

"ANTITRUST LAW: ITS UNFULFILLED POTENTIAL FOR IMPROVED MARKETING EDUCATION"

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ABSTRACT

Antitrust law reflects marketing realities in dimensions especially appropriate to marketing education. Regrettably, however, the study of legal elements and strategy have been traditional. The author would call for a change in focus, coupled with use of computers for case research, in anticipation of substantial educational benefits.

DEPARTURE FROM TRADITION

The central thesis of this paper is that the potential of antitrust law for improved marketing education is substantial, yet generally unrealized at upper-division and graduate university levels. Furthermore, given recent technological developments in information science, the prospects for improved educational efficiencies in the study of antitrust law are great.

Admittedly, courses that deal with the subject, ranging from foundational to in-depth treatment, have been taught for decades. However, these courses are commonly not organized along lines consistent with strategic marketing management studies. Reference to textbooks dealing with antitrust law which are used in these courses confirm this. Practically all are structured by statutory prohibition, classes of actions, and the like.<sup>1</sup>

Contributing to this marketing malaise is the fact that all too often the in-depth courses on the subject are taught by non-marketing personnel, typically from law and economics departments. Occasionally a marketing professor with a special interest in the law pertinent to his specialization-- e.g., advertising--will teach sections of the law strategically. However, the practice is not general nor systematized. Yet, it should be.

The prospects are exciting. Antitrust law contains a mother lode of educational opportunities, many of which are largely untapped by traditional courses on the subject. Whereas in these courses the focus is upon the "letter of the law" and applicable cases, the proposed focus would be on strategic marketing, with study of the antitrust law, cases, and enforcement contributing as a realistic backdrop for this process. The end product: improved marketing management education.

A brief example here may be helpful. In the Monsanto case, recently reviewed by the U.S. Supreme Court, evidence of resale price maintenance was at issue. Traditional analysis of the case would focus on the law and the decision, only, or primarily. In contrast, the strategic approach, while embracing the traditional analysis, would focus instead on the distribution realities that gave rise to the case in the first place. Additionally, it would emphasize alternatives for ameliorating the conflicts between members of the vertical marketing network involved, consistent with objectives.

In short, as proposed, marketing law would not be taught as simply a course in the law. Rather, it would be made a springboard for developing strategic management skills. The law does provide a highly realistic and important backdrop of competitive proscriptions, with case records of attendant conflicts in actual markets. Moreover, changes in the law clearly reflect changes in markets, including the impacts on environmental forces and publics, all of which provide very good grist for the marketing educational process.

PROSPECTIVE COURSE MODELS/IMPLEMENTATION

The author's position is that the study of antitrust law, as proposed, should conform to commonly accepted marketing decision categories. Conceptually, these categories could range from ones as universal as definition of the company mission to the highly detailed specifics of promotional messages. Essentially, the approach would be one that conforms to generally accepted strategic planning models. Accordingly, major modular elements on which to position the law would include corporate growth strategies, portfolio planning (SBU's), and always the marketing mix decision categories, among others.

Accepting the proposition that antitrust law should be studied in the context of strategic marketing management, not vice versa, other steps would necessarily follow. A second major one would be to assign to appropriate decision categories the various proscriptions of the law, including representative cases. Finally, a third, major step would be to emphasize problem solving of issues that have given rise to the proscriptions and to the cases themselves.

<sup>1</sup> See, for example: Kinter, Earl W. (1964), An Antitrust Primer, New York: The Macmillan Company. Shepherd, William G. and Clair Wilcox (1979), Public Policies Toward Business, 6th edition, Homewood IL: Richard D. Irwin, Inc. Singer, Eugene M. (1981), Antitrust Economics and Legal Issues, Columbus, Ohio: Grid Publishing, Inc.

<sup>2</sup> Monsanto Co. v. Spray-Rite Service Corp. --U.S.--(1984).

## COMPUTER ACCESS TO INFORMATION

By the very nature of our legal system, court cases are a matter of record, and the process of search has been well refined. Nevertheless, given the volume of activity, throughout the various courts of the land, reflective of our litigious nature as a society, the task of research for students unfamiliar with the process can be formidable. At the same time, the importance of keeping abreast of developments in the law, as reflected in current cases, has probably never been greater.

Enter a recent technological development, a product of the information age: computer data banks of cases, indexed by court, by proscription, by year, and the like. Additionally, abstracts as well as complete opinions are available in print-out form. With these studies, the task of research is substantially reduced.<sup>3</sup> The prospect of making available such systems for use by marketing faculty and students--as is done today for the legal profession--is impressive, to say the least.

## POTENTIAL PITFALLS

Several conditioning factors, reflecting latent constraints to a successful marketing law course, as proposed, should be mentioned. One of these would be the resolution of potential conflicts with faculty and administration committed to traditional offerings. Another would be the assurance of instructional capability in marketing, not just law. Additionally, preparation would need to be thoroughly integrative of marketing management and the law. Finally, the end objective should be the achievement of positive strategic outcomes in marketing management forms, as previously emphasized.

## CONCLUSION

The course herein proposed is actually an extension in application educationally of the marketing or societal marketing concept.<sup>4</sup> Our objective, the author submits, should not be limited to the study of the law, but rather the development of legally emancipating strategies, whether regarding corporate growth, pricing, territorial arrangements, or other. The marketing system is predicated not so much on restraints (law) as upon routes (strategies) leading to the satisfaction of pluralistic needs. Without question, this should always be the thrust of marketing education. How better to develop a strong marketing philosophy within our student body than to practice it in our instructional processes?

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<sup>3</sup> At least two major systems now provide these computer services. One is named "Lexis" and the other "Westlaw".

<sup>4</sup> For definitions preferred by the author, see Kotler, Philip (1980), Marketing Management--Analysis, Planning and Control, 4th edition, Englewood Cliffs, NJ: Prentice Hall, Inc., 31, 35.

The "beauty" of law--often unappreciated--is its absolute grounding in reality. For us, marketing reality. This paper is essentially a professional challenge to marketing educators to trade on that reality more effectively. The author would emphasize that his proposal is not a change in kind but a change in focus. The study of marketing law should serve marketing education, not vice versa. The law deals with problems, but as everybody knows, the other side of a problem is an opportunity. In short, why not flip the antitrust coin?