

Taking Your Business to the Next Level with Crowdfunding: Navigating the Legal Minefields

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Why Crowdfund?

Generate buzz around product/offering

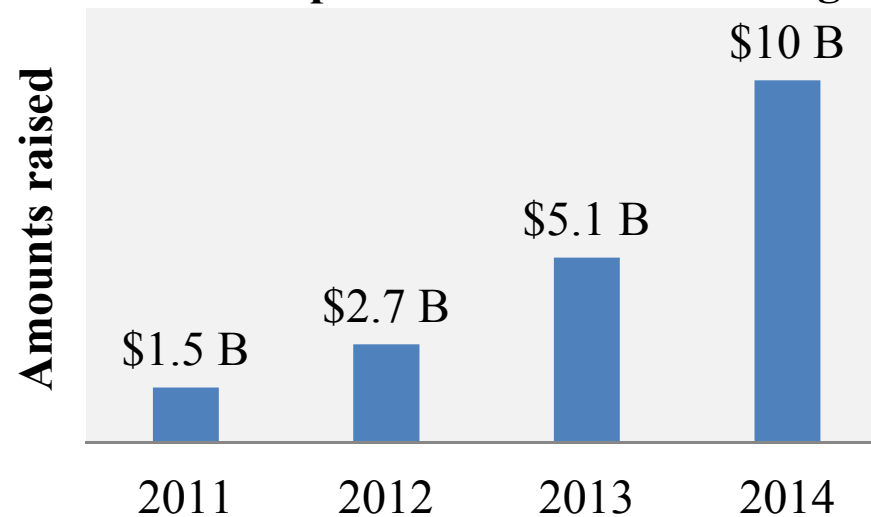
Filling out an “offline” round

Initial financing to build prototype

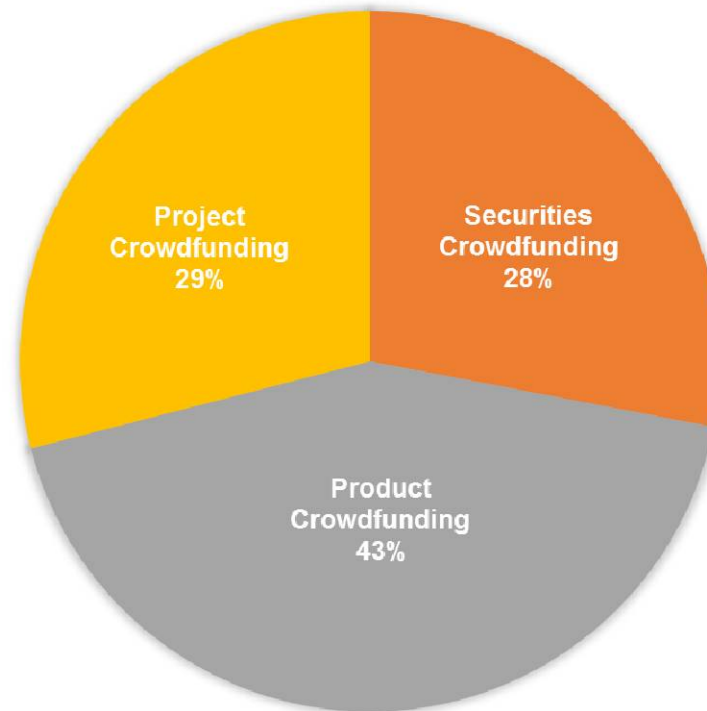
Test market interest

Access capital from broad group of investors

The Rapid Rise of Crowdfunding



Forms of Crowdfunding



Bottom line: Pick the platform with the audience that is appropriate for your goals and needs

Project Crowdfunding

- Backers contribute money to a specific project/cause



Project Crowdfunding

PROS	CONS
Opportunity to partner with a foundation/align with cause	Time-consuming and resource intensive
Build brand awareness	Not a general all-purpose way to fundraise
	Some platforms are all-or-nothing

Product Crowdfunding

- Backers contribute money usually in exchange for a reward, which is often the product
- Geared toward consumer-facing products

KICKSTARTER



Product Crowdfunding

PROS	CONS
Test the market	Ready to deliver a working product
Price discovery	Some platforms are all-or-nothing
Cheap source of financing	Increasingly expensive to run a successful campaign
No dilution of existing shareholders	PR issues
No conflict with securities laws	

What is Securities “Crowdfunding”?

- JOBS Act
 - Title III – Regulation Crowdfunding
 - Title IV – Regulation A+
 - Title II – Rule 506(c)
- Intrastate crowdfunding

Securities Crowdfunding

PROS	CONS
Offering flexibility	Accredited investors only for 506(c)
Use of general solicitation	Administrative costs
Limited filing requirements and disclosure	Regulatory uncertainty
Not tied to deliverable product	Limited liquidity for larger capital raises
Federal preemption	Equity dilution

Choosing a Platform

- Not one-size-fits-all – be sure to involve legal counsel and all stakeholders
- Choose a platform that with an investor base that matches your industry and stage and development
- Company-led versus investor/syndicate-led
- Registered broker-dealers



Every crowdfunding platform is different. Carefully review each platform's requirements to ensure compliance.

Preparing to Crowdfund

Corporate Housekeeping

- Formation
- Employment matters
 - Employee vs. independent contractor
 - Employment agreements
 - Compensation plans and awards
- Share issuances and cap table

IP Considerations

- Types of IP – patents, trademarks, copyrights
- Avoid infringement
 - Clearance of names and trademarks
 - Be careful when using images, video/audio clips, open source code or creative commons media
 - Not everything on the Internet is in the public domain
- Protect IP
 - Be careful not to divulge patentable information
 - Trademark/patent filings

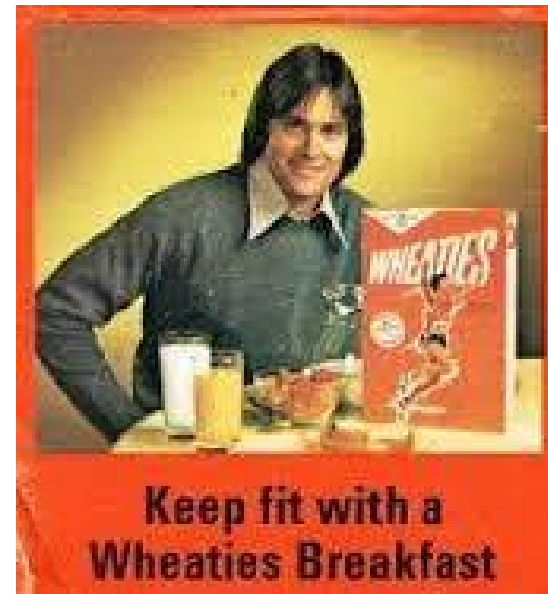
Marketing Considerations

- Section 5 of the FTC Act
 - “[U]nfair or deceptive acts or practices in or affecting commerce are declared unlawful” (15 U.S.C. Sec. 45(a)(1))



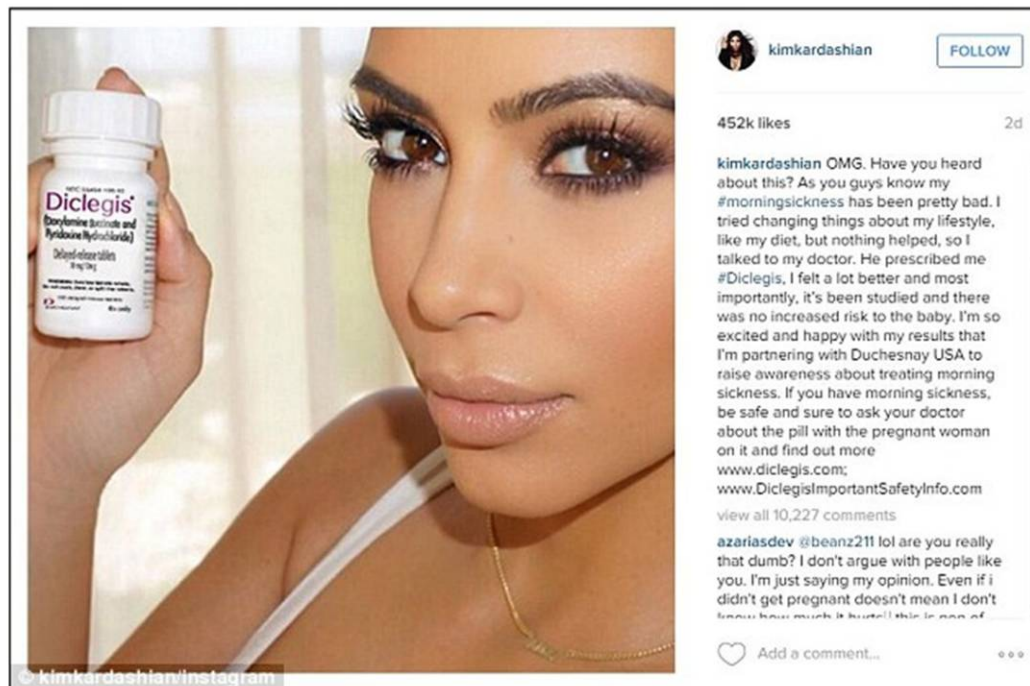
Marketing Considerations

- FTC FinTech – “The Doom”
- FTC Endorsement and Testimonial Guides
 - Threshold question – is it an endorsement?
 - FTC “endorser” factors



Marketing Considerations

- Why should you care about claims made by others?
- Kim Kardashian and Diclegis



**ONE
of the
BEST**

**One of the
best apps
just got
better**

***GREAT,
family-friendly
board game app***

**Amazing
new
game!**

**[App developer]
hits another home
run with [app
being reviewed].**

**[App
developer]
does it
again!**


Reverb Communications, Inc., 150 F.T.C. 782 (2010) (consent order)

The New York Times

Business Day
Technology

Give Yourself 5 Stars? Online, It Might Cost You

By DAVID STREITFELD

Published: September 22, 2013 |  316 Comments



A.G. Schneiderman Announces Agreement With 19 Companies To Stop Writing Fake Online Reviews And Pay More Than \$350,000 In Fines

“Operation Clean Turf” Concludes Year-Long Undercover Investigation Into Reputation Management Industry, Astroturfing And False Endorsements

Schneiderman: Astroturfing Is 21st Century’s False Advertising

What About Facebook Postings?



FACEBOOK Testimonials



Todd Bumgardner

James Smith and DeFranco's Gym have put together the most comprehensive resource on POWER training that I have ever seen! You should have bought it 5 minutes ago!



Dylan Poesch

I got the DVD today! It's great just finished watching! I am jacked for my next workout! I'm going to do the contrast method on Wednesday with barbell squats and jump squats! Lots of great information! Thanks again!



Christopher James Perilli

If you want to be more POWERFUL then pick up a copy of POWER! by DeFranco's Gym and James Smith today. You won't be sorry but your competition sure will be! To be powerful means to train with bad intention on moving the weight as fast as possible within a percentage of your 1RM. If you train slow you will be slow. If you spar slow you will be beaten slowly when it comes fight time. Get POWER! now!



Ben Bruno

Watching the new POWER! DVD from James Smith and DeFranco's Gym. It just came out today and it's freakin awesome! Definitely check this one out!



Luka Hocevar

Got this in the am and crushed through it. Another amazing product by Smitty and Joe DeFranco!



JP McElwee

POWER! is sic!! I watched it last night after a double shift at work. So much info, so many different variations. You guys did an amazing job.

Best Practices

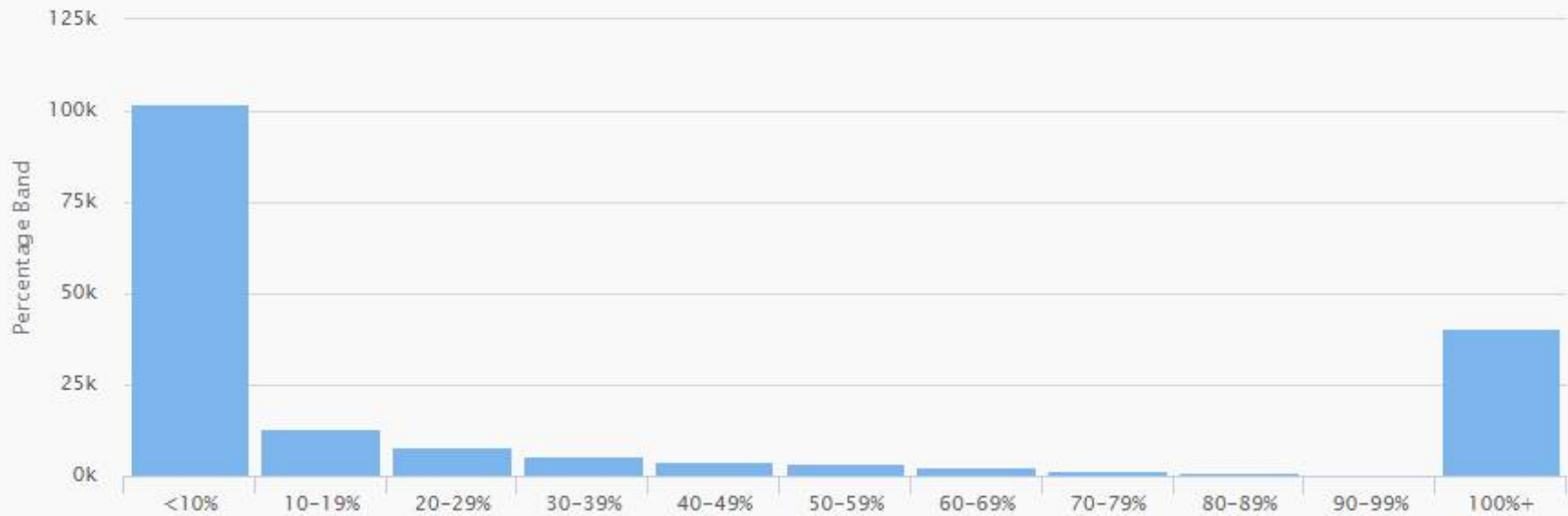
Get a Lead Investor

- Enhance reputation and legitimacy
- Build momentum
- Boost investor confidence
- Try to line up 20-30% of offline funding first
- 50% of crowdfunders never get to 10% of goal

COMPLETED PROJECTS PERCENTAGE DISTRIBUTION

This is totals of percentage reached by projects

Drag the chart to zoom



More Tips & Advice

- Build awareness well in advance
- Develop compelling pitch materials
- Set realistic fund targets and rewards
- Choose investors wisely
- Post-funding accountability
- Line up a good team of external advisers

Questions?

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