

Title of the Paper

Legal and Ethical Issues

in the Dynamic marketing environment



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Abstract

1. Title of Paper:

Legal & Ethical Issues in the dynamic marketing environment

2. Purpose/Objective:

The objective of the current study is to examine the legal and ethical practices in the marketing arena. The focus of this paper is to enumerate as to how marketing strategy is influenced by the legal and ethical actions. Moreover, the research objective also addresses on how organizations react on implementation of any laws, regulations associated with marketing aspects.

3. Design/Methodology/Approach:

In order to answer the research objectives a Content Analysis was carried out using website of the regulating agencies, syndicated reports, orders, concerned organizations, journal papers and newspaper articles. A random search on Google for explicit details was recorded. Based on these findings company websites were visited for additional facts.

4. Findings:

The present paper would reveal the facets of legal and ethical issues in marketing and evaluate the efficacy of the legal and ethical measures prevailing in India. The findings of this paper are based on partial data collection in regards to the ethical and legal actions for formulating and implementing a marketing strategy. A range of possible actions to examine the legal and ethical factors that

influence the marketing strategies are identified and briefly evaluated. The results ascertained are still to be tabulated and analyzed.

5. Practical Implications:

The present paper will help to understand the legal and ethical issues while formulating and implementing the marketing policies and guidelines in corporate organizations.

6. Originality/Value:

The present paper will pinpoint legal and ethical challenges faced in the marketing environment and how to anticipate and address them before they arise. Where and when to strike the balance between legal and ethical issues in framing marketing policy and guidelines would be the value created around this paper.

7. Key Words:

Marketing, Legal issues, Ethics and Regulations.

8. Type of Paper:

Conceptual Paper

Introduction

In a rapidly evolving marketing environment, the demarcation of legal and ethical issues have a thin line at the base that ultimately turns out to be ambiguous to a marketer since he is more interested in the functional side of the mundane activities of the business. The legal and ethical issues turn to be very important for any marketer due to abundant choices, while facing fierce competition in the existing business environment and therefore it becomes crucial for a marketer to adhere to the corporate values solidly based on a moral judgment. Ethical and legal matters for a marketer are always both simple and complex because it always has a bearing on the way one approach's towards a frame of reference.

A good marketing executive always attempts to strike out differences between legal and ethical issues and tries to his best to bring out an early solution in case of any confusions arising (Brown and Kandel, 1995). The diverse nature of organizations and differences in personal values makes it mandatory to maintain a code of conduct which would prevent wrongdoings (Reidenbach and Robin, 1989). The strategic decisions taken by a marketer has an effect on all the stakeholders which would warrant maintaining integrity through uncomplicated legal and ethical decisions. As a result of this, compliance programs are a must for developing relationship with stakeholders based on trust.

The marketing functions include persuasion and influencing the consumer behaviour which is underlined by moral values. Marketing campaigns is one of the areas which is most discussed when it comes to the legal and ethical issues in marketing. One of the functions of marketing is the process of communicating the products or services to the prospective customers. Every organization tries to market their products, service in an efficient and effective way. Advertising is an area which would require stricter laws and code of conduct when it comes to the style, content and delivery aspects. There is liberty with the large organizations to spend billions of rupees on marketing campaigns whereas small & medium organizations fail to market their products/services in an effective manner due to various issues like budgetary constraints. Although it is legal to spend on campaigns with huge advertising budgets but the question of the hour would be if it is an ethical practice to actually do it. There is a close relationship between ethics and the law and it is the existence of law which crafts the ethics or values enforceable. The fulfilment of the legal obligation by the marketing companies in no way means that the ethical justice has been accomplished. The practices adopted by the

organizations as a whole or a marketer as an individual might be legal but again it might be ethically questionable.

The present paper has tried to highlight ethical and legal issues in marketing. The focus of this paper is to enumerate as to how marketing strategy is influenced by the legal and ethical actions. The initial part constitutes ethical issues in marketing and subsequently the legal issues in marketing are discussed through focus on certain regulatory bodies. As a part of the overall discussion, the present paper has also attempted to understand the considerations of legal and ethical issues while formulating and implementing the marketing policies and guidelines in corporate organizations.

Research Objectives and Methodology

The objective of the current study is to examine the legal and ethical practices in the marketing arena. The focus of this paper is to enumerate as to how marketing strategy is influenced by the legal and ethical actions. Moreover, the research objective also addresses on some aspects of how organizations react on implementation of any laws, regulations associated with marketing aspects. In order to address the research objectives a content analysis was carried out using website of the regulating agencies, syndicated reports, orders, concerned organizations, journal papers and newspaper articles. A random search on Google for explicit details was recorded.

Ethical Issues in Marketing

When a legal approach does not provide a viable solution, the next question that arises is whether it would be an ethical choice to move forward. Ethical behaviour is mandatory if a free market is to function efficiently and effectively (Dickson, 1994). Ethics are regarded as moral guidelines which govern good behaviour. Being ethical in business is majorly regarded as the best business practices. An ethical decision on one hand is both legal and on other hand meets the shared ethical standards of the community from the broader perspective. Jan Mattson (2008) talks about the *True Marketing* and has explained in his paper as to how unethical practices of the company damage the company's brand name quoting the example of the Nike's case of employment of children in the company under bad work conditions.

Hence, a de-marketing exercise can have devastating effects from the long term perspective. That is the justification behind the fact that True Marketing is considered as much more than just sorting out the mistakes in marketing area. True Marketing is the moral platform on which the company is based and it should apply to everyone and in everything one does.

When a company markets a product it is expected that the truth be stated about the product and consequently false promises are soon discovered and many consumer groups have destroyed those firms who have misrepresented their product.

Today we witness cut throat competition between various brands existing in the Indian market. It becomes all more crucial for any company to follow the ethical practices because brands stand as symbols for the total quality of a company and to the viewpoint of many customers, become the company, or embody the relationship with the company as such(**Brodie, 2006**). **Thomas F. Gilbertson (1999)** believes that the goals of the marketing department are to target an audience, appeal to that audience, and get the audience to purchase that particular product or service. In doing this, a company must make sure that they are first abiding by all laws and regulations, but they should also strive to be sure that they are acting ethically and honestly. Social responsibility in marketing ethics refers to an organization's obligation to maximize its positive impact and minimize its negative impact on society. By contrast, ethics relates to the marketing decisions made primarily by individuals; 'social responsibility concerns the impact of an organization's decisions on society' (**Pride and Ferrell, 1991**)

Ethical issues in marketing have received substantial discussion in the past decade. The ethical principles has been utilized exclusively by marketing practitioners but when it comes to actual decision making we see very less evidence in regards to the adoption of ethical principles. One of the areas where it applies to a larger extent is Ambush marketing which is an effort by a company to relate its own brand to a sponsored activity without acquiring official rights. **Doust (1997)** proposes that "the degree to which a company agrees to "back off a bit' will to a large extent be determined by its own code of ethics, and by whether that company views ambush marketing practices as unethical or simply good business sense". There would always be gray areas existing in the business environment but it would be the companies call to take the right course of action which would be as per the interest of the consumers and maintain the integrity of the business.

Ethical Issues in [Marketing](#)

Ethical problems in marketing stem from conflicts and disagreements. Each party in a marketing transaction brings a set of expectations regarding how the business relationship will exist and how transactions should be conducted. Each facet of marketing has ethical danger points as discussed below.

Market Research

Some ethical problems in market research are the invasion of privacy and stereotyping. The latter occurs because any [analysis](#) of real populations needs to make approximations and place individuals into groups. However, if conducted irresponsibly, stereotyping can [lead](#) to a variety of ethically undesirable results.

Market Audience

Selective marketing is used to discourage [demand](#) from so-called undesirable market sectors or disenfranchise them altogether. Examples of unethical market exclusion are past industry attitudes to the gay, ethnic minority, and plus-size markets.

Another ethical issue relates to vulnerable audiences in emerging markets in [developing](#) countries, as the public there may not be sufficiently aware of skilled marketing ploys.

Ethics in Advertising and Promotion

In the 1940s and 1950s, tobacco used to be advertised as promoting health. Today an advertiser who fails to tell the truth offends against morality in addition to the law. However the law permits [puffery](#) (a legal term). The difference between mere puffery and [fraud](#) is a slippery slope.

Sexual innuendo is a mainstay of advertising content, and yet is also regarded as a form of sexual harassment. Violence is an issue especially for children's advertising and advertising likely to be seen by children.

The advertising of certain products may strongly offend some people while being of interest to others. Examples include: feminine hygiene products as well as haemorrhoid and constipation medication. The advertising of condoms has become acceptable in the interests of AIDS-prevention, but are nevertheless seen by some as promoting promiscuity.

Through negative advertising techniques, the advertiser highlights the disadvantages of [competitor](#) products rather than the advantages of their own. These methods are especially used in politics.

Delivery Channels

[Direct marketing](#) is the most controversial of advertising channels, particularly when approaches are unsolicited. TV commercials and direct mail are common examples. Electronic spam and [telemarketing](#) push the borders of ethics and legality more strongly.

Deceptive Advertising and Ethics

Deceptive marketing is not specific to one [target market](#), and can sometimes go unnoticed by the public. There are several ways in which deceptive marketing can be presented to consumers; one of these methods is accomplished through the use of humor. Humor provides an escape or relief from some kind of human constraint, and some advertisers intend to take advantage of this by deceptively advertising a [product](#) that can potentially alleviate that constraint through humor.

Anti-competitive Practices

Bait and switch is a form of fraud where customers are "baited" by advertising for a product or service at a low price; second, the customers discover that the advertised good is not available and are "switched" to a costlier product.

[Planned obsolescence](#) is a policy of designing a product with a limited useful life, so it will become unfashionable or no longer functional after a certain period of time and put the consumer under pressure to purchase again.

A pyramid scheme is a non-sustainable business model that involves promising participants payment or services, primarily for enrolling other people into the scheme, rather than supplying any real investment or sale of products or services to the public ([Figure 1](#)).

Pricing Ethics

[Bid rigging](#) is a form of fraud in which a commercial contract is promised to one party, although for the sake of appearance several other parties also present a bid.

Predatory pricing is the practice of selling a product or service at a very low price, intending to drive competitors out of the market, or create [barriers to entry](#) for potential new competitors.

Using Ethics as a Marketing Tactic

Major corporations fear the damage to their image associated with press revelations of unethical practices. Marketers have been quick to perceive the market's preference for ethical companies, often moving faster to take advantage of this shift in consumer taste. This results in the propagation of ethics itself as a selling point or a component of a corporate image.

Marketing ethics, regardless of the product offered or the market targeted, sets the guidelines for which good marketing is practiced. To market ethically and effectively one should be reminded that all marketing decisions and efforts are necessary to meet and suit the needs of customers, suppliers, and business partners. The mindset of many companies is that they are concerned for the population and the environment in which they do business. They feel that they have a social responsibility to people, places and things in their sphere of influence.

Legal Issues in Marketing

When we discuss legal issues in marketing, it becomes very important to understand that for many issues in the marketing arena there are no readily available solutions emerging from the legal domain although there is a general mandate to exist within the legal framework. It means that company has to follow laws, regulations and ethics simultaneously not one part only. No company can exist out of the legal framework of the country. They have to operate within the legal framework within the respective country. Sometimes they also have to follow international standards and norms to comply international treaties and conventions. In India, there are Government and private bodies to govern when it comes to marketing campaigns in India. There are recent instances in which these bodies have become to a certain extent active and followed strict measures. We would have a look at some instances as follows:

Ministry of Information and Broadcasting, Govt. of India

It was in May 2011 when the Ministry of Information and Broadcasting banned certain television commercial for men's deodorants while claiming that it wanted to curb ads targeted at tickling the libidinous male instincts and portraying women "as lustily hankering after men under the influence of such deodorants.

Food and Standard Authority of India

The Food Safety and Standards Authority of India (FSSAI) had directed the state food safety commissioner to scrutinize and initiate stringent actions against those advertisements which raised misleading claims on the quality of food and beverages. As per the directions

companies were not allowed to use edible oil named 'Super Refined', 'Extra Refined', 'Micro Refined', 'Double Refined', 'Ultra Refined' and 'Cholesterol Friendly'. FSSAI had been created for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import to ensure availability of safe and wholesome food for human consumption and these advertisements allegedly try to deceive the customers. The cases will be registered under Food Safety and Standard Act, 2006 and if proved guilty, it will invite penalty of Rs. 10 lacs (Section 53 of FSS Act). The labelling of packaged food are proposed to be made more stringent as the Food Safety and Standards Authority of India (FSSAI) and once these new labelling provisions are introduced, packed food manufacturers will not be able to get away with any claim they make on the products as they have to be substantiated by a research report. The research findings will either have to be published in a respected international journal or should be verifiable by the FSSAI

Telecom Regulatory Authority of India

The Telecom Regulatory Authority of India which was established in 1997 issued notification in May 2012 limiting television advertisement duration to 12 minutes in an hour taking note of viewer irritation and has come up with a proposal to regulate the duration, frequency and timings and audio level of advertisement. The industry estimates showed that this could impact advertising revenues of broadcaster by 15% to 40%. The Telecom Regulatory Authority of India has also pointed out that news and current affair channels cannot run more than two scrolls at the bottom of the screen, occupying a maximum of 10 per cent screen space. It also says that ads should not in any manner interfere with the programme use of lower part of screen to carry captions, static or moving alongside the programme.

Cable Television Networks (Regulation) Act, 1995

As per the regulation 6 of Cable TV Regulation Act, No person shall transmit or re-transmit through a cable service any advertisement unless such advertisement is in conformity with the prescribed advertisement code.

Advertising Standards Council of India

The Advertising Standards Council of India (ASCI), established in 1985, is committed to the cause of Self-Regulation in Advertising, ensuring the protection of the interests of consumers. ASCI's Code for Self-Regulation in Advertising is now part of ad code under Cable TV Act's Rules. Violation of ASCI's Code is now violation of Govt. rules. Advertising Industry

Watchdog ASCI upheld 9 complaints against Brooke Bond Red Label Natural Care, Tata sky, Nikon Camera etc. ASCI further said its Consumer Complaints Council found that complaints against five TV ads were unsubstantiated. In case of Tata Sky, ASCI said it had received a complaint against the company stating that "Cable is just a Dabba" in a print advertisement. Similarly, it had also upheld a complaint against Nikon camera's TV commercial for violation of The Performing Animals Registration Rules 2001.

However, other than these instances mentioned above, one of most crucial areas to discuss would be social marketing practices. The people share their stories by way of blogs on the Internet and its becoming quite popular information open to general public (Kluth, 2006). The sharing of stories is pleasurable because both authors and readers can be relieved to sharing their experiences in form of anger and happiness (Schindler & Holbrook, 2003). With the advent of community brandings, website advertising, blog writings, tweeter groups and instant messaging, it has given rise to multitude of issues in the Indian context. The legal and ethical practices in this zone have still to be defined clearly and code of conduct still needed to be developed explicitly clearly defining the level of control over privacy and sensitivity. The setting of legal and ethical practices over the geographical boundaries of the world would be the biggest challenge faced in this area.

Conclusions and Recommendations

The goal of this paper was to pinpoint legal and ethical challenges faced in the marketing environment and how to anticipate and address them before they arise. To strike the balance between legal and ethical issues in framing marketing policy and guidelines was the objective of this paper. The present paper attempted to reveal the facets of legal and ethical issues in marketing and evaluate the efficacy of the legal and ethical measures prevailing in India. The four ideals that marketers could adopt from the ethical perspective could be justice, equality, freedom and truth (Walton, 1998). The marketers usually try to satisfy consumers with products which are priced fairly and all consumers are meant to be treated with equality. Companies give the choice of freedom to customers in the marketplace and it becomes significant for any business to bring out the real truth which is ultimately based on the good legal and ethical practices. On one hand making a right ethical choice is not that easy in marketing but on other hand continued compliance of ethics is even far more difficult. The marketers have to be provided with meticulous tools to assess the legal and ethical

implications of a marketing strategy and the best way to do is outright development of proactive compliance programmes. Virtue ethics will see resurgence in coming times when moral values embedded in the corporate culture would play a significant role in the Indian market. As it has been evident in the above discussion, the ethical and legal issues play a

crucial role in deciding the marketing strategy in the competitive market. Companies try to make as many as effort to penetrate and sustain in the market at any cost, but it is imperative that they must not overlook the ethical and legal aspect of marketing. Ethics and Law cannot exist in isolation. Regulating agencies have been highly active in formulating specific laws for good governance relating to marketing affairs, but it is still lagging at the implementation stage wherein the compliance is at a very low level. We as individuals always know what the right way is and what is the wrong way, perhaps it is our acceptance to what is right and what is wrong which matters the most .No law could bring revolutionary change in the system since it is the moral conduct of the organizations which would successfully navigate the minefield of marketing principles and discover sustainable growth in the long run.

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