successful self-taught, rough-hewn businessman who, when offered a written contract, says something on the order of:

“Son [or Young lady], where I come from, we establish a good business relationship with a firm handshake. It was good enough for my daddy; it’s good enough for me.”

A number of design firms, particularly those who serve small towns and rural areas, indicate they still run into such individuals fairly often. Even in the big cities, you’ll sometimes hear a client say something along the lines of:

“Y’know, Such & Such Associates has a contract that’s about one-tenth as long as yours. It’s like a breath of fresh air.”

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Dealing with Mr. Handshake

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Mr. Handshake's overriding assumption seems to be that a thorough contract is unnecessary if not insulting because, chances are, nothing serious will go wrong. And if something does go wrong, a frank person-to-person chat will set things right.

Often a designer and client can indeed iron out problems with a quick conversation. But rarely does that happen when there is a lot of money involved. All of a sudden, Mr. Handshake isn't quite so amicable and those verbal agreements you entered into become quite fuzzy.

So how do you deal with this situation? How do you convince Mr. or Ms. Handshake that a comprehensive written contract is far better than a simple short-form letter or, worse, a verbal agreement? Consider the following when negotiating with someone who thinks comprehensive written contracts are a waste of time.

The Verbal Agreement

"A verbal agreement ain't worth the paper it's printed on," Louis B. Meyer is supposed to have advised. Still, a verbal agreement can be binding. When you start to perform services for a client, or your client starts to pay for future services, you both act as though a contract is in effect. Therefore, in the eyes of the law, one is in effect. The verbal agreement that started this transaction, no matter how brief, is a contract.

What happens if a problem arises? In that case, you and your client will refer to your respective understandings of what was agreed to. Not surprisingly, those understandings often differ. So who deter-

mines what each of you really said and meant? That responsibility falls to a trier of fact -- typically a judge, jury, arbiter or mediator. Unfortunately, the trier of fact was not there to hear the verbal agreement, may not fully understand the types of services you render and may be unfamiliar with the prevailing standard of care for delivering such services. So when a client tells you that a written contract is unnecessary, you might reply:

"You know, Mr. Handshake, I don't like the time and expense of these written agreements any more than you do. But I sure as heck would rather have you and I determine our fate rather than a bunch of expensive lawyers and folks who don't know us from Adam. A written agreement will help us make sure that should a dispute arise, it will be settled in accordance with the facts we agreed to, not the opinion of some outsider."

Mr. Handshake also needs to be reassured that having a written contract does not indicate a lack of trust or weaken the importance or impact of personal diplomacy. If anything, it can enhance trust and diplomacy by creating a reasonable framework for after-the-fact discussions and modifications. A written contract can call for face-to-face meetings or alternative dispute resolution techniques such as mediation in the event disputes arise.

Written Contracts Can Be Amended

Actually, when Mr. Handshake says "We don't need a piece of paper to tell us what's right and what's

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wrong,” he’s absolutely correct. No matter what a written agreement may say, it can be amended through mutual consent of the parties involved. A written contract does not prevent you and your client from reaching creative solutions as problems may arise.

Consider this: You and your client both sign a contract. Each of you put a copy in a file. A problem arises. What’s the first thing you do? Refer to the agreement? Unlikely. The first thing you probably do is call one another and try to work it out. Your client, whether he or she knows it or not, often has the upper hand in such “work-outs.” You want to keep your client satisfied in order to obtain future business.

True Value

Arguably, the greatest value of drafting a comprehensive contract is not the words that go onto the paper, but the process through which important issues are identified and discussed. The client can gain a better understanding of your mutual risks and what the two of you can do to manage them. The client can learn what the both of you can do to lower the likelihood of errors or omissions. And you can both set up a framework in which any problems that do arise can be addressed in a fair and equitable manner that focuses on problem resolution rather than finger-pointing and disagreement as to what you had verbally agreed to.

The contract-formation process, more than any other aspect of your project involvement, gives you the opportunity to demonstrate your professionalism and generate the communication, coordination and cooperation required for project success. And that’s something every Mr. Handshake can give a thumb’s up to.

Let the client know that: “We don’t look at a written contract as a weapon, Mr. Handshake. We see it as a repository for understandings we have agreed to. When it comes to what your project needs

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Marketing Systems

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ing marketing stuff too? That’s really a funny question in an industry that is driven by billable hours.

Being able to answer some basic questions can help us preserve our scarce and valuable business development time for pursuits that are stacked in our favor:

- How much revenue is in our opportunity pipeline—do we need the work?
- How successful have we been at winning work from this client?
- What does the client think of us?
- What competitors have chased work with them before and won? How did they win?
- How much time should we spend pursuing this, given our odds?

Many options are available to collect marketing data and client information: homegrown systems, off-the-shelf systems and on-line systems. Yes, these systems are worth the pain—they make you smarter, improve your efficiency and give you a competitive advantage.

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relative to my discipline, I'm the doctor and you and your project are the patients. Likely, we will need to discuss a lot of issues to make things right, and we need to keep track of what it is we discussed. If we don't talk and we don't record what we talked about, one of us -- or both of us -- stands the risk of being in for an unpleasant surprise. I don't know about you, but I don't remember everything said in a lengthy meeting. Sometimes our memories differ or fade. By putting our agreement in writing, we can have a meeting of the minds, based on what we see as the road ahead. Now, as we start down that road, we may run into a few unexpected curves or detours. We'll talk about it and do our best to resolve problems because you want your project done right and I want to keep you as a client."

Don't Forget Third Parties

One important reason for a written agreement is its ability to prevent third parties from gaining the standing they need to sue you and/or your client based on a contention that they are third-party beneficiaries of your agreement. And if the agreement is verbal, the third parties may enjoy an advantage. Juries are sympathetic to third parties, especially those with whom they can readily identify as "the little guy." Tell Mr. Handshake:

"Your Daddy was a wise and fair man indeed. But he didn't have to deal with all the litigious stuff we have to contend with today. It's a whole different world."

Your written agreement with a client can address third-party liabilities. It can help prevent unauthorized third-party reliance, and can be attached to appropriate deliverables (such as reports) to help ensure any third party reviewing them understands the contractual limitations (scope, schedule, fee, general conditions) affecting them.

Where There's a Will There's a Way

Chances are Mr. Handshake has a will -- in essence, a written contract with the future. It presupposes mortality. You may point

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Treasury, IRS Regs

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Code. The plans, called "cafeteria plans," allow employees to make a choice between receiving taxable cash compensation or tax-free employee benefits, such as health care, dependent care, and other fringe benefits.

The new proposed regulations generally preserve the rules of the existing proposed regulations, while adding clarifications relating to statutory changes and administrative guidance changes since the previous regulations were published. The new regulations also address many issues on which the IRS has previously provided informal guidance.

The new proposed regulations:

- Clarify that cafeteria plans are generally the sole method of preserving the nontaxable nature of employer-provided benefits where employees are allowed to elect between taxable compensation and nontaxable benefits.
- Include new rules for determining if a cafeteria plan improperly

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out to Mr. Handshake that, if anything happens to either of you, the project will be affected, problems will be likely, dollars will be involved and disputes might arise.

“A written agreement, to a very real extent, is your will for the project, Mr. Handshake. Should something happen to either one of us, the written contract will tell our survivors what to do. They can't have our understandings. They need that guidance. We owe it to them.”

Is It Insurable?

Suppose you and Mr. Handshake enter into a verbal agreement and later have a dispute you can't resolve. You go before a judge or jury who, based solely on your verbal testimonies, issues a judgment in Mr. Handshake's favor. Mr. Handshake should be happy, right? Well not necessarily.

Suppose the wording of the judgment, written by someone not well versed in laws and standards governing the design and construction industry, is perceived by your insurer as uninsurable? Mr. Handshake won the battle, but he may have just lost the war. Unless your firm can cover the damages, he may have just lost his design firm and jeopardized his project. Tell Mr. Handshake:

“I think long-winded written agreements are a pain, too. But I have a great insurance company, solid coverage and a fantastic agent. They can help us review our written agreement and assist us in making sure that it's insurable. This benefits you as much as me. An uninsurable agreement, verbal or otherwise, doesn't do either of us any good.”

Can We Be of Assistance?

We may be able to help you by providing referrals to consultants, and by providing guidance relative to insurance issues, and even to certain preventives, from construction observation through the development and application of sound human resources management policies and procedures. Please call on us for assistance. We're a member of the Professional Liability Agents Network (PLAN). We're here to help.

Treasury, IRS Regs

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discriminates in favor of highly compensated employees, including definitions of key terms. The new rules are generally consistent with the rules for qualified retirement plans. Also, the rules provide an objective test to determine if the actual election of benefits is discriminatory.

- Incorporate guidance previously issued relating to debit cards and grace periods for using health Flexible Spending Arrangements (health FSAs) money after the end of a plan year.
- Generally retain the rules in the prior regulations for health FSAs, including a 12-month plan year, requirements that the full reimbursement be available at anytime during the plan year, restrictions on changing elections in mid-plan year, and the requirement that unused amounts at plan year end are forfeited (the "use-or-lose" rule).

The IRS requests comments on the proposed regulations and will hold hearings on the proposed regulations on November 15, 2007. Taxpayers may rely on the proposed regulations for guidance pending the issuance of final regulations.



Car Insurance Myths Debunked

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complete with explanations about why they're true or untrue.

Myths

Red cars cost more to insure.

Color is not a factor used to calculate car insurance rates — we don't even ask you what color your car is when you get a quote from us. Factors that do matter are the year, make, model, body type, engine size and age of your car, and drivers on your policy.

One speeding ticket increases my car insurance.

Sometimes this is true, but in many cases, you have to get two tickets before your rate goes up. Your driving history, the length of time you've been insured with a company and how fast you were going when you were cited can affect whether your rate increases or not.

I only need the bare minimum of car insurance.

Many states have minimum car insurance requirements, but the minimum amount of required insurance may not cover all of your costs. If you cause an accident that results in a lawsuit and your insurance limits don't cover all of the damages, your assets could be pursued.

Cheaper cars cost less to insure.

If your cheaper car has a large engine, weighs a lot or is an unusual model, it might cost more to insure than a more expensive small car. However, if you have a cheaper car, you will pay less for Comprehensive coverage, which covers damage caused by vandalism, hail, fire or animal accidents.

If someone driving my car causes an accident, I won't be held responsible.

It's possible you'll be financially responsible for an accident — even if someone else is driving your car. In most states, the car insurance policy covering the vehicle is considered the primary insurance, which means that the insurance company for the vehicle must pay for damages caused by an accident. Even so, it's still possible that the driver's insurance company could be responsible for some of the damages. Why? If the vehicle's insurance limits are too low and don't cover all the damages, the driver's insurance may be next in line to pay for the remainder of the damages.

Older cars are cheaper to insure.

Car insurance rates for all vehicles vary depending on several factors, such as who drives a vehicle and its annual mileage. For older vehicles, many drivers choose to carry only Liability (BI/PD) coverage, which covers injury or damage to other people or property, not damage to the insured person or vehicle. Liability only coverage may be cheaper than insuring a vehicle with Liability, Comprehensive and Collision coverage.

My car insurance rates will be higher if I smoke.

Your car insurance rates will not be higher if you smoke — we don't even ask you if you're a smoker when you get a quote from us.

My car insurance rates will be similar to my neighbor's rates.

Car insurance rates are individually determined, so factors such as age, driving record, type of vehicle and marital status are considered. Each person's situation is unique, and car insurance rates will vary because of this.



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