JCPenney CEO: "We Can Have Loyalty Programs For Kids." Doing It Is Smart. Saying It Isn't

November 14, 2012

In the middle of an analyst briefing on November 9, where he was detailing a painful 27 percent drop in quarterly revenue, JCPenney CEO Ron Johnson made a bizarre comment that "we can have loyalty programs for kids." Such utterances have been heresy in retail circles, where it sets off every creepy warning alarm that parents have. But Johnson's point, which JCPenney tried its best to walk back, may have a lot of legitimacy behind it.

Johnson's comment points to a hole in the legal minefield of marketing to children. Federal law strictly restricts and all but prohibits online marketing and tracking of children younger than 13 (once they become teenagers, the government—and parents around the world—have pretty much agreed that it's time to surrender). But there are no such restrictions in-store. Ironically, the reasons Congress agreed to restrict online activity are, today, probably more relevant to in-store, thanks to mobile.

Congress agreed to have the government—through the Federal Trade Commission—protect children dabbling in E-Commerce because of an e-tailer's ability to track every page, every visit, every product click, the IP address where the access came from and the duration of visits. That level of information, Congress argued, warrants every protection for children.

And yet today, that level of information—and much more—is being collected from mobile devices in-store. With children using mobile phones at an increasingly early age, the devices are with them constantly. Even the most invasive Web site doesn't stay with a child when he or she goes out to play or visits a friend's house, or if the child visits the mall.

This raises the question of why restrictions are strictly needed when a 10 year old visits Amazon.com, but no restrictions exist when that same child visits the physical version of Target, Macy's or JCPenney. Such logic suggests that the protections should be the same, while leaving open to debate whether that means removing the restrictions from E-Commerce (there's good reason to believe that those safeguards aren't delivering a lot of meaningful protection anyway) or adding restrictions to in-store.

That brings us back to Ron Johnson's perhaps-not-so-wacky comment. Johnson said JCP is about to open an area dedicated to kids in the new JCPenney stores, within the chain's existing stores. He then started to describe those areas.

"We want to be the best place to buy every great American brand like Dockers and Hagger and Levi, and we will do that in our shop format. We are moving in an area where we will see the street changes for kids, where we have place for kids to play games on iPads, Max, Lego. We think a candy store is a great addition to a shopping experience. We just make sure the kids want to come, and we can have loyalty programs for kids," the JCPenney CEO—and veteran of Apple and Target—said. "We'll have Disney shops, coming in next spring, where we are the only place out of the Disney Store to carry true Disney-manufactured merchandize. It's not a license shop."

The "we can have loyalty programs for kids" comment is tucked away in the middle of his discussion, but it's a fascinating concept. Today, a parent might make purchases and the store can track that, but it can't differentiate between children and adults. Mobile opens the door to direct contact, highly targeted messaging and truly customized promotions/incentives. Marketers have been free to do this in every format possible, except online. It's the fear of being perceived as overly invasive that has scared retailers from even considering such a move. At least JCPenney's boss is considering it, which is encouraging.

JCPenney, though, would rather he hadn't shared this particular thought. When asked to specifically elaborate on the CEO's "we can have loyalty programs for kids" comment, JCPenney spokesperson Kate Coultas said: "We don't have plans to create loyalty program for kids. Ron was talking about how we can create customer loyalty with an engaging in-store shopping experience with several of the initiatives we will be launching in The Street. However, we are looking at revamping our current customer loyalty program—jcp rewards—next year. It's too early to share those details, but that is an entirely separate initiative."

Asked to reconcile "we don't have plans to create loyalty programs for kids" with the CEO's "we can have loyalty programs for kids" comment, Coultas E-mailed back: "At this time, we don't have plans for a loyalty program for kids. I do not have any further details I can share with you." The difference between the two comments is the phrase "at this time." Asked to clarify further, Coultas said: "I believe he was talking about creating loyalty for customers and creating programs/initiatives in-store for kids, not an actual loyalty program for children. Right now, we are concentrated on our jcp rewards program, and you have to be a credit-card holder to be a part of that program."

What the CEO meant to say, or intended to say, is certainly an open issue. Given that he explicitly said, "we can have loyalty programs for kids," though, it's hard to argue that he meant "not an actual loyalty program for children." This comment wasn't in response to an analyst's question. He initiated it all on his own.

Another bizarre note: This particular JCPenney analyst meeting was streamed live as a video. It was then kept on the site as a replay. What JCPenney didn't say—although it would have been obvious to anyone watching the video and listening closely—is that the video was edited and the reference to loyalty for kids was removed. Whether that roughly 90-second segment was removed because of the kid comment or whether there was another reason is not certain, but it was removed—and in a very abrupt, non-finessed edit—nonetheless.

For what it's worth, the SEC has no problem with companies posting edited videos, given that there is no requirement for them to post the video at all. The SEC does have a problem if the edit removes anything material or if the edited video would mislead investors.

Getting back to the policy itself, the very nature of juvenile marketing is a retail nightmare. 7-Eleven got caught flat-footed when it solicited mobile phone numbers for texting and other purposes. To make it less intrusive, the chain opted to not ask for a customer's age. But that didn't work out well, because it gave 7-Eleven no way to differentiate children from adults. Therefore, to avoid the huge risk of texting some 10 year old, it had to essentially not use the collected data at all.Then there's the opposite issue of protection. Far from protecting kids, underage E-Commerce needs to help protect retailers. Kids have been agreeing to buy products and then, after taking possession of the product, declining to pay, because a minor can't enter into a purchase contract.

Then there's age-verification, which is problematic online and even becomes an issue for kiosks.

But arguably the most interesting age-related in-store issue is a matter of purchase history, CRM and aging out. Given that almost no chains maintain extensive histories of children's purchase habits—and they are only slowly collecting teenage purchase activity—this is creating legions of 18 year olds who materialize on the retail landscape as blank slates with no history.

That's been the case for all of the 20th Century. The difference now is that there are E-Commerce histories of these new shoppers, and those histories sometimes go back to when they were 7 or 8 or younger. (Don't get me started with how I felt when I saw my at-the-time 5 year old surfing Amazon.) Even if you buy into the theory that juveniles cannot be marketed to, 18 year olds certainly can be. What are the ethical implications of using all of that child-CRM data once that child becomes an adult? At least one marketing firm is preparing for such a possibility.

Will Congress weigh in and throw in consistency with all of these contradictions? Congress has a strong history of only weighing in on such matters when the issue is at least five or more years out of date, so no imminent help will be coming from that quarter.

So what should retailers do? Until the law changes—and state laws could change, especially in places like California and New York, much more quickly than federal laws—I'd argue for no restrictions on what data is collected from children. If for no other reason, that data can be used in aggregate to make better decisions and in customer-specific CRM form to use when the customer becomes an adult.

Personally, even as a parent, I can't name one specific issue with direct-marketing to children that—and this is critical—isn't already being done. Kids are too impressionable? Fine, ban TV commercials on shows aimed at kids. Kids have insufficient judgment to make financial decisions? True, but if the child has access to the store and has access to money, it's hard to blame retailers for providing what is being sought.

StorefrontBacktalk Legal Columnist Mark Rasch suggests careful online wording to avoid conflicts with the federal Children's Online Privacy Protection Act of 1998 (COPPA). An e-tail site "that says, 'We won't collect information about kids' might bind them to never collect information about kids—ever. Much better to say, 'We will comply with COPPA' or 'We won't collect info about kids online,'" Rasch said.

It's actually even worse than that, because a site most likely has no idea if the visitor is underage. So that would suggest, "we won't collect info about kids online, when the kid tells us he/she is a kid."

Rasch also points out much of even the online law speaks less to not tracking and more to not tracking without parental permission. For in-store, that may not be much of an issue.

"When Mommy Smith buys little Jeffrey a jacket using her loyalty card, the information is dutifully collected and stored. There is little risk that 10-year-old Jeffrey will independently buy something using a loyalty card and cash. So the loyalty card might be able to distinguish between purchases by little Jeffrey and his 8-year-old brother Sam (who has his own loyalty card) but doesn't really provide much more information than the retailer can already get from mom and dad. Sure, it might track in-store purchases by cash, but the kid has to present the loyalty card to initiate the tracking. Not too risky," Rasch said. "It also doesn't seem too likely that a kid under 13 will sign up in person at a store for a loyalty card without mom and dad's permission. Because the point of COPPA is to get parental permission for the collection of information about kids under 13, adding a simple parental signature requirement (even with some proof of age) should solve that problem."

Retailers can be respectful in how far they go with marketing to children, but is the message here that misleading adults is OK? The FTC is supposed to make sure that all marketing is not misleading, and as long as that is the case, I'm not so sure that limiting children's marketing makes sense anymore.

Then again, this gets us into the perception versus reality issue. Even if it's perfectly fine to collect data and to then market to children, it's going to be perceived as evil and reprehensible. That's where JCP's Ron Johnson dropped the lollipop. Those are perfectly good thoughts and ideas to have. Saying them out loud, though, at an analyst event when there's not a full-blown marketing plan backing up the comments, is just asking for trouble. Good thing no one noticed he said it.