



## In Celebration of “Singularity”

Consider these statements:

- \* When Papa John’s first got started, it sold pizza, cheese steaks, submarine sandwiches, fried mushrooms, fried zucchini, salads, and onion rings.
- \* Planet Hollywood discovered that one of the best locations in a city for its restaurant was across the street from a Hard Rock Café.
- \* Federal Express was a struggling player in a delivery business until CEO Fred Smith focused on overnight delivery with a slogan, “When it absolutely, positively has to be there overnight.”

Each illustrates an application of one of the 22 *Immutable Laws of Branding* addressed by authors Al and Laura Ries in their new book. Branding, they assert, is the “single most important objective” of the marketing process. Branding is based on the concept of **singularity**, and has as its goal the creation in the mind of a prospect the perception that there is no product on the market like *your* product. A successful brand, then, has the ability to not only influence purchasing behavior, but to “pre-sell” a project or service to the user.

Papa John’s story is an illustration of the **Law of Contraction**, which states: “A brand becomes stronger when you narrow its focus.” When founder John Schnatter wanted to build a powerful brand he reduced the variety of items on his menu. This goes against the normal tendency of marketers to want to expand their brands, but if you try to be all things to everyone you can undermine the power of your brand.

The Planet Hollywood statement is an illustration of the **Law of Fellowship**, which states “In order to build the category, a brand should welcome other brands.” Choice actually stimulates demand, as the “noise level” of competition because choice is seen as a major benefit (unless the number of choices gets too great). This law helps explain why similar businesses tend to congregate in the same neighborhood, and why almost every Burger King franchise is right across the street from a McDonalds!

The Federal Express statement illustrates the **Law of the Word**, which

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# Legally Speaking

By L. Michael Zinser TCMA General Counsel

## Joint Publication During Strike is OK in Detroit

The U. S. Court of Appeals for the Sixth Circuit affirmed a lower court ruling (see LawLight June 1997) that the Detroit daily newspapers did not violate the antitrust laws by publishing combined weekday editions during the early days of a strike called in July 1995. The Detroit News and Detroit Free Press are published under a Joint Operating Agreement approved by the Justice Department. That agreement provided for separate publications Monday through Friday. Separate weekday editions resumed after the first nine weeks of the strike.

The court rejected arguments that the Detroit Newspapers must seek Justice Department approval every time a change was made to the agreement. The court noted that the Detroit Newspapers did inform the Justice Department in 1992 of its plans to publish joint editions in the event of a strike. Finally, the plaintiffs could not show that combined weekday editions would be published again.

## Atlanta Airport Loses Newsrack Fight

The Atlanta Department of Aviation (Department) sought a dissolution of a preliminary injunction granted earlier by the Court preventing them from implementing a newsrack scheme. The newsrack plan enjoined by

the earlier injunction required publishers to lease newsracks provided by the Department for \$20 a month. The newsracks provided by the Department contained Coca-Cola advertisements on their sides. The Atlanta Journal & Constitution (AJC) sought and was granted the injunction on the grounds that it was a violation of First Amendment free speech to restrict their right to distribute newspapers through newsracks.

In opposing the dissolution of the injunction, the AJC once again asserted their First Amendment argument. The Department argued that they had a legitimate interest in raising revenue and promoting aesthetics and passenger safety which justified the plan.

The court found in favor of the AJC and declined to grant a dissolution of the injunction, ruling that "there remains a substantial likelihood Plaintiffs [AJC] will succeed on the merits of their claims with regard to the Coca-Cola plan. A loss of First Amendment freedoms for even a minimal period of time constitutes irreparable injury." The court rejected the Department's argument that revenue, safety, and aesthetic interests justified the plan. The court stated the following:

*There is little evidence to show that the Coca-Cola plan*

*would increase passenger safety and convenience or enhance aesthetics as compared to the plan that was in effect prior to April of 1996. With the Department's strongest interest being generating revenue, the loss of revenue to the Department compared to the threat of violations of Plaintiff's constitutional rights demonstrate that the balance of harms does not favor dissolution of the preliminary injunction.*

## Racially Animated Language Not Direct Evidence of Discrimination

The U. S. Court of Appeals for the Eleventh Circuit held that a discharged black practical nurse failed to make out a prima facie case of racial discrimination because she failed to offer any direct evidence of it.

In the past, the Head Nurse allegedly stated that "you young black girls make me sick, sometimes I just feel like just hitting you in the head" and that "you black girls get away with everything." However, these statements were not associated with events leading up to the practical nurse's discharge. There was no evidence showing that on the day of the incident leading to the discharge, the Head Nurse did anything other than orally report the

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Zinser Continued

practical nurse's misconduct to her superior. On that day, the Head Nurse reported the practical nurse for being out of uniform and for failing to wear it upon instructions to do so.

Also, the practical nurse was not replaced by a non-minority employee, nor were non-minority employees treated better than the practical nurse.

**Complaints About Overtime Are Not Actionable**

The U. S. Court of Appeals for the Ninth Circuit ruled that the prohibition against retaliation found in §215(a)(3) of the Fair Labor Standards Act does not apply to "informal complaints" made to a management employee. The section states: it is unlawful to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any such proceeding.

Here, none of the plaintiffs actually "filed" a formal complaint or instituted or testified in an FSLA proceeding. Rather they complained to a supervisor about overtime, called the Dept. of Labor for information, had a lawyer write a letter to management, and had a complaint delivered to the employer. None of this is enough to state a retaliation claim under the FSLA.

The result is that the lower court was reversed, \$4 million in punitive damages, and \$450,000 in emotional distress claims were thrown out. The case was remanded for review under Washington State's wage-hour law which will not permit punitive damages in this type of case.

SEASONS GREETINGS



**BELLATRIX SYSTEMS annual Symposium 1998** was held in Bend, Oregon in late September. The symposium was attended by participants from all over the US, Canada and as far away as Germany. Group workshops, panels and discussions were held on a variety of issues associated with today's single copy newspaper sales and distribution practices. Individuals interested in attending **Symposium 1999** to be held on **September 23 and 24, 1999**, in Bend, Oregon should call Bellatrix at **800-451-9753** for more information. Budget early for this valuable conference.

*(In Celebration of "Singularity")*

states: "A brand should strive to own a word in the mind of the consumer." To get into the consumer's mind, you have to reduce the essence of your brand to a single thought or attribute. Emery Air Freight was actually the first air cargo carrier offering all kinds of service as noted in its slogan, "Whatever you want to ship, Emery can handle it." Federal Express narrowed its focus, and the word "overnight" became synonymous with the company name. (An interesting observation: Certain brand names are used generically, such as Kleenex, Jell-O, Band-Aid, Saran Wrap and Scotch Tape. This usually happens when you are the first brand and can establish the category. Federal Express is an example of a company that wasn't first but, in effect, created an entirely new category when it narrowed its focus. That's why we all say, "FedEx this package, please").

Any proper noun, according to our authors, is a brand. They even note to be successful in life, you should **consider yourself a brand** and act accordingly. In other words, recognize your "singularity" and determine what you have to offer that is unique. That's not a new concept at all! The psalmist recognized it when he praised God that he was "fearfully and wonderfully made" (Ps 139:14). A challenging question: When someone hears your name, what perception is created in his mind?

*(The WORD for the Week, a weekly fax letter from Success Insight)*

## TCMA Wants You!



**The 1999 TCMA Renewal Membership Invoices have been mailed to all members and associate members. If you did not receive your invoice, please call James Smith at 713 220 7644 now. The Constitution and Bylaws specify that dues payments are due no later than January 15, 1999. A networking directory is planned for the Spring. Send your renewal notice and \$25.00 membership payment now to insure a place in the directory.**

**CIRCULATOR'S PROMOTIONAL SERVICES, INC.** is proud to announce a new product line that was recently introduced at the TCMA annual sales conference in South Padre Island. CPS can package a Pre Paid Gasoline Card with a Pre Paid Telephone Calling Card to fit your promotional needs. CPS has a working agreement with most major oil companies.

Internet access time is also available as an added bonus to the Pre Paid Telephone Calling Card. Add value to your added value discount dining cards by adding Pre Paid Telephone Calling Time to the back of the card. For more information contact **Jerry Weinerth** personally at (800) 329-0210 or e-mail at [Hijerbear@aol.com](mailto:Hijerbear@aol.com).

**Texas Circulation  
Management Association  
TCMA Newsletter  
December 1998**

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# Yes, Virginia . . .

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We take pleasure in answering thus prominently the communication below, expressing at the same time our great gratification that its faithful author is numbered among the friends of The Sun:

**Dear Editor---**

**I am 8 years old. Some of my little friends say there is no Santa Claus. Papa says, "If you see it in The Sun, it's so." Please tell me the truth, is there a Santa Claus?**

**Virginia O'Hanlon**

Virginia, your little friends are wrong. They have been affected by the skepticism of a skeptical age. They do not believe except they see. They think that nothing can be which is not comprehensible by their little minds. All minds, Virginia, whether they be men's or children's, are little. In this great universe of ours, man is a mere insect, an ant, in his intellect as compared with the boundless world about him, as measured by the intelligence capable of grasping the whole of truth and knowledge.

Yes, Virginia, there is a Santa Claus. He exists as certainly as love and generosity and devotion exist, and you know that they abound and give to your life its highest beauty and joy. Alas! how dreary would be the world if there were no Santa Claus! It would be as dreary as if there were no Virginias. There would be no childlike faith then, no poetry, no romance to make tolerable this existence. We should have no enjoyment, except in sense and sight. The external light with which childhood fills the world would be extinguished.

Not believe in Santa Claus! You might as well not believe in fairies. You might get your papa to hire men to watch in all the chimneys on Christmas eve to catch Santa Claus, but even if you did not see Santa Claus coming down, what would that prove? Nobody sees Santa Claus, but that is no sign that there is no Santa Claus. The most real things in the world are those that neither children nor men can see. Did you ever see fairies dancing on the lawn? Of course not, but that's no proof that they are not there. Nobody can conceive or imagine all the wonders there are unseen and unseeable in the world.

You tear apart the baby's rattle and see what makes the noise inside, but there is a veil covering the unseen world which not the strongest man, nor even the united strength of all the strongest men that ever lived could tear apart. Only faith, poetry, love, romance, can push aside that curtain and view and picture the supernal beauty and glory beyond. Is it all real? Ah, Virginia, in all this world there is nothing else real and abiding.

No Santa Claus! Thank God! He lives and lives forever. A thousand years from now, Virginia, nay 10 times 10,000 years from now, he will continue to make glad the heart of childhood.

**Editorial Page, New York Sun, 1897**

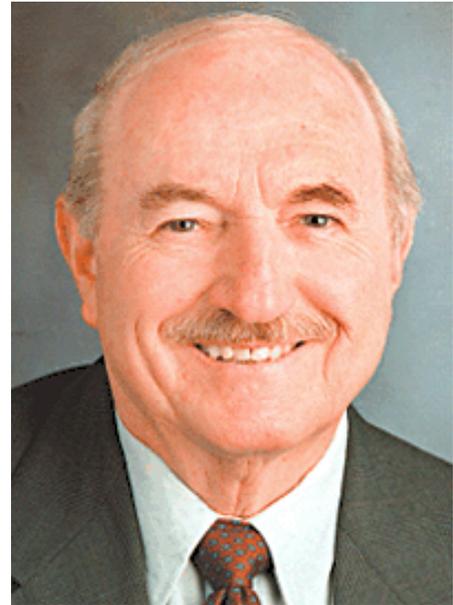


# News Flash!

Hollis Price, Vice President of Circulation for the Houston Chronicle, stunned his staff on Monday, November 23, 1998, with his announcement that he will resign on January 1, 1999. Hollis is completing a forty-three year tenure with the Chronicle. He began his service as an independent distributor. Hollis served as a distributor for thirty years. The past thirteen years, Hollis has been an employee of the Chronicle in several circulation management positions. In January 1998, he was promoted to Vice President of Circulation from Director of Circulation. Price is expected to serve as a consultant with the Chronicle and the Hearst newspapers.

Hollis served the TCMA in several board positions before becoming president in 1995.

If you would like to say, 'so long,' Hollis can be reached at 713 220 7109 through December 31. His address is 801 Texas Avenue, Houston, TX 77002.



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## TCMA Officers

TEXAS CIRCULATION  
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