PLANNING FOR THE APES:

COPING WITH GUERRILLA CONSUMER BEHAVIOR WHEN THE COURTS WON'T HELP

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ABSTRACT

The stakes are high for marketers when it comes to assuring consumer satisfaction, whether in a business-to-consumer or business-to-business setting. When consumer dissatisfaction results from an undesirable outcome, guerrilla consumer behavior, or consumers acting out beyond an expected or normative level, can result. Guerrilla consumer behavior can have immediate and long-term economic consequences for a firm.

In a study of the legal environments in the states of California and New York, the authors of this article have determined that marketers can find little assistance from the court system, with even the most egregious consumer guerrilla actions protected by the First Amendment and anti-SLAPP laws, as well as the courts' view of online communication as being of less legitimacy than print communication. The marketer's best recourse remains allowing consumers to express their voice and find an unobstructed exit from an otherwise dissatisfying consumer experience.

Keywords: customer satisfaction, dissatisfaction, guerrilla consumer behavior, SLAPP, consumer law, consumer protection, First Amendment.

INTRODUCTION

When it comes to consumer satisfaction, the stakes are high: a recent study found that in the United States alone, about $83 billion is lost by marketers each year due to poor customer experiences (Ingram 2013). While firms certainly have many ways to prevent or recover from a poor customer experience, in many situations the customer reacts in a way that causes damage to the marketer. The current study continues the exploration of guerrilla consumer behavior (Koprowski and Aron 2011) as responses to consumer dissatisfaction against which marketers have little recourse, resulting in both lost sales as well as harm to reputation and property.

Guerrilla consumer behavior" is a response by dissatisfied customers going beyond normative behavior and resorting to counterproductive, economically harmful, and even illegal activities (Koprowski and Aron 2011). This phrase describes a reaction by customers who have experienced suboptimal outcomes and resort to acting out, behaving in an irrational, compulsive way (Reber 1985) against a firm or firm representative. The term guerrilla consumer behavior is meant to evoke the same kind of desperation and reliance on limited resources as used in the terms guerrilla warfare (a type of warfare fought by irregulars in fast-moving, small-scale actions against orthodox military and police forces) and guerrilla marketing. This desperation often can be seen in the very language used by guerrilla consumers. Examples contained herein illustrate that this language can be far from rational, and may be considered quite vulgar and inappropriate, particularly in a professional context.

In the face of guerrilla consumer behavior, the impact on the firm is of great importance. A customer or group of customers, lashing out against a company can have a number of negative effects and result in substantial costs. These costs include those exacted by consumer retaliation, which has been classified as creating cost/loss (that is, creating extra work for the firm); consumption prevention; voice, exit and betrayal; and boycotting (Huefner and Hunt 2000; Funches, Markley and Davis 2009). While the tangible stakes can be significant, users of the Internet can also spread negative word-of-mouth comments even faster and to a broader audience by means of Facebook, Twitter, blogs, and anti-brand web sites.

EXAMINING GUERRILLA CONSUMER BEHAVIOR

Background

A firm confronted with guerrilla consumer behavior has a limited number of options available, at least after the behavior has occurred. Consumers may cause a commotion or damages that exact a real cost to a merchant, including physical damage or loss of reputation. The protection of the courts, in particular, seems like an appealing avenue to pursue, given that some examples of this kind of behaviors listed above may seem to be illegal, at least on the surface. Some of the most common legal recourses available to an aggrieved firm include allegations of defamation, commercial disparagement, or intentional interference with prospective economic advantage in a lawsuit.

Earlier research examined the protections offered to aggrieved firms in the State of Illinois and found surprisingly limited legal remedies available (Koprowski and Aron 2011). There is a dearth of legal solutions available to firms located in Illinois. Is this the case in other states as well?

To better understand this question, other states were examined, specifically, New York and California. The reasons for adding New York and California to this study are straightforward: Illinois is home to the authors of this study, and California and New York join Illinois among the five most populous states in the United States (the other two top-five states, Texas and Florida, offer opportunities for future research).

For some general background, Illinois hosts 1.1 million firms, and is one of the nation's manufacturing and agricultural leaders. New York is home to 1.9 million firms and has the largest economy in the United States, and the second largest in the world, featuring a high concentration of financial and service sector firms. California is the most populous of the United States and hosts 3.4 million firms.

Illinois, New York, and California are about as geographically and perhaps culturally distant as three states can be, yet they are similar in terms of their great commercial importance in the United States. They are also similar in the lack of support provided to plaintiff firms seeking redress from guerrilla consumer behavior.

With this in mind, the current study expands upon earlier work in several ways:

- Legal environments outside of the State of Illinois are examined, specifically, the states of California and New York.

- Recent legal developments regarding SLAPP (strategic lawsuit against public participation) laws are examined in the context of marketer reaction to guerrilla consumer behavior.

- Alternatives for firms outside of the courtroom to plan for, cope with, and recover from guerrilla consumer behavior are discussed.

Options and Obstacles for Combatting Guerrilla Consumer Behavior

The nature of guerrilla consumer behavior ranges from the kind of in-store activity suggested by earlier research (e.g., Huefner and Hunt 2000; Harris and Reynolds 2004) to the myriad of options available online. The latter phenomena suggest that there is little firms can do directly to combat this behavior. A store manager can't react to a negative Facebook page posting the way she might have her security guard escort a vandalizing customer off the premises. This situation leaves the justice system as the most obvious legitimate option. Firms seeking redress in the courts have three major categories of response available: *litigation*, *injunction* and *criminal prosecution*. The relevant terms are introduced and explained below.

Civil litigation, the branch of law involved in disputes among individuals and organizations, is pursued in response to defamation, commercial disparagement, and intentional interference with prospective economic advantage. Injunctive relief, which is a court-ordered ban against an act, is also possible but a less practical remedy in cases of guerrilla consumer behavior because injunctions ban future behaviors, whereas guerrilla behaviors have already occurred. Criminal prosecution can be pursued by the firm in the face of shoplifting, vandalism, and violence against property or persons.

A significant obstacle to the plaintiff firm has arisen in the form of anti-SLAPP legislation. SLAPP stands for Strategic Lawsuit Against Public Participation and this legislation is meant to dissuade businesses from pursuing lawsuits against

their critics with the intent "to censor, intimidate, and otherwise silence consumers by forcing them to stage a legal defense against the attacking firm" (SLAPP Back Transcript 2010). Anti-SLAPP rules are meant to prevent, colloquially speaking, the big firm from picking on the little customer. In fact, a plaintiff threatening a lawsuit against a critical or even a misbehaving customer might not even expect to win that case; instead, this tactic is meant to chill the defendant and inflict an expensive burden upon the defendant. It would be sobering for any customers to see themselves named as defendant in a lawsuit against a large, seemingly all-powerful corporation or even a smaller business. It is for this reason that anti-SLAPP legislation, meant to protect the citizen-consumer, can be a detriment to a firm victimized by guerrilla consumer behavior.

The history of anti-SLAPP laws is relatively recent. California was the first state to enact such a law in 1993. The purpose of the law was "to encourage continued participation in matters of public significance and to prevent the chilling of such participation" (Tate 2000, p. 801). Since then, 28 states plus the District of Columbia have enacted anti-SLAPP laws, including New York and Illinois (Public Participation Project). These SLAPP lawsuits have been described as "actions without substantial merit brought against individuals or groups with the intention of 'silencing opponents, or at least… diverting their resources'" (Tate 2000, p. 802) and have the effect of interfering with the defendant's … exercise of constitutionally protected rights." (Tate 2000, p. 803). SLAPP suits "masquerade as ordinary lawsuits." (Tate 2000, p. 804) The most frequent type of lawsuit is for defamation, but also includes business torts such as interference with prospective economic advantage (Tate 2000). Tate points out that the motive of SLAPPers is not to win, but rather to chill the defendant's activities of speech and protest and to discourage others from similar activities. SLAPPers can intimidate unsophisticated defendants with the specter of staggering defense costs even though SLAPPers lose eighty to ninety percent of suits that actually go to trial (Tate 2000). A SLAPP plaintiff expects to lose and is willing to write off litigation expenses as a cost of doing business.

Expanding on a prior study of legal remedies available to aggrieved parties for guerrilla consumer behavior, the current study analyzes statutory and case law in the two of the largest states in the United States, California and New York. First, the relevant statutes in California and New York which are available to an aggrieved plaintiff will be examined, and then relevant cases in each state will be considered. For the purpose of this article, this study has been limited to cases from within the last five years. Also, cases are presented in which the plaintiff was a marketer (company, firm or organization), as opposed to an individual.

Examples from California

Defamation cases in California are numerous, and similar to Illinois, it appears that few cases provide a viable legal remedy to a plaintiff business's allegations of damaging statements by disgruntled consumers. Also similar to Illinois, there are few reported cases claiming unfair competition. Of the cases cited herein, many of them involve multiple causes of action forming the basis of a lawsuit. These causes of action include unfair competition, trade libel[1] or tortious interference with a prospective advantage. [2] Combining several causes of action is a common litigation tactic.

One representative example is that of *Simpson Strong-Tie Company, Inc. v Pierce Gore.* In this case, a manufacturer sued a lawyer, alleging defamation and trade libel claims arising from a newspaper advertisement by the lawyer directed at Simpson's customers, owners of wood decks built with the manufacturer's galvanized steel fasteners. The plaintiff firm, Simpson Strong-Tie Company, Inc., was a California corporation in the business of

[1] Defined as "any intentional false communication, either written or spoken, that harms a person's reputation; decreases the respect, regard, or confidence in which a person is held; or induces disparaging, hostile, or disagreeable opinions or feelings against a person" (thefreedictionary.com 2013).

[2] Defined as "a third party's intentional interference or inducement of a contracting party to break a contract… thereby (causing) damage to the relationship between the contracting parties" (uslegal.com 2013)

designing, manufacturing, and marketing building products, including galvanized screws for use in wood frame construction.

The plaintiff asserted that the lawyer's advertisement falsely implied that its galvanized screws failed to meet appropriate industry standards and that valid claims might exist against the plaintiff based on negligence or product liability. The complaint stated that the advertisement "communicates that Simpson's galvanized screws are defective," and that the advertisement "disparaged Simpson's goods…" (Simpson Strong-Tie 2010).

Simpson retained an opinion survey firm to confirm that the advertisement had caused injury to their reputation. The survey revealed that shoppers, after reading the advertisement, were significantly more likely to believe that Simpson's galvanized screws were defective or of low quality and were significantly less likely to purchase galvanized screws manufactured by plaintiff. (Simpson Strong-Tie 2010).

The court rejected Simpson's arguments and denied relief. In a lengthy opinion, the appellate court affirmed the trial court's decision dismissing plaintiff's complaint since defendant's statements were made in furtherance of free speech on an issue of public interest.

The case of *Lisa Krinsky v. Doe 6* illustrates the enormous leeway that courts grant users of Internet chat rooms and message boards to speak anonymously under the free speech protection of the First Amendment. Krinsky, the plaintiff, was the president, board chair and chief operating officer of SFBC, a publicly traded company. Krinsky sought damages and an injunction accusing the defendant of intentional interference with a "contractual and/or business employment relationship" between plaintiff and SFBC, and a further claim of libel based on false and misleading Internet statements imputing dishonesty, fraud, improper professional conduct, and criminal activity to plaintiff (Krinsky 2008).

The alleged defamatory messages were posted on the Yahoo! message board. They suggested that there were "cockroach" executives at the company. In one message, posted on December 18, 2005, the defendant (Doe 6) stated that it is "funny and rather sad that the losers who post here are supporting a management consisting of boobs, losers and crooks." One of the messages included the following statement: "…Lisa [Krinsky]…has fat thighs, a fake medical degree, and has poor feminine hygiene" (Krinsky 2008).

In holding for the defendant, the court concluded that the language of Doe 6's posts, over a two-month period were not actionable, but rather, "fell into the category of crude, satirical hyperbole which, while reflecting the immaturity of the speaker, constitute protected opinion under the First Amendment" (Krinsky 2008). The court concluded by saying that while Doe 6's statements were "rude and childish, intemperate, insulting, and often disgusting and understandably offended plaintiff, nevertheless, offensive speech is still accorded constitutional protection."

In another Internet-related case, the plaintiff is *Eagle Broadband, Inc.*, alleging defamation arising from unflattering messages about the firm posted on Yahoo! Finance. The complaint made a number of general allegations, including fake announcements supposedly from Eagle Broadband that claimed…

- "the company had been deleted from the Russell 3000 Index due to poor performance and business failures."

- "Eagle Broadband was suffering from continued financial losses causing the share price to drop and encouraging others to '… go short to make some of your money back….' "

- "significant change is coming at Eagle. They are out of cash, sales, and time. They must pay Aggregate back the $10mm which they do not have…" (Eagle Broadband 2007)… all posted by the defendant.

An assertion by defendant concerned the plaintiff's "purported inability to sell a key product line essential to its business…." The defendant also predicted that plaintiff's share price would "continue to drop significantly," that plaintiff would be forced to make hard financial choices, which might include bankruptcy, and that the situation ahead would be "ugly." The defendant closed by stating: "This is truly a case study in professional incompetence and dereliction of fiduciary duty to shareholders" (Eagle Broadband 2007).

A California appellate court was not persuaded of the merits of the Eagle Broadband case. In denying plaintiff's claim for relief, the court cited the emerging SLAPP statute. That is, the court considered the Eagle Broadband case to be an example of "meritless lawsuits filed primarily to chill the defendant's exercise of First Amendment rights" (Eagle Broadband 2007). The California Legislature responded to a "disturbing increase" in such suits by enacting an Anti-SLAPP statute (section 425.16, an A) "to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process" (Eagle Broadband, 2007).

The court, in deciding the Eagle case, relied on the Anti-SLAPP statute, stated that the "offending message was published in an unregulated and freewheeling milieu [the Yahoo! message board]. Recognizing the nature of this forum, Yahoo! Finance message board users are warned not to rely on the information contained there" (Eagle Broadband 2007). The court concluded that "the average reader would recognize the (defendant, Williams) mock press release as parody. That being so, it 'does not defame [the plaintiff]...'" (Eagle Broadband 2007).

The case of *Keene v. Lake Publishing Co., Inc.*, involving allegations of defamation and trade libel, is another intriguing example of guerrilla consumer behavior. The plaintiff, Dr. Camille Keene, a neurologist, examined a local radio personality. Her preliminary diagnosis, pending an MRI and other tests, was that the radio personality was experiencing amyotrophic lateral sclerosis (ALS), a debilitating illness commonly referred to as Lou Gehrig's disease. However, after the MRI and further tests, the patient learned that he did not in fact have the disease. The defendant published an article which stated several times that the radio personality was "misdiagnosed" by the plaintiff, Dr. Keene.

Dr. Keene sued, contending that the statements were defamatory and that the "clear inference was that she was unfit to perform the duties of her neurology specialty," and that the "statements …were libelous because they injured her….professionally" (Keene 2010). The appellate court disagreed with plaintiff's assertions and upheld the trial court finding for the defendant on both counts of defamation and trade libel (commercial disparagement). In finding for the defendant, the court analyzed California law pertaining to defamation and trade libel. It stated that libel, a type of defamation, is defined by statute as "a false and unprivileged publication by writing, printing …, or which has a tendency to injure a person in his or her occupation or which has a "natural tendency to injure a person's reputation." (Civ. Code sec. 45). The elements of this tort are (1) a publication, that is (2) false, (3) defamatory, (4) unprivileged, and that (5) has a natural tendency to injure or that causes damage" (Keene 2010).

The trial court found that Dr. Keene failed to show libel because there was insufficient evidence that any of the statements from the article were false or defamatory. The appellate court stated that "'there can be no recovery for defamation without a falsehood" (Keene 2010). Moreover, the court further stated that "in an action initiated by a private person on a matter of public concern, the First Amendment requires that the *plaintiff* (in this case, Dr. Keene) bear the burden of proving falsity" and that plaintiff in this case failed to meet the burden (Keene 2010).

The appellate court also dismissed Dr. Keene's trade libel claim. Trade libel is an injurious falsehood that interferes with business. Unlike classic defamation, trade libel is "'not directed at the plaintiff's personal reputation, but rather at the goods a plaintiff sells or the character of his or her business, as such (Keene 2010). In denying plaintiff relief for trade libel, the court held that plaintiff failed to prove "actual malice," which is required element in proving a trade libel cause of action. Actual malice means a defendant publishes a statement about the plaintiff he *knows* is false; or that the defendant publishes a statement about the plaintiff with reckless disregard for whether it is false or true.

The final example we highlight from California is the case of *Balboa Village Inn, Inc. v. Lemen.* This is a rare instance in which the *plaintiff* prevailed.

The plaintiff owned and managed the Balboa Island Village Inn, a restaurant and bar which had been operating at that location for more than half a century. Defendant Anne Lemen purchased the "Island Cottage," which was across an alley from the Village Inn. She lived there part of the time and rented the cottage part of the time. Lemen was a vocal and constant critic of the Village Inn and has contacted the authorities numerous times to complain about excessive noise and the behavior of inebriated customers leaving

the bar. To bolster her case, Lemen videotaped the Inn approximately 50 times (Balboa 2007).

The plaintiff introduced evidence that for more than two years, the defendant parked across from the Inn at least one day each weekend and made videotapes for hours at a time. Customers often asked Lemen not to videotape them as they entered or left the building. Yet, numerous times, she followed customers to or from their cars while videotaping them. She took flash photographs through the windows of the Inn a couple of days each week for a year, further upsetting the customers. Lemen called customers "drunks" and "whores" and told customers entering the Inn, "I don't know why you would be going in there. The food is shitty." Overall, Lemen approached potential customers outside the Inn more than 100 times, causing many to turn away (Balboa 2007).

Lemen, also had several encounters with employees of the Village Inn. She told a bartender that she "worked for Satan," was "Satan's wife," and was "going to have Satan's children." The defendant referred to the owner's wife, as "Madam Whore" and told her, in the presence of a third party, "Everyone knows you're a whore." Three times, the defendant took photographs of cook Felipe Anaya and other employees while they were changing clothes in the kitchen.

Lemen, the defendant, told neighbors that there was child pornography and prostitution going on in the Inn, and that the Village Inn was selling drugs and was selling alcohol to minors. She said that sex videos were being filmed inside the Village Inn, and that it was involved with the Mafia. Concurrent with Lemen's guerrilla consumer attack, Village Inn's sales dropped more than 20 percent (Balboa 2007).

In holding for the plaintiff against the defendant, the court held that while the First Amendment right of free speech is stated in broad terms, the right is not absolute (Balboa 2007). The court held that there are categories of communication and certain special utterances to which the First Amendment does not extend.

These cases, with the exception of the final example, can lead one to conclude that, at least in the State of California, individuals have free license to engage in guerrilla consumer behavior, and disparage, defame, or otherwise damage the reputations of companies with little to fear from the judicial process. Primarily on First Amendment grounds, disgruntled consumers are given a wide berth and seem to be able to attack firms and individuals with impunity. In the next section, the conditions for combatting guerrilla consumer behavior in the State of New York will be explored.

Examples from New York

Unlike California, New York has no statute defining defamation, commercial disparagement or tortious interference with prospective advantage. But just like California and Illinois, not only are there numerous court cases involving defamation, but also plaintiff complaints tend to allege multiple causes of action such as unfair competition and tortious interference with business opportunity.

In the example of *Schoolman Transportation System v. Aubrey*, a 2011 case, the guerrilla consumer is actually the representative of an educational institution, the New York Institute of Technology ("NYIT"). The plaintiff, Schoolman Transportation System, Inc., conducted business as Classic Coach and was contracted to provide transportation services to the NYIT. However, a representative of NYIT, Leonard Aubrey (NYIT's Vice President for Financial Affairs and its Chief Financial Officer and Treasurer), unilaterally terminated the contract.

The transportation provider sued for defamation against the defendant. The complaint alleged that, in Aubrey's termination letter, the defendant defamed Classic Coach by falsely stating that plaintiff engaged in "egregious overbilling practices." The complaint also alleged that Aubrey published those statements to third parties, causing damage to Classic Coach's business reputation. The question therefore is can Schoolman Transportation prove that in this act of guerrilla consumer behavior, Aubrey conducted on behalf of NYIT a "willful course of malicious conduct." According to the court, the strong words against the bus company were made as part of Aubrey's job, "in the scope of his employment" (Schoolman 2011). In this case, it is the protection of NYIT that allows Aubrey's behavior to go unchecked.

Protection for guerrilla consumers can also come from the Internet. In the case of *Sandals Resorts International Limited v. Google, Inc.*), the plaintiff (Sandals) sought damages for defamation from an unknown writer arising out of an email sent to multiple recipients. Here, Sandals is taken

to task for their presence in Jamaica in light of the economic conditions of the island's population. The unknown writer contrasted the financial circumstances of the people of Jamaica with that of a corporation that operates multiple resorts in Jamaica, criticizing the corporation's treatment of native Jamaicans.

The email contained the following comments:

- "Why are poverty-stricken Jamaican taxpayers subsidizing the billion dollar tourist industry?"

- "Menial-low paying jobs for Jamaicans; high profile luxury-style jobs for foreigners!"
- "Making foreign millionaires at Jamaicans's expense?"

The court held for the defendant finding the "the communication is not actionable, since the writing as a whole was "pure opinion." Moreover, the "content of the whole communication, its tone and apparent purpose") and its very anonymity, would signal to any reasonable reader that the writer's purpose is to foment questioning by native Jamaicans regarding the role of Sandals' resorts in their national economy (Sandals 2011).

It is the very nature of this guerrilla consumer behavior, through a medium provided by the Internet, which affords it protection. The court's opinion is instructive and provides insight into judicial thinking in general about Internet libel. According to that document:

- The culture of Internet communications, as distinct from that of print media such as newspapers and magazines, has been characterized as encouraging a "freewheeling, anything-goes writing style."

- Bulletin boards and chat rooms are often the repository of a wide range of casual, emotive, and imprecise speech, and that the online recipients of [offensive] statements do not necessarily attribute the same level of credence to the statements [that] they would accord to statements made in other contexts.
- The low barrier to speaking online allows anyone with an Internet connection to publish his thoughts, free from the editorial constraints that serve as gatekeepers for most traditional media of disseminating information.
- The observation that readers give less credence to allegedly defamatory remarks published on the Internet than to similar remarks made in other contexts, specifically addresses posted remarks on message boards and in chat rooms. However, it is equally valid for anonymous Web logs, known as blogs (Sandals 2011).

The Internet bears and in some ways promotes outrageous claims where the words used online are considered to be of lesser weight than they would be in another medium. This includes an online culture of casual writing, unfiltered, emotional and imprecise speech, and low barrier to entry among contributors. Guerrilla consumers choosing to communicate online are often free of editorial constraint and therefore their words are given "less credence." The language used online might be of a lower standard but the power of social media in terms of marketing communications and digital word-of-mouth communication between and among consumers remains influential.

The sections concerning the States of California and New York present only examples of the few cases that have been found. The courts historically and continually offer little relief against guerrilla consumer behavior. This lack of judicial relief means that marketers must be proactive in their own defense. Being proactive is key among the implications described in the next section.

MANAGERIAL IMPLICATIONS AND RECOMMENDATIONS

Previous research on guerrilla consumer behavior pertaining to Illinois indicates that the legal remedies to firms are limited and that court decisions tend to favor defendants (Koprowski and Aron 2011). Similarly, in New York and California, there are a limited number of legal options available to aggrieved parties seeking remedies for alleged harm due to defamation (disparaging a person's reputation), commercial disparagement (disparaging goods or services), or

tortious interference (intentionally damaging) with contract or with prospective advantage. Plaintiffs who believe that they have been wrongfully disparaged or damaged by allegedly aggrieved consumers seem to have little legal recourse available to them.

The anti-SLAPP legislation and the general unwillingness of the courts to support plaintiff firms against guerrilla consumer behavior (and other consumer criticism in general) leave few options for an affected firm. Moreover, since courts rely heavily upon Constitutional free speech rights, there is little likelihood that any attempts to limit baseless claims through the legislative process would be fruitful. Therefore, in order to combat guerrilla consumer behavior, we refer back to the seminal work of Hirschman (1970) to offer two recommendations: voice and exit.

Consumer voice, in this case complaint management, has become not only an accepted outlet for frustrated consumers (Fornell and Birger 1988) but has also become a vital source of information for a firm and can even play a role in facilitating service recovery and enhancing customer satisfaction and loyalty (McCullough and Bhadradwaj 1992). In short, a firm is well-advised to allow customers (whether dissatisfied or not) a voice, a connection to empowered employees and management, before any decision or impulse is followed to employ guerrilla consumer behavior and broadcast their dismay throughout the store or across the Internet.

Encouraging complaining behavior might have once seemed an indefensible option, and the success of this approach still relies on the company managing consumer expectations for the resolution of the complaint and applying the appropriate level of correction to the situation (Singh and Wilkes 1996; Susskind 2005).

Recent events suggest that an even more surprising approach might help in defusing guerrilla consumer behavior: supporting, allowing, and even encouraging exit behavior. The notion of a business firing its customers is not new. In fact, this notion really just represents a sophisticated kind of marketing in which a firm seeks to maximize its "return on customer" while propelling poorly-matched customers toward other sources, even competitors, more likely to satisfy their needs.

Netflix, the Internet-based entertainment provider, offers an example letting customers who want to leave escape without barriers or costs to exit. Netflix recently pursued the strategy of raising prices while splintering into two separate entities. Consumer confusion and anger ensued (Sandoval 2012). The managerial decisions behind this price increase have been subject to great criticism, and indeed, led to an estimated loss of 800,000 subscribers (Sandoval 2012). Facebook, a popular stage for guerrilla consumer behavior, hosted several sites that railed against Netflix (http://www.facebook.com/search/results.php?q=anti%20netflix&init=quick&tas=0.23507100078382903).

Yet a Facebook page aggressively entitled "1,000,000 people who will not stand for Netflix's new prices" garnered support from just over 5,000 people. At that time, a consumer who wanted to leave their relationship with Netflix could simply exit. For consumers and marketers, letting unhappy customers leave may be a mutually acceptable path of least resistance. Admittedly, this is one example, but it is one that illustrates that even a corporate misstep costing hundreds of thousands of lost customers, can avoid the added negative retaliatory impact of guerrilla consumer behavior.

LIMITATIONS AND FUTURE RESEARCH

The exploration of guerrilla consumer behavior started with the state of Illinois and with the current research has expanded to include New York and California. The focus of this work has been the legal environment of these states and the lack of courtroom responsiveness to plaintiff firms affected by guerrilla consumer behavior. This leads to several avenues for future research.

The current study, as well as past research (Koprowski and Aron 2011) has recounted a variety of legal cases involving guerrilla consumer behavior, as well as offering recommendations for proactive measures to obviate the need for such a consumer response. This has provided an important foundation for the study of guerrilla consumer behavior. An imperative next step in this area is the integration of this consumer response with existing conceptual and theoretical propositions to explain this type of activity. The research on consumer dissatisfaction and complaining cited throughout, as well as recent and related phenomena such as *consumer grudgeholding* (Aron 2001), serve to illustrate the

importance of integrating guerrilla consumer behavior into the existing areas of consumer research.

Some of the cases presented in this current study make it apparent that guerrilla consumer behavior can be enacted by individuals and groups that are not actually customers of a particular vendor and may have had no direct interaction with a targeted firm. This sort of response can be seen in other cases, wherein individuals participate in protests, pickets, strikes, or simply sign petitions to demonstrate their allegiance and shared concerns with others who might be more directly affected by a firm's behavior. The study of consumers acting out frustration that they have only experienced indirectly is another approach to understanding guerrilla consumer behavior.

Laws change and regulations, like the anti-SLAPP laws, will continue to be enacted. While anti-SLAPP laws offer protection for "the little guy" consumer against a resource-rich corporation, there remain few options for businesses to respond to guerrilla consumer behavior. Future research might continue to examine how the courts respond, particularly in states which have yet to enact anti-SLAPP laws, including Ohio, Michigan, and North Carolina, each among the ten most highly populated states in the United States (WorldAtlas.com 2013).

CONCLUSION

The current study continues the exploration of guerrilla consumer behavior and the responses available to firm under attack. An examination of a sample of court decisions found in California and New York, along with past research on Illinois, suggests that in the courtroom, firms have little hope of fighting consumer dissatisfaction which manifests itself as guerrilla consumer behavior. From the cases presented herein, it seems as though the courts will almost never support a plaintiff firm that is assailed by guerrilla consumer behavior. The one exception that was found, California's case of *Balboa Village Inn, Inc. v. Lemen,* offers that the First Amendment right of free speech is not absolute (Balboa 2007). It is that very right, though, that is invoked in support of the guerrilla behavior illustrated in the other cases in New York, California, and Illinois (Koprowski and Aron 2011). The First Amendment has been broadly interpreted, and the line that demarcates going beyond this protection has not been clearly drawn.

While there are still another 47 states to consider, not to mention other countries and cultures throughout the globe, the outlook in terms of legal protection is not encouraging. In fact, anti-SLAPP laws are a further attempt to level the playing field between David, the consumer, and Goliath, the firm. Firms continue to have, or at least appear to have, ample resources to combat and perhaps intimidate dissatisfied customers into silence. However, Anti-SLAPP laws offer the consumer yet another shield while the Internet, social media, and mobile communications offer an effective array of weaponry. This, combined with the protection of the First Amendment, suggest that while the voice of the consumer must not be silenced, protection and recourse for an embattled merchant, damaged by guerrilla consumer behavior, must remain available.

The fundamental approaches to customer satisfaction still offer preemptive and recovery responses to guerrilla consumer behavior that the courts do not seem to provide. Consumer voice, that is, allowing and responding to complaining behavior, is an important approach to relieving consumer dissatisfaction and frustration. Facilitating exit behavior, in contrast to voice, can be seen as counterintuitive even in this era of empowered consumers. Many firms and entire industries, such as mobile phone or cable television service provision, rely on long-term contracts, access to consumer bank accounts, and automatic renewals to not only hide the exit doors from consumer but to lull consumers into forgetting that exits even exist. In other words, some firms thrive by making "one crucial element of the customer experience as difficult and frightening as possible…. the experience of *disconnecting*" (Fox 2013). It remains incumbent upon marketers to remove the possibility of guerrilla consumer behavior by making voice and exit possible, and by providing consumers incentive to stay.

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