# ETHICAL AND LEGAL RESPONSIBILITIES OF MARKETING MANAGERS IN THE PHARMACEUTICAL INDUSTRY IN NIGERIA

***Dr. Joseph I. Uduji***

## Abstract

Recent criticism of the ethics of marketing reflects the increased societal concern about business practices and has focused on specific issues, industries and companies. However, there has been a long-standing suspicion of marketing in the pharmaceutical industry in Nigeria. Many people associate marketing activities, especial selling and advertising, with huckerism. Although it is a subset of business in its own right, with frameworks specific to the evaluation of marketing practices and empirical research of ethical decision making in marketing. Building of this literature, this article traces the origin of marketing ethics and its fit within marketing knowledge, identifies some of the major ethical issues in marketing, and provides some approaches for answering the question asked increasingly by marketing managers: what constitutes ethical marketing and legal practices in the pharmaceutical industry in Nigeria? The study covered the top ten pharmaceutical and health care companies in Nigeria. Both Secondary and primary sources were used to gather information for the study. Data from the study were analyzed using descriptive and inferential approaches. The findings, show the need to the following unethical issues in marketing management in the industry : bribery, unfair pricing, cheating customers, unfair credit practices, misleading advertising, product safety, dishonesty in making or keeping contracts, reciprocity in the selecting of suppliers, unfairness to employees and prejudice in hiring.

Ethics are the science of moral duty or the science of ideal human character. Ethics are moral principles or practice. They are professional standards of conduct. Thus, to act in an ethical fashion is to conform to some standard of moral behaviour. Marketing mangers have important ethical responsibilities with regard to their own actions as well as the actions of their sales people marketing managers are often faced with ethical dilemmas in hiring, setting quotas, evaluating, and many other aspects of their management tasks. They are also responsible for establishing, communicating, and enforcing the ethical standards which they expect their salespeople to follow. Sales people are exposed to greater ethical pressure than individuals in many other jobs. They work in relatively unsupervised settings; they are primarily responsible for generating the firm's revenues, which at times can be very stressful; which at times can be very stressful, they are continually faced with problems that require unique solutions, which is also stressful, and they are often evaluated on the basis of short-term objectives. Being evaluated on the basis of short-term objectives can cause salespeople to promote short-term solutions to customers' problems, which may not be in the customers' best interests.

One often reads in the trade press or hear of such matters as price discriminations, bribes, Kickbacks, insider trading, or conflicts of interest. These practices are considered evidence of management's deficient ethical code. While these practices may be unethical, they are more important-illegal. It is illegal to take or give bribes. It is illegal to participate in inside trading on the securities exchanges. It is even illegal to pad an exchange account-it's called embezzlement. Indeed, a large notion of the so-called ethical issues raised by critics of business in Nigerian press are not really ethical problem at all. They are law enforcement problems. Nigerians have standardized a partial common code of ethics based on our complex National Agency for Food, Drug and Control(NAFDAC), Standard Organization of Nigeria(SON) and other regulatory body statutes-the law. Indeed, there are people for whom the law is their code of ethics. If it is legal, it is ethical. To others, just because something is illegal does not make it unethical. Most speeders, for example, see nothing unethical about their driving habits. However, most people understand that the law cannot possibly cover and regulate all aspect of life-nor should it attempt to do so. They understand the need for a personal code of ethics beyond that covered by the law. This study focuses first on ethical questions and then on legal issues. Nevertheless, it is important to know that the line between ethics and law is shady. Therefore, this study jumped over it continually.

**Theoretical Review**

According to Schlege Milch (1998), Marketing Ethics refers to morally right and wrong action in marketing. It can be defined in two ways. First it is a discipline that involves the systematic study of the moral evaluation of marketing decisions, practices and institutions. Second, marketing ethics are the standards or 'norms' applied in the judgment of marketing activities as morally right and wrong. More simply, marketing ethics is about the moral problems example, the ethical considerations associated with the product safety, truth in advertising and fairness in pricing. It is an integral part of marketing decision making(Smith and Quelin,1993).much of the discussion of marketing ethics, by academics and practitioners, is centered on ethical dilemmas: issues that arise when there is an obligation to one group of people in conflict with an obligation to another, suggesting a difficult choice between alternative courses of action. For instance, a company may face demands from animal rights groups that its products be tested on animals, while consumer interest groups are demanding that the company take every possible step to ensure product safety. Fundamentally, these ethical issues are about the incorporation of values, such as honesty, trust, respect and fairness, into marketing decision making. The end result should be more consistently good marketing decisions, decisions that promote the welfare of and have respect for those they affect (Ferrel, Gresham and Fraedrich, 1989).

According to Smith (1995), Ethics is the branch of philosophy concerned with the study of the evaluation of human conduct, particularly the criteria that may be used in judgments of what is good and right for human beings, it is also called moral philosophy. Often the terms 'ethics' and morality are used interchangeably. Ethics is used here to refer to a discipline of study and to moral standards. Murphy and Laczniak (1981) noted that there are three categories of approaches within ethics.

1. The descriptive approach, a morally neutral attempted to describe the ethics dominant in a society.
2. Meta – ethics, the analysis of the meaning and nature of moral concepts and judgments.
3. Normatic Ethics, a prescriptive approach identifying moral principles and methods of moral reasoning that justify rules and judgments of what is right and wrong.

Tsalikis and Fritzsche (1989), wrote that ethics may be applied to the moral problems of specific human activities, such as a profession. Accordingly, in medical ethics general ethical principles are applied to the practice of medicine. Business ethics is also an example of applied ethics. It involves the systematic study of moral evaluation of business decision, practices and Institutions.

According to Chonko (1995), business ethics was primarily normative (most academics in the field were formally trained moral philosophers). During the mid-late 1990s, however, there has been an increase in descriptive ethics research, with a growing number of empirical researchers attracted to the intriguing and often important questions of business ethics, especially the topic of how managers make business decision that have ethical content. A comprehensive review of marketing ethics by Murphy and Laczniak (1981) identified the earliest marketing writings on the topic emerging in the 1960s, they note that in the 1970s, there was a shift from broad observations on marketing ethics to a focus on specific issues. This continued in the 1980s with an increasingly more rigorous treatment of the topic (Laczniak, 1993).

A major impetus for the development of the entire business ethics field was an overwhelming concern in society about business practices, particularly during the so-called 'green decade' of the 1980s. This concern focused on misconduct in financial institutions, such as insider trading, and unethical marketing practices, such as bribery and deceptive advertising and sales practices. Interest in marketing ethics grew concurrently with business ethics (Gundlach and Murphy, 1993). Spurred by developments in business ethics, from the mid-1980s onwards marketing writers began to make substantial use of moral philosophy to develop descriptive and normative theories of marketing ethics, while interest in researching specific issues continued. While some researchers have continued to address specific issues in marketing ethics, others have attempted to develop normative framework that might guide marketing decision making. Meanwhile, models that were developed to describe how managers make decisions with ethical contents are increasingly subject to empirical scrutiny. Many of these empirical studies in marketing of ethical decision making by practitioners are making substantial contributions to the field of business ethics (Smith and Cooper-Martin, 1997).

**Research Method**

The study covered the top ten pharmaceutical and health care companies in Nigeria. Since the study was concerned with specific predictions, narrations of facts and characteristics, a descriptive/diagnostic design was adopted. Both secondary and primary sources were used to gather information for the study. The target population of the study was the sales force size of 624 the top ten pharmaceutical and health care companies in Nigeria. The sample size of 244 was determined using the Yamani (1964) formula. Data from the study were analyzed using descriptive and inferential approaches.

**Result and Discussion**

The study surveyed the sales force of the top ten pharmaceutical and health care companies in Nigeria, asking them to describe the job situation that poses the most difficult ethical problems. The issues identified are shown in table 1 below.

**Table 1: Ethical Issues in Marketing Management in the Pharmaceutical Industry in Nigeria**

| S/NO | Issue (with Illustration) | Frequency (%) |
|---|---|---|
| 1. | Bribery (gifts from outside vendors, 'money under the table', payment' of questionable commissions) | 25% |
| 2. | Fairness (manipulation of others, unfairly placing corporate interests over family obligations, inducing customers to use services not needed, taking credit for the work of others) | 19% |
| 3 | Honesty (misrepresenting services and capabilities, lying to customers to obtain orders) | 15% |
| 4 | Price (differential pricing, meeting competitive prices, charging higher prices than firms with similar products while claiming superiority | 12% |
| 5 | Products (Products that do not benefit consumers, product and brand infringements, product safety, exaggerated performance chains) | 10% |
| 6 | Personnel (hiring, firing, employee evaluation) | 8% |
| 7 | Confidentiality (temptation to use or obtain classified, secret or competitive information) | 5% |
| 8 | Advertising (misleading customers, crossing the line between | 3% |

| | | |
|---|---|---|
| | puffery and misleading) | |
| 9 | Manipulation of data (distortion, falsifying figures or misusing statistics or information, internally and externally | 2% |
| 10 | Purchasing (reciprocity in the selection of suppliers) | 1% |

Source: Analysis of Field Data, 2012

Some issues in table 1, above are not unique to the marketing function, applying to all managers in the industry. They fall more appropriately within the broader domain of business ethics; marketing ethics is concerned primarily with the ethical problems of marketing managers in their marketing decision making. The most frequently reported ethical conflict in this study involved attempting to balance the corporate interest against the interest of customers. This is in keeping with marketing's responsibility for the firm's relationships with customers. These issues of concern may be organized by the major marketing decision areas (marketing research, market selection, the marketing mix) together with other practices that have prompted questions of marketing ethics. It should be note that here, as elsewhere in this entry, the ethics of certain marketing practices are treated in a some what simplistic fashion, appropriate to the purpose of this introduction to marketing ethics. References to practices as being criticized as unethical or generally unethical often do not refer to consider moral judgments informed by moral philosophy so much as expressions of public or professional opinion and common sense morality. There are good reasons for assuming that there might be a close correlation between the two and definitive ethical evaluations are hard to come by. None the less, there is an important distinction between what a group of people might say is unethical and a judgment based on moral philosophy.

Indeed, many marketing decisions involve ethical considerations in Nigeria. While it is not possible to specify all the various ethical issues marketers might sale, it is possible to identify some of the more frequently occurring questions or criticisms of marketing ethics in the pharmaceutical industry in Nigeria. This study shows more findings on the ethical issues in marketing. Table 2, below shows how the respondents responded to a question asking them to identify the one practice they would most likely to see eliminated in the pharmaceutical industry in Nigeria. Most of the practices identified involved marketing, ranked by frequency of citation as follows:

**Table 2: Ethical Issues in Marketing**

| S/NO | Marketing Practices that Respondents Would like to See Eliminated in the Pharmaceutical Industry in Nigeria | Frequency (%) |
|---|---|---|
| 1. | Gifts, gratuities, bribes, and 'call girls' | 23% |
| 2. | Price discrimination, unfair pricing | 21% |
| 3 | Dishonest advertising | 16% |
| 4 | Miscellaneous unfair competitive practices | 14% |
| 5 | Cheating customers, unfair credit practices | 11% |
| 6 | Price collusion by competitors | 9% |
| 7 | Dishonesty in making or keeping a contract | 4% |
| 8 | Unfairness to employees, prejudice in hiring | 2% |

Source: Analysis of Field Data, 2012

Many instances of alleged unethical conduct in marketing are illegal; Nigeria has laws prohibiting deceptive advertising price fixing or bribery, for example. Generally what is illegal is also unethical. Breaking the law may be regarded as unethical more importantly, the law acts to proscribe unethical conduct. So deceptive advertising may be unethical as well as illegal because it conflicts with the principles or code of morals of the marketing professions. It is known to be wrong and for instance, contradicts the National Institute of Marketing of Nigeria (NIMN) code of ethics. More basically, advertising that is untruthful is likely to conflict with the value of honesty. However, not all widely acknowledged unethical conduct in marketing is illegal to make legal decisions which may be unethical. There are issues not yet covered by the law or, because of their complexity or uncertainty abound correct conduct, the law cannot or will not prescribe in Nigeria. So, for example, price gouging is usually not illegal, but is often viewed as unethical; television advertising to young children is legal in Nigeria, yet it, too is often criticized as unethical. The grey unethical or where legality and ethics are uncertain, are often the more challenging, for practitioners and academics (Ann, Anita and Renes, 2005; Maduka, 2006; Monynihan and Cassel, 2005; Lucas, 2012).

As well as legal restrictions' on marketing, there are other topics closely related to marketing ethics. Social responsibility in marketing may be treated as part of marketing ethics, marketing ethics include consideration of the responsibilities of marketing decision markers to various stakeholders affected by marketing practices. Sometimes, social responsibility in marketing is confused with social marketing. Both are concerned with a relationship between society and marketing. However, social responsibility in marketing is concerned with the effects of marketing activities on society, whereas social marketing uses marketing to change behaviours for society and(usually) the target individuals' benefit (Corey, 1993, Fritzsche, 1985). For example, advertising offensive to a group in society, such as the elderly, is an issue of social responsibility in marketing. Examples of social marketing include programmes to promote smoking cessation or to discourage drinking and driving. As in all other areas of marketing activities, ethical issues arise in social marketing too. Particularly important is the extent to which social marketing programmes involve the informed concept of participants and avoid coercion. Also closely related to marketing ethics are the topics of green marketing and quality-of-life and marketing (Thompson, 1995, Chonko and Hunt, 1985).

**Implications for Sales Managers**

The findings of this study suggest that ethical questions are involved in many of the relationships that sales managers have with their sales people, their companies and their customers. A few of these implications are discussed here:

1. A substantial portion of sales managers' ethical problems relates to their dealings with the sales force. Assume, for instance that a sales person has built a territory into a highly profitable district. The sales rep may even have worked under a strength commission compensation plan and paid his or her own expenses. An executive who sees this sales person's relatively high earnings may decide there is too much territory and split it. Is this ethical? On the other hand, is it sound management not to split the district if the sales executive believes there is inadequate coverage of an overly large district? In some companies, management takes over the large, profitable accounts as house accounts (these customers are sold directly by some executive and the salesperson or drug rep in that district usually receives no commission on the account). Is this ethical? Particularly if the salesperson spent much time and effort in developing the account to a profitable level? Yet management may feel that the account is now so important that an executive should handle it. Ethical questions often arise in connection with promotions, termination, and references. If there is no likelihood that a sales representative will be promoted to a managerial position, should the rep be told? If the sales manager knows that the drug rep is working in expectation of such a promotion, to tell him means to loose him. In another instance, when managerial position opens up in another region, a sales manager may keep a star sales rep in her present territory despite the rep's qualifications and desire for promotion. And what is management's responsibility in giving references for a former sales person? To what extent is a manager ethically bound to tell the truth or give details about former employees?

2. Changing jobs and handling expenses accounts illustrate the ethical problem involved in sales executive's relations not companies in pharmaceutical industry in Nigeria. When changing

positions, a manager may want to take key customers to the new employee. Ethical and legal questions may arise if the executive tries to move those customers to the new firm. Many times a sales manager possess information that could be highly useful to a competitor. Naturally, it is difficult to control the information a manager gives to a new employer. But beyond certain limits, such behaviour is clearly unethical. Ethical questions may arise in the interpretation of expense account policies. Suppose that top management states it will pay only N3000 a mile to sales reps or sales manager, knowing who use their personal cars for company business. Yet a sales manager, knowing that actual expenses are N600 to N700 a mile at the minimum, may be tempted to pad mileage and to encourage the reps to do so too to make up the difference. The manager may justify this action on the basis that the money is really being spent from business purposes, and the spirit of the expenses account is not being violated. Ethical questions include the following: should sales personnel manipulate expense accounts to protect themselves from the stringy policies of top management? In so doing, they only recover money honestly spent in the solicitation of business for the firm or should they attempt to get policies changed? Or failing that, should they change employer's rather than commit what they believe are unethical acts?

3. Perhaps the most critical set of ethical questions facing sales managers is associated with customer relations. The major problem areas involve information, gifts and entertainment. It is important that sales people provide their customers with all of the information that enables them to make informed decisions. Sometimes salespeople make recommendations that are not in the best interest of their customers. For examples, they may neglect to give customers complete information, sometimes sales people knowingly sell a higher priced product when a lower priced product would have fulfilled the customer's need just as well. The **Journal of the American Medical Association** claims that pharmaceutical sales representatives are pushing higher priced calcium channel blockers for high blood pressure which cheaper diuretics and beta blockers are just as effective (Nierenberg, 2009). The practice of giving gifts to customers, especially at the holiday season ,is time honoured in Nigerian business, but today, perhaps more than ever before, the moral and ethical climate of giving gifts to customers is under careful scrutiny. The practice is being reviewed by both the givers and the receivers of gifts. Some of the pharmaceutical firms put amount limits on the business gifts they allow their employees to give or receive (Akambi, 2012). Other pharmaceutical firms have stopped the practice of giving Christmas gifts to customers. Instead, some of these firms offer to contribute (in amounts equal to their usual gifts) to their customers' favourite charities.

It is unfortunate that gift giving to customers in the pharmaceutical industry in Nigeria has become so complicated and so suspect. A reasonably priced, tastefully selected gift can express appreciation for a customer's business. Today, the problem lies largely in deciding what constitutes reasonably priced' and 'tastefully selected'. Fortunately, sales executives have some time-tested guidelines to help them avoid gift giving that is unethical or in bad taste. For example, a gift should never be given before a customer does business with the firm, do not give gifts to customers spouses, and the value of gifts should be kept low to avoid the appearance of undue influence on future purchase decision (Adedeji and Odutola, 2009). Business entertainment is definitely a part of sales work, and a large portion of the expense money is often devoted to it. Drug reps who spend this money unwisely accounts with little potential waste time, and their selling costs will be out of line. Indeed, a contributing factor in sales people's success may be their ability to know the right person to entertain and the nature of the entertainment called for over the years, some useful generalizations have been developed for customers entertainment: entertain to develop long-term business relationship not on order, keep the entertainment appropriate to the customer and the size of the account, be sensitive to customers' attitudes toward types of entertainment, and do not rely on entertainment as one of the foundations of the selling strategy, use it only to complement the strategy

(Ann, Anita and Rene, 2005). It is not realistic for a sales manager to just distinguish between ethical and unethical. Sales mangers should understand that ethical behaviour not only is morally right but, over the long run, realistically sound. Too many sales administrators are short-sighted. They do not see the possible repercussions from their activities and attitudes. Whether or not the buyer was deceived or pressured may seem unimportant so long as the sale is consummated. Management often does not recognize that such practices can lose customers or invite public regulation.

**Conclusion**

1. Using bribes-the payment of money or gifts to gain or retain a customer – is illegal. Using bribes to gain information about competitors is also illegal. Bribery in selling is an unpleasant fact of life that apparently has existed, in varying degrees, since time immemorial. Blatant bribes, payoffs, or kick-backs may be easy to spot – and they are patently wrong. Unfortunately, today much bribery is done in a more sophisticated manner and is less easy to identify. Sometimes the lines are blurred between a bribe, a gift to show appreciation, and a reasonable commission for services rendered. In sales, the bribe offer may be initiated by the sales person (Drug rep), or the request may come from the buyer. Usually the buyer's request is stated in a veiled fashion, and it takes a perspective sales rep to understand what is going on.

2. It is illegal to make false, deceptive, or misleading claims about a product or about the services that accompany that product. When a sales person makes exaggerated claims about a product and those claims lead to misuse of the product, the seller is sued for any property or personal injuries arising out of a customer's misuse of the product. Making false, deceptive, or disparaging statements about a competitor or its products is also illegal. And this practice is very prevalent in the pharmaceutical industry in Nigeria. The lies run from fibs about the competitor's financial stability to personally attack another product and sales person. Regardless of their nature, these actions all have the same purpose of discrediting the competitor. This is illegal and can lead to prosecution, fines, and imprisonments.

**Recommendations**

1. Marketers' professional conduct in the pharmaceutical industry in Nigeria, should be guided by the basic rule of professional ethics ie not knowingly to do harm; the adherence to all applicable laws and regulations, the accurate representation of their education, training and experience, and the active support, practice and promotion of the professional code of ethics.

2. Marketers in the pharmaceutical industry in Nigeria, should uphold and advance the integrity honour and dignity of the marketing profession by being honest in serving consumers, clients employees, suppliers, distributors and the public, not knowingly participating in conflict of interest without prior notice to all parties involved, and establishing equitable fee schedules including the payment or receipt of usual, customary and/or legal compensation for marketing exchanges.

3. Participant in the marketing exchange process in the pharmaceutical industry in Nigeria should be able to expect that: products and services offered are safe and fit for their intended uses; communications about offered products and services are not deceptive, all parties intended to discharge their obligations, financial and otherwise, in good faith and appropriate internal methods exist for equitable adjustment and for redress of grievances concerning purchases.

## References


Adedeji R. & Odutola, A. (2009) 'The Drug Market is now Witnessing a Depression' *Broad Street Journal*, 16/17 (April): 20-23.

Akambi M. (2012) 'Why Anti-Corruption War is not Yielding Quick Results' *Newswatch,* June 55(22): 28-31.

Ann, M. O., Anita, C. & Rene S. (2005) 'Marketing and the Law' *Journal of Academic of Marketing Science,* 33 (1):116-118.

Corey, E. R. (1993) 'Marketing Managers: Caught in the Middle' in Smith, N. C. & Quelch, J. A. *Ethics in Marketing,* Home-Wood, Il: Richard D. Irwin: 43.

Chonko, L. B. (1995) *Ethical Decision Making in Marketing,* Thousand Oaks: Sage.

Chonko, L. B & Hunt, S. D. (1985) 'Ethics and Marketing Management: An Imperical Investigation' *Journal of Business Research*, 13:339.

Ferrell O. C.; Gresham, L. G. & Fraedrich J. (1989) 'A Synthesis of Ethical Decision and Models for Marketing' *Journal of Macro-Marketing, 9:55-64.*

Fritzsche D. J. (1985) 'Ethical Issues in Marketing Management' in Laczniak, G. R. & Murphy P. E. (eds) *Marketing Ethics: Guidelines for Managers,* Lexington, MA: Lexington Books.

Gundlach, G. T & Murphy, P. E. (1993) 'Ethical and Legal Foundations of Relational Marketing Exchange' *Journal of Marketing* 57:35-46.

Laczniak G. R. (1993) 'Marketing Ethics: Onward Toward Greater Expectations' *Journal of Public Policy and Marketing*, 12:91-96.

Laczniak G. R. & Murphy, P. E. (1993) *Ethical Marketing Decisions: the Higher Road,* Needham Heights, MA: Allyn & Bacon.

Murphy, P. & Laczniak G. R. (1981) 'Marketing ethics: A Review with Implications for Managers, Educators and Researchers' in Enis B. M. & Roering K. J. (ed) *Review of Marketing,* Chicago: American Marketing Association: 251-266.

Schlegemilch, B. (1998) *Marketing Ethics*, London: International Thomson Business Press.

Smith N. C. (1995) 'Marketing Strateges for the Ethics Era' *Sloan Management Review*, 36:92.

Smith N. C. & Cooper-Martin, E. (1997) 'Ethics and Target Marketing: The Role of Product Harm and Consumer Vulnerability' *Journal of Marketing* 61:1-20.

Lucas, M. (2012) 'Plane Crash: why Dana is Culphable' *Tell*, June (24) 28-34.

Maduka, C. (2006) 'Nigerians to Sue Drug Companies' *Washington Post*, June (8): 27-35.

Monynihan, R. C. & Cassels, A. (2005) *Selling Sickness: How Drug Companies are turning us All into Patients,* New York: Allen and Urwin.

Nierengber, A. (2009) 'Ten Largest Pharmaceutical and Biotech Companies in Nigeria' *Time Magazine*, February (2): 51-53.

Smith, N. C. & Quelch J. A (1993) *Ethics in Marketing*, Homewood, IL: Richard D. Irwin.

Thompson, C. J. (1995) 'A Contextualist Proposal for the conceptualization and Study of Marketing Ethics' *Journal of Public Policy and Marketing*, 14:177-191.

Tsalikis, J. & Fritizsche, D. J. (1989) Business Ethics: A Literature Review with a Focus on Marketing Ethics. *Journal of Business Ethics*, 8:695-743