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Jason Bruce Kilby

Ismet Anitsal

M. Mereal Anitsal

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An Exploratory Study on Ethical and Legal Issues of Marketing Strategies in the Cigarette Industry: Perspectives on E-Cigarettes

Jason Bruce Kilby

Ismet Anitsal

M. Meral Anitsal

Tennessee Tech University

ABSTRACT

Cigarette and E-Cigarette companies use different marketing strategies to promote their product. Some of these marketing strategies could be considered by many to be both unethical as well as illegal. Many ethical and legal issues surround the cigarette industry and these same issues could be relevant in the emerging E-cigarette industry. This research organized cigarette industry behavior into a matrix where a behavior was classified on whether it was ethical, unethical, legal or illegal. In order for a behavior to be considered ethical it must meet the minimum standard of being legal except under moral exception. What is considered to be ethical or legal marketing strategies is dependent on the time frame in which the marketing strategy occurred. E-Cigarettes are a new industry, therefore laws regarding their usage are just now being enacted. This leaves us with the unique situation where the minimum standard for ethical behavior, which is usually legal behavior, has yet to be fully established. The purpose of this conceptual research is to organize E-cigarette marketing strategies into ethical and legal strategies in the matrix similar to the way tobacco company behavior could be organized. Discussion and future research avenues will be provided.

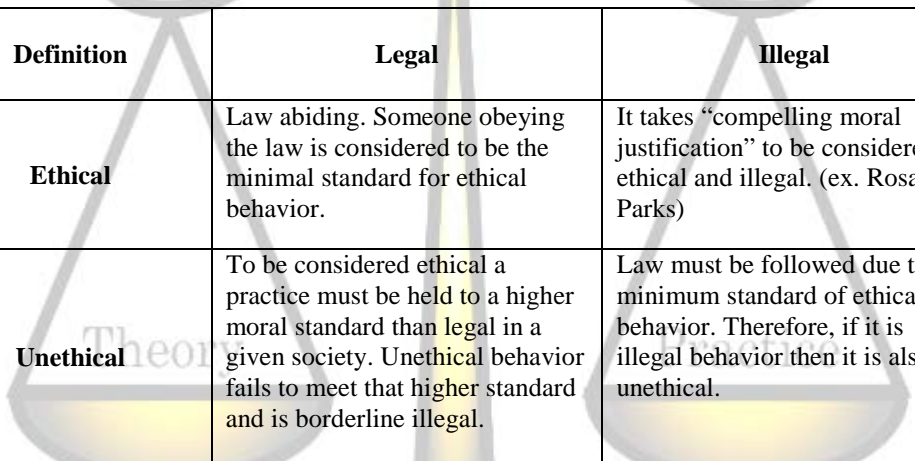
INTRODUCTION

In response to growing concerns about the health issues associated with smoking as well as increasing taxes and legislation about conventional combustible cigarettes, tobacco companies responded with a new product, the E-cigarette, which was developed in China in 2003 (Newswire, 2016).. E-Cigarettes look a lot like conventional cigarettes and contain a battery and a small replaceable cartridge. Sander-Jackson, Schleicher, Fortmann and Henriksen (2015) define an E-Cigarette as “battery powered, plastic devices that simulate the experience of smoking by heating a flavored solution that usually contains nicotine to create vapor” (p.110). In addition to the vapor that is exhaled, a user of an E-Cigarette is sometimes exposed to chemicals such as acetone, isoprene, and nicotine (Sanders-Jackson et al). A variation of the E-cigarette is the vaping device which was developed soon afterwards. In contrast, a vaping device “turns chemicals called E liquid into vapor, which a smoker then inhales” (Whelan, 2015). A vaping device is usually not disposable, the user will refill the device with “juice” compared to an E-Cigarette which the user will simply replace a screw off cartridge. Since these devices were introduced, vaping stores have been opened across the country and locally, where this research was conducted at high rate. This research will examine tobacco company behavior in the realm of corporate marketing strategies. The purpose of this research is to organize tobacco company

strategies into four categories in order to better understand the way that E-cigarettes are marketed to consumers and create a matrix containing these behaviors (Table 2).

The four categories considered for comparison in the matrix are: (1) Illegal and ethical strategy, (2) Illegal and unethical strategy, (3) Legal and unethical strategy, and (4) Legal and ethical strategy. It is important to define the terms legal, illegal, ethical, and unethical for use in the matrix (Table 1). Mayer, D., Warner, D., Siedal, G., and Lieberman, J. (2012) define “ethics is the study of morality—“right” and “wrong”—in the context of everyday life, organizational behaviors, and even how society operates and is governed” (p.47). Henderson (1982) provides the definitions for what is ethical and what is legal that is used in the matrix shown in Table 1.

**Table 1:
Matrix of Legal and Ethical Definitions**



Definition	Legal	Illegal
Ethical	Law abiding. Someone obeying the law is considered to be the minimal standard for ethical behavior.	It takes “compelling moral justification” to be considered ethical and illegal. (ex. Rosa Parks)
Unethical	To be considered ethical a practice must be held to a higher moral standard than legal in a given society. Unethical behavior fails to meet that higher standard and is borderline illegal.	Law must be followed due to minimum standard of ethical behavior. Therefore, if it is illegal behavior then it is also unethical.

Adapted from Henderson, V.E. (1982), Wood and Brink (2001), MacDonald (2011).

Someone who is law abiding can be considered to be behaving legally and is also meeting the minimum standard for ethical behavior. To be truly ethical, someone is held to a higher standard than just obeying the law. Other researchers argue that just because something is legal does not make it ethical. MacDonald (2011) notes that it is important to realize that 1) just because something is legal does not make it ethical, 2) lying is a type of behavior that is considered to be unethical but most kinds of lying are legal behaviors.

Similar examples and definitions of the legal and ethical matrix of behavior were given by Wood and Brink (2001): examples of legal behavior include obtaining a license to be married, illegal but ethical behavior was Rosa Parks refusing to give up her seat on the bus and move to the back during the Civil Rights Movement, example of unethical but legal behavior was a student cheating on their final exam, and Wood and Brink listed murder as a behavior that is both illegal and unethical.

**Table 2:
Matrix of E-Cigarette Marketing Strategies**

Company Marketing Strategy	Legal	Illegal
Ethical	1) Blow Canada Inc. offered combustible cigarette smokers an offer of a free E-cigarette device if they extinguished their conventional cigarette. Use of celebrity endorser throughout history.	3) The relatively new E-cigarette/vaping industry is ahead of some of the regulation that would curtail its use. Outdoor bans on E-cigarettes, yet no yet proven risk to bystanders.
Unethical	2) Camel Crush marketed conventional combustible cigarette geared to teen girls due to their packaging: black box with bright neon pink and neon green lettering. Newport market to African Americans. Tobacco companies influence politicians to undermine Framework Convention on Tobacco Control. Flavored E-Cigs that contained flavors banned in conventional cigarettes.	4) Philip Morris failed to mention the amount of toxins present in cigarette smoke during their animal test trials. Made cigarettes appear to be less toxic than they actually were. Marlboro used infants in ads and targeted mothers. Newport targeting youths.

- 1)Media Advisory (2015), McGann (2014), Martano (2017).
 2)Siddique (2013); Noman, (2016); Weishar (2012); Miles and Palmer (2012).
 3)Paton (2016); Singh (2016);
 4)Wertz, Kyriakos, Paranjape, and Giantz, (2011); Tan, Kriss, and Giantz (2013); Heimann, (2001); Noman (2016).

The question of ethics always comes into play when examining company marketing strategies. Clearly, in the early days of combustible conventional cigarette advertisement ethical issues were very different compared to what we do or not do today. Children were used in cigarette advertising campaigns (Heimann, 2001) and smoking was presented as a safe and even a healthy behavior long after the research said it was not. In one particularly shocking by today’s standards advertising campaign by Marlboro an infant is pictured with the caption “before your scold me mom... maybe you better light up a Marlboro” (Heimann, 2001). In today’s world, where tobacco advertisement is under governmental regulation, the ethical breaches have to be much more subtle.

LEGAL AND ETHICAL ADVERTISING STRATEGIES

When a product may potentially be hazardous to the user’s health, and those individuals nearby, it is difficult to call any advertisement of said product to be an ethical advertisement or an ethical marketing strategy. E- Cigarette companies do offer discounted merchandise as an attempt to promote their product. The offer of a product discount is legal and ethical company behavior so

this strategy will be discussed here. Even this strategy could be argued to be unethical on the basis it may unfairly target a low-income individual.

One marketing strategy that attempts to attract low-income smokers is the regular offer of coupons or incentives to keep the low-income smoker smoking. In 2015, one E-cigarette company called Blow Canada Inc. offered combustible cigarette smokers an offer of a free E-cigarette device if they extinguished their conventional cigarette. (Media Advisory, 2015). One reason that smoking taxes are so high in some states such as New York is that the tax is proposed to be a deterrent to smoking being that the cost to continue the smoking behavior is so high. Marlboro sends out monthly coupons in the postal mail and more are available online to print. These coupons sent out help to counteract the high taxes and keep smoking affordable enough for a low-income individual to justify continuing the habit. One E-cigarette company, Mark 10, seems to be using the same strategy of flooding the postal mail with coupon offers for their product at a greatly reduced rate. Blow Vapor Inc. lists one of their marketing strategies as offering taste trials in which they offer free samples so a potential smoker would not have to make an initial purchase to sample their product (Media Advisory, 2015). This particular strategy appears to target low-income smokers, by providing a free sample there is no financial risk if they do not like the product. Someone with limited income likely would not purchase a product that they could not return if they did not know if they would like it or not.

Many E-Cigarette advertisements are eerily similar to tobacco ads of the past. E-Cigarette advertisements often contain a celebrity endorsement, one of the more famous celebrities to endorse the specific E-cigarette brand Blu is the former model and MTV star Jenny McCarthy (McGann, 2014). The strategy of using a celebrity endorser for a cigarette advertisement dates back to the 1930's when major league baseball players endorsed tobacco products (Martano, 2017). At the time the ad was made, this type of ad was entirely legal. In the 1930's the cigarette company Camel boasted in their ad campaign that 21 out of 23 players on the World Series Champion New York Giants smoke Camels (Martano, 2017). Later, in the 1950s, the commissioner of baseball banned players from endorsing tobacco products while wearing their game uniform but famous players with recognizable names such as Ted Williams and Mickey Mantle endorsed cigarettes and got around the advertising ban by simply wearing a suit and tie (Martano, 2017). While the use of celebrity endorsers for cigarette products is entirely legal and arguably ethical, one can also argue that it could be unethical to have a celebrity endorser who is very popular with younger people since it could be argued that the tobacco company is attempting to entice young people to smoke like the popular celebrity is doing.

LEGAL AND UNETHICAL ADVERTISING STRATEGIES

The question of ethics always comes into play when examining company advertising strategies. Clearly in the early days of combustible conventional cigarette advertisements there was little ethics present. Children were encouraged to smoke and smoking was presented as a safe and even a healthy behavior long after the research said it wasn't. Historically, even when a particular rule was passed such as a uniformed baseball player cannot be a paid endorser for cigarettes, these rules were easily bypassed by getting the most famous players who would be recognizable outside of their uniform and still advertising the tobacco product (Martano, 2017). In today's world, where tobacco advertisement is under governmental regulation the ethical breaches have to be much more subtle. Also, it is important to note that what is considered

unethical today in the realm of tobacco advertising would have been entirely ethical in the past. Camel Crush was recently accused of marketing their conventional combustible cigarette geared to teen girls due to their packaging, which included a black box with bright neon pink and neon green lettering similar to what colors might be present at a teen rave party (Siddique, 2013). While in the 2000's this type of marketing strategy is seen by most as unethical, in the past having a pick and black cigarette box would have not caused someone examining ethical marketing strategies of cigarette companies to even raise an eyebrow. Newport is also catering to the youth market by targeting young smokers by offering pop up promotions at Las Vegas concert venues where young smokers can purchase their menthol cigarettes at only one dollar per pack (Noman, 2016). These marketing strategies appear to be working, Arrazola et al, (2015) found in their survey on tobacco use on middle and high school students that almost 25 percent of them reported using tobacco in at least one form in the past month.

An entry level smoker may find that smoking a full flavor cigarette is quite harsh on their lungs. For this reason, cigarette companies introduced clove cigarettes in the late 1990s and early 2000s to make the experience more enjoyable. Clove cigarette production was halted in the United States in 2009 due to concerns that these products were too appealing to young people (Miles & Palmer, 2012). Now many e-cigarette and vaping devices are using the same flavors in their product that caused the clove cigarette ban in the late 2000s. One can argue that these flavors (grape, cotton candy, maple syrup) are quite appealing to young smokers and are not so different than the flavors banned in clove cigarettes like cherry, strawberry or cinnamon (Miles & Palmer 2012).

One such ethical breach is the long-standing habit of cigarette companies targeting low income individuals and minorities. Specific magazine ads by Newport have targeted African Americans by including advertisements containing smokers who are African American smoking Newport cigarettes in magazines that are geared toward an African American readership (Noman, 2016). It remains to be seen if E-cigarette/vaping companies will continue the trend of marketing their product specifically to African Americans. Low income areas are often flooded with advertisements in their convenience stores.

ILLEGAL AND ETHICAL ADVERTISING STRATEGIES

In Table 1, which is the matrix examining Legal/Illegal and Ethical/Unethical advertising and marketing strategies of E-cigarette companies, there is little behavior that falls within this category. In exploring why there is not much behavior in the E-cigarette industry that could be labeled as illegal but ethical behavior the researchers found two reasons. One, the E-cigarette industry is a new industry, which at the moment does not have an abundance of laws that regulate the industry compared to a much older industry like tobacco. Laws and litigation take a while to catch up to new technology. E-cigarette/vaping usage is a relatively new behavior that has exploded in popularity in recent years. In the United States, the first year that E-cigarettes/vaping devices were available to consumers was 2007 (Singh, 2016 paraphrasing Arrazola, Singh, Corey et al. 2015). The relatively new E-cigarette/vaping industry is ahead of some of the regulation that would curtail its use (Paton, August 2016). Most traditional tobacco products are regulated by the Food and Drug Administration under legislation called the Family Smoking Prevention and Tobacco Control Act which was enacted in 2009 (Singh, 2016). E-cigarettes/vaping devices had just been introduced and were not included in the original

legislation. E-cigarettes/vaping devices are currently under review as to whether to be included with other types of tobacco products under the Family Smoking Prevention and Tobacco Control Act (Singh, 2016). There are many places where someone can use a vapor or e-cigarette device where smoking is prohibited.

It seems that we do not see much ethical activity from the E-cigarette/vaping industry as well. Post conventional morality requires companies to regulate their ethical behaviors regardless of the existence of rules, regulations, or laws (Lamb, Hair and McDaniel, 2009). It appears that lack of self-regulation is an indication of lack of maturity among manufacturers/distributors of E-cigarettes/vapors. Therefore, this may be an indication for a need of close scrutiny of industry activities to close legal gap.

ILLEGAL AND UNETHICAL MARKETING STRATEGIES

Another ethical question was did tobacco companies know their product was dangerous and attempt to hide that information from consumers. Tan, Kriss, and Giantz (2013) examined tobacco company documents from as late as 2000 in which the tobacco companies were still attempting to minimize the danger associated with consumption of cigarettes. In a document analysis conducted by Wertz, Kyriss, Paranjape, and Giantz, (2011) on documents that had been released to the public due to litigation the company was involved in, the tobacco giant Philip Morris failed to mention the amount of toxins present in cigarette smoke during their animal test trials and this could have been due to poor scientific methods including a small sample size. These strategies used by Philip Morris to manipulate data made cigarettes appear to be less toxic than they actually were.

Tobacco companies have a vast amount of money and resources, a 2014 advertising and marketing budget of 8.5 billion dollars for example, and have been known to use their almost limitless resources to influence legislation regarding tobacco products (Federal Trade Commission, 2016). Sometimes tobacco companies have to pay out enormous amounts of money in settlements if it is proven that their marketing strategies were illegal or unethical. According to a recent Health and Medicine Week Article (2015) R. J. Reynolds recently had to pay out over 46 million dollars in punitive damages to an individual who showed that the big tobacco company used deceptive advertising in marketing their low tar cigarettes as safer, and this lawsuit was the 9th high profile win against big tobacco for the same law firm. Weishar et al (2012) conducted a qualitative study using hermeneutic methodology on documents that were from court cases involving transnational tobacco corporations in Germany. These documents from the tobacco companies at one time were considered confidential but became public through lawsuits. Weishar et al (2012) found during their analysis of the formerly private documents now made public that there were at least 12 instances in Germany where the global tobacco companies had tried to bribe or otherwise influence politicians so that the Framework Convention on Tobacco Control could be undermined. Tactics that Weishar et al (2012) found that the tobacco corporations used to undermine the Framework Convention on Tobacco Control included using the media to enhance their position, specifically the companies used the Wall Street Journal Europe which was a media outlet that catered to free trade friendly.

Similar research to the previously mentioned analysis on tobacco company documents that was conducted by Weishar et al (2012) has also occurred in the United States. Tan, Kyriss, and Glantz (2013) also analyzed tobacco company documents that were once considered private but

had been released to the public due to a lawsuit. Tan, Kyriss, and Giantz (2013) looked specifically at documents provided by the tobacco companies to the Institute of Medicine who was formulating a report to submit to the Food and Drug Administration about harmful ingredients in tobacco products. Tan, Kyriss, and Giantz (2013) found that the tobacco companies attempted to fill the Institute of Medicine report with research conducted by the tobacco companies themselves and otherwise influence the report through systematic tactics of deception.

DISCUSSION AND FUTURE RESEARCH AVENUES

This research grouped marketing strategies of tobacco companies into one of four cells in a matrix. A strategy could be considered 1) legal and ethical, 2) legal and unethical, 3) illegal and ethical, and 4) illegal and unethical. There were grey areas when grouping a strategy into a cell in the matrix. For example, it is difficult to consider any advertising strategy where tobacco is shown in a positive way as an ethical behavior when so much is known about the long-term health consequences of smoking. In addition, due to the nature of the matrix it is hard to group behaviors related to smoking advertising strategies as illegal and ethical because by definition most illegal advertisements would likely also be unethical. Many strategies utilized by tobacco companies seemed to fall in two categories. The first category was legal and unethical. By pushing the limits of advertising, tobacco companies often technically were engaged in legal advertising strategies by the letter of the law, but when examined closely their behavior could still be considered unethical. Examples include the tobacco company's constant attempts to appeal to a younger audience. While obeying the laws and no longer using cartoon characters such as Joe Camel to advertise their product because a cartoon could overtly be seen to appeal to a younger audience, the tobacco companies became much subtler. The companies covertly marketed cigarettes like Camel Crush and Newport to young people and African Americans through package design and strategic promotional offers (Noman, 2016). This behavior while technically legal would be considered unethical because it is targeting vulnerable populations.

The other area where many cigarette company's behaviors fell was illegal and unethical. Over the years many of the historical practices of tobacco companies were highly unethical and even though tobacco companies funneled millions of dollars into legal battles, many of the behaviors were ultimately deemed illegal as well as unethical (Wertz, Kyriss, Paranjape and Giantz (2011). The Family Smoking Prevention and Tobacco Control Act of 2009, (Pub.L. 111-31, H.R. 1256) gives authority to the United States government, specifically the Food and Drug Administration, to regulate cigarettes. Many of the historical practices of tobacco companies are now considered illegal due to this legislation.

It is important to note that what is legal and what is illegal as well as what is ethical and what is not ethical is constantly changing. A marketing strategy must be judged within the time frame in which it happened. As discussed throughout the paper the tobacco companies have a long history of past behavior that when judged by current standards would appear shocking (Martano, 2017). At the time of the marketing strategy, however the strategy was legal and enough of the population was of a similar opinion that it could be argued the strategy was ethical as well. It will be interesting to see if in the future some of the early E-Cigarette marketing strategies which are based on successful strategies that the tobacco industry has used in the past for conventional combustible cigarettes will be judged to be illegal or unethical in the near future.

It is also important to consider that this research focused primarily on smoking behaviors and marketing strategies in the United States. One must realize that smoking both conventional cigarettes and E-Cigarettes is a global phenomenon with many several countries with higher smoking rates than the United States. Rachiotis, Barbouni, Katsioulis, et al (2017) report the high rate of smoking (38.2%) among Greek adults which was only lower than the Russian Federation (39.3%) among European countries, and a much higher rate than Mediterranean countries like Turkey (27.1%) and Egypt (19.7%). China has the largest number of smokers at over 300 million and that number is made up by a disproportionate number of male tobacco consumers (Schwartlander and Pratt, 2015). One cultural phenomenon is the huge disparity in the number of male (52.9%) and female (2.4%) smokers in China (Schwartlander and Pratt, 2015). South Africa has a smoking rate of 17.6 percent and this rate contributes to a mortality rate of 8 percent due to smoking (Ganz, 2016).

Smoking rates also vary widely across ethnic groups in the United States. One ethnic group that appears to have a rate of smoking that is above average is Native Americans. Phelps (2005) reported that in the United States smoking rates among Native American tribes topped out at 36 percent of adults while the number for adult Caucasians was roughly 24 percent.

This line of research will be relevant again in the near future. The same matrix used to describe ethical and unethical, legal and illegal behavior of the tobacco companies in this research would be applicable to the E-cigarette industry in the near future when the litigation surrounding this new industry catches up with the new technology. At this time, it is difficult to group E-cigarette company behaviors into illegal and unethical categories because at this early stage little is known for certain about the long-term health impact of E-cigarette usage. Another area of concern is the vast amount of resources that the E-cigarette companies, just like the tobacco companies of the past, would be able to utilize in pro E-cigarette legal battles. Like the history of tobacco litigation, it might be decades later that truths about the E-cigarette industry come to the surface.

This research endeavor hopes to serve to highlight the dangers of smoking conventional combustible cigarettes as well as the potential risk for smoking E-Cigarettes. As a suggestion to E-Cigarette manufacturers we the researchers remain hopeful that the marketing strategies you use to promote E-Cigarette products will be both legal and ethical in nature. Ethical marketing strategies are held to a higher moral standard than just being legal. For this reason, until the long term health risks associated with first-hand, second-hand, and third-hand exposure to E-Cigarette vapor is documented that marketing strategies that target vulnerable populations like adolescents, minorities, and low socioeconomic status individuals can be avoided. Also, it is hoped that the same standard will be applied to marketing strategies in foreign markets, especially third world and developing countries.

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ABOUT THE AUTHORS

Jason Bruce Kilby received his Ph.D. in Exceptional Learning with a concentration in Literacy from Tennessee Tech University in December of 2016. He is currently working on completing his MBA at Tennessee Tech University.

Ismet Anitsal (Ph.D., The University of Tennessee, Knoxville) is Faye Halfacre Moore Professor of Entrepreneurship and Professor of Marketing at Tennessee Tech University. His research interests emphasize customer productivity, customer value and service quality in services marketing and retailing as well as entrepreneurship, business ethics and online education. He is retailing section editor for Journal of Applied Marketing Theory. He also serves on the editorial boards of several scholarly journals.

M. Meral Anitsal is a Professor of Marketing in College of Business at Tennessee Tech University. She holds a Ph.D. in Marketing from The University of Tennessee, Knoxville. Her research interests include services marketing, consumer behavior, new product development, business ethics and online education. She serves on the editorial boards of several scholarly journals.