

Obstacles Caused by Laws to Marketing Activities in Vietnam

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ABSTRACT

Law not only provides a legal environment for corporate operations but also produces restrictive effects on corporate performance. The paper aims at identifying restrictive effects of legal regulations on marketing activities within the corporate governance framework in Vietnam today. From a marketing aspect, many regulations as seen by companies as are obstacles to development and integration into the world economy. Results obtained through analyses, syntheses, group and twosome discussions help identify several obstacles, such as limits on expenses on advertising and sale promotion, protection for brand names, and regulations about advertising contents and forms.

Keywords: law, corporate governance, marketing activities, Vietnam.

1. EFFECTS OF LAWS ON CORPORATE OPERATIONS

a. Relations between Laws and Corporate Operations:

Law is one of the macro factors that affect indirectly corporate operations in general and marketing activities in particular (P. Kotler, 1994). From Drucker's ideas of governance to M. Porter's theory of competition and P. Kotler's thoughts of marketing, all recognize profound effects of laws on corporate operations. Theoretical bases for marketing strategy (P. Kotler, 1996) or brand strategy (D. Aaker, 1996) all point out that the first thing to do when making a plan is to analyze the environment, especially the legal aspect.

In practice, laws differ over countries, and the law system produces different effects in different industries. Therefore, analyzing effects of the law system on corporate operations should be based on features of industries at various times and aspects.

In Vietnam for example, when analyzing the legal environment for the market on imported toys, such as Legos, marketing strategists usually focus on import tariffs, and culture- and environment-oriented regulations on trade in toys. When analyzing the legal environment for beverage industry, bottled green tea for example, marketers should examine regulations on food safety, information provided in ads, advertising expenses, and registration of brand names and trademarks, etc.

Additionally, all analyses of the macro environment, including the legal one, always aim at identifying business opportunities, threats, obstacles, risks, and negative effects from the environment in order to build effective business plans and strategies. Effects of the legal environment on corporate governance, thus, are always bi-dimensional: providing business opportunities along with obstacles or limitations.

b. Overall Marketing in Relation with Laws:

Due to the present global competition, marketing activities have become more sophisticated and helped connect corporate development with responsibility for community development, which led to the concept of overall marketing [1]. This approach maintains that complexity and scope of marketing activities should be identified and modified because those activities extend over various fields and produce many inter-dependent factors. Specifically, overall marketing activities reveal in the following four components (or functions):

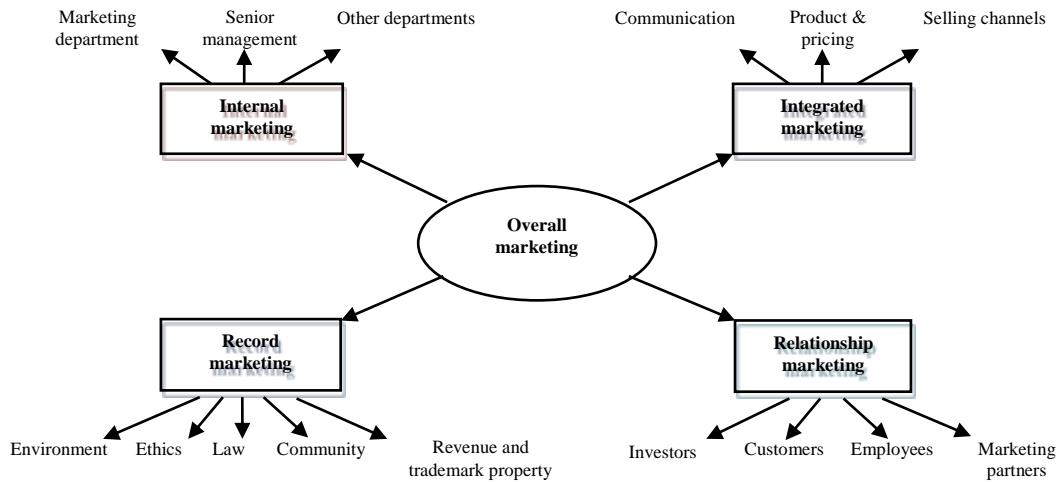


Figure 1: Components of Overall Marketing

Relationship marketing aims at building long-lasting satisfactory relationships with four parties (customers, employees, marketing partners, and investors) to gain profit and maintain business operations. Integrated marketing aims at creating, connecting and giving values to customers by building and implementing integrated marketing activities. These activities synthesize all components of the marketing mix (P. Kotler 1994) communicated in an integrated form called Integrated Marketing Communication (IMC) [2]. Internal marketing ensures that all members of the company, especially senior managerial board, agree to implement selected marketing principles to serve customers better. Record marketing maintains that performance of marketing activities should be placed in broader relations with legal, customs, social and environmental issues.

This theory also states that marketing activities not only generate short-term profit but also aim at long-term interests by building brand names, protecting the environment, developing local communities, observing laws and respecting ethical norms. Marketers usually call it a "social marketing viewpoint." This viewpoint forms a long-term orientation for the company and links corporate development with that of local community and has become widespread when many companies ignore long-term interests of consumers or damage caused for the environment just because of short-term demand of customers (reducing expenses) or interests of the company. This

practice produces disastrous consequences for the company as well as local community.

In brief, in the market economy where competition becomes keener and more complicated the role of legal factors is increasingly important. The law can ensure a fair competition and serves as a standard, or scale, that helps the company establish a right orientation towards a sustainable development. In managing a company, not all marketers can identify positive effects of the legal environment to impose measures to achieve a sustainable development instead of applying non-overall marketing views or exploit legal loopholes to strengthen its short-term competitive advantages. Such companies may run into troubles, and even bankruptcy, when the law system is improved.

c. An Example of Effects of Laws on Companies in Vietnam:

The case of Vedan Vietnam provides us with an example of effects of laws on corporate operations. Vedan has been a major, and even a leading, trademark in the seasoning business in Vietnam. After official conclusions of its violations of environmental regulations, Vedan faced various difficulties: (i) a huge expense on handling of consequences of its dumping of pollutants [3]; (ii) falls in sales caused by target customers' boycott on its products [4]; and (iii) a poor public image of Vedan in the eyes of consumers and local communities [5].

The cause of this sudden change is the effect of laws. Introduction and implementation of legal regulations may include shortcomings but the biggest mistake is the failure of Vedan management to estimate effects of laws on their corporate governance. Vedan serious violations of regulations on environmental protection inevitably lead to disastrous consequences.

2. SOME LEGAL OBSTACLES TO MARKETING ACTIVITIES IN VIETNAM

The law may produce both positive effects, such as creating a fair and stable environment for corporate operations, and obstacles to companies. Restrictive effects may come from subjective causes when the company are against regulations and faces serious consequences; or from objective causes when regulations become obstacles to corporate development. Many group and twosome discussions with representatives from nine companies in South Vietnam show that some restrictive effects caused by the laws are regulations on legal expenses on advertising, protection for brand names, content and form of ads, and procedures for acquiring licenses for advertisements.

One of the measures widely taken by local companies to improve their competition is to build brand names by carrying out marketing campaigns, but the regulation of a 10% limit on expenses on advertising affects severely such marketing activities [6].

To gain better understanding, we can examine the profit and loss statement of MH cosmetic company for a brand of shampoo. The statement shows that MH had to spend 45% of net revenue on marketing activities to gain an EBIT of 7%. This percentage may be much greater than 45% if the marketing expense is compared with the total expense used for calculating corporate income tax. This percentage may reduce over time, the company also has to spend some 20% of total expense on marketing to gain an EBIT of 17% at current interest rate. Thus, the 10% limit on advertising expense has become an obstacle to the effort to build brand names, especially for producers of fast-moving consumer goods, because in this industry the production cost usually equals 55%-60% of selling price, and marketing expense in early years of the product may amount to 17%- 20% of net revenue or higher if compared with total expenses for tax purpose.

Table 1: P&L Report by MH Company (VND1,000)

Item	2007	2008	2009	2010	2011
Amount of units	4,800,000	5,760,000	6,336,000	6,969,600	7,666,560
Retail price	22	23	24	25	26
Gross revenue	105,600,000	132,480,000	152,064,000	174,240,000	199,330,560
VAT	10,560,000	13,248,000	15,206,400	17,424,000	19,933,056
<i>Discount (6.4%)</i>	6,758,400	8,478,720	9,732,096	11,151,360	12,757,156
<i>Unit returned</i>	105,600	132,480	152,064	174,240	199,331
Net revenue	88,176,000	110,620,800	126,973,440	145,490,400	166,441,018
Production cost	37,033,920	49,779,360	63,486,720	77,109,912	88,213,739
<i>As % of net revenue</i>	42%	45%	50%	53%	53%
Gross profit	51,142,080	60,841,440	63,486,720	68,380,488	78,227,278
<i>As % of net revenue</i>	58%	55%	50%	47%	47%
Selling expense	1,022,842	1,825,243	1,904,602	2,393,317	2,737,955

<i>As % of net revenue</i>	2.0%	3.0%	3.0%	3.5%	3.5%
Marketing wage	153,426	243,366	317,434	341,902	391,136
<i>As % of net revenue</i>	0.3%	0.4%	0.5%	0.5%	0.5%
Marketing expense	39,679,200	38,717,280	31,743,360	29,098,080	29,959,383
<i>As % of net revenue</i>	45%	35%	25.0%	20.0%	18.0%
Consumer	26,452,800	22,124,160	19,046,016	18,913,752	21,637,332
<i>As % of net revenue</i>	30%	20%	15.0%	13.0%	13.0%
Trade marketing	13,226,400	16,593,120	12,697,344	10,184,328	11,650,871
<i>As % of net revenue</i>	15%	15%	10%	7.0%	7.0%
Logistics expense	1,022,842	1,216,829	1,587,168	1,709,512	1,955,682
<i>As % of net revenue</i>	2%	2%	2.5%	2.5%	2.5%
Office expense	1,022,842	1,825,243	1,904,602	2,393,317	2,737,955
<i>As % of net revenue</i>	2%	3%	3.0%	3.5%	3.5%
Total operating	45,234,288	48,009,427	43,170,970	43,647,120	46,603,485
<i>As % of net revenue</i>	51%	43%	34.00%	30.00%	28.00%
EBIT	5,907,792	12,832,013	20,315,750	24,733,368	31,623,793
<i>As % of net revenue</i>	7%	12%	16%	17%	19%

Thus, this regulation makes it difficult for companies to allocate fund for marketing activities, which forces them to cut marketing fund or find a way to avoid this regulation. In any cases, companies face certain disadvantages in carrying out their marketing campaigns.

Building the brand names is an effective measure to improve competitiveness because a strong brand name helps the company increase emotional benefits of the product [7]. Building the brand names, however, is a topical issue to local companies because of shortage of marketing fund, regulation on legal expenses for advertising and sales promotion, and regulation on protection for brand names.

The Vietnamese Intellectual Property Law came into effect in November 2005 to protect intellectual properties such as brand names. This law, however, is not accurate

and comprehensive enough. It can only, for example, provide a general definition of “brand name” while “trademark” is usually used by companies to refer all aspects of recognition of a company, including its products [8]. Enforcement of this law is not strict enough with the result that fake and counterfeit goods are widespread and abundant, from shampoo, beverage to wrist watch and even gold bar [9]. Fake and counterfeit goods have become a disaster of national level and a huge obstacle to corporate effort to build brand names.

This situation poses many difficulties for companies: (i) Their trademarks are damaged when consumers hold a low opinion of the trademark after they are deceived by fake and counterfeit goods; and (ii) They suffer huge losses because of an unfair competition from fake and counterfeit goods after they have spent large sums on research and development of new products. The problem here is the effect of laws. If the law system is stricter and enforcement of law is more effective, fake and counterfeit goods cannot find a place in consumer market and companies can find it much easier to build their brand names through marketing activities.

In sum, the restrictive effect of the law relating to protection for brand names and trademarks has become an obstacle to local companies. If the situation is not improved, companies cannot feel sure of their effort to develop new products and build brand names, and the national economy cannot develop in a healthy and sustainable manner.

Regulations on contents and forms of ads, such as the limit of 25% of the surface of website for ads [10] or the ban on using superlative comparison in ads, are also obstacles to marketing activities. Although such regulations aim at ensuring a level playing field, they still create many obstacles to marketing activities, especially in small and medium companies. For multinationals that are free from the 10% limit on advertising fund, they can place ads on TV and newspapers and use the Internet as an additional channel for advertising. Meanwhile, local companies because of shortage of fund have to place ads on websites and thereby being badly affected by this regulation. Similarly, the ban on using superlative comparison only produces effects on Vietnamese market while foreign companies can use other ways to introduce their trademarks as the first-class products.

Other examples includes bans on ads for milk for babies under 12 months old, food for babies under six months old, milk bottles and nipples (teats) in any forms [11], and on ads for products as replacements for breast milk, bottles and nipples for babies of

six months old [12]. Although they aim at protecting babies, local governments cannot implement them consistently.

Additionally, regulations on form and sites for ads (billboards) and procedures for acquiring advertising license also cause difficulties for companies. In District 1 of HCMC for example, some companies can be allowed to hang their banners over the streets or place billboards while others cannot. This inconsistency comes from unclear procedures for getting advertising licenses and regulations about acceptable contents and forms of ads or billboards. Thus, certain regulations have become obstacles to marketing activities.

3. SUGGESTIONS ABOUT IMPROVEMENTS IN MARKETING ACTIVITIES

Effects of legal factors on marketing activities of Vietnamese companies lead to both opportunities and obstacles. Companies cannot control such factors and they have to adjust themselves to such effects. However, they can take the following measures to reduce obstacles and improve their marketing activities

a. Analyzing Effects of Legal Environment:

In all industries, legal factors always affect greatly business performance, and companies, therefore, have to analyze such factors when developing investment plans and marketing strategies. Additionally, effects from those factors vary over times and industries. Companies should identify the most influential factors for analysis. A regulation may affect favorably this group of companies and produce bad effects on the others, and therefore companies should select, analyze and evaluate regulations carefully. Moreover, analyzing the legal environment should be based on reliable and original documents.

b. Applying Overall Marketing Views:

At the present time, marketing is no longer a specialized function and it becomes a task for all employees of the company. Marketing ceases to be limited to a sales supportive role but aims at helping the company gain a sustainable development by developing brand names and connecting the company with local community. The corporate leadership and its employees, therefore, should master the overall marketing view to carry out marketing activities and pay proper attention to effects from legal factors. Observing regulations set by these factors is a precondition for the corporate sustainable development.

c. Some Practical Solutions:

With a 10-percent limit on advertising expenses, the company can divide marketing costs into other reasonable expenses, such as transferring part of expense on commercial marketing to selling expense and logistics cost, and forwarding part expenses of commercial marketing to the next year. Part of consumer marketing can be turned into wages for marketing personnel by employing more seasonal workers. Additionally, marketing expenses in early stages can be seen as a fixed investment and divided among many successive years.

Although the company is unable to deal with counterfeit and fake goods, the following measures may be useful: (1) Maintaining R&D activities to improve product quality and package; (2) Developing new products regularly based on modern technologies and production lines; (3) Registering brand names, trademarks, etc. in detail with Office of Intellectual Property and placing anti-counterfeiting stamps on products; and (4) Disseminating information about brand names and product quality among customers, retailers and communities, and adopting measures to encourage retailers to inform the company about appearance of fake and counterfeit goods.

Facing the ban on using superlatives in ads, the company may use “leading” or “group of three leading companies” and promote the message about the leading position of its product or service by providing evidence on publications, newsletters, and even by word of mouth. Pricing is also a way of building an image of a leading brand name. With the ban on using more than 25% of the surface of the website for advertisement, the company may design small ads or offer links. Small and medium companies can examine closely procedures for granting advertisement permits, and regulations about places and forms for ads in order to carry out marketing activities effectively.

d. Relevant Petitions:

Most regulations aim at ensuring a good environment for corporate operations and a fair competition among companies, but not all regulations are strict and reasonable. Regularly reviewing and amending the regulations will be much appreciated and supported. In our opinions, the following regulations about marketing activities may need amendments or revision:

- The 10% limit on advertising expense: Many organizations and experts suggest removing this regulation or allowing companies to use 20% of their expense on advertising and sales promotion.
- A more comprehensive law of intellectual property: The term “trademark” should be added to the law along with definitions of brand name, trademark, fake and counterfeit goods.
- Introducing severe punishments, such as heavy fines or revocation of business license, for production of fake and/or counterfeit goods.
- Introducing regulations on and punishments for transport of fake and/or counterfeit goods, along with policies on bonuses and incentives for officials responsible for fighting against fake and counterfeit goods
- Encouraging habits of using genuine goods to support socioeconomic development.
- Improving procedures for granting advertising licenses and making them known.

Notes:

- [1] Kotler, P. & K. Keller (2009), *Marketing Management*, 13th ed, NJ: Prentice Hall, 59-67.
- [2] Integrated marketing communications are unified communications through product, pricing, selling and promotion (L. Percy, 2008).
- [3] <http://www.tinmoi.vn/cong-ty-vedan-hoan-thanh-den-bu-cho-nguoi-dan-11638640.html>.
- [4] <http://www.tienphong.vn/xa-hoi/509012/Dong-loat-noi-%E2%80%9Ckhong%E2%80%9D-voi-Vedan.html>.
- [5] <http://dantri.com.vn/c20/s20-414322/dong-long-tay-chay-vedan.htm>
- [6] Decree 24/2007/NĐ-CP on implementation of Corporate Income Tax Law, Article 5, Item 11.
- [7] Lê Đăng Lăng (2010), *Quản trị thương hiệu* (Brand management), Đại học Quốc gia TP.HCM Publisher, 24-52.
- [8] Luật sở hữu trí tuệ (Intellectual Property law), Part 3, Chapter VII, Section 4, Article 72.
- [9] <http://www.baomoi.com/Phat-hien-vang-mieng-SJC-gia/126/4770731.epi>.
- [10] Dự thảo Luật quảng cáo quy định quảng cáo trên báo điện tử (Bill of Advertisement, regulations about advertisements on the Internet) Article 26.
- [11] Decree 21/2006/NĐ-CP, Section 1, Article 6.

[12] Dự thảo Luật quảng cáo (Bill of Advertisement), Section 4, Article 8.

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