

Legal and ethical considerations in marketing essay sample

[Media](#), [Advertising](#)



According to (Media, 2004) the Bureau of Consumer Protection's Business Bureau is put things in perspective that all advertisement in the U. S. must be at all times truthful and not mistreated unfairly. Anyone in an advertisement must be able to show any evidence of claims that they may make, because the Federal Trade Commission Act (FTC) finds that it to be deceitful to mislead consumers to alter their decision-making to buy a product. The FTC outlines one-sided advertisements of those who cause substantial, inevitable injury by a product that the injury may outweigh the verifiable benefits. FTC believes in the practice of truth-in-advertising laws especially with children but has been a lot of unethical behaviors in advertisement.

A former FTC commissioner Roscoe Starek states, " Children are not likely to understand exaggerated statement or images, citing the example that children may believe a toy helicopter to come fully assembled when in fact assembly is required." The most ethical decision is not to advertise to children but in this case to the adult, parental person. Children advertisement encourages children to get hooked on products that impel on social development (Media, 2004). Throughout the country, people look at advertisement differently. For instance, cigarette advertising is geared to marketing consumers for particular broadcasting while alcohol advertising is allowed on all broadcasting channels. It is imperative that companies examine the true nature of their product before acting ethically as advertisers.

Fast food franchise has shown have a large link with obesity but they have multitude of television. Other advertisement ads with high demands which are legal for advertising fast food products that doctors and everyone else can see is high risk for future obesity with children (Media, 2004).

Pharmaceutical ads encounter numerous side effects with medications that are later sued for class-action lawsuits for wrongful injury. Advertising can be misleading as well as additional ethical issues leading to legal entanglements for unintentional advertising, emotional appeals, taking advantage of less educated individuals, spreading propaganda for political campaigns and other tactics ethical advertising refrain from using (Media, 2004). Consumer is eager to buy into honest, have integrity, and don't use manipulative tactics to gain their business.

According to (Gray, 2011) businesses have the ethical duties to consumers to making sure product is safe, and they are not being deceived what they are buying. When a consumer purchases a television set it is expected that the television is working functional, has minimally sufficient quality, and it will not harm them in any way once it is used. Utilitarians will argue that a business should help people blossom to better their lives, even though it is not there responsibility to do so. It is the responsibility for companies to inform them quality about pros and cons of their products. Consumers go in the impression that the company that is selling to the consumer is in their best interest.

It is the ethical obligation of companies to ensure product safety they pay for and safe for ordinary use. Every year millions of people are injured in one

way, or another for defects in products. Companies/manufacturers legally liable under “strict liability” even though they make have taken precautions. Utilitarian’s support this strict liability because it is an effective source of motivation to enforce companies. Utilitarians take every precaution serious, because it can cost them in the long run a lot of money from legal battles (Gray, 2011).

A direct- to-consumer television advertisement shows through a portion of televisions air time on broadcast or cable television that is paid by the company for ideal purpose of releasing information about one or more of the company’s new medicines.

Direct-to-Consumer (DTC) raises concerns and questions about ethnicity of companies’ advertisement tactics. DTC can promote and encourage people by discussing ways with their professional healthcare can reduce medical issues. DTC can keep patients to get their prescriptions refilled and help them adhere to their medications regimens (Health, 2010).

Nevertheless, many people are worried about misleading information or not enough information about risks and defects connected to that advertised product. Sometimes the commercial are aired quickly with the side effects relating to that product but unsure of what they are due to not being visual or vocally enough. It also may not advance and may even threaten the public health and this can encourage overuse of prescription drugs. Another negative effect of DTC is it encourages use of the most costly treatments, instead of less expensive treatments that would be just as satisfactory

(Health, 2010). The FDA is constantly encouraging to companies is being honest about the products they are marketing.

Through empirical information presented it has shown that DTC is misleading and discourages consumers to buy into advertisement products due to fraudulent marketing. FDA encourages better communication of labeling and promotional information to health professions and to consumers. There is a strong empirical record that demonstrated that DTC communications about prescriptions medicines can serve the public health, best by increasing awareness about diseases and by educating patients about other effective treatment options (Services, 2013). As was stated before can motivate patients to contact their physicians and active engagement in their healthcare and to find logical and affordable costs for ongoing healthy lifestyles. I against advertisement for DTC due to factual information of consumers being misled (PhRMA, 2008).

Compounding pharmacies make drugs issues by a prescribed doctor for a specific patient through commercial available drugs. For example, small children are preferably uses liquid form dosing verses than adult tablets and an individual maybe allergic to a brand that has an ingredient in it that causes counter reactions so they will choice a commercial drug. The FDA conventionally has oversight of drug manufacturers and the state regulate pharmacies. It is known that there are three specific government agencies that control compounding pharmacies. The state boards of pharmacy make sure that pharmacies are following the guidelines for pharmacy practice and

the FDA ensures “ the integrity of the drugs.” The pharmaceutical have combined is safe for human use.

The Drug Enforcement Administration ensures that the compounding pharmacies are properly handled (DeNoon, 2012) PharmaCare has violated the FDA regulations by hired CompCare to operate as, a compounding pharmacy to sell the new formulation to consumers on a prescription basis. PharmaCare used CompCare to avoid the FDA regulations to assure the product-safety staff reviews their market strategy and advertising for assuring safety of the product. When a product reaches the consumers through marketing tactics, the company such as PharmaCare and CompCare should make it available to consumers to review the pros and cons of the performance. CompCare started advertising AD23 directly to consumers without written knowledge of the effects to other consumers using that product that resulted in deaths. CompCare was marketing to healthcare providers such as, hospitals, clinics, and physicians’ offices knowingly they can sell drugs in bulk for the general use.

CompCare did a low-cost renovation by setting up in parent’s headquarters to conserve money and time. Companies are not prohibited to avoid safety measures to save them money because safety standards are a requirement other than a profit. When products such as AD23 have showed, serious injuries is in the highest need for safety standards. Consumers were reporting that using AD23 suffered from heart attacks at alarming rate and the company ignored these complaints by filling even larger orders. The executives and managers were instead receiving large amounts of bonuses,

including John one of the pharmacists that wife died from a heart attack using AD23.

The Federal Trade Commission regulates deceptive advertising and fraudulent commercial practices, but it is known to not protect consumers in a higher level (Halbert & Ingulli, 2012). Consumers can be held for legalities as a result of false advertising, because a large amount of consumers were deceived and misleading them.. According to (Halvert & Ingulli, 2012) the FDA requires that companies show that their products that they are considering to market are safe. The Consumer Product Safety Commission (CPSC) protects consumers from unreasonable risk of injury and/or death in which Pharma Care violated these regulations by continues to market a product that caused heart attacks and death.

U. S. law has certain rights and protection to owners of intellectual property. Any property that was created the fruits of mental labor is called intellectual property. John can be compensated for AD23 because he was actual inventor and not just contributing to the invention of AD23. John should be awarded a fair share of benefits from AD23 that PharmaCare has derived. John should be acknowledged for the patent rights for AD23 as well as the glory and fame. Based on the federal patent, trademark and copyright laws and state trade secret laws will determine the rights and protection under the umbrella of intellectual property. These laws vary from state to state. Copyright protects the rights of creators and traditional copyrights of literacy and artistic from range of books, music, paintings, sculpture, and films, to

computer programs, databases, advertisement, maps, and technical drawings (Halvert & Ingulli, 2012).

Patents protect inventions of tangible things that can't be naturally occurring or non-obvious. The federal government patent to be legally be protected by the owner for 20 years, from the date of filing of an application for patent, and can be protected for 18 months until it has to release information of the ingredients and other factors relating to the patent. John could compensate by formulating AD23 with different ingredients by maximizing the effects and has the right to decide who or whether the AD23 can be used by PharmaCare. John created a natural formulation of AD23 that slowed down the progression of Alzheimer's disease (AIPLA, 2014). John can sue PhamaCare for infringement for the AD23 that violated the rights of the intellectual property.

John can receive compensation for his work in creating the new AD23 that CompCare is exploiting and he should be given a percentage of the shares from PharmaCare stocks if and when his shows that he is the originally inventor of the AD23. John will gain moral rights to protect him from unfair attacks, distortion of his work that will damage his reputation through legal ramifications of injuries that CompCare will face from injuries. John must register in order for him to gain all the benefits from AD23 for legal protection serving the function and purpose of new AD23. John was also getting bonuses for the work that he put forth with the other executives and directors to it should be determined what other financial gains should he

inherit from the AD23. According to (Preimesberger, 2014) CEO, Seth Ravin was charged with theft of Oracle's intellectual property.

Rimini Street infringed copyrights on Oracle's PeopleSoft enterprise resource planning (ERP) software by installing unlicensed copies of PeopleSoft systems so it could create software updates for customers violating Oracle copyrights. Rimini Street downloaded over 25 copies of Oracle's database software and produced more than 200 copies that were all unlicensed. There were several causes of action brought by PharmaCare such as negligence, misrepresentation, breach of express warranty, breach of implied warranty and strict products liability. Drug manufacturers such as PharmaCare have the responsibility of doing thorough testing on their products and provide informative information to physicians and pharmacists that can give accurate prescribed medications to their patients. PharmaCare neglected to properly test AD23 by taking a cheaper way by creating a parenting company, CompCare to conserve money and time and doing a quick, low-cost renovation.

PharmaCare had a duty to inform the public of the proper warnings of dangerous side effects, failure to disclose the poor results of AD23 and CompCare began advertising AD23 directly to consumers and marketing the directly to hospitals, clinics, and physician offices, knowingly that compounding pharmacies are not permitted to sell drugs in bulk for general use. PharmaCare misrepresented to doctors that AD23 was affecting people with heart attacks at alarming rate. PharmaCare continue to roll the dice by continue to market the drug that was not approved by the FDA. PharmaCare

breeched the warranty that could be litigated due to John wife dying after using AD23 by suffering from a heart attack. John can file false claims due to PharmaCare because his wife did not recover from the heart attack and died, PharmaCare failed to warn cause of action to side effects that resulted in death.

Rimini Streets was founded by the same person who had a similar copyright infringement in a case involving Oracle and PeopleSoft years before that in which Rimini Street CEO Ravin co-founded TomorrowNow, a SAP division that provider lower cost to Oracle consumers. SAP bought TomorrowNow in 2005 and had pleaded guilty to liabilities by TomorrowNow employees that battles out in court for over five years (Preimesberger, 2014). The court granted Oracle \$426 million judgment in August 2012. The court gave both parties 60 days to bring forth evidence of who had original copyrights. Rimini Street stated that Oracle knowingly had knowledge that they were using their customers and duplicating copies. Oracle shipped backups with complied consents leading that there was no cause for copyright infringement and showed no supported evidence by the judge (Preimesberger, 2014).

According to (Commission, 2014) the Federal Trade Commission protects consumers by preventing fraud, deceptions and unfair business marketing. PharmaCare established a wholly-owned subsidiary, CompCare which benefited from the reputation of PharmaCare by reputation, databases, networks, sales, and marketing over 6 month time launching the product AD23. It also had high demand with patients from Medicare, Medicaid, and Veterans Affairs which they knew through data records the AD23 caused

heart attacks and the death of John's wife. John came to PharmaCare informing them through a memo describing the potential problems with AD23. PharmaCare continued to roll the dice by disregarding the memo and continue marketing AD23.

PharmaCare violated the FDA regulations by not submitting information to be cleared for marketing by FDA, but consumers rights were violated by not given proper knowledge of AD23 by not being approved for marketing. PharmaCare was required to give sufficiently safe products whether were regulated or not. PharmaCare used deceptive advertising through CompCare under the impression that AD23 was safe and effective, concealing facts effecting physical injury. PharmaCare is a pharmaceutical company that has been marketing the drug, AD23 that was not approved by FDA and John sent a memo outlining the multitude of problems that was reviewed by senior partners, and they continue to launch AD23 knowingly the injuries it caused to consumers.

John found that PharmaCare was defrauding the government, did the right thing by whistleblowing and should be rewarded for it. The Federal and state laws protect John for whistleblowing by coming forward and can collect a generous portion of money due to the government. The law also protects John from any retaliation from PharmaCare by making adverse actions against him, such as firing, disciplinary, making threats, intimidation, reducing his pay or hours, and blacklisting (Halvert & Ingulli, 2012).

Whistleblower Protection under OSH Act protects employees who complain to their employer, OSHA, or other government agencies in relations to unsafe

work practices that may cause poor working conditions that may cause harmful injury to employees or another human being (Labor, 2014).

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