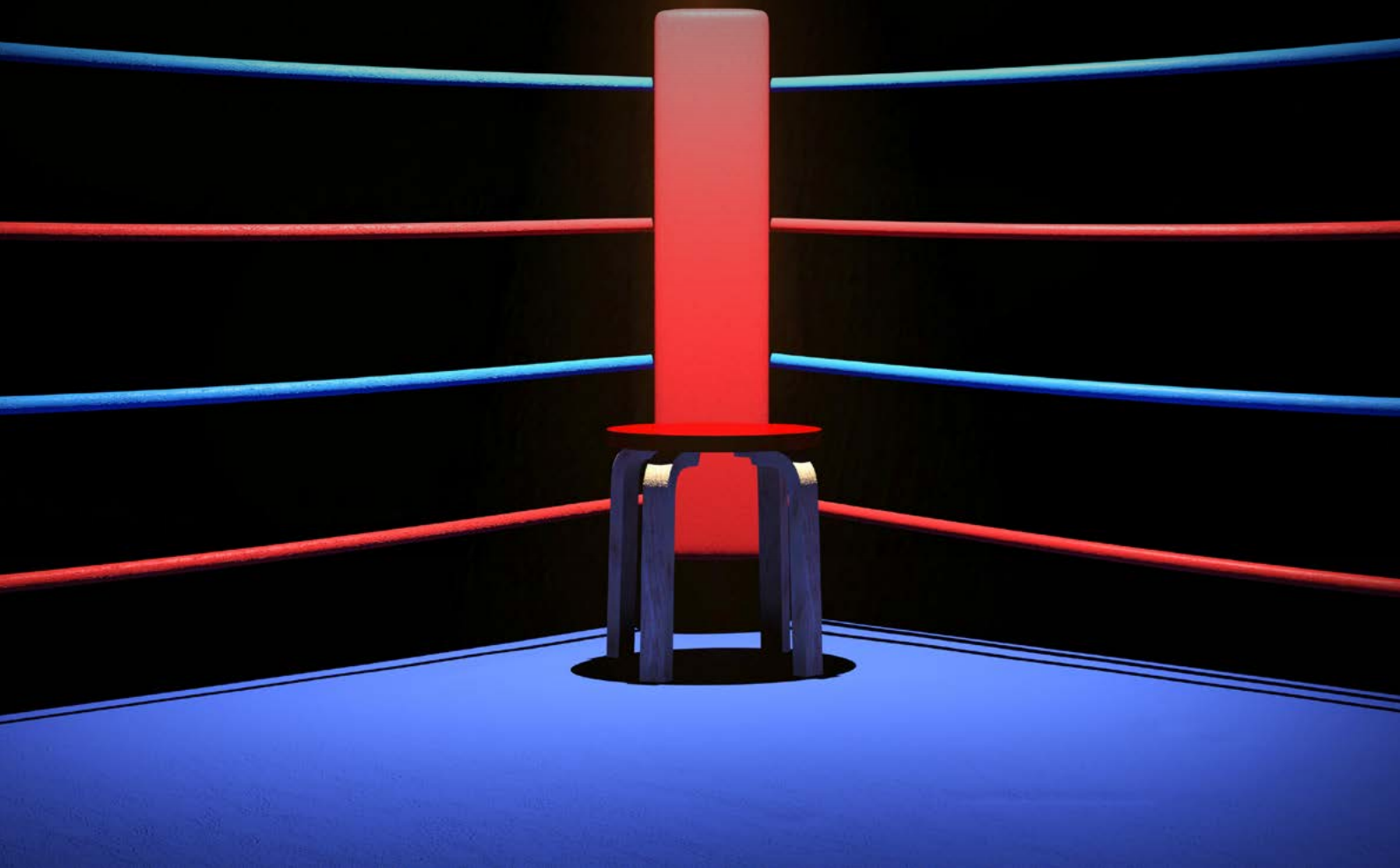


FIGHT SITES

SINGLE-CHANNEL PROXY FIGHTS ARE ALMOST A THING OF THE PAST AS DIGITAL MEDIA BECOMES A FACTOR IN MOST ACTIVIST CAMPAIGNS, WRITES JOSH BLACK.

A slickly-produced video features a seven-year-old girl saying, over a comedy soundtrack, that she hopes shareholders will back a CEO who has promised them to deliver value for their grandchildren. “[I]n, like, 20 or 30 years, I could really use the money,” she says. “So stick with keeping shareholder money in the freezer, and a super slooow plan.”

The video is not part of a mega-cap proxy fight, or the invention of a big-name activist. Instead, it was produced for a fight at Knight Therapeutics, led by a joint-venture partner and a then-director of the \$790 million market-cap, Canadian-listed company.



“IT’S CLEARLY EVOLVED FROM A HEADLINE-GRABBING GIMMICK TO A POTENTIALLY INTEGRAL PART OF THE CAMPAIGN.”

A novelty five years ago when *Activist Insight Monthly* first wrote about the combination, digital media and activism is now a familiar pairing. Campaign websites – also called “fight sites” – social media advertising, and video are at the forefront of the new arms race driven by both tactical considerations and technological advances.

“It’s another channel to reach the audiences that matter in a proxy fight and if one side is using it and the other isn’t, then you can find yourself at a disadvantage,” argues Dan Zacchei, a managing director at Sloane & Co, the communications adviser.

CHANGE THE CHANNEL

Perspectives on the importance of digital media in proxy fights range from the skeptical to the insistent. One of the words most frequently used in interviews for this piece was “critical,” and not solely by digital specialists. “My personal view is that it’s clearly evolved from a headline-grabbing gimmick to a potentially integral part of the campaign,” says Michael Fein, head of proxy solicitor Kingsdale Advisors’ U.S. operations.

While digital tactics are a given in fights that could swing on the votes of retail shareholders, who are notoriously difficult to reach and whose turnout is low, institutional investors are also a part of the calculus.

“Generally, the higher the percentage of shares held by retail investors, the more of a role social media can play in winning votes,” says Patrick Ryan, of communications firm Edelman. However, he warns that “tit-for-tat alienates institutional investors and reflects poorly on the company,” and advocates “talking past” the activist.

A survey published in February by Brunswick suggests most sell-side analysts use digital media to follow companies, and 46% will use it to find out what activists are saying about a stock. Including the institutional investor community, use of digital media to make investment decisions increased 41 percentage points between 2015 and 2018 to become “ubiquitous.”

Outside of the communications industry, however, some education is still required. “We are still in the infancy of the use of digital media in these campaigns,” says Townsend Belisle, creative director of Haystack Needle, a digital specialist widely seen as the leading design agency for

activists and activism defense, as well as a range of other corporate events. “These tactics are still new and somewhat scary to some in the finance community.”

“YOU COULD USE DIGITAL MEDIA A LOT, BUT WHEN YOU DO, YOU GET CRITICIZED FOR SPENDING THE SHAREHOLDERS’ MONEY.”

“I think it always makes sense to have at least a campaign website but even that is not a view that is universally shared,” says Kai Liekefett, a partner at Sidley Austin and head of its activism defense practice.

ATTACK ADS AND FIGHT SITES

Close followers of activism have become accustomed to seeing a variety of digital tools, whether they realize it or not. Third Point Partners’ mock-commercial at Campbell Soup became a news story in itself, a fact not lost on public relations experts, who say this amplified the activist’s message.



MMMM... GOOD.

“OF COURSE, YOU STILL HAVE TO FIGHT LIKE HELL TO MAKE SURE NEWS ARTICLES ACCURATELY REFLECT YOUR POSITION ON KEY ISSUES”

The suppliers and budgets for digital efforts are often treated as trade secrets but unlike Third Point's previous ad at Dow, its Campbell video featured what was likely expensive live shooting with an actress and a narrative based on Campbell's own famous “Mmmm... good” commercials.

With both campaigns settling – Dow quickly, Campbell shortly before the meeting – debates about the effectiveness of the videos are hard to resolve. Few people in the industry do not have an opinion on it.

While Third Point has led the way in “attack ads,” video has other uses. Elliott Management sent Arconic shareholders video-players pre-loaded with its slate of nominees talking about their qualifications. Pershing Square Capital Management and EQT's CEO Rob McNally promoted soft interviews with Jim Cramer or Bloomberg TV via social media. Transcripts of such appearances have to be filed, per Securities and Exchange Commission rules governing solicitations, so why not make a virtue out of them? (Pershing Square lost its battle at ADP, while EQT's proxy fight with the Rice brothers is ongoing.)

AD NAUSEUM

Other digital ads, often placed on LinkedIn, Twitter, or Facebook, but also on Google's search engine or on

“WHAT DO YOU WANT YOUR AUDIENCES TO DO – AND HOW DO YOU WANT THEM TO FEEL?”

WHO ARE THE PLAYERS?

Haystack Needle, a New-York based digital specialist founded by Townsend Belisle in 2001, is generally recognized as a leader in the field. It offers seven different services, from search optimization to event production and videography, and has worked on high-profile campaigns for both activists and corporates.

Everest Communications only launched in May but has already worked on one 2019 campaign. President Zack Condry previously worked for Edelman and Brunswick after a spell working on political campaigns.

Several communications firms offer in-house expertise. Brunswick has about 30 digital specialists and integrates its techniques into almost every contested situation, while Edelman typically handles its digital work in-house but will work with external providers.

newspaper websites, can convey a message or direct recipients to fight sites or presentations. In 2017's tightly contested battle between Procter & Gamble and Trian Partners, such ads aired for months. The fight ended in a dead heat.

Recently, Barclays took out LinkedIn ads to promote its first-quarter results ahead of a proxy fight with Sherborne Investors to help shore up faith in its strategy. The bank won the vote, albeit helped by journalists' interest in Sherborne's hedging arrangements.

“Of course, you still have to fight like hell to make sure news articles accurately reflect your position on key issues,” says Jonathan Doorley, a New York-based partner at communications firm Brunswick. “That ground game is still really important but why not also dominate the digital space at the same time?”

What isn't disclosed are details of where such ads are focused. When ads can be targeted geographically to a zip code or even a large building, or by a job title or employer on LinkedIn, an unknowable part of the proxy fight entails making sure the right people see an ad.

TRICKS OF THE TRADE

The real power in digital media comes in three parts: education, persuasion, and action, says Zack Condry, president of Everest Communications, a new digital specialist founded by The Prosper Group, better known for its work on political campaigns. The two things he wants audiences to say are: “I learned something about the company I didn't know,” and, “Dammit, I'm going to do something.”

“IT IS NOT YET POSSIBLE TO KNOW IF WE DIRECTLY AFFECTED A VOTING DECISION – BUT WITH DIGITAL TECHNOLOGY WE CAN QUANTIFY AND TRACK OUR MESSAGING.”

“We always ask about sentiment,” adds Belisle. “What do you want your audiences to do – and how do you want them to feel?”

Then there is the pressure cooker effect. Elliott blitzed Arconic employees, alumni, and shareholders with stinging criticisms of CEO Klaus Kleinfeld in its 2017 fight. Kleinfeld lost his job after apparently lashing out at Elliott founder Paul Singer.

Condry says that as long as the agitating campaign is prepared for a potential escalation of the fight, digital efforts can make things seem “bigger than they are.”

“I think the personal thing works extremely well,” he told *Activist Insight Monthly*. “Bear in mind, I come from politics.”

PROBLEMS

The greater visibility of digital media, while sometimes cheaper than traditional methods, can be a counterproductive effect. “One issue that we always face – it’s a rock and a hard place issue – you could use digital media a lot, but when you do, you get criticized for spending the shareholders’ money,” says Liekefett.

In April, activists looking to elect a new board member at Texas Pacific Land Trust (TPL) reproduced some of the company’s social media adverts, scolding warnings of a “storm on the horizon.”

“Is management paying out of their own pocket for this media extravaganza, which includes an expensive website, designers, PR advisers and now a social media campaign?” the activists asked, contrasting their exposure to the real estate investment trust’s shares with management’s more limited ownership. “We believe buying back shares is a better investment than Google ads.”

Not everyone agrees that the plethora of feedback from hits and engagements prove that votes have been switched. “Digital technology is a valuable tool that is scalable and fantastically measurable,” says Belisle. “It is not yet possible to know if we directly affected a voting decision – but with digital technology we can quantify and track our messaging.”

In high-stakes campaigns, such doubts can be a luxury. “I don’t know how much it helps but on balance, if it’s a tight vote, I’d rather be doing it,” says John Ferguson, a founder of Saratoga Proxy Consulting. 🙌



ELLIOTT MANAGEMENT SENT VIDEO PLAYERS TO SHAREHOLDERS IN ITS FIGHT WITH ARCONIC.



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