

Legal and Ethical Considerations in Marketing, Product Safety, and Intellectual Property Rights

Student's Name

Professor's Name

Course

Date

Legal and Ethical Considerations in Marketing, Product Safety, and Intellectual Property Rights

Question 1

There is the need for companies to understand the essence of business ethics for the betterment of their business activities. Adequate knowledge of corporate ethics helps the organization in question to apply professionalism and ethical principles, so as to minimize ethical problems arising in the firm environment. The success or collapse of businesses is to a great extent dependent on its adherence to business ethics.

Ethical problems in marketing emerge when there are conflicts or when parties involved in marketing are not in harmony (Parboteeah & Cullen, 2013). Different parties involved in marketing have varied expectations on how business relationships should be; hence, a deviation from the expected conduct of marketing leads to challenges. One of the issues in marketing is the popularity of social media networking due to the widespread use of the internet. During market research, companies can easily connect to their consumers, thus, collection of individual information becomes active. The challenge brought about by the online (or social media) marketing is the omission of critical information regarding the products being marketed. Companies are expected to conduct market research with utmost consideration of probable ethical issues to avoid affecting the lives of consumers, especially, when products disseminated in the market have side effects (Parboteeah & Cullen, 2013). Another problem in marketing is when a particular group is targeted on a negative perspective, thereby making it offensive to the specific group, hence, amounting to stereotyping. In that light, a marketer should address the issue of targeting a particular cluster by mitigating the chances of harmful outcomes.

Ethical problems in advertising are related to marketing in that companies should ensure they tell the consumers the truth regarding the products sold. In the current world, an advertiser

who does not inform their target customers the truth offends both the morality and law. Even though, the law permits puffery, advertisers should differentiate it from fraud against their clients (Parboteeah & Cullen, 2013). Similarly, in advertising, there is the provision for negative advertising strategies that allow companies to highlight the setbacks of their rival products instead of the advantages of their own. However, advertisement leading to unfair competition is unethical; hence, companies should not disdain the products of other firms while advertising.

Issues related to intellectual property rights are based on the passing of another person's work or idea as your own. The act of copying something and further making profits through the sale of the product is similar to shoplifting (Parboteeah & Cullen, 2013). However, it is essential to note that processes, thoughts, or events are not covered by copyright, hence, there is a need to fix such ideas in a tangible medium.

Ethical issues regarding the regulation of product safety could be best fathomed through evaluation of drug companies. There is a moral requirement that such pharmaceutical firms should produce medicines that are safe for human consumption or usage (Parboteeah & Cullen, 2013). Product safety is a mandatory duty for companies disseminating products consumed by humans, even though, there is a low success on regulating product safety. However, as explained by Parboteeah and Cullen, today's world has seen success in protecting consumer rights through regulation of product safety (2013).

In the case presented, PharmaCARE violated the ethical issues of marketing and advertisement, intellectual property, and product safety. There is the deception to the customers (or patients, in this case) due to the dissemination of drugs that on one side mitigate diabetes, but on the other hand, lead to increased cases of heart attack to the consumers. Regarding the intellectual property rights, the company disregarded the efforts of John and other workers who

worked to ensure that drug was reformulated to suit the safety of consumers. Lastly, PharmaCARE violated the issue of product safety by continued sale of the diabetes drug (AD23) regardless of the drug causing significant cases of heart attack on patients.

Question 2

Direct-to-Consumers marketing and advertising entail any efforts by pharmaceutical firms to promote the products it's meant to prescribe, directly to patients instead of healthcare professionals (Ventola, 2011). In my argument, DTC marketing by drug companies is not advisable, since the Food and Drug Administration (FDA) has not yet issued formal guidelines, especially for the online advertisement. DTC marketing and publicity could lead to increased spending by federal government, consumers, and insurers without ample justification of the spending. It is evident that DTC marketing by the pharmaceutical firms encourages the higher use of particular drugs, than is warranted by their health benefits (Ventola, 2011). Similarly, DTC advertising for new medicines, such as the AD23 for diabetes management in the case provided, makes people use the medication that has not been tested for potential risks; hence, there is an infringement of the product safety provision. Therefore, it is important to establish a moratorium on marketing or advertising brand-name prescription medication to consumers, especially, in the first two years after the approval of the drugs by the FDA.

Similarly, healthcare professionals are the ones equipped with the necessary experience and training in assisting patients take in the desired drugs as per the health condition at hand. Therefore, the physicians should be left with the responsibility of prescribing drugs to the patients. DTC marketing intrudes the relationship between the patients and medical professionals; hence, it creates an interruption in the therapeutic process.

Question 3

Under the current law system, compounding pharmacies (i.e. those that custom-mix drugs in bulk) are under the federal oversight. This was as a result of the outbreak of meningitis from contaminated steroids injections that left 64 people dead, with over 750 others sickened (Jaslow, 2013). State boards of pharmacies regulate compounding by pharmacies, even though, federal laws also play a role. However, the FDA regulates the manufacture of medicines in the United States. Compounding pharmacies producing large volumes of drugs are required to register with the FDA and, as well, submit to the federal requirements, just like any other drug manufacturers (Jaslow, 2013). There is the need to differentiate between the regulations of the traditional pharmacies with the compounding pharmacies. State boards of pharmacies still regulate the former.

In the case presented, the FDA could have intervened ensuring product safety, hence, mitigating the increased cases of heart attack emanating from the usage of the AD23 diabetes drugs. The responsibility of the FDA is to track whatever the registered pharmacies make, review the reports regarding any troubles that occur with the compounded drugs, and also conduct the necessary security assessments (Jaslow, 2013). Therefore, PharmaCARE could face legal exposure regarding its practice of disseminating harmful compounded drugs to the consumers. Despite the potential of the drug to mitigate diabetes, the firm did not disclose of the side effects, as it failed to notify the patients that usage of the medication exposed them to heart attack.

Question 4

PharmaCARE uses the US law in protecting its intellectual possessions through the use of legal counsel to develop a suitable defense strategy. There is the policy of ensuring that all company sub-contracts and licensing have well-explained language related to intellectual

property. Additionally, the pharmaceutical has a system that is well established, and which is aimed at monitoring and analyzing that all partners operate with utmost diligence. PharmaCARE became aware of the implications associated with selling of the compounded drugs, thus, sought ways to be protected by the US law. The pharmaceutical company established a wholly owned subsidiary firm called CompCARE that was responsible for the formulation and selling of the new drug. This was after FDA discovered that PharmaCARE was reformulating the AD23 diabetes drug to maximize its effects. CompCARE was also in a position to patent the new drug, thus, operate in agreement with the FDA and US Patent and Trademark legislations, and hence, sell the drug freely. Lastly, the firm has registered and owned secured trademarks and patents related to the new drug.

John, the pharmacist, involved in reformulation of the new drug was the inventor of the AD23 drug; hence, he has claimed over its patency. In that light, the company should compensate John through various ways. First, the company should compensate him handsomely due to the death of his wife. This is because the drug is associated with the intellectual property of the firm; hence, the responsibilities of the side effects should be carried by the company. Secondly, the company should have compensated John for using his intellectual property rights by offering him a position in the business's management posts. The firm could make John a co-founder of the newly formulated diabetes drug after the renewed AD23 drug is legalized. Thirdly, there should be programs to recognize the creativity of the pharmacist.

Question 5

Theft of intellectual property was faced by Microsoft Corporation when the firm accused China's Sichuan Changhong Electric Company of unlawful use of Microsoft's activated software. Microsoft accused Changhong of using product keys (letters and numbers) used to activate the

former's software. According to Tu (2013), Microsoft Corporation confirmed that the China-based company stole the product keys from various organizations, such as engineering firms, educational establishments, and, also, the Asian manufacturer, that are registered.

However, the brand reputation was only affected to a limited extent, since the individuals involved in the named cybercrime were successful not for long because of the confined algorithms put in place by Microsoft software (Tu, 2013). The attempts further proved the relatively stable security against computer fraud brought in place by Microsoft programs, demonstrating the efforts as low-risk.

The pharmaceutical firm has been linked to intellectual theft within the past two years, and it is related to the top selling AD23 diabetes drug. As John brings out the claim of company's use of the AD23 diabetes drug, the issue of infringement of the intellectual property right emerges. PharmaCARE has claimed ownership of the drug which is believed to have been developed or rather invented by John. The firm goes on to register and secure patents and trademarks regarding the drug that is with no doubt reformulated by one pharmacist, John; hence, he should be the owner of the drug. The new medication is stocked and sold from CompCARE, the subsidiary company of PharmaCARE.

As opposed to the intellectual property theft in Microsoft software that never affected the reputation of the brand, PharmaCARE company has faced a significant impact on its brand. The AD23 drug sold by the firm was reported to be linked to detrimental effects to human health. Individuals who consumed the diabetes drug had high incidences of suffering from heart attack. Despite full information about the side effects of the drug, the company ignored the claim. PharmaCARE continued production of the harmful drug, as it was noted to encourage its top level management team, such as managers and executives, due to their efforts to increase the company

earnings. As shown by John, the pharmaceutical firm has plans to take chances with the imminent effects associated with the dreadful drug by continuing to market the same.

In this light, the reputation of the company was declining in the face of consumers, as well as the general public, but the company was doing nothing to correct the situation. The implication with the negative reputation of the company's brand is that bodies, such as the FDA, are likely to set in their assessment of the potential threats associated with the produced drugs. Therefore, claims related to dissemination of harmful drugs will slow down the growth of the company, since they will impair the potential sales of the firm.

Furthermore, PharmaCARE does not live up to its brand name upon the launch of AD23 diabetes drug, as the formulation fails to conform to the ethical test required for FDA approval. The company is seen to skirt the FDA process of drug approval through establishment of a subsidiary company that would sell the harmful drugs. PharmaCARE does not care for the health of its consumers, since the drug is clearly killing those patients who take it. Additionally, the company is said to use fake prescriptions, so as to market the diabetes drug directly to consumers, hence, increase revenue, which is not a commendable feature of a well-run firm.

Question 6

There was an alarming rate at which patients reported complications of heart attack after consuming the AD23 diabetes drug, which, as well, led to many deaths of the firm's customers, one of them being John's wife. Despite the increased reports of deaths and health problems of many other consumers owing to the side effects of the drug, the company did nothing to mitigate the health risk associated with the drug. PharmaCARE was better suited to assess and foresee the results and side effects from using AD23, as it is a large organization capable of studying the mechanism in which the drug works over extended periods of time, thus, providing disclaimers

to its users. Therefore, the fundamental issue adjacent to the decease of John's wife could be viewed as driven by negligence of the pharmaceutical firm to conduct the necessary preliminary processes before dissemination of the drug to consumers. Similarly, there could be litigation against the enterprise regarding the unethical behavior of the company, as it denied the users the much-needed information about the drug produced. Besides, PharmaCARE was dishonest, as it could have withheld the release of the drug without a detailed study of the side effects that could harm the customers. Therefore, potential legal issues against the firm include illegal and unethical conduct, and also neglect of security for the organization's employees and clients.

Question 7

The whistleblower's security laws identify the handling of a given government and company with an individual who reports an illegal or dishonest endeavor towards an entity of socioeconomic ties that could be assessed and proven as the flaw of accused party (Yeoh, 2015). If John applied for protection from his supervision, labor union, the FDA, the Human Resource director, or even from any other legal system, then he could be termed as a whistleblower. Such entities are responsible for his non-retaliation, as well as confidentiality. Being a pharmacist in the accused company, John knew the side effects of the formulated drug, but was unaware of the many deaths emanating from the AD23 diabetes drug. His knowledge of the side effects led him to seek assistance from the law firm of Chetum, Dewey, and Howe. His move to seek legal counsel was directed by his long-term practice of working for the named pharmaceutical company, the knowledge of the firm's plan to take chances with the sale of the illegal drug, and, also, the information contained in the company's internal memo describing the potential effects linked with the diabetes drug. In this case, John could be viewed as being free from linkages with

the determination of flaws in the company (Yeoh, 2015); hence, he is capable of asking for the needed protection as a whistleblower.

References

- Jaslow, R. (2013). President signs tougher drug compounding bill into law. *CBS News*. Retrieved from: <http://www.cbsnews.com/news/president-signs-drug-compounding-bill/>
- Parboteeah, K. P., & Cullen, J. B. (2013). *Business ethics*. Abingdon, UK: Routledge.
- Tu, J. I. (2013). Microsoft security unit files first theft case. *The Seattle Times*. Retrieved from: http://o.seattletimes.nwsourc.com/html/business/technology/2022479611_microsoftcyber_crimexml.html
- Ventola, C. L. (2011). Direct-to-Consumer pharmaceutical advertising. *Pharmacy and Therapeutics*, 36 (10), 669-674, 681-684.
- Yeoh, P. (2015). Whistleblowing laws: Before and after Sarbanes–Oxley. *International Journal of Disclosure and Governance*, 12 (3), 254–273.