

The Celebrity Activist: How Activists Use a Lack of Information to Achieve Results

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No company in the modern era has managed to consistently leverage the unknown better than Apple. The functional execution is stunningly simple. Apple essentially sets a date for a “special event” and lets the media speculate wildly for weeks. Just look at the headlines created this past year with virtually no information to go on: “What to Expect from Apple’s Big Event,” “Excitement Building over New Apple Products” and “Apple Excitement Builds.”

What if instead of launching a new phone though, the company used this same strategy to stir up anticipation prior to announcing an increased share buyback or payment of a special dividend? Putting aside the logic of such an approach, the strategy of purposefully building excitement in the market ahead of a financial announcement would certainly strike many as highly unusual or even illegal. What if the company were more direct in the pre-announcement marketing, saying “tomorrow’s announcement will be the most important one in the company’s history?” Certainly that would set off a few alarms.

Yet this is exactly what some shareholder activists are doing. Armed with well-known brands of their own, certain “celebrity activists” are using their public personas to mimic this product PR strategy in campaigns to force corporate change. With a stock market that reacts on bits and pieces of information from these activists, targeted companies are confronted with an uneven playing field that creates significant challenges in designing defensive measures.

Last October, Carl Icahn, perhaps the most famous activist, tweeted “Tmrw we’ll be sending an open letter to @tim_cook. Believe it will be interesting.” The tweet went out at 2:33 PM EDT on a Wednesday, 90 minutes before the markets closed in the United States. Pershing Square’s Bill Ackman more recently

stated that his attorneys held evidence showing clear stock manipulation at one of his targeted companies. Several trading days later, the documents were filed, and after reviewing them, *The New York Times* declared there was no “smoking gun.” In a more unusual example, a relatively new hedge fund, Kerrisdale Capital, recently hosted an online poll asking the public to guess which of two public companies it would target when it presented a detailed short case in the coming days.

These are all unequivocally incomplete statements and actions designed to create a reaction with the broader public and, it seems, in the public equity markets. In fact, the result of each one of these actions was at least a momentary stock price movement that favored the activist’s position, either long or short. The longer term impacts are not immediately clear, but based on comments from Kerrisdale’s leader, Sahn Adrangi, the hedge fund community has noticed the power of celebrity and values its impact. In a *New York* magazine profile, he stated he is “realizing that the more profitable route, in the long run, might be to turn himself into a brand, go on CNBC, get some gravitas, and start picking fights.”

There is a debate to be had by legal experts about the particular application of rules on financial disclosure in this area. However, in the near-term, for a number of reasons (not all of them rooted in the law) the simple fact is that companies do not share or utilize this same tool.

Emboldened by an enormous influx of funds and several high-profile “wins” over the last several years, activists have increasingly honed their communications strategies to shift public perception broadly while also gaining tactical victories against targeted companies.

So how can a corporate Board effectively defend itself against these celebrity activists?

Speed and clarity are critical in any successful defense. A savvy activist can solidify a public narrative about a target with astonishing speed. To be ready, management teams and Boards are increasingly conducting their own stress tests before an activist ever arrives, oftentimes holding in-person sessions with full advisor teams to battle-test different scenarios and vulnerabilities.

This does not mean reviewing or creating a standard playbook. Constantly shifting tactics of attack mean preparation also needs to continually adapt.

These sessions must consider all potential tactics from the activist at each level of engagement. How would a tweet be managed? What about a passing reference on CNBC? A “sources familiar” story in *The New York Times*? Investor opinion can be swayed long before any SEC filing. These training sessions help define messages and, the equally important functional teams, in the event of an activist approach. The end result has to be a focus on speeding up response times.

The best Boards take this further. They understand potential weaknesses, thoroughly evaluate how to alleviate each point and, where possible, proactively

take action. In the midst of a fight with an activist, this history of action can prove invaluable in not only disarming potential accusations, but more importantly enabling the company to move rapidly and decisively to answer shareholders.

History is showing that companies that move quickly and with conviction prevail far more often than those that do not. Many companies have been served well by pre-empting activist announcements, where possible, and reinforcing corporate strategies early. This then gives third-party supporters a more attractive opportunity to voice their opinions.

Activists’ new celebrity status drove a staggering 73 percent success rate in 2014. In an environment in which activists are winning with such frequency, companies need to consider new principles for activism defense, grounded in both a deep understanding of investor relations, a current view of market dynamics and an equally inventive approach to communications.

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