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A pilot study in higher education marketing implementation constraints

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Abstract

This paper outlines a pilot study which aims to explore the perceived risks that Australian higher education marketing practitioners believe they face as they implement marketing strategies. We set the discussion in the context of work on the nature and characteristics of higher education service products, and the important role of marketing implementation in the achievement of marketing success (Fisk et al 2007; Lovelock 1983; Kotler 1994; Bonoma 1984). We overview the Trade Practices Act (1974) and the other areas of relevant marketing law which higher education marketers are most at risk from. A further focus will be on methods and approaches practitioners perceive as effective or ineffective in assisting their efforts to manage marketing implementation, including legal compliance. Specific research questions are posed, and a methodology is proposed for the pilot study. The results of this study will form the basis of further study.

Introduction

The marketing of education services both within Australia and internationally has long been a major business undertaking. There are over one million people currently enrolled in over 50 Australian higher education institutions and higher education revenue is expected to amount to $18.61 billion in 2009 (IBISWorld Australia, 2008). Australia’s higher education sector is of extreme importance to society, and as Australia’s fourth largest export, to the economy. Higher education institutions market their products by advertising through a range of media outlets, producing publications using university branding and by making bold statements about what their products can offer to a prospective student above that of its competitors. Competition in the higher education market is fierce. There are nine major universities in Victoria alone competing for students, and this is not inclusive of other TAFEs and private colleges.

The primary aim of this research is to explore marketing practitioner perceptions concerning marketing implementation, with particular reference to perceptions of legal risk from relevant marketing law.

Marketing implementation - the actual ‘undertaking’ of marketing activities – is a poorly developed area within both marketing literature and within marketing education. A key element of strategic planning involves an analysis of the macro and micro environment in which marketers operate, an analysis which often forms the basis of an organisations marketing plan, alongside its marketing objectives. Marketing plans often act as an organisational guidebook for marketers, listing all the planned activities and initiatives for a forthcoming period of time, and are therefore developed with prestigious care. It is the implementation of these plans that often lets organisations down. Marketers can become so consumed with strategy that they overlook the critical implementation process, and this may lead to unsuccessful marketing campaigns.
Compliance with marketing law is an important issue for all marketing organisations and according to Clarke & Sweeney ‘any firm that does not have a legal compliance policy in place nowadays runs an enormous risk’ (2006). Implementation of a compliance program within marketing activities is necessary. Marketers need to be aware of the legal marketing limitations by which their strategies are bound. Marketing law in Australia is mostly contained in the Trade Practices Act of 1974, but also within other important pieces of legislation. Proper implementation of marketing plans is crucial to the success of a good marketing strategy, and implementation of legal compliance within a marketing strategy is necessary to keep organisations out of the courtroom.

In this study we are concerned with higher education marketing practitioner’s views concerning the implementation phase of marketing plans, and methods undertaken to implement marketing strategies, including compliance with marketing law. Study within this sector may yield considerable insights concerning implementation and compliance perceptions and practice within the broader not-for-profit and government sectors. It can provide insight on the effectiveness or otherwise of current marketing education, and be used to encourage diffusion of good practices and the discouragement of ineffective ones.

Higher Education as a Service Product

Kotler (1994) explained a service as an ‘activity, benefit or satisfaction that is offered for sale’. Services are also commonly described in terms of ‘performance’, and were described thus by Berry (1980) who described them as a ‘deed, act or performance’. From a marketing perspective, higher education is a ‘service’ product (or range of products), that can be differentiated from ‘goods’ on the basis of service product characteristics such as intangibility, simultaneity, heterogeneity and perishability (Fisk et al., 2007). For most students’ higher education represents a major, high involvement and long term purchase.

Marketing Implementation: the ‘Missing Link’?

The significance of effective implementation of strategy is reflected in the marketing literature, although this literature is not particularly well developed (Dibb, S, Simkin L, & Bradley, J, 1997). According to Baker (2003) marketers are all too often ignoring the benefits of implementation when developing a strategy, and when it comes time for implementation stand back and wonder why their strategy never gets executed effectively. For this reason Piercy (1992, p.224.) believes that chief executives should ‘reject out-of-hand any marketing plan of any kind which does not come with a detailed and realistic implementation strategy’ (Dibb, S, Simkin L, & Bradley, J, 1997).

It is not enough that marketers have a strategy in place. It is important that they implement this strategy thoroughly into their routine and into the marketplace if they wish it to succeed. Bonoma (1984) states that poor implementation can disguise (and ruin) a good strategy, and that great implementation can compensate to some degree for a somewhat less than optimal strategy. Only when strategy and implementation coincide has an organisation done all it can to ensure a successful marketing outcome. Similarly, having a strategy in place to ensure compliance with marketing law is not sufficient (ACCC, 2008). The Australian Competition & Consumer Commission (ACCC) (2008) argues that it is not enough that an organisation has a legal compliance program, but it is also necessary that this compliance program has been actively implemented and committed to by the organisation.
The Legal Context of Higher Education Marketing

Marketing Law and the Marketing Mix

Australian marketing law is contained primarily, but not exclusively, within the Trade Practices Act (TPA) of 1974 (Clarke and Sweeney, 2006). This Act covers aspects of product, pricing, distribution and promotions – all areas of the traditional 4 P’s within which marketers conceptualise and organise much of their work (Clark and Sweeney, 2006). Impacting on each of these areas of the marketing mix is a range of marketing laws that frame the activities of higher education marketers; these are listed in Table 1.

Table 1: Areas of Marketing Law

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<th>Product</th>
<th>Patents Act; Breach of Confidence; Copyright Act; Designs Act; Passing off; Trade Marks Act; Business Names Legislation; Trade Practices Act; Fair Trading Legislation; Sale of Goods Legislation &amp; Trade Practices Act: Pt V Div 2; Negligence; Trade Practices Act: Pt V Div 2A; Trade Practices Act: Pt VA</th>
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<tr>
<td>Price</td>
<td>Trade Practices Act S. 45; Trade Practices Act S. 46</td>
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<tr>
<td>Promotion</td>
<td>Trade Practices Act; Fair Trading Legislation</td>
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<tr>
<td>Place/Distribution</td>
<td>Restraint of Trade; Trade Practices Act ss. 46, 47</td>
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Source: Adapted from Clarke and Sweeney, 2006

Education by nature is an intangible product and therefore higher education institutions must rely on their trademarks, branding and reputation for identification within the marketplace. Product related marketing laws give institutions exclusive rights to logos, colours and names, so that marketers can use this to build up a brand. The heavily regulated nature of pricing by the federal government means that marketing laws pertaining to price are not particularly relevant to university marketers, because there not faced with price fixing or price discrimination. Higher education marketers promote their service product tirelessly throughout the year through a variety of different means. Promotion is the key area that university marketers need to be aware of when building and implementing strategies. Higher education marketers by law can’t not engage in promotional activities that are likely to mislead and deceive, therefore marketers need to be cautious over the claims they make about their institutions. Promotional laws also prohibit bait advertising, misleading sales talk and harassment (Clarke and Sweeney, 2006).

Breaching marketing law in many instances is a distinctively easy thing to achieve for marketers. Marketers can become so consumed with their strategies they can often neglect to reflect on the invariable consequences these strategies might have during implementation. Marketing law, particularly for product and promotion in the marketing mix, can be ambiguous. What can seem like a harmless promotion to a marketer can be construed by the courts as deceptive or misleading. Recently the ACCC has issued proceedings for misleading advertising against Crazy Johns and Saab Australia, two prestigious and well know company’s, demonstrating how easy it can be to commit a breach.

In the eyes of the law, marketing practitioners, and government regulatory authorities, higher education institutions are businesses that engage in marketing activities and that are competing for a share of various markets. The ACCC itself has said that the more universities
engage in commercial activities, the more they will be treated like businesses and the more their marketing activities will be monitored (IBISWorld, 2008). Higher education institutions are heavily in the public eye and as a service industry rely on their name and reputation. Prosecution for marketing law breaches can mean irreparable branding damage, crippling financial penalties and the withdrawal of academic funding and sponsorship.

Higher education institutions and their faculties now have substantial promotional budgets and are advertising on television, public transport, billboards, are in attendance at trade fairs and are making use of high traffic Y and Z generation websites such as Facebook and YouTube. Students are wanting more and more out of their degrees and universities have to tailor their marketing efforts not only to a student but also their parents, family, friends, schools, and potential employers. Today higher education providers often have layers of marketers within an institution from top to faculty level. A single institution can have upwards of 20 professional marketers. These marketers often work across different schools and faculties, between undergraduate and postgraduate levels and are all working on different advertisements, publications or events. Many of these marketers are reporting to non-marketing managers or a working independently, and this has created a substantial level of risk and heightened the probability of breaching marketing laws. It is for these reasons, that higher education institutions more than ever need effective compliance strategies that are well implemented.

**Research Questions**

We propose the following specific research questions within an exploratory study aimed at opening up this topic from the practitioner perspective:

1. What do marketing practitioners perceive as the extent to which formal higher education marketing plans are actually implemented?
2. What procedures and techniques do marketing practitioners perceive are in place to support the implementation phase of higher education marketing planning?
3. What do marketing practitioners in higher education institutions perceive as the major risks arising from current marketing law that they encounter in their daily work?
4. What procedures and techniques are marketing practitioners using to assist in achieving matching strategy and implementation in terms of compliance?
5. How congruent are practitioner perceived risks in this area with the actual risks as perceived by marketing law experts.

**Research Methodology**

A review of the appropriate literature attaining to the higher education industry, marketing implementation, relevant marketing law and the issue of legal compliance has been undertaken. This will provide a basis for the study, providing an overview of the industry in which we will be researching as well as providing supplementary support to our primary research. The study is essentially exploratory and qualitative in nature. In depth interviews of 30 – 40 minute duration will be conducted with senior marketing practitioners within Australian higher education institutions. Ethics clearance is necessary and each participant must sign appropriate documentation. These will be tape recorded for subsequent transcription. The transcriptions will be subjected to simple narrative/hermeneutic analysis, identifying common themes and responses. As the number of interviews will be
relatively small—perhaps a dozen in all, the use of NVivo type analysis software will not be necessary. However, the interviews will be audited by a co-researcher for consistency of interpretation.

This analysis will provide a firsthand account of how these practitioners view their marketing implementation and legal compliance programs. It should be possible to identify what area(s) marketing managers find to be the most difficult to implement, and also the most subject to legal risk. Interviews will be conducted with university and faculty marketing managers, as both are confronted with the issues of marketing law compliance, and are engaged in implementation on a daily basis. It should also be possible to identify common or less common strategies and techniques in use to assist these managers in obtaining effective marketing implementation and legal compliance. Some analysis should be possible in terms of practitioner perceptions relative to their levels of experience and training.

Secondary sources of data will also be utilised, particularly concerning the Australian higher education sector, implementation, marketing law, ACCC compliance programs, and case law. University compliance programs and guides, many of which are publicly available, will also be accessed for further insight into current implementation and compliance strategies in use. Expert opinion in the field of marketing law will be sought for comparison with the perceptions of the practitioners interviewed. A comparison between expert determined ‘actual’ risks and perceived risks may highlight any gaps that might exist in practitioner knowledge. All respondents and their institutions will be fully de-identified and all reportage will be aggregate. Findings will be disseminated to practitioners, enabling them to reflect on how their perceptions matched those of other professionals and of expert legal opinion.

Conclusions

This research is exploratory, and can serve as a pilot for a larger study. A major benefit of the study will be the location of any gaps between the perceptions of risk amongst marketers within universities and the actual risks outlined by marketing law experts. This research will assist academics in the training of their students in the areas of marketing implementation and legal risk and compliance measures in the context of Australian services marketing generally, and within not-for-profit and government marketing in particular. One outcome will be to provide an up-to-date case study of a specific services industry sector responding to the challenges of marketing implementation in general, and of compliance with marketing law in particular, for use in teaching and in universities. Such material can also be used for the purpose of induction into employment in the marketing function in higher education.

Consumers may also benefit from the dissemination of the findings; as such dissemination should encourage benchmarking and the application of good practices by Australian education providers. The purpose of ‘law’ is after all, to protect consumers and to encourage fair practices.

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