

Legal and ethical considerations in marketing assignment



Every marketing manager will be confronted with how they must dress ethics and law. Each marketing executive knows that rarely are there cut and dry answers to ethical issues that will arise during the normal course of business. (Lamb, McDaniel, & Hair, 2010). One ethical issue that will occur in marketing is how to be socially consensus. When a product is being marketed and advertised to a particular group, there must be ethical consideration of how this will affect the people you are targeting. Will this be considered stereotyping? Is this offensive to a particular group? Is it culturally sensitive?

A marketer and/or advertiser must answer these and other ethical issues: What are the potential magnitudes of the consequences? What is the probability of a harmful outcome? What is the extent of the ethical problems within the organization? All are legitimate and expected questions that will arise from just the social responsibility in marketing and advertising.

Intellectual property Intellectual property is necessary to give one the right to protect and own his work with the arrival of the digital age it has become much harder to remain in control of a person's intellectual property.

This is because the intellectual property rights no longer protect exclusively the interest of reserving a trade secret but is now interested in preserving the monetary gain of a person. Regulation of product safety major involves the consumers act which aims at providing quality and healthy products to customers. (Burgeons & Schroeder, 2002) Regulation of product safety The ethical practice of any business to ensure that they give quality products while practicing social responsibility to the consumer.

Product safety engineers are expected to determine the safety of products, obtain agency certifications for the products, and examine and test the products according to various standards. However, this is where ethics of the individual can be tested. As we learned in the Compare scenario, the safety engineers became aware of issues surrounding the product yet management ignored the risks for the high rewards and profits that Pharmacies received. This continues to be an ethical issue with the regulation of product safety.

It has been noted that if we stress higher standards for product safety, for example, not allowing the product to be manufactured in countries where we cannot regulate the conditions of the facility. We continue to have sweatshops that reduce many of the products we use on daily basis. Argue for or against Direct-to-consumer (ETC) marketing by drug companies.

Whenever we are watching our favorite prime time specials or shows or even sporting event, it comes that awkward moment when a direct to consumer ad comes on for those suffering with erectile dysfunction.

There is that moment that someone reaches for the remote before they read the line of what to do after 4 hours. Direct to consumer (ETC) ads are a nuisance and can take a great moment in your household from excited to anxious when the many side effects are mentioned by the announcer who makes them sound so very insignificant. As referenced on the Fad's weapon, these side effects lists are required for each of the ads. Provided by drug companies, these ads are aimed at a general audience, and not at health care professionals such as doctors, nurses, and pharmacists.

The ads are broadcast on TV and radio, and published in magazines and newspapers normally in sections and times that are most popular or viewed. They also appear online, on the side of your Facebook page, even on your mobile devices such as while you are listening to Pandora. The most annoying part of the ads is that the ETC advertising often features celebrity spokespeople, computer generated characters, or actors portraying happy and satisfied patients. The FDA requires prescription drug makers to provide risk information in any promotion that qualifies as a product-claim advertisement. (Keeping Watch Over Direct-to-consumer Ads, 2013).

Determine who regulates compounding pharmacies under the current regulatory scheme, what the Food and Drug Administration (FDA) could / should have done in this scenario, and whether the FDA should be granted more power over compounding pharmacies. The FDA and Compounding pharmacies Who regulates compounding pharmacies under the current regulatory scheme? The first element that we must address is what is compounding.

Compounding is a practice in which a licensed pharmacist, a licensed physician, or, in the case of an outsourcing facility, a person under the supervision of a licensed pharmacist, combines, mixes, or alters ingredients of a drug to create a medication tailored to the needs of an individual patient. Compounded drugs are not FDA-approved. This means that FDA does not verify the safety, or effectiveness of compounded drugs.

Consumers and health professionals rely on the drug approval process to ensure that drugs are safe and effective and made in accordance with Federal quality standards. (The Food and Drug Administration) What could /

should the FDA have done in this scenario? As we learned in assignment two's scenario, Pharmacies, in order to avoid FDA scrutiny, established a wholly-owned subsidiary, Compare, to operate as a compounding pharmacy to sell the new formulation of DADA to individuals on a prescription basis. Compare set up shop in a suburban office park near its parent's headquarters, and to conserve money and time did a quick, low-cost renovation and designated Allen Jones to run the operation's "clean room." Compounded drugs lack an FDA finding of manufacturing quality before such drugs are marketed. State boards of pharmacy will continue to have primary responsibility for the day-to-day oversight of state-licensed pharmacies that compound drugs in accordance with the conditions of section AAA of the Federal Food, Drug and Cosmetic Act (FDA), although FDA retains some authority over their operations. For example, the adulteration or misbranding of drugs compounded under section AAA, or false or misleading statements in the labeling or advertising of such drugs, may result in violations of Federal law.

Firms that register with FDA as "outsourcing facilities" under section BIBB will be regulated by FDA and inspected by FDA according to a risk-based schedule. (The Food and Drug Administration) This example provided by the FDA is how Pharmacies was able to escape this scrutiny. Although technically the organization should have been inspected by the FDA, they didn't denote the facility as outsourcing; they used an existing office park and did a renovation. Should the FDA be granted more power over compounding pharmacies? The FDA would be granted more power over compounding pharmacies.

According to the FDA website: "... Although FDA retains some authority over their operations . . . Outsourcing facilities that register under section BIBB are regulated by F-DAD and must comply with CAMP requirements and will be inspected by FDA according to a risk-based schedule. " As recent as last month, the FDA has been given more power as it concerns compounding pharmacies. On November 27, 2013, President Obama signed the Drug Quality and Security Act (SAA), legislation that contains important provisions relating to the oversight of compounding of human drugs.

Title I of this new law, the Compounding Quality Act, removes certain provisions from section AAA of the FDA that were found to be unconstitutional by the U. S. Supreme Court in 2002. Section AAA describes the conditions under which certain compounded human drug products are entitled to exemptions from three sections of the FDA requiring: Compliance with current good manufacturing practices (CAMP) (section 501 (a)(2)(B)); Labeling with adequate directions for use (section 502(f)(1) and FDA approval prior to marketing (section 505). In addition, the new law creates a new section BIBB in the FDA.

Under section BIBB, a compounded can become an " outsourcing facility. " An outsourcing facility will be able to qualify for exemptions from the FDA approval requirements and the requirement to label products with adequate directions for use, but not the exemption from CAMP requirements. Outsourcing facilities: Must comply with CAMP requirements, Will be inspected by FDA according to a risk-based schedule, and Must meet certain other conditions, such as reporting adverse events and providing FDA with certain information about the products they compound.

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According to the news release, if compounded register with the FDA as outsourcing activities, hospitals and other health care providers can provide their patients with drugs that were compounded in outsourcing facilities that are subject to CAMP requirements and federal oversight. If a compounded chooses not to register as an outsourcing facility and qualify for the exemptions under section BIBB, the compounded could qualify for the exemptions under section AAA of the FDA.

Otherwise, it would be subject to all of the requirements in the FDA applicable to conventional manufacturers. FDA anticipates that state boards of pharmacy will continue their oversight and exultation of the practice of pharmacy, including traditional pharmacy compounding. The Agency also intends to continue to cooperate with State authorities to address pharmacy compounding activities that may be violating of the FDA.

Decide whether Pharmacies use of Collegian intellectual property would be ethical in accordance with: Utilitarianism Demonology Virtue ethics Ethics of care Your own moral / ethical compass using the scenario from the previous assignment, Pharmacies use of Collieries intellectual property without proper payment or acknowledgement is not in accordance with my own personal ethics or moral compass. It is not appropriate to deplete the resources of an area and not aid this area in rebuilding. The executives were living very well off destroying the natural environment of this African nation unfortunately the natives were not as fortunate.

Pharmacies use of Colombia intellectual property falls in line with ethical theory ethics of care. Ethics of Care is widely applied to a number of moral

issues and ethical fields, including caring for animals and the environment, bioethics, and more recently public policy. Originally conceived as most appropriate to the private and intimate spheres of life, care ethics as branched out as a political theory and social movement aimed at broader understanding of and public support for, care-giving activities in their breadth and variety. Ethics of care is a theory which revolves around interdependence of every party involved.

It bears the assumption that people and communities are different and vulnerability differs with different people. It also bears the consideration that their decisions affect different people with a different measure. Their practice supports these ethics of care as they know their services have high impacts on the lives of patients even though it may not be primarily positive as the scenario depicts. Pharmacies actions do not coincide with demonology because this ethical theory implies that we have a duty and that duty is based on rules.

This ethical theory states that every human being possess those certain moral rights and duties and that ethical choices derive from universal principles based on those rights and duties. Pharmacies is not using the utilitarianism approach as well. This approach to ethics states that ethically correct behavior is not related to any absolute ethical or moral value but to an evaluation of the consequences of a given action to those who will be affected by it. Applying the virtue of ethics theory to the Pharmacies organization would not be appropriate as well.

This theory states that our virtues are a matter of good habits, developed training and repetition with our individual communities. Analyze the way Pharmacies uses U. S. Law to protect its own intellectual property while co-opting intellectual property in Colombia Pharmacies and the United States Intellectual Property Laws Usually success in any global economy will depend more on the intellectual property of assets. Just like the Other intellectual reporter based business Pharmacies has driven a huge economic growth in the county of position as well as in the United States of America.

The United States protection of intellectual property has been successful as a result of the advantages that come together with it. To start with, it is the world's most recognized system of intellectual property regime since it has protected thousands of goods and assets (Lacking, Bowie, & Klein, 2005). The procedures used are quite affordable and suitable for various businesses which need be acquired. In the United States, intellectual property laws cover variety of services. For example, trademarks, which protect the company's brand and identities which can be acquired at a federal state level.

There are also patents which are guaranteeing to protect a company's new inventions and the copyrights to protect creative expressions which are presented in recorded form. A significant factor that pharmacy has taken advantage Of is the fact that intellectual property laws in the US the fact that the transparent and predictable legal systems which are applicable in the solving of disputes. Any company performing its business activities in the United States has the liberty of using the exceptional legal system which can

help in the minimization of its intellectual property assets (Lacking, Bowie, & Klein, 2005).

The advancement in the legal systems has been able to promote the culture of respect after the transparency and predictability system. Pharmacies have the privilege of having more enforcement options than anywhere else in the world. Suggest at least three (3) ways the company could compensate the people and nation of Colombia for the use of its intellectual property and the damage to its environment. Pharmacies has benefited manically from the nation of Colombia. These indigenous people sacrificed their land and lives to benefit Pharmacies.

The ridiculous bonuses its top executives have received from their profits do not seem to match the fact that most of the workers who are living in huts with no electricity or running water. How can Pharmacies state that its actions are ethical when they are destroying the environment where these people will continue to live after they have benefited from its resources?

There executives are living in estates where they have access to golf courses and swimming pools when it's rabble that many of the indigenous workers from Colombia have never seen a swimming pool.

Most global corporations that are based in the United States yet have productions abroad try to pay their workers an hourly rate that is based on the current living wage for the area. It is a guesstimate but more than likely the current living wage for a worker in Colombia is higher than a \$1. 00 a day. Surely, the executives could pay a \$1. 00 an hour to each worker that is

traveling by foot into jungles with over 50 pounds of herbs more when at their highest point; the stock was valued at over \$300 a share.

The company could also commit monies to be left in trust to provide continued support to plant trees and rebuild in the country. Pharmacies could also dedicate funds going forward to do charitable outreach programs with their employees traveling to this country and volunteer. Compare Pharmacies actions with those of at least one (1) real-world company whose creativity in skirting legal technicalities led to ethical lapses and financial loss. Although the scenario given in assignment two was fictional, many pharmaceutical companies have faced similar situations like Pharmacies.

Similar to the Compare scenario where it was found that the DADA drug was leading to heart attacks, Pfizer faced a similar situation with its drug Lipton. Pfizer was in the forefront of the mass marketing of drugs, and of getting its sales force in front of doctors to persuade them to use Pfizer products instead of a competitor's. And if its research labs weren't exactly prolific – Pfizer hasn't developed a blockbuster on its own since Vicarage – it still managed to produce a steady stream of blockbusters by buying up other companies and acquiring their potential blockbusters.

Pfizer was banking a great deal on a cholesterol rug it had developed called directorate, the first drug aimed at raising the level of good cholesterol, rather than simply lowering cholesterol levels, the way Lipton does. It would have been huge. But in early December 2006, the company announced that it had ended its efforts to develop the drug after a clinical trial showed a higher-than-expected number the loss of directorate was a crushing blow.

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Pfizer in 2007 lay off nearly ten percent of its staff because of declining sales.

In 2007, they faced more than just a reduction in profits; they had diminished reputation which they really have never covered. Determine the success Pharmacies and Well shareholders would have in suits against the companies. In the short run, the shareholders of the Pharmacies and Well had experienced an increase in dividends after the company's recorded profits. The stock price was recorded to be high and usually the higher the price of a company's stock in the market means that the returns are bound to increase. However in the long run they are expecting a slowed decrease in the returns and price of dividends.

Whenever shareholders invest in a company they are expecting a high price on the moment of their shares than they bought the shares at the initial time. Shareholders success will also determine by the long run reputation of the companies which is portrayed through the quality of the products and services of the company. Further, the fact that the business is not concentrating on the improvement of the condition of its lab and the quality of its products it shows that they are not using many of its funds on such expenses.

The significant aspect is that the business is ignoring its reputation so as to maintain high profits and please the shareholders. They would not be pleased if they knew the entire truth. In this scenario even though the business is enjoying large profits it will not continue for a long time. There has been an increased production which has led to increased cases of heart attacks. In a

case of reduced prices of the shareholders' dividends, the shareholders would sue the company for losses.

Whenever the reduction in the price of shares and the stock has occurred for no apparent reason or a cause which is beyond the control of the company, the shareholders would have nothing to sue about. When Compare was sold to Well they were not aware of the product which had caused the massive deaths. Thus, for Well it would have little to answer to shareholders. The reduced stock price to both companies will reduce the shareholders returns. Their shareholders will most probably ask for a refund for the number of shares that they gave for the shares. This is due to the expected loss on its stock prices which might not be recovered.

Determine whether or not Pharmacies lives up to its brand. Support the response. Pharmacies clearly does not live up to its brand. At first it had a good reputation, consumer database and sales/ marketing expertise. This made its products sales high and the company was able to enjoy more profits. It is later discovered that these products were dangerous causing many deaths as a result Of heart attacks. The company however saw the reputation it initially had was an opportunity to get more profits and advertised its services to those who would buy just because of their brand name.

The advertising was made to promote and create awareness of the particular drugs to consumers. They were not aware that these products were not quality for consumption but created in a way to ensure that consumers easily accessed the products from hospitals and clinics. Living up to its brand would

require them to do an extensive research and inspection on its products to ensure that it is safe for the consumption of the human beings as well as having corporate social responsibility. Even though compounding pharmacies are not supposed to sell drugs large quantities for the general use, they were allowed to do so.

Compare encouraged doctors to fax the list of the bogus patients. After the discovery that one of its products seemed to cause heart attacks, they ignored the complaints and still continued to file large orders instead of inspecting on the cause of the problem and to find ways to curb all that. When all else failed they sold the bad link and never looked back. Their brand name and reputation cannot be recovered by going to their local store and getting another one. Recommend at least three (3) changes Pharmacies can make to be more ethical going forward.

In conclusion, legal and ethical considerations when it comes to marketing, advertising and product safety are essential elements to a company. As organization must balance the need to market a product with ethical and legal responsibility if they want to be successful overall. There are so many federal laws that affect marketing and product safety. It can fall into many categories Of regulatory activity and we must be knowledgeable if we are to protect the consumer as well as the organization.

Pharmacies has not showed that there is an ethics and legal responsibility relationship. They have shown that they are not ethical with their environmental responsibility because they are not practicing the initiatives that they have stated to implement. They are not concerned with product

integrity because they have known about the defective nature of their drug yet have not taken the appropriate steps to remove it from the marketplace thus saving the lives of the patients as well as their employees who produce it.

Pharmacies is not concerned with its legal responsibility since it was able to skirt it's the regulations of the FDA by using compounding pharmacies. With the new legislation that was just passed last month, real world Pharmacies as well as others will not be able to make this scenario come to pass or they will face stiff penalties.