Monitoring the market misleaders

by Kent Grayson and Svetlana Kirillova

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Misled customers are a serious business concern. Products that do not last as long, taste as good or work as quickly as expected increase the possibility of customer complaints and hurt repeat business. And dissatisfied customers are more likely than satisfied ones to tell others about their experience.

Customers can be misled for a number of reasons. These range from carelessness on the part of the customer to negligence or deliberate deception on the part of the marketer. When a customer feels that he or she has been misled, legal procedures are available in most countries but self-regulatory organizations (SROs) usually offer faster and cheaper redress. Generally these are impartial, independent bodies funded by advertising agencies for the purpose of regulating marketing communications. In Europe some SROs have existed for more than 50 years.

The main purpose of this article is to consider such regulation from the point of view of business and to discuss the wider issues involved when customers make complaints.

Modes of communication

SROs focus primarily on advertising because it is generally the most explicit way that marketers communicate with customers. However, it is not the only way consumers can end up with a false belief.

Every market offering is made up of a number of attributes that "say something" about the product or service. To assist with marketing planning and management, marketers divide these attributes into four categories, which are widely known as the "Four Ps." They are:

- **product:** the product or service offered to the consumer
- **price:** the cost to the consumer of getting the product or service
- **place:** the way in which the product is distributed
- **promotion:** verbal, auditory or visual information communicated about the product by the marketer

It is important to recognize that communication is accomplished via all of the Ps, not just promotion. Take the physical attributes of the *product* itself. Its color, shape, design or size inherently provides information. Research has shown, for example, that some customers judge the quality of bread by relying more on its color than on its nutritional label. Furthermore, the *price* of a market offering can communicate more than just its cost. For instance, some customers will avoid buying a low-price product because they believe – sometimes incorrectly – that the low price means low quality. How a market offering is *distributed* can speak volumes. When a product is available only in speciality shops or when it is

What should marketers do?

A tempting solution to the problem of misleading advertising is simply to place all responsibility for it on marketers. But however simple this approach may be, it places unreasonable demands on business. As we have argued, an advertisement can be truthful and well intentioned but still mislead a customer. Thus it is appropriate that marketers, consumers and regulators negotiate, usually on a case-by-case basis, whether or not an advertisement is misleading.

A case-by-case regulatory system – especially one that is dependent in part on customers' motivation to complain – is by nature flexible, and skillful marketers can easily take advantage by stretching the rules as far as they will go. Some marketers have even found that the publicity generated by incurring the wrath of regulators helps to enhance their company's image in some customers' minds.

Although testing regulatory limits has its place, such tests should be undertaken with due regard for the costs. Experience has shown that the more marketers are seen as not playing their role in keeping advertising reasonably honest, the more regulators and consumers argue for less flexible controls on advertising.

Most marketers know that simply following the basic principles of good marketing goes a long way to keep marketers from naïvely misleading customers. Advertisements are pre-tested for consumer response and are adjusted if there are misunderstandings. Many campaigns are aimed at specific customer groups via the appropriate media, thus keeping the message from being seen by those who may not share the same social facts as the target audience. Lastly, keeping information about research and strategy can assist in verifying a marketer's intent to regulators and consumers.

Many marketers also recognize that, even when the best information is kept, consumers and regulators may still view the advertisement as deceptive and may request that it be removed. The nature of a three-way negotiation between consumers, regulators and marketers is that the marketer's view does not always win.

In such situations, many marketers reluctantly agree that both they and the regulatory system are generally best served by prompt assent. Of course, it is difficult to say "you win some, you lose some" when production costs, media plans and client goodwill may all be at stake. But unless the regulatory system develops a pattern of prohibition that is widely seen to be inappropriate or unfair, questioning or testing the legitimacy of the system's decisions may amount to questioning the value of an imperfect umbrella in the middle of a rainstorm.

displayed prominently in a supermarket, this in and of itself communicates information.

Promotion includes not only advertising but also brochures, press releases, instruction manuals, sales pitches and words written on packaging. Because promotion includes words and pictures it communicates with customers more explicitly than the design of a perfume bottle or the appearance of an automobile dealership. In this article we will focus primarily on promotion, although the points we raise are generally applicable to communication accomplished by all of the Ps.

Are marketers to blame?

The general opinion seems to be that customers are misled because marketers wish to mislead them. For instance, a majority of the 38,000 customers surveyed by Roper Starch Worldwide in 40 countries reported that advertising exaggerates product benefits, health benefits and product sizes – and that advertising in general does not provide accurate information. In a CLA Medialab Sensor survey, 60 per cent of UK customers aged 15 to 24 agreed that products frequently fail to live up to their promises. Given these results, it is not surprising that US customers contacted by Gallup rated selling and marketing jobs lowest in terms of honesty and ethics.

But are marketers always to blame when marketing is misleading? Indeed, some marketing communication may be unintentionally complex, purposefully vague or deliberately extreme – all of which will mislead at least some consumers. However, even when a marketer communicates clearly and accurately, consumers may not do a good job of interpreting it.

Customers can be "misled" when they read too quickly, make unreasonable assumptions or fall victim to their own wishful thinking. So the cause of misleading marketing can range from deception on the part of the marketer to delusion on the part of the consumer. Because of this, a potentially important issue for regulators is determination of the marketer's intent.

From a strict consumer protection standpoint, a marketer's intent should not be relevant. A marketer who purposefully misleads will often have the same negative impact as one who inadvertently does. And intent can be difficult to determine – people who deliberately deceive are unlikely to confess their intention.

Despite these issues, regulators often operate on the assumption that a company acting in good faith should not be judged by the same standards as someone acting in bad faith. Therefore marketers can protect themselves from potential regulatory action by making it as easy as possible for regulators to determine intent when it falls under question. In most instances, it is the marketer alone who has access to the information and documents that can shed light on the issue.

The collection of evidence is a responsibility that marketers must shoulder in order to facilitate the regulatory process – and this is a requirement stated in many SROs' codes. Without clear assurances from the marketer, a regulatory body is left to make judgments based only on the evidence of the marketing communication itself. Even if this evidence is debatable, the marketer's unwillingness to provide counter-evidence may be taken as indicating an intention to mislead.

With the right information, however, marketers may be able to show that they have naïvely – rather than deliberately – misled customers. Consider, for example, an advertisement for a travel company that described an itinerary for a boat tour of the Yangtse. When a customer was able to complete only part of the cruise, he complained to the UK's Advertising Standards Authority (ASA). In response, the company explained that it had changed the itinerary because of exceptionally low water levels. It was able to show that these circumstances were indeed exceptional and not seasonal, thus supporting the claim that the marketer naïvely misled the customer. When the advertisement was published, the marketer believed that the information provided was truthful. The ASA did not uphold the customer's complaint.

Social facts and SROs

When a question arises about marketing activity, it is important to ascertain not only the marketer's intent but also the facts. Without this knowledge, it is impossible to determine whether or not the customer has a false belief about the product. However, most of the "facts" we use in our everyday lives are based more on social agreement than on objective truth and thus are prone to ambiguity.

For example, consider the following case, which is based on a complaint raised with the ASA in 1997. A magazine advertisement for an airline-branded credit card reported that card holders could earn a mile for every £1 spent on the card. A complainant objected that the "miles" earned did not correspond to the nautical miles traveled on the free trips offered. For example, the 15,000 "miles" required for a trip from London to selected European destinations were significantly more than the actual miles flown to Europe and back. In many airline loyalty programs the "miles" earned are more like "points" that can be exchanged for rewards. However, these programs are most familiar to frequent flyers and it is unlikely that all consumers know the rules.

This case raises two difficulties associated with determining social facts. The first is that they can differ from group to group. What is a social fact to a seasoned airline loyalty program customer may not be a social fact for a less experienced traveler. The second difficulty is that, almost by definition, social facts do not start out as facts. When the first airline loyalty program used the word "miles" as a way of referring to points, it was just one company's approach and it was incumbent on the company to be explicit about its terms. What is less clear is how many frequent flyer programs must adopt the same system – and for how long – before these terms become a social fact.

Although determining the nature of social facts is not always easy, SROs – as the bodies that must decide whether marketing claims match social facts – should endeavor to keep track of them. To this end, many SROs establish consultative councils with consumer groups, use their regional offices to keep in touch with local views, and undertake direct consumer research. For example, the UK's Independent Television Commission (an SRO that regulates television advertising) spends £1m per year on consumer research.

As a postscript, the ASA did not uphold the complaint about air miles on the grounds that because similar schemes' "miles" did not correspond to exactly to travel miles, readers were unlikely to be misled.

Summary

When customers complain that a purchase does not live up to expectations, who is at fault? Many would blame the marketer – a Gallup survey in the US indicated that people rate marketing and selling jobs lowest in terms of honesty. But **Kent Grayson** and **Svetlana Kirillova** argue that this is too simplistic. While there are undoubtedly dishonest marketers, many misunderstandings are down to mere carelessness on the part of the marketer or the customer. And because of the slippery nature of "social facts" – established by convention rather than objectively – it is not always clear whether a marketing communication is misleading or not.