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COMPLIANCE FOR THE CAPITALIST: CREATING THE IDEAL RELATIONSHIP BETWEEN YOUR MARKETING AND LEGAL DEPARTMENTS

BY SCOTT CALAME

Editor's Note: This article is based on a presentation made by Scott Calame at the Professional Insurance Marketing Association (PIMA) MarkeTTechSM Symposium.

Today, a marketer at an insurance company somewhere in America will present promotional material to her legal department for review, comment and approval. Tomorrow, or a week later, she will be presented with a morass of red lines and frantic scrawls, some of which are legible and almost none of which work to improve the sales-effectiveness of the piece. The marketer will read the comments and notice that few, if any, are accompanied by any identifiable rationales. She will then proceed to make every one of the marked changes without question. The next conversation the marketer will have with the lawyer is when she walks through

the lawyer's door with the next promotion to review. When the marketer's copywriter questions one of the changes, her reply will simply be something like, "Oh, legal made us change that."

The marketer will never fully understand which comments were intended to keep the CEO out of jail, which ones were a reasonable stretching of concern over some administrative rule, and which ones were a reflection of the attorney's English usage preferences or notions on marketing and salesmanship.

In a free market, with profit as our motivation, both marketer and compliance officer should agree on a common goal—the most effective promotional piece possible that still passes regulatory muster. That sounds like common sense, yet few financial service companies have established procedures trained on achieving that goal. This article will provide a four-step strategy for easing the burden of compliance by creating a more ideal relationship between two departments that often seem diametrically opposed.

Attorneys must adopt a marketing mindset.

As a corollary, marketers must also work to understand the attorney's position. However, most marketers have presumably already adopted the goal of maximizing sales by addressing consumer need. Of course, attorneys must fulfill their duty to protect the company from fines and criminal prosecution, but in their keen awareness of the regulatory environment, they often lose sight of the larger competitive marketing environment in which they are practicing.

The attorney and other compliance officers must accept that their role is not to keep overzealous marketers in check. Ideally, they exist to facilitate the activities of those marketers, not squelch them. The relationship between marketer and lawyer is not adversarial—it is symbiotic. An attorney who adopts this mindset will instantly raise his or her contribution to achieving the company's legitimate business goals without sacrificing on his or her duty to protect the company from regulatory threats. The attorney will

also instantly become more approachable to the marketer, helping alleviate the intimidation factor that is often part of the marketer-attorney relationship.

Laypeople often perceive lawyers as professionals who wield their academic training like a big club and the ramifications for not following their advice to the letter can truly be severe. So an approachable attorney who makes it clear that she understands the marketing concept will facilitate a more honest and open dialogue focused not just on restrictions, but on solutions. This type of dialogue is a critical factor in building a more ideal relationship.

Attorneys and marketers should work together on compensating strategies.

The regulatory environment is becoming increasingly complex and it is not going to get simpler. Generally, when a law affecting the marketing of insurance is passed, the effect on sales is negative. Consequently, compensating strategies designed to overcome some of the deleterious effect on sales are needed, but marketers cannot design such strategies in a vacuum.

When new laws are passed, lawyers are the first professionals to clearly define what the marketers cannot do. Marketers need their attorneys to do that. However, marketers also need their attorneys to tell them what they can do. Whenever possible, an attorney's restrictive comment on marketing copy should be accompanied by a permissive one—a suggestion on what the marketer can say as an alternative. Marketers must respect the attorney's role, but lawyers must also recognize that the phrase “can't say this” is not really advice without an accompanying phrase that begins with the word “because.”

Compensating strategies can involve not just alternative wording suggestions, but also the format of information sent to consumers. For example, say a new law is passed that requires several different long and complicated disclosure and waiver forms be sent to customers using prescribed wording. One possible compensating strategy would be to organize the various forms into a consumer-friendly booklet, with

plain language prefaces introducing each of the various prescribed sections and a toll-free customer service number to call for help in completing the forms. The attorney must ultimately advise the marketer on the legality of such an approach, but nothing prohibits the attorney from coming up with such a creative solution himself.

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Attorneys should also be open to examining what competitors are doing and how that might affect the way a proposed communication will be viewed by a common regulatory body. For example, if the attorney is nervous about using a certain phrase in a communication to prospective customers, seeing that a market-leading competitor consistently uses the same phrase to the same market may indicate that the lawyer is being overly cautious. Of course, the fact that “everybody is doing it” is not conclusive proof of legality, but such marketplace realities should not go unexamined.

Effective marketer-lawyer communication requires a framework.

In the first paragraph of this article, I described a common scenario: A marketer is left holding the legal department's comments with no real guidance regarding what must be heeded to remain within the law and what can be ignored without consequence.

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The marketer should strive to understand his or her regulatory environment, but without rationales for the legal department's comments, the understanding will be limited. Categorizing the comments according to their importance will help solve the problem but the attorney must be willing to take the time required to educate the marketer. With apologies to the Department of Homeland Security, I recommend the following five-level Legal Risk Assessment System. When the marketer receives comments back from legal, each comment should be accompanied by one of five Risk Ratings.

<i>Regulatory Risk Rating</i>	<i>Meaning for the Marketer</i>
5 Severe Risk	Explicitly illegal by statute or court decision.
4 High Risk	We've been sued and either lost or settled.
3 Elevated Risk	We've been sued, but easily defended.
2 Guarded	It's a hot legal issue that is getting some attention in the news.
1 Low Risk	I'm no marketer but I wouldn't do it.

This system does require a commitment from the attorney, but its impact on sales and the improved marketer-attorney relationship are well worth the effort. Of course, the specific risk level definitions and meanings can be adjusted to reflect the realities of your particular business, but this model is a good place to begin.

Marketers must do their part to avoid compliance problems.

The best way for a company to avoid the negative effects of burdensome regulation is to not have the regulation enacted in the first place. In that regard, marketers are responsible for the single most important thing that can be done to avoid the burden—taking good care of customers.

The direct marketing industry wages a public relations battle based on individual stories. For every 100 consumers whose lives have been improved by a product or service purchased through direct marketing, there is one story of a little old lady bilked out of her savings by a fly-by-night telemarketing criminal. That one story is what makes the front page.

So provide a level of service that precludes complaints. Deliver fast and fair claim service with a goal focused not purely on loss control, but on making a good customer glad they insured with you. Empower front-line employees to solve customer relationship problems before a call to a legislator or plaintiff's attorney is made.

In sum, marketers must respect the attorney's role as a guardian of the company. Attorneys must understand that, when crafted by an experienced professional, individual word choices in a marketing communication are made with scientific precision and with no less professionalism than it takes to understand HIPPA.

A solutions-based relationship of mutual respect and collaboration is necessary to thrive, or even survive, in today's competitive marketplace. That improved relationship could start with lunch today. Go make it happen. ■



Scott Calame is a direct marketing strategy and creative consultant residing in Austin, Texas. He can be reached at (512) 697-9127 or at s_calame@yahoo.com.