Volume 14, Number 8 **ISSN 1078-4950**

JOURNAL OF THE INTERNATIONAL ACADEMY FOR CASE STUDIES

INSTRUCTORS' EDITION

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Editorial and Academy Information
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www.alliedacademies.org

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Whitney Press, Inc.

Printed by Whitney Press, Inc.
PO Box 1064, Cullowhee, NC 28723
www.whitneypress.com

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LETTER FROM THE EDITORS

Welcome to the *Journal of the International Academy for Case Studies.* The editorial content of this journal is under the control of the Allied Academies, Inc., a non profit association of scholars whose purpose is to encourage and support the advancement and exchange of knowledge, understanding and teaching throughout the world. The purpose of the *JIACS* is to encourage the development and use of cases and the case method of teaching throughout higher education. Its editorial mission is to publish cases in a wide variety of disciplines which are of educational, pedagogic, and practical value to educators.

The Instructors' Notes contained in this volume have been double blind refereed with their corresponding cases. Each case for which there is an Instructors' Note contained herein has been previously published in an issue of the *Journal of the International Academy for Case Studies*. Each case was required to have a complete teaching note before consideration. The acceptance rate for manuscripts in this issue, 25%, conforms to our editorial policies. This publication also conforms to the AACSB requirements to publish case notes which are considered by that body to be of more academic value than the case itself.

If any reader is interested in obtaining a case, an instructor's note, permission to publish, or any other information about a case, the reader must correspond directly with the author(s) of the case.

The Academy intends to foster a supportive, mentoring effort on the part of the referees which will result in encouraging and supporting writers. We welcome different viewpoints because in differences we find learning; in differences we develop understanding; in differences we gain knowledge and in differences we develop the discipline into a more comprehensive, less esoteric, and dynamic metier.

The Editorial Policy, background and history of the organization, and calls for conferences are published on our web site. In addition, we keep the web site updated with the latest activities of the organization. Please visit our site and know that we welcome hearing from you at any time.

Inge Nickerson, Barry University
Charles Rarick, Purdue University - Calumet

CASES

CARPET CAPITAL CULTURE CLASH

Marilyn M. Helms, Dalton State College
Judith E. Weber, Dalton State College

CASE DESCRIPTION

The primary subject matter of this case concerns the issues faced in a U.S. company with a large percentage of immigrant Latino workers and the resulting interactions with their original Anglo workforce. The case is appropriate for junior and senior-level business courses. The case is designed to be taught in two class hours and is expected to require one-to-three hours of outside preparation by students.

CASE SYNOPSIS

Teaching culture to business students is important, but often challenging. The authors developed this case study to describe the cultural issues and challenges encountered between an Anglo and Latino workforce in the U.S. This case is different from traditional cases that discuss culture in a new or "foreign" environment because this case is a domestic-based cultural case. This case profiles Dalton, GA home of the world's carpet and flooring producers. The industry, struggling for labor, actively recruited an able workforce from Mexico and Latin America to augment its local, Anglo workforce. Yet after years of working side-by-side, the Americans are puzzled over the behavior of a large group of Mexican workers in their midst. Specific situations outline the various encounters and behaviors that seem puzzling to both the Anglo and Latino employees. When viewed in the cultural context of the U.S., these exhibited behaviors violate cultural and social norms as well as common business practices. The case issues become understandable when viewed within the cultural norms of each group as presented in this Teaching Note.

The Human Resources Department is unclear how to address the issue facing the company. Students are asked to consider ways to educate the employees in the cultural norms and business practices of each group to improve morale and workplace functioning. Use of this case in various undergraduate international business classes can aid students in understanding the challenges of managing employees form several cultures. The issues of cultural misunderstandings should be generalizable to similar situations with other groups of mixed nationalities. The Latino culture was chosen for this case because it became a growing issue to the community of Dalton, Georgia and was and is experienced in a number of towns in the U.S., particularly along the U.S. Mexican border, in Arizona, Texas, and New Mexico.

INSTRUCTORS' NOTES

Recommendations for Teaching Approaches

There are three significant learning objective dimensions to the case:

1. It allows students to clearly identify cultural challenges that arise with an international workforce, providing a general level of sensitivity to culture and an in-depth cognitive understanding which should foster their ability to act effectively in similar situations.
2. It features actual examples of challenges for students to assess.
3. It highlights the unique situation of the growing number of companies in the U.S. and abroad that face challenges of merging multiple cultures in a high performing work group.

Learning Objectives

The learning objectives of this case are:

1. To introduce students to the concept of culture and how cultural differences manifest in workplace behaviors, even within the U.S.
2. To conduct an assessment of why such challenges exist and the use outside Internet and/or library research on the topic.
3. To understand the critical role of education on the part of all ethnic groups.
4. To create policies, procedures, and programs to address and to continue to educate workers on cultural differences.

Level Appropriateness

This case is appropriate for the following undergraduate-level classes:

- International business, particularly in the coverage of cultural differences
- Human resources, focusing on ways to manage and indoctrinate international employees to the company culture and/or the predominant culture of the area
- International management, focusing on ways to manage employees from a number of cultural backgrounds and ways to enforce policies and procedures that may not be well understood by the parties involved

Format Appropriateness

This case is appropriate for the following formats:

- case discussion at the end of a chapter in a textbook to reinforce international business/culture chapter concepts
- class discussion of the issues involved in managing a multi-national workforce
- homework case for international business
- team assignment for short written or oral presentation to research trends and customs for both Anglo and Latino cultures

TEACHING CULTURAL AWARENESS

While experts disagree about the best ways to prepare managers and students to operate in another culture or even learn about another culture, this task remains a major concern confronting corporations. Park and Harrison (1993) found that within the corporate setting, the application of cross-cultural training is practically non-existent and even cite the high percentage of U.S. expatriates that are reassigned to other cultures without any training and often fail in their assignments.

While teaching culture to business students has been well documented as a needed part of the business curriculum, it is often challenging to find the best way to approach the internationalization. Even with the language training often required of business majors, most lack cultural knowledge in actual business settings (Hong, 1999). Many student lack international experience and thus the professor must rely on textbooks, cases, and outside materials to help students become effective business practitioners in an intercultural or international framework. Harrison (1992) in a study of cross-cultural management training found a combination of role play (experiential) and a cognitive program was the best approach while Jacobson (1996) in his study of learning culture found cultural knowledge is best understood in terms of situated cognition.

Peralta and Kleiner (1994) specifically recognized the challenges in managing the Mexican employees in early 1994 and explained management is not easy and the art of management is further complicated when trying to effectively manage individuals from other cultures. They agree the immigrant work force migrating to the U.S. presents a special dilemma. They stress because of the different needs and problems brought on with such a diverse work force, managers need to understand their culturally different workforce in order to effectively manage their plants.

Mallinger and Rossy (2003) agree while teaching culture is intrinsically rewarding, the complexity can create a challenge for faculty. Bird, Osland, Mendenhall, and Schneider (1999) agree international management textbooks treat the coverage of culture as simple and superficial and agree it often bears little resemblance to the complexity most managers will confront in domestic and/or international situations. Most textbooks, the authors agree, cover Hofstede's (1980) work-related values dimensions on which cultures can be differentiated and only a few texts provide a limited analysis of culture and the challenges of working across cultures. Sokuvitz and George (2003) suggest strategies including case studies that professors can use to augment the teaching of culture. To address these deficiencies, the authors developed this case study to introduce students to cultural challenges involved in working with Latino employees in the U.S.

END OF CASE QUESTIONS

1. List examples of cultural misunderstandings you have encountered. Why did they exist?

Student examples will vary. If students are not diverse or have not traveled significantly abroad, consider inviting a foreign faculty member or foreign national as a classroom guest to share their experiences.

If possible, invite a Peace Corps representative or other individual (Rotary International Scholar, missionary, international business owner, etc.) with specific training on the issue and experience of living in a foreign land to class to discuss the acculturation process and international business differences. If there are multinational students in class, draw parallels and discuss similar issues they have faced both at home and abroad.

2. Research the history and culture of Mexico. Assess the probable reasons for the unusual behaviors Sam Haws' human resources directors observed.

Sanitation.

Sanitation issues differ in Latin America. Typically sewer systems can't handle paper products, particularly in the smaller cities and farms. Ironically, while ancient Mexican city of Teotihuacán boasted water and sewer lines (at least that's the guess of today's archeologists) from 600 A.D., modern Mexico is having major sanitation problems and this is a key issue as an OECD (Organization for Economic Cooperation and Development) country. The Mexican populations are from largely rural, agrarian communities. Sanitary sewers are primitive and their infrastructures frequently become clogged and overflow when toilet paper is introduced into the system. In Mexico's smaller communities, toilet paper is disposed of in trash cans located inside the restrooms stalls. Lacking such disposal containers in U.S. facilities and with no knowledge of the U.S. sewer system, the Mexicans place their used waste paper on the restroom floor when they don't see a trash can. They are just acting normally according to their culture and exhibiting classical ethnocentric behavior. Would

U.S. visitors to small Mexican community flush their waste paper; of course, because that's how they do it at home. Is it any wonder that some of the approximately 40,000 Mexicans, residing in the Dalton area, who move to Dalton for decent manufacturing jobs, have problems using our plumbing system? Wouldn't a Hispanic person think an Anglo visitor to their town as “nasty” too if they clogged their toilets and sewer system with paper?

Group and Team Behavior.

The period between A.D. 900 and 1521 is named “postclassical Mesoamerica”, for the replacement of kingdoms by tribal councils in Mexico, but continuing warfare and ritual sacrifice. Many of the Chichimec-Toltec tribes migrated south and established settlements, like the cultural center Thule. An important tribe was the Mexica, or Aztecs, who left Aztlan (“place of heroes”) and founded their new cities with impressive buildings and temples and developed cultural centers, like Tenochtitlan, which became today’s Mexico City, the largest metropolitan area in the world.

Throughout these times ritual sacrifices took place in entire Mesoamerica. For rain, for better crops, for triumph in warfare thousands of people were sacrificed, including children. Ball games also developed, played first by individuals, later by teams, representing their tribes and the loser ending up as sacrifice. These pre-Hispanic ball games were played with a rubber ball in a rectangular court and became a spectator sport, reminding us on today’s soccer games and their fans. The tribal culture, the ball-playing in teams all had a significant effect on the group culture, we can observe at the workforce in the carpet factories. The workers in these modern environments still hold onto old customs, preferring to be “team-players” and not “leaders”. In their group-based culture, family is the first priority. Friends are extremely important. Mexicans visit in large groups, prefer to act as a group, and work better in groups.

Ogden (2005) agrees unifying factors in the Hispanic market are group orientation, respect for authority, class distinction, faith, and belief in both fate and family. However these values often change in second and subsequent generations of living in the U.S. culture. Mexicans emphasize quality of life and enjoyment and there are group oriented. They place emphasis on groups and group goals, which is often in opposition to the highly individualistic U.S. culture. Hispanics see Anglos as individualistic, selfish and to some degree hypocritical because they espouse self denial (from their largely Protestant faith) and often act just the opposite with their materialistic purchases and seeming lack of attention to their family.

Perceptions of Time.

The underlying common denominator for all the different tribes and cultures in Mexican history was agriculture, hence the interest in mathematics and astronomy, the worship of the rain god. It is also a common thread in the culture of modern Mexico that the perception and importance of time is vastly different from the industrialized, "Western" countries and the United States, where "time is of the essence". It will take time for the newcomers in the region's factories to adjust to this faster rhythm of production life, while the pace of work and life is growing faster for all of us. Most of the immigrant labor from Mexico who comes to the U.S. is from small Mexican towns where little work is available; they are historically lower-skilled. Most of their motivation is economic and the few jobs available in the smaller towns of their homeland are farming, working in small stores, tending a bar, caring for animals or making products at home to sell in the streets (Peralta and Kleiner, 1994). The Hispanic worker's conception of time and punctuality is different. Many Mexican workers in this country are former rural workers accustomed to rising and retiring with the sun. Clock time and punctuality are learned behaviors along with the seriousness of absenteeism. In some cultures, including Central and South America, it is even considered improper or rude to be on time. This is in extreme contrast to the Anglo culture and particularly the assembly-line culture that demands all employees be on-time before their work can begin.

Gender Roles.

DeForest (1988) agrees women have a special place in the Hispanic culture and in Mexico; Mother's Day is a national holiday. The wife is the boss at home and it is freely accepted that she managers the children and often holds a firm rein on her husband.

Why marriage and family are more important than success, career, and "making money" for many of the first generation of Mexican immigrants, might have to do with the teachings of the church, which also prefers keeping women at the home, instead of throwing them into the "rat race". Women in the Mexican culture are associated with home and family. Girls participate in the "quincan?era" or 15th year celebration and according to the largely Catholic culture; these 15 year olds are preparing for marriage and child rearing duties. Also in Mexico few girls can afford or are encouraged to participate in higher education. Thus the lagging enrollment of women in the local college can be explained. As future and subsequent generations live in America, the number of women entering college and supervisory positions will increase. Latino males, however, are not traditionally used to working with or working for female managers.

Mexicans have more traditional gender roles and most are well defined. The husband tends to be dominant and focuses on decisions regarding major household purchases. Because Latinos are slower to acculturate than other immigrant groups, they tend to retain their original gender roles (Valencia, 1989 and Valdes and Seoane, 1995).

Translation without Information.

In the business environment, orientation in area companies is conducted by the human resources department. Bi-lingual employee explained the two week vacation period as a job perquisite but didn't explain to workers they had to fill out vacation authorization forms and get management approval for their selected two weeks. Workers just assumed they could take the two weeks anytime and didn't inform anyone. While the employees speak Spanish there may still be a language barrier, even with correctly translated materials. Research also points out that Mexicans often think their stay in the U.S. is temporary and to earn money and they may not bother to learn English or understand business practices and norms. Also many lack the educational backgrounds that would make learning a new language easy. Their heavy work schedule and possible undocumented status may make participation in language classes difficult (Paralta and Kleiner, 1994). While local translators in the workplace may know Spanish, if they were born in the US, these translators will not understand the cultural differences. Hispanics too feel skeptical about translators because they are usually "Chicanos" or individuals with Hispanic parents but born in the U.S. Chicanos are usually ignorant about the Hispanic culture because they prefer to be seen as "Americans."

Work Policies and Work Ethic.

Working long hours and embracing overtime is due to their poor economic conditions in Mexico and desire to pursue both the American dream and to send funds home to family in Mexico and to better their situation. Americans tend to be defined by their work or job. Mexicans believe their job is only a part of their lives and are more fatalistic and don't often set goals. This is a concept that must be taught. Traditions die hard.

DeForest (1981) points out that management of Mexican workers is difficult because of personnel policies that have been established by management to mirror their own perceptions and values. Anglo managers often think of a job in terms of the chance it offers to use one's talents and skills and as an opportunity for advancement. Mexicans, however, in large part regard this practice as unusual since their main concerns are pay, fringe benefits the supervisor and mainly having a job, any job. Upward mobility is valued but believed not to be attainable. The Mexican thinks of getting ahead in personal terms rather than in career terms. The social and familial culture stresses cooperation and competition. Mexicans, in general, are reluctant to supervise peers.

Respect for Authority.

Mexicans are not taught to question authority as Americans are. Authority figures, including teachers and managers, are more respected and Mexicans believe authority should tell them what to do and they take orders from them. Eye contact is also a big difference between the two cultures. In America, we've been taught someone who doesn't maintain eye contact is shifty or deceptive but in other cultures, looking someone in the eye, particularly when it is someone of authority, is disrespectful.

Distrust of Banks.

Some immigrants distrust banks because of the history of currency devaluations in their homelands. Others simply dislike an officious manner that smacks too much of the U.S. government, or worse, a U.S. immigration agent. Too many Mexican consumers think that if they go to the bank and suggest or disclose that they are in the U.S. illegally, they will be reported to immigration authorities, says Mr. García, the Dallas Mexican Consul. "The people don't understand what happens behind the window," he says. "They think that if the employees discover they are undocumented, they will be taken and deported."

3. Gather facts on the number of Hispanics in America. What trends to the data predict?

The U.S. Census defined Hispanics as people who originate from Spanish-speaking countries or regions and estimates the group to be the nation's largest race or ethnic minority at 39.1 million which is 13.7 percent of the U.S. total population not including Puerto Rico. By the year 2050, the projected Hispanic population of the U.S. will be 102.6 million or 24% of the nation's total population on that date. Nearly 67 million Hispanic people would have been added to the U.S.'s population between 2000 and 2050, according to this projection (http://print.infoplease.com/spot/hhmcensus1.html). In fact, some 40% of the Hispanic population in the U.S. was foreign-born in 2002 and 52% of this group entered the U.S. between 1990 and 2002. Latinos are not a homogeneous culture and all the population working in the area are not Mexican.

Out of the 6.1 billion of the world's population, there are 175 million people, who reside in a country not of their birth. Ever since the 1970s, when a new, "borderless economy" was advocated for economic integration of the earth, a migration of the world's populace took shape in unexpected and ever growing size. In several developed countries with an aging population and decline of the productive workforce is taking place, while worry, even opposition of the citizens is getting more pronounced about immigration's increasing social costs and its threat to the original culture. These opposing issues: the need for more workers, yet fear of the social and cultural costs of immigration are further complicated in the United States. In this country, a true "melting pot" of all the varieties of mankind, the earlier immigrants were eager to assimilate, to become Americans, with all the duties and privileges – and never look back. *"The current wave of immigration to the US today is an endless stream, much of it illegal, which the US never had before. And it is overwhelmingly Hispanic, and within that overwhelmingly Mexican"* (Huntington, 2001).

Hispanics are the largest minority group in the United States, making up 13.5 percent of the U.S. population. In addition, the Latino population's high fertility and immigration rates make this the fastest growing racial/ethnic group in the country. Latinos are also relatively young and the median age is 26.1 compared to 35.0 for the general population. Latino poverty rates are also severe with 31% living below the poverty line as compared to 13.5% of the general population (Martinez-Ebers, Fraga, Lopez, and Vega, 2000).

4. Develop proposals to effectively deal with the situations presented. Assume the role of the HR director as your plan your implementation. What programs would you develop for Latinos? What programs would you recommend for your Anglo workforce? Include an implementation plan and time-frame for this cultural change.

Although Hispanic workers are increasing in great number, many American managers have learned seemingly little about how to manage such a work force for the best results. As a consequence many companies have not educated middle management and shop floor managers about how to manage employees of Hispanic culture and psychology (DeForest, 1988).

Effectively managing others is a difficult task and this if further complicated when trying to manage individuals from other cultures. Programs on understanding cultural differences for employees are needed to explain differences in the various issues presented here (time, role of men and women, supervision and authority, etc.). All employees and managers need to attend the training and it should be offered to all new employees. Anglo workers and managers in particularly may need an advanced course on culture. Latino workers may need additional information on various U.S. customs and workplace norms. A consultant with experience in linking multiple cultures can assist as well. The training programs should begin immediately and continue until changes are seen on the shop-floor. The programs should be on-going as long as improvements in awareness and workplace functioning is seen. With high worker turnover or employment growth, the training should be repeated for new groups joining the workforce.

Have students develop potential training programs along with policy issues for workplace rules and standards of conduct. Use signs and posters with both or multiple languages to explain proper conduct, how to request and schedule a vacation, or proper waste paper disposal. Add trash cans to restroom stalls with signs in Spanish.

Develop as part of the employee handbook, modules on business culture, corporate culture, and daily workplace norms. Have a bi-lingual employee from Mexico review or create the materials to ensure accuracy and ease of understanding. Institute an ambassador or liaison to explain problems/issues to new employees as well as to existing employees. This employee can identify problems experienced by all cultures employed and bring issues and solutions/training programs to top management.

5. Is the Mexican workforce in Dalton, Georgia a diaspora, meaning homogeneous ethnic minority groups of migrant origins residing and acting in host countries but maintaining strong sentimental and material links with their countries of origin or homeland, typically maintaining their own language and culture?

Initially it appears the workforce maintained all their unique cultural norms and migrated to the area to follow the carpet industry jobs. It appears, however, that with the workers buying homes and staying in the area, they are no longer totally a diaspora but are slowly adapting to the U.S. culture while still maintaining features of their own culture and heritage. The second and subsequent generations of immigrants appear to be adapting more to the new culture and the process of acculturation is faster.

CLOSING STATEMENT

Remind students to be sensitive and cautious to the feelings of individuals from other cultures as the class discussion and case analysis progresses. This case, while sensitive, is a good mechanism to raise this important issue to students and has proved to be efficacious in the various classes in which it has been pilot tested.

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ODYSSEY HEALTHCARE: A DEPARTMENT OF JUSTICE INVESTIGATION RELATED TO THE FALSE CLAIMS ACT

John Newbold, Sam Houston State University
Laura Sullivan, Sam Houston State University

CASE DESCRIPTION

The primary subject matter of this case is the application of the False Claims Act by the Department of Justice to investigate the recruitment and patient care policies of a for-profit hospice: Odyssey Healthcare. The case provides examples of the types of marketing and management practices which could fall under the purview of the False Claims Act. Secondarily, the case gives instruction as to management practices which would help firms establish and maintain ethical and legally-compliant corporations.

This case has a difficulty level of" two" or" three", and is appropriate for undergraduate students who are being introduced to the topics of business ethics and/or business law. Through its focus on the hospice industry, the case provides a poignant backdrop for the need for ethical business behaviors. The case describes the basics of the Odyssey Healthcare business model, with an emphasis on the types of marketing and management practices which drive hospice businesses in the United States. It culminates with the investigation of the Department of Justice and sets up a beneficial discussion of why False Claims Act investigations are initiated and the specific types of corporate behaviors which are sometimes scrutinized. Finally, the case gives some instruction on the manner in which ethical and legally-compliant corporations can be established and maintained.

The case is designed to be taught in three class hours, with roughly one hour spent on understanding the hospice industry and Odyssey Healthcare, one hour spent on the specifics of the False claims Act. The final hour would be dedicated to the discussion of how to establish and maintain an ethical corporate culture and compliant operations. It is expected to take two hours of preparation by students.

CASE SYNOPSIS

Richard Burnham had major legal and public relations issues on his hands. He had stepped down as CEO of his for-profit hospice firm, Odyssey Healthcare, less than a year previously, in January of 2004. His cofounder, David Gasmire, had assumed his responsibilities, while he stayed *on as Chairman of Odyssey's Board of Directors. Now, less than a year later, a Department of Justice investigation was threatening the viability of his company.*

In October of 2004, Odyssey Healthcare senior management informed investors and analysts that the firm was under investigation by the Department of Justice for violations of the False Claims Act, with respect to the company's practices for patient admissions, patient retention and billing practices. Immediate action was required. The first thing Burnham needed to do was find out what had given rise to the DOJ investigation. Even if some "rogue" employees had disregarded the firm's Code of Ethics and engaged in illegal activities, could his firm really be held responsible for these actions? Going forward, what steps should the company take to create a more ethical corporate culture and maintain more compliant operations in order to avoid future investigations from the Department of Justice?

INSTRUCTORS' NOTES

Recommendations for Teaching Approaches

This case provides a unique context for business ethics and legal issues, since Odyssey Healthcare, Inc. is a for-profit hospice operating in an industry still dominated by non-profit entities. The case brings to the fore the aspects of the False Claims Act, which is the tool of choice when the federal government is investigating the fraudulent billing of a business entity. The fact that the subject matter involves the hospice industry makes the implications of the discussion more vivid and poignant.

It is recommended to first discuss the business model of Odyssey and other health care providers and the resulting business and marketing strategies deployed. Odyssey and others were aggressive in promoting rapid growth and achieving economies of scale. They were also creative in the manner in which they targeting potential patients, sometimes going after cancer patients, sometimes not, depending on the situation at each site. One key conclusion: Due to its tremendous rate of growth, Odyssey struggled to adequately track and control its operations.

The most compelling discussion will likely revolve around the question of whether or not Odyssey Healthcare, Inc. was indeed guilty of fraudulent behavior with respect to inappropriate billing of Medicare. The instructor may wish to set up this issue by asking students to describe a typical trip to the doctor's office and trying to identify areas where fraudulent behavior could occur. For example: Did you actually visit the doctor at all? Did the doctor use all of the equipment he claimed he did? Did the doctor prescribe all of the medicine that was claimed? This will give the students some idea of the myriad of areas where false claims can be made. Next, the discussion can be turned to the specifics of the forms of hospice care. Where is it possible for false claims to be made in regard to hospice care?

The second segment of the discussion should then turn to the False Claims Act itself. It would be beneficial to talk about the unique nature of the qui tam provision of the False Claims Act.

The qui tam provision provides an incentive for private citizens to report wrongdoing to the federal government. This can lead to a fruitful discussion of whether or not the government is promoting a "squealer society". It may be useful to discuss what other approaches, if any, are available to the government to help them identify and prosecute fraudulent behavior? At this point, key aspects of the False Claims Act can be examined relative to the business practices of Odyssey. There is a discussion question with a table summarizing some key points in this regard.

Finally, this case can serve as a springboard for a discussion of what companies can do to foster a more ethical corporate culture and maintain compliant operations. Schein's framework for establishing a corporate culture can be utilized to discuss what Odyssey was and was not doing to promote a cultural environment that might preclude the need for a Department of Justice investigation. In regard to operational issues, the final discussion question, dealing with some of the particular requirements of the Corporate Integrity Agreement between Odyssey and the Department of Justice, provides specific steps that can be taken to help ensure compliance with government regulations.

Discussion Questions

1. What circumstances have led to this DOJ investigation?

At the outset, it should be emphasized that Odyssey Healthcare, Inc. and its management *have not been found guilty of anything*. The Department of Justice is involved in an investigation, but the case is yet to be determined. However, Odyssey is already paying a price, as the DOJ investigation, in conjunction with the Barron's article, has caused the marketplace to lose faith in Odyssey and the firm has slipped significantly in market value. Thus, one can appreciate that even the *look* of impropriety can prove costly.

There are several factors that may have led to the DOJ investigation, most of which are related to Odyssey's aggressive growth strategies:

- The growth has outstripped Odyssey's ability to manage its widespread operations effectively,
- Its acquisitions of previously non-profit hospice operations may have led to current or recently-released employees who do not appreciate or agree with some of the processes Odyssey utilized for recruitment and care, and
- The culture of the firm may have been more dominated by the financial goals of continued revenue growth and bottom–line performance which, when combined with loose management of operations, gave certain employees the incentive to engage in fraudulent activities.

The DOJ investigation was instigated by two separate *qui tam* actions (to be explained in the next section). These complaints were likely filed by current or former employees of Odyssey, or perhaps a recent patient or patient's family member. It is certainly possible that an employee of a recently-acquired non-profit hospice did not quite agree with some of the Odyssey business processes and guidelines. By virtue of the federal government's decision to take up these claims, one is led to believe there is some merit to them.

2. Why would the Department of Justice send a letter to Odyssey with such little information regarding the offense?

The Department of Justice, like any investigating agency, wants to ensure that they obtain as much information as possible from the entity being investigated. When a simple one-page letter is sent, the party under investigation may provide additional information regarding offenses that the DOJ was not even aware of. This is why it is extremely important that any responses be carefully drafted and reviewed by Odyssey's legal staff.

One of the more challenging aspects of this question is the fact that Odyssey has not been fully informed of the nature of the claims in the qui tam complaints. This is due to the fact that the qui tam complaints are sealed (secret) to provide the federal government time to conduct their own investigations without the alleged violator being tipped off to their investigation. Thus, when the government approached Odyssey with the notification of their investigation, they were not specific, as they were trying to preclude employees of Odyssey destroying or otherwise ridding themselves of incriminating files, evidence, etc.

3. What types of misconduct would come under the purview of the False Claims Act?

It is important to note that *we do not know specifically what charges the Department of Justice was investigating with respect to Odyssey*. The following table summarizes some of the areas of the False Claims Act which may have been brought to bear upon the activities of Odyssey. It is based upon what the case tells us about Odyssey's activities and the areas covered under the False Claims Act.

The most alarming revelations of possible wrong-doing under the False Claims Act can be found under the section dealing with the Barron's article. Here we see specific charges of "providing a level of care and services below the standards set forth under government guidelines" and questions regarding the guidelines used for admission. The article cites the relatively high average length of stay of Odyssey's patients as evidence of lax standards in regard to the "six months to live" guideline.

Specific Areas Where Odyssey May Have Been Investigated Under the False Claims Act

Number	Aspect of False Claims Act	Odyssey Activities
1	Knowingly presenting, a false claim for payment.	Odyssey was very aggressive in their recruitment tactics. If any patients were admitted for hospice care who did not truly meet the criteria (e.g., were not actually six months or less from dying), claims for payment for hospice services would be considered false claims.
2	Kickbacks for referrals and other activities	Again, relative to recruiting, Odyssey was engaged in developing relationships with larger healthcare providers such as pharmaceutical companies, nursing homes and HMOs. If any of these business arrangements were to be deemed inappropriate (e.g., kickbacks), this would be a violation of the False Claims Act.
3	Services provided without the medical necessity.	If Odyssey were found to be unnecessarily providing "value-added" services, such as those requiring durable medical equipment (and thereby engendering higher levels of reimbursement), they may have been deemed guilty of providing unnecessary services.
4	Inadequate care.	In their efforts to control costs, Odyssey may have been found to have been administering inadequate care. For example, if a patient were in need of more pain relief, such as morphine. If Odyssey's national formulary called for a level of medication which the patient or his/her family deemed ineffective, they may have been accused of providing inadequate care. If Odyssey were seen as not providing proper bereavement care for patients' families, this might be construed as inadequate care.

4. If the investigation turns up some form of misconduct, can Odyssey be held responsible for the behavior of a few rogue employees?

The False Claims Act is leveraged very broadly to include essentially all business activities carried out by Odyssey or third parties acting on Odyssey's behalf. Perhaps of most concern to senior management at Odyssey was the broad interpretation of the term "knowingly". Under the False Claims Act, a person knowingly engages in misconduct if he/she acted with the actual knowledge, reckless disregard, or deliberate ignorance of the information underlying the misconduct (Vogel 1996). *Thus, if a lower level employee of the* *organization has engaged in some type of inappropriate behavior, the organization is not relieved of liability just because senior management was unaware of the employee's activities.*

5. What business measures should Odyssey take to avoid this type of investigation?

While improvements can be made to the technology used to process and validate claims, and new processes can be instituted to help prevent fraudulent behavior, the main deterrent to inappropriate behavior from top to bottom of the corporation lies with the corporate culture.

Odyssey should work to create a culture of patient caring that supersedes the culture of the profit-driven company. This culture should be supported by business processes that measure critical aspects of patient care. Once this culture is well-established, Odyssey should work to promote their image as incorporating this culture, in order to build up goodwill in the case of any additional allegations to come in the future.

The strategic plan of the corporation should reflect a greater focus on patient care. Thus, performance metrics, by which the company measures its effectiveness, would change from a stock market, profit-maximization orientation to a customer-satisfaction driven orientation. In addition, long-term investment in patient care should not be validated on return-on-investment standards, but instead on patient quality-of-life issues.

Finally, caregivers in these facilities would not be evaluated not the impact their actions on a company's cost structure, but instead on the experience and care that they can bring to bear on their patient's needs (Cruise 2002).

Odyssey can establish a more ethical climate by identifying common values and beliefs so that employees are better able to recognize them on hold themselves and co-workers responsible for them. Employees should have a visceral understanding of cheating of any kind on patient recruitment, care and billing is not condoned by the firm under any circumstances. Hopefully, they can be shown how detrimental a DOJ investigation, a class action suit, or a negative piece of investigative journalism can be to the firm.

6. What, if anything, could Odyssey do to promote a corporate culture where the ethical issues were better balanced with its business objectives?

In his book on organizational culture and leadership, Edgar Schein outlines a framework of major management tools by which corporate leaders can influence the culture of their organizations (Schein 2004). The following table outlines these management tools, and indicates whether or not the case provides enough information to attempt to assess

Odyssey's use of each tool. The shaded areas of the table indicate areas where some conclusions may be drawn about Odyssey's shaping of its corporate culture.

Schein's Major Tools to Influence Corporate Culture		
No.	**Tool**	**Case Information**
1	What leaders pay attention to, measure and control	Yes
2	Leader reactions to critical incidents and crises	No
3	How leaders allocate resources	Yes
4	Deliberate role modeling, teaching and coaching	No
5	How leaders allocate rewards and status	No
6	How leaders recruit, select, promote and ex-communicate	Yes
7	Organizational design and structure	Yes
8	Organizational systems and procedures	No
9	Rites and rituals	No
10	Design of physical space, facades and buildings	No
11	Stories about important events and people	No
12	Formal statements of organizational philosophy, creeds and charters	Yes

(Schein, 2004)

Thus, five of the twelve major tools can be assessed for the case. The table below summarizes information from the case relative to the five tools as outlined by Schein and where information is available.

Odyssey Healthcare appeared to have many of the necessary elements in place to ensure the culture of an ethical company. They had a senior executive in charge of compliance. They possessed a formal code of business conduct and ethics. And they administered internal audits of ethical behavior. However, given its position as one of the leading for-profit hospice operations in the country, one may easily argue that Odyssey did not go far enough. Perhaps senior management could have taken a more active role in promoting an ethical culture. Perhaps the firm could have engaged in more training emphasizing ethical behavior. Perhaps organizational incentives related to patient care should have been implemented to balance out the recruitment incentives. On balance, it appears that Odyssey may not have gone far enough to promote an ethical culture inside their organization.

Table 2: Information Relative to Schein's Framework		
No.	**Tool**	**Odyssey**
1	What leaders pay attention to, measure and control.	The case indicates that Odyssey management was focused primarily on the metrics of the business, such as average daily census and average length of stay. There is no indication in the case that management was utilizing a set of metrics focused upon patient recruitment processes and patient care. This is an area where Odyssey management could provide more emphasis moving forward.
3	How leaders allocate resources.	Odyssey's resources were mostly directed at driving growth in patient census. As Odyssey was adding new hospice sites, they dedicated an increasing share of their operational budget to establish and staff personal selling teams. In addition, resources were dedicated to the training of these "Community Education Reps", or CERs.
6	How leaders recruit, select, promote and ex-communicate.	This issue is addressed only tangentially in the section titled "Driving Admissions Growth through Personal Selling". In this section it is indicated that compensation plans for CERs were geared around numbers of referrals and types of patients obtained. While base salaries were set higher than market (presumably to attract the best candidates), bonuses were based upon the growth in referrals from quarter–to-quarter. There was no discussion regarding incentives or compensation for those who cared for the patients. Going forward, Odyssey management would be better served to provide more emphasis in this area.

7. What types of specific operational practices under the following categories should Odyssey put in place to avoid any further investigation by the United States Department of Justice?

a. Training
b. Written Standards or Policies
c. Disclosure Program
d. Internal Compliance Audits

(Note: the following answers were gleaned from the Settlement and Corporate Integrity Agreement between Office of Inspector General of Department of Health and Human Services and Odyssey Healthcare, Inc., July 6, 2006)

a. Training

In Odyssey's settlement agreement with the Department of Justice, Odyssey agreed to establish corporate compliance training programs. Further, not only was initial training required but also annual "refresher training" for employees. In addition, for employees that dealt specifically with the compliance and reporting portion of the business, an additional four hours of training was required. The specific training required that the employee learn about federal health care program requirements, proper requirements regarding documentation of medical records, applicable reimbursement statutes and regulations and the legal sanctions for violations of the Federal health care program requirements.

Employees that completed the relevant required training were to receive a written or electronic certification upon successful completion. The training certifications were to be kept on file with Odyssey.

Odyssey's training program and trainer certification were to be reviewed and updated annually. Any changes in the Federal laws or significant issues uncovered during internal annual audits were to be included in the annual "refresher training."

b. Written Standards or Policies

Per Odyssey's agreement with the Department of Justice, it was required to create a Code of Conduct. The code was to cover the following:

1. Odyssey's commitment to full compliance with all applicable legal health care statutes. In addition, its dedication to submit accurate claims that were in compliance with the relevant Federal statutes.
2. Corporate policies and procedures.
3. Reporting of any suspected violations of any Federal statutes.
4. Consequences to employees if they failed to comply with any Federal statutes and/or corporate policies and procedures.
5. A disclosure program. This program was to allow employees to report suspected violations in a confidential manner.

The Code of Conduct was to be updated periodically. The revised code was to be distributed to employees within thirty days of the completion of the revision.

Further, Odyssey was required to create a Policy and Procedures manual. The manual was to include subjects included in the Code of Conduct, as well as compliance program guidance for hospice and an internal billing review protocol. The billing protocol included a plan for admissions and long length of stay reviews. Odyssey was required to update its policy and procedures manual at least annually. A more frequent review could be done if Odyssey deemed it necessary.

c. Disclosure Program

Odyssey's Disclosure Program was to allow for an employee to disclose any issues he or she may find regarding compliance to any federal statute and/or policy or procedure. The key to the disclosure program was that it was non-retaliatory and allowed for the anonymous communication of violations.

Once the Compliance Officer had received notification of a potential violation, the Office was to make a good faith investigation to determine the legitimacy of the allegations. The Compliance Officer was required to maintain a compliance log. The log documented all complaints and the status of each compliant.

d. Internal Compliance Audits

Odyssey was required to have a full-time Compliance Officer who was charged with developing Odyssey's policies and procedures. In addition, it was the Compliance Officer who ensured compliance with all relevant federal statutes. The Compliance Officer was required to make quarterly reports regarding the above mentioned policies and procedures to the Compliance Committee and the Board of Directors. The Compliance Officer did not report to the General Counsel or the Chief Financial Officer in order to ensure that the position had sufficient autonomy.

A Health Care Compliance Committee was created so that all federal statutes were adhered to and the internal policies and procedures were followed.

EPILOGUE

In February 2006, Odyssey announced that they had reached an agreement in principal with the Department of Justice to settle its civil investigation, agreeing to pay the federal government a sum of $13 million, but admitting no wrongdoing or liability.

Odyssey has maintained its strategy of aggressive growth. Odyssey has implemented a new IT system to help with internal controls and reporting.

In October of 2005, Odyssey named a new President and CEO to replace the departed David Gasmire. His name is Robert A. Lefton. Mr. Lefton joined Odyssey from Select Medical Corporation, a privately-held operator of acute care hospitals. Mr. Lefton is expected to spearhead Odyssey's operational initiatives as well as contribute to the partnering efforts of the firm. Richard Burnham retained his position as Chairman of the Board.

In January 2006, Odyssey announced the creation of a new position: Senior Vice President of Strategy and Development. Mr. Woodrin Grossman, a former member of Odyssey's Board of Directors, was named to the post. Prior to serving on Odyssey's board, Mr. Grossman was Chairman of PricewaterhouseCoopers Global Healthcare Practice.

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Web-related Resources

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THE MID-CITY CONVENTION AND VISITOR'S BUREAU (CVB)

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CASE DESCRIPTION

This case can be used to illustrate concepts of leading an organization with multiple issues and priorities. Secondary considerations include the need for long-range planning and the effective utilization of resources, the need for partnering with other groups and organizations to achieve desired results, and, in this case, the ability to read the political climate to reach desired goals. The case has a difficulty level of two to three and is designed to be taught in one to two class hours. Depending on the depth of detail the instructor intends to pursue, preparation time for the students will take from one to three hours.

CASE SYNOPSIS

The Mid-City Convention and Visitor's Bureau (CVB) is faced with low employee morale, relatively fixed current funding, a lethargic, patronage-style board of directors, an uninformed public, and the requirement to deal with a state legislature and disgruntled voters to increase its revenue. The manager of the CVB believes additional revenue is necessary to increase marketing efforts in order to bring in more conventions and tourists. To increase revenue, the manager of the CVB would like to raise the current room tax, which is the CVB's primary source of revenue, or institute a restaurant tax. Both the room tax increase and restaurant tax plans are opposed by associations that represent hotel/motel and restaurant owners and operators. In addition, passage of either of the taxes will require significant political maneuvering to implement. The manager of the Mid-City CVB is faced with a catch-22 situation: CVB revenue cannot increase without conventions and tourists, yet current funding levels will apparently not allow additional marketing to the conventions and tourists they are attempting to reach.

INSTRUCTORS' NOTES

Recommendations for Teaching

For instructor lead discussion, students could put themselves in the place of the manager of the Mid-City CVB. The instructor may then lead the class in a discussion of what issues the "manager" should address and their relative importance. Issues to be considered include: the need for cooperation between the CVB and the Chamber of Commerce in order to combine efforts to bring industry and subsequent business travelers to the area; the need for cooperation between the CVB and the hotel/motel and restaurant associations to gain their support in promoting the area and possibly gain further funding; the need for cooperation between the CVB and area industries to promote business travelers and gain their help in securing convention business; the need to address low morale among the CVB staff; the need for an improved image among the residents of Mid-City; and the need for an improved method of securing knowledgeable and active members for the CVB board of directors.

Similarly, students may engage in group discussions and/or role playing using the characters described in the case. While the instructor is concerned with the outcome of the discussions, he or she may also want to observe the group dynamics during the discussion phase. The instructor should encourage students to fully "engage" the roles that they have assumed, including that of apathetic board members. At the conclusion of the role play, the board can "vote" on an action. Questions the instructor may want to explore during or at the conclusion of the role play include:

Regarding a new tax, what position(s) does mayor Gann, CVB board president Barnes, and CVB manager Fulco take?

How receptive are the HMA and RA representatives (Bartholemew and Jones) to the arguments of the mayor, the CVB president and CVB manager?

What role has Martin Hall assumed in the discussion?

Is the CVB board able to reach a consensus on this issue? If not, what would be required to reach a consensus?

Did any member offer insight regarding the CVB and Chamber of Commerce relationship, and possible cooperative marketing efforts?

The case could also be used as a homework assignment. If utilized in this manner, students should be instructed to read the case thoroughly, then list and provide analyses of the issues/questions affecting the CVB. The students should then provide viable solutions to the listed issues/questions.

ISSUES/QUESTIONS

Room Tax Versus Restaurant Tax

What are the advantages and disadvantages of the room tax versus a restaurant tax? The advantage of the room tax is that it is not likely to directly affect the residents of Mid-City. As a result, they are more likely to support passage of a room tax. Also, the room tax is directly related to at least one of the goals of the CVB, which is to promote tourism and conventions. By using a room tax, the Mid-City CVB has an incentive to promote overnight guests at area hotels. A disadvantage though, is that even though the CVB has shown the ability to "live within their means," a room tax puts the CVB finances at risk should the tourism or convention business drop unexpectedly. While implementation of a restaurant tax will provide more revenue than the room tax, since all patrons will be taxed, it may be more difficult for Mid-City residents to fully support the tax.

Convincing the Hoteliers the Room Tax Should be Increased

Convincing the Mid-City HMA of the advantage of an increase in the room tax could present a challenge. Prior to addressing the tax issue with the HMA, the Mid-City CVB should develop a firm plan for the marketing of Mid-City. This would include a detailed analysis of the target market(s), how those markets will be reached, expected costs, and returns. Dialogue between the Mid-City Chamber of Commerce and CVB should be initiated and explored with the intent of developing cooperative agreements beneficial to both agencies, and, most importantly, Mid-City. This action should demonstrate the CVB's intent and willingness to utilize all resources available to the Mid-City CVB. The CVB manager should provide information and assurances to the HMA that the tax will be used for the promotion of Mid-City and emphasize the fact that each dollar spent in marketing the Mid-City area returns $75 in tourist expenditures. A portion of those tourist expenditures would be spent by overnight tourists resulting in increased hotel/motel revenue.

Convincing the Restaurateurs a Restaurant Tax Should be Implemented

Advantages of the restaurant tax are that everyone pays (it is not targeted to a particular traveler such as day trips versus overnight) and it is projected to provide more revenue than the room tax. A disadvantage is that the residents of Mid-City as well as visitors will be taxed, which could adversely impact local restaurants (higher cost means residents may not eat out as much). It is also questionable that Mid-City residents will approve a new tax in light of their recent vote against the bond proposal for more parks and a zoo. Convincing the Mid-City RA and the citizens of Mid-City to support the restaurant tax presents a challenge for the CVB. As with the hotel/motel tax, the restaurant association and residents will need to be assured of the value of a restaurant tax and the Mid-City Chamber of Commerce should be consulted regarding this effort. Arguments for the tax include the increased revenue stream for the CVB over the hotel/motel tax and the significant payout for dollars spent marketing Mid-City.

Mid-City CVB's Measure of Effectiveness

The Mid-City CVB's current measures of effectiveness (convention bookings and tourist inquiries) are too vague. What other measures might be more appropriate? To measure the impact of the tourist activity, the CVB could measure tourist-hotel-nights and day-tourists. Tourist-hotel-nights will measure the number of tourists and the number of nights that each spends in a Mid-City area hotel or motel. Day-tourists data could be captured through regular surveying of the top tourist attractions in the area and businesses that serve travelers. To measure convention activity, the CVB could capture data as convention-delegate-nights. Convention-delegate-nights indicates the number of convention delegates in area hotels and motels and the number of nights they stayed in the area.

Working With the Mid-City Voters

The CVB must first gain the support of the affected (RA and/or HMA) association and the cooperation of the Mid-City Chamber of Commerce. Once that support has been attained, the CVB, the affected association, and the chamber of commerce should undertake an educational mission to inform the Mid-City residents of the benefits of the proposed tax. While the backing of the affected association is crucial, the Mid-City chamber of commerce can provide additional leverage in working with local businesses to support the passage of the tax.

Working With the State Legislature

With the support of the affected association (RA and/or HMA), chamber of commerce, and approval of the voters of Mid-City, these actions will likely garner the support of the local state legislators. It is unlikely that the local legislators will oppose actions supported by their constituents and the affected association. With the affected legislators "on board," approval by the entire state legislature is virtually certain.

Lack of Recognition in the Local Community/Methods of Promoting the Mid-City CVB

A low-cost public awareness campaign should be mounted by the Mid-City CVB. This could include the sponsorship of a booth at the various festivals to make attendees aware of the work of the CVB. This could also include durable signage that could be used repeatedly at all local events.

The CVB could also appeal to local television and radio stations to gain air time for public service announcements publicizing their work and encouraging Mid-City residents to promote tourism as well as patronize local events.

Lack of Interest and Expertise Among the Members of the Board

Job descriptions must be developed for board members. Existing and potential members of the board must be made aware of the requirements for the job and be willing to adhere to those requirements. The mayor must abandon the patronage methodology of selecting members and base the selection on a potential member's qualifications and willingness to work for the betterment of the CVB and Mid-City. The tradition of appointing a member of the hotel/motel and restaurant associations should be formalized, thereby recognizing the groups' importance to the CVB and its' efforts.

Low Morale Among the Mid-City CVB Employees

With increased interest and participation of the CVB board members, it is likely that the CVB employees will find renewed interest in their work. Recognition of the Mid-City CVB's work by the hotel/motel association and/or the restaurant association as well as the positive affirmation by the voters would likely improve the morale of the CVB employees. The CVB employees should be surveyed to determine their concerns and areas for improvement. Consultants and/or nearby university faculty may be available to assist in these efforts.

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AUNTIE ANNE'S PRETZELS: A KNOTTY PROBLEM

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CASE DESCRIPTION

This case involves growth and management issues, and is appropriate for small business and management courses. A secondary issue is the owner's social motives for the business, thereby making this case appropriate to a discussion of entrepreneurial goals and social responsibility. It traces the birth and growth of a new business into an international franchise system. It is a level 2 case designed to be covered within one class period and is appropriate for small business or management classes. The purpose of this short case is to expose students not only to real-world questions of strategic management and franchise development, but also the way an entrepreneur's personal goals can influence business decisions.

CASE SYNOPSIS

Auntie Anne's is a family owned and operated snack eatery business that holds a strong commitment to customer satisfaction. The company focuses on product quality, strong support to its franchisees, and a commitment to relationships that will help in the long-term growth of the franchise system. Auntie Anne's success can be seen in its growth from a farmers' market stand to the expanded franchise system it offers today. Founder Anne Beiler started the business as a means to fund charitable work, and now Anne is considering selling the business in order to focus on her charitable projects. In addition,there has been an expansion of Auntie Anne's to include a new café format as well as the furthering of the charitable aspect of the business. This case study will examine Auntie Anne's past and possibilities for the future from a corporate and franchisee perspective.

INSTRUCTORS' NOTES

Recommendations for Teaching Approaches

This case covers the strategic direction of the company, as the owners consider expanding in a different direction through the development of Auntie Anne's Café as well as the growth of the existing franchised Auntie Anne's brand. Underlying the case context are the Beilers' personal goals. From the beginning, they started the business in order to fund their alternate goal of funding charitable work. This case presents the entrepreneurs, Anne and Jonas Beiler, at a time in their lives where they are deciding whether they have reached their ultimate goal, and should lay aside the means they had used to reach the desired end.

As this case deals with a franchise retail outlet to which many students may relate, the instructor should strategically segue into the case with a basic overview of the existence of the franchise operations as not only a contributor to the American economy but also as a possible source of inspiration for a potential entrepreneur in the classroom. By focusing on the franchise from inception to its expansive presence today, the instructor can highlight the meaning and processes of a franchise, the target markets, small business operations and a basic SWOT analysis.

Within the small business or management course, the instructor can use this case to shed light on the changes that Auntie Anne's experienced throughout its history. This chronology can be used to contemplate the history of other similar franchises. The realm of small family owned restaurant-turned-franchise can be presented as the backbone to a network of evolving eateries lending themselves to the ever-changing consumer preferences landscape. Auntie Anne's response to these changes can be brought to the attention of the students to highlight the need for change in competitive markets. The case can also be a catalyst to a lively conversation about the concept of chain restaurants and their proliferation during the last 3 or 4 decades.

It stands to reason that the average U.S. consumer is familiar with a great deal of chain restaurants (franchises) but not savvy on the developments that have led up to their existence in terms of individual company history, competition and the need for change. This case can enable the student, possibly a stakeholder to some degree in this or other food service franchises, to actively engage in the change and dynamics faced by a franchise operation. For deeper study into franchises, especially those in the soft pretzel sector, students can search the internet for the most recent information on Auntie Anne's competitors.

This Auntie Anne's case can also be used to demonstrate relevant costs in joining a franchise rather than starting a new independent business. While students can easily research other pretzel companies to compare costs, the following are examples of additional costs that are frequently not revealed until later in the application process, but present significant expenses.

Table 2: Additional Franchise Fees

Regional Advisory Council Dues	$300/year
Advertising Fee	1% of Gross sales (paid weekly
Transfer Fee	$3000
Lease Renewal	$2000
Lease Documentation Late Fee	$500
Relocation of Business Fee	25% of current franchise fee
Franchise Renewal Fee	$15,000 or 50% of current franchise fee, whichever is greater

Table 2: Additional Franchise Fees	
Polling Set-up Fee	up to $400
Polling Recurring Fee	up to $100 per month as incurred
Franchisor’s Lost Profits	
Following Termination	Royalty and Advertising Fees for the remaining term of the Franchise Agreement plus the greater of 18% per annum for the interest or the highest possible amount under your state’s law
Operating in Event of Default	$250 + travel, lodging, meals until default is cured
Service Fee	$250/day of help per person
Legal fees	Franchisee must cover legal and incidental costs incurred by franchisor if franchisor brings an action against the franchisee.
Audit Fee	All expenses if receipts were understated by more than 2%

SUGGESTED CASE QUESTIONS

1. From both the franchisor and franchisee perspectives, what due diligence could be conducted to reach a mutually beneficial franchising agreement?

The due diligence investigation of a potential investment serves to confirm the fundamental material facts in regards to a sale. This refers to the care a rational party should take before entering into an agreement or a transaction with another party. Due diligence analysis usually yields a go or no-go decision with regards to a purchase of an asset, or in this case a franchise commitment (franchisor <-> franchisee). This process should entail a thorough study of financial records in addition to anything else material to the sale. Sellers (franchisors) should also perform a due diligence analysis on the buyer (franchisee). Factors to be reviewed include the franchisee's ability to purchase, as well as other items that will affect the franchisor after the sale has been completed. Due diligence serves the purpose of preventing unnecessary harm to either party involved in a transaction.

Beiler moved up the learning curve quickly with regards to franchising. She seemed to develop a keen acumen for the key criteria for potential franchisor/franchisee investment decisions. Beiler realized the importance of national or international advertising, training, and other support services are commonly made available by the franchisor. As franchising tends to be longer term than a licensing agreement, greater due diligence by both franchisor and franchisee is advised. A prospective franchisee has an array of franchises and industries from which to choose. Table 1, "Franchise comparison" compares several criteria among Auntie Anne's, a direct competitor Wetzel's Pretzels, and the family restaurant Ponderosa Steakhouse. This can serve as a quantitative point of comparison in the due diligence process. Qualitative factors tend to be subjective judgments based on nonquantifiable information. Examples include perceived strength of brand, management expertise, firm reputation, and industry cycles.

2. What are the potential risks of the following actions?

Anne Beiler selling her company to cousin Sam Beiler:

Although Sam does have experience and perceived commitment to Auntie Anne's, different o1wnership can bring about unforeseen changes. Anne Beiler had specific goals with the creation of the company, to include philanthropic objectives. Whether Sam Beiler follows through with those goals will depend on his desires, the profitability of the firm and the industry itself. Sam has been part of the Auntie Anne's family since 1989 when he became one of the company's first franchisees. Since then he has concentrated on opening 137 foreign stores and overseeing 37 company owned units. If the company is sold, it is likely that he will take it in a new direction. Sam has stated that he would like to open about 40 pretzel stores a year – is this too aggressive? Will losses result from this?

Creating the new Auntie Anne's Café concept:

Sam also plans to introduce the Auntie Anne's Café slowly to see if it will be profitable. This maneuver represents risk since the Auntie Anne's brand name is associated with pretzels and the Café concept will introduce other products. The marketing costs to inform the public could outweigh the benefits in terms of revenues generated by the new idea.

3. Conduct a SWOT analysis for the Auntie Anne's concept (from both franchisee and franchisor perspectives).

The strength of the franchisor is its size and potential to quickly expand due to the mobility of the franchising business model. Additionally, since the localized risk is assumed by the franchisee, a franchisor can more easily absorb the negative effects of a failed venture due to the initial investment by the franchisee. A weakness of a franchisor is that intellectual property is vulnerable and ideas can be used by franchisees to become a competitor. Opportunities include quick expansion and a turnkey process which leads to a competitive advantage in many local markets. Independent businesses (non-franchise) are threatened by the spread of franchises. Threats include unfavorable legislation, processes required in certain states, as well as the possibility of franchisees stealing ideas and becoming competitors.

From the franchisee perspective, a strength is that an entrepreneur can have quick access to a proven brand and business model yet employ his/her enterprising spirit by entering into a franchising agreement quickly and with a lower capital requirement than would be the case if starting right from the beginning. The franchisee usually has access to marketing, training, ongoing support and an established supplier or distribution network. On the other hand, the established suppliers may not be the least expensive or most efficient. The franchisee has minimal leeway in this area in most franchise contracts. This is typically due to quality concerns. A weakness for the franchisee is a loss of control that the entrepreneur starting from scratch retains in a business venture. The franchisee is required to follow a certain protocol determined by the franchisor. Among different opportunities figure the potential for good return on investment, a solid brand name, and training opportunities. Threats include competition and risks with snack food location employee turnover. Additionally, strong brand can hinder expansion into other products.

4. Would you go to an Auntie Anne's Café? Why or why not?

This question is posed as an open ended discussion. A recommended approach for this query would be to suggest that the students ascertain whether there is an Auntie Anne's in their area (or a similar franchise) and to visit and possibly even partake in the fare. It would also be useful to do basic website perusal of http://www.auntieannes.com/ to learn more about the operation – does the website inspire consumption? Is it easy to locate a store? What are the products offered (beyond pretzels)?

5. How have Anne Beiler's personal goals affected the business?

Anne's personal goal has long been to provide funding to a counseling center. As a true entrepreneur, she pursued growth and profit through innovation. However, she viewed her business as a means to an end, rather than an end in itself. Having sold the business, she is free to concentrate on building up the counseling center, a not-for-profit business.

EPILOGUE

Anne Beiler sold Auntie Anne's to cousin Sam Beiler, who intended to expand the franchise with Auntie Anne's Cafes. His experience as franchisee since 1989 and as CEO since April 2001 proved to be critical. Anne and her husband are devoting more time to their charitable work.

The new Café concept unfortunately has suffered from the brand strength of Auntie Anne's – the association of Auntie Anne's with the pretzel. One of Sam Beiler's objectives is to redefine the brand of Auntie Anne's. In October, 2006, Auntie Anne's "closed four of its five restaurants […] saying they drew customers wanting the company's renowned soft pretzels, not the café's broader menu" (Mekeel, 2006). The "return on investment in the cafés could not justify a national growth plan" (Burns, 2006).

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PROPERTY RIGHTS IN CYBERIA A STUDY OF “INTENT” AND “BAD FAITH”

A Case Study in the Adventures of Creating Property Rights in Cyberspace

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CASE DESCRIPTION

The primary objectives of this Case Study is to address the dynamics and challenges of harmonizing present day business practices that may be impacted by traditional legal concepts, identifying current government/international organization regulatory initiatives that influence Internet policy, and coordinating case law principles that have application to resolving business disputes pertaining to “Cyberspace Property” status and other related property activities on the Internet. This Case Study provides primary subject matter insights into complexities of intellectual property rights as related to Cyberlaw principles and E-Business activities that have been profoundly effected by recent technology changes. Another important aspect within the framework of this environment of changes are the continuing dynamics of Internet oriented commercial activities and its effects on managing and conducting business transactions, both locally and globally. In this instance, intellectual property rights, commercial activities, and the business transaction process are directly related to each other and have profound effects on business outcomes.

Secondary issues examined in this Case Study pertain to numerous “ethical dilemmas” created by commercialization of advancements in technology and, again, the effects that such “changes” have on law and the business community. Also, within the context of intellectual property issues, U.S. Constitutional issues and criminal activities will be evaluated. Additionally, student preparation for the Case Study is exclusively assigned to On-line legal research activities.

This Case Study has the difficulty level of two or three, and is suitable for sophomore and junior course work in “Legal Environment of Business” or “Business Law.” It is also applicable to various specific topics within E-Business/E-Commerce curricula (e.g. E-Marketing, E-Law, E-Strategy/Policy among others). Primarily, it is designed as a supplement and update to materials introduced in textbook chapters relating to intellectual property and Internet law. This Case Study may be taught in a cumulative four-hour class session(s) and requires four hours for student preparation.

CASE SYNOPSIS

The pioneering journey of this Case Study explores new and exciting adventures of virtual property rights in the world of Cyberspace. The objectives, in this instance, is to investigate on the merits the facts of this spirited Case Study and determine current relevant issues relating to On-line/Internet oriented Cyberlaw principles that are directly applicable to contemporary practical business approaches and will help reveal and solve some of the mysteries of Cyberjustice trends. Key material factors are addressed specifically through uniquely fashioned commercial events enumerated within the Case Study during an exhaustive fictitious 30 day period. A sampling of topics include: Cybertrespass, Cyberstuffing, Pagejacking, Spoofing, Cybersquatting, Cyberpiracy, Typosquatting, Protest Domains and Cybergripers, Metatagging, Keywording, Linking, Framing, and Mousetrapping.

The second feature of this Case Study is in teaching specific On-line business and legal research skills. All student preparation is Internet based. "Student Instructions" include an exhaustive section pertaining to On-line research.

This is where the virtual rubber hits the virtual road. The "Student Instructions" also includes a number of detailed instructions and approaches that address the formulation of case issue/issues through the process of understanding the basic operative facts enumerated within the fictitious 30 day period of the basic Case Study and by applying legal principles most suitably related to the stated facts that will essentially establish the rule of law for each identified issue. Next, the transition from the previous process of establishing the issue is to present the reasoning and analysis of why there is application of the law in resolving the original dispute as presented by the stated facts. Finally, the conclusion states the outcome in a definitive style that establishes the results of the decision making process. The hope at this point: predictability, stability, and continuity. Students use a combination of "Student Instructions" that follow the Case Study, evaluation of the fictitious 30 day period of facts presented in the Case Study, and On-line research in the learning process. Finalization of the process is extensive and challenging student discussions in the classroom. [Hint: The outcome of this Case Study ends with a twist of fate not foreseen by Dr. Ima Goode and Dr. Rob M. Phast, competing university presidents.]

INSTRUCTORS' NOTES

Case Study Objectives

1. *To investigate the facts of this Case Study and determine relevant legal principles for On-line Cyberlaw issues that are appropriate and applicable to practical business approaches in supporting intellectual property rights solutions and that help reveal and solve some of the mysteries of Cyberjustice.*

2. *Formulate finalization of the case issue/issues through understanding the basic operative facts enumerated in the case and by applying legal principles most suitably related to the stated facts that will essentially establish the rule of law for each identified issue.*

3. *Reasoning and analysis of why there is application of the law in resolving the original dispute as presented by the stated facts.*

4. *State the outcome in a definitive style that establishes the results of the decision making process.*

5. *Establishing opportunities to develop business relationship skills that are applicable to team and group projects.*

6. *Improving skills for conducting legal research On-line.*

Case Study Concepts and General Teaching Instructions

A suggested approach in meeting the objectives of this Case Study is to develop a series of sequential "issues" from the operational/material facts. The facts start with descriptive comments in identifying "Old Ivy University" and "International Olympic University." These specific facts may be pertinent to the "dated" facts that follow and are identified as "Additional Facts." Each paragraph under this section is identified by a calendar date. Generally, each date presented has at least one issue buried within the facts of each such paragraph. The issues being developed relate to Internet Domain Name problems, and specifically to Cybersquatting and subtopics of Cybersquatting. There are also several secondary issues that will be addressed in class that will supplement many of the primary issues, such as intellectual property, Constitutional Law, and criminal law. Student preparation should include following the "Student Instructions" by (i) reading the full text of the facts for the purpose of developing issues of this Case Study; (ii) reviewing the "vocabulary;" (ii) being familiar with the suggested "organizations and laws" as listed; (iii) reading/briefing of the "cases" as listed; and (iv) developing issues for discussion during class time.

The flexibility of this Case Study is designed for several possible approaches in the student preparation stage and the class presentation/participation stage. First, the entire class may be assigned to research, present, and participate as a whole, each student being responsible for all issues of the case. This approach requires more out-of-class preparation time for students. Another approach is assigning groups/teams and/or individual students a specific issue or topic (or dated paragraph) from the Case Study. This requires more coordination and planning on the part of the instructor. A final approach is to formulate this Case Study into a seminar or special session format that may be suitable for a more in depth analysis and study.

Another feature of this case study is the challenge of conducting legal research On-line. The exercises are designed to improve On-line research familiarity and skills as to: (i) finding and using of legal dictionaries to understand the "jargon" and specific meanings for key words and phrases; (ii) finding and reviewing U.S. government agencies, especially as to specific delegated authority pertaining to the subject matter of the issues; (iii) finding and reviewing pertinent U.S. statutory and regulatory laws relating to the issues; and (iv) finding federal and state court decision citations that are directly related to the issues. Legal research, in this instance, is the basic process of identifying and retrieving material information that is necessary to analyze and support the specific relevant "issues" throughout this Case Study.

An additional attribute of the Case Study is the prospect of expanding the facts to include a number of other issues relating to other topics within the course. Essentially, the instructor could develop factual extensions that would include issues involving contracts, torts, property, etc., that parallel any text in a "Legal Environment of Law" or "Business Law" class. Students would be familiar with the original facts as presented within this Case Study (the parties, locations, time elements, etc.), and, as such, would easily transition the existing story line to include a factual basis for addressing additional issues. This approach was not part of this paper, but is a topic for a future article.

The overall approach of this Case Study is to provide a forum for discussing all sides of an issue, that is, the various and possible conflicting beliefs, expectations, and alternatives derived through classroom interaction. Yes, there will be agreements and disagreements as to conclusions, but the process promotes developing and supporting rational resolutions on the part of each participant. A key ingredient to the Case Study exercise is in providing a process of reaching conclusions. This is a problem solving pursuit.

We believe that this Socratic type method of analysis supports applications of critical thinking and problem solving techniques that strengthen decision-making skills and competencies, especially in formulating possible courses of action and in facilitating student mastery of such concepts. In keeping with the spirit of the process, the following issues of this case study are systematically listed by calendar date and identified in italics, followed by a discussion of ideas and perceptions that support the basic elements of the identified issues.

The specific design, in this instance, is to promote responsive interaction within the classroom and to possibly or hopefully expand and develop outcomes and solutions that are rationally beyond the scope and reasoning of the stated answers suggested below. This integrative process expands complex concepts into formulated solutions. Have fun.

CASE STUDY ISSUES

Introduction

There are several approaches in writing legal issues from a set of given facts. The issue writing function is generally more art than science. Sometimes, a short factual wording or restatement of a happening will include all the elements needed to describe the issue. At other times concepts of a law need to be used or a combination of facts and concepts. The "Student Instructions," listed above, gives a good review of legal issue construction.

A continual theme throughout this Case Study is the possible infringement of trademarks *via* Section 43 of the Trademark Act and its various revisions (15USC1125), including the Federal Trademark Dilution Act of 1996. Of particular importance to the facts of this Case Study is the action of Dilution by Tarnishment where IOU continually infringes OIU's many famous trademarks by manipulating the marks through various stages of Internet state-of-the-art techniques to the benefit of IOU and to the detriment of OIU, and IOU use of numerous trademark names and symbols that are the same or similar to OIU trademarks. In both instances, these actions on the part of IOU create a likelihood of injury to OIU's reputation.

A second continuing theme throughout this Case Study would pertain to numerous actions that would violate provisions of various U.S. Federal Trade Commission (FTC) statutes, regulations and rules. Included in this category would be the many actions of Dr. Phast that allude to "unfair methods of competition" and "unfair and deceptive acts or practices in or affecting commerce" (United States Code: Title 15, Chapter 2, Subchapter 1, Section 45). A second area of FTC concern would relate to "deceptive advertising" practices (United State Code: Title 15, Chapter 2, Subchapter 1, Section 53.

There are also instances where these FTC provisions run parallel and/or supplement infringement of trademarks and other intellectual property rights issues. Additionally, in the context of this Case Study there are always U.S. Constitutional issues and defenses of Freedom of Speech, Due Process of Law, etc. The complexities are numerous. While some of the above identified themes will be addressed where it is prudent or critical to the facts presented, the main issues pertain to principles of contemporary Internet law as it has been developing during the last decade.

Introduction to Case Study

"Old Ivy University" and "International Olympic University"

The first two sections of the Case Study give detailed backgrounds and descriptions of the two universities and their presidents. The purpose of these facts is to introduce the primary parties of this Case Study. There are certainly hints as to character, trust, reputation, standards, practices, etc., of both parties (possibly good class discussion material for introducing the Case Study). Developing perspectives from this information will be useful in addressing and clarifying the myriad of facts presented and alluded to in the following "Additional Facts" section of this Case Study. There are several issues related to *trademark law* that should be identified:

a. **[Trademark Slogans]** *Is "Let's Win the Big One" a phrase that could be a legitimately protected trademark as the specific "slogan" for Old Ivy University? Yes.* A trademark "slogan" is protected because it functions as a "mark." Generally speaking, a trademark slogan can be almost any phrase that is short and it does not need to be clever or novel. The question in this Case Study is "does the slogan develop enough of a secondary meaning to immediately identify with Ol' Ivy?" Even if the slogan were considered a "weak mark," continuous use of it for five years would be presumed to have acquired a secondary meaning and will be eligible for placement on the federal principal trademark register. "Reach out and touch someone," "This Bud's for you," and "Don't leave home without it" are good examples of legitimate slogans. The courts declared that "You've Got Mail" is too generic and not protected. What about "It's Hot" by Paris Hilton?

b. **[Trademark & Confusion]** *Does the "International Olympic University's" symbol (a golden goat with the letters "IOU" emanating from its head) infringe on the prior registered trademark symbol of "Old Ivy University" (a golden goat with the letters "OIU" emanating from its crown)? Yes.* The phrase "likelihood of confusion" is key to all trademark conflicts. A "likelihood" means that confusion is <u>probable</u>; not necessarily that it has happened, or that it will happen, but that it is more likely than not that a reasonable customer (or fan) will be confused. In this situation, the two golden goats with similar letters (OIU and IOU) emanating from both goats" head area would probably be confusing even though one set of letters came from the crown and the other directly from the head.

c. **[Trademark Dilution]** *Is a trademark dilution action a timely claim for Old Ivy University to file against the independent business of "Old Ivy – Let's Win Used Cars?" No.* The fact is that "Old Ivy University" did not previously claim that the name of the used car business would weaken the distinctiveness, value, and reputation of the "Old Ivy" name for over a 15 year period even though the junior user (the used car business) relied on similar marketing channels within the geographic area as Old Ivy University. The dilemma is that Old Ivy University created a "constructive weaver" that essentially acts as a *laches* device that bars Ol' Ivy from equity or legal action because it neglected to act upon its rights for an unreasonable length of time. Such inaction appears as though the alleged infringement has not harmed Ol' Ivy very much. This is known as "sleeping on your rights," and a court is less likely to give the senior user (Ol' Ivy) any relief if it has not taken action to protect its rights despite another's use of the same or similar trademark for a long period of time. It should also be noted that under federal registration provisions of the Lanham Act (31U.S.C111) the mark can qualify for "incontestable" status if it stays on the principal register for five years.

Additional Facts

September 2005 through October

The events during this time period are mainly transitional, addressing drastic changes in business activity, adding staff and position, and identifying demographics of its potential customer base. Again, developing perspectives from this information will be useful in addressing and clarifying the myriad of facts presented and alluded to in this section, "Additional Facts." There is certainly the fact that IOU is attracting a high volume of E-mails from international locations, and there may be a hint as to why. This is the ideal time to introduce and discuss IOU's intent up to October time frame, and, later, to compare its intent at various phases throughout the remainder of this Case Study.

November 1 & 2, 2005 [Metatags]

a. *Is the use of third party senior trademarks in metatags permitted if the use does not mislead or confuse consumers? Yes.* Metatags are hidden html codes in Webpages that ostensibly describe content to signal search engines. Its primary use is to assist search engines to index and summarize sites. For example, a car dealer (Ford) would be permitted to use a famous automobile trademark (Ford) in its metatags if the dealer sold this brand of automobiles (Ford) without infringing the famous trademark (Ford). Not so with IOU. It appears that the metatags are being used for no legitimate purpose and are in fact placed on the IOU page to draw OIU customers unsuspectingly to the IOU Web site. The burden-of-proof otherwise would be for IOU to prove. This practice is arguably fraudulent because these intentionally mis-descriptive search terms cause search engines to more prominently display these Web sites when users are looking for other sites, causing users to suffer initial confusion. Such misuse of metatags may cause consumer confusion or dilution that infringes a trademark owner's rights.

November 3, 2005

a. **[Cybersquatting]** *Are the actions of Dr. Rob M. Phast in registering domain names that are the same as, or confusingly similar to, the trademarks of OIU considered cybersquatting (also known as "stealth" squatting) events that the Anticybersquatting Consumer Reform Act (ACRA) addresses as being actions considered to be in bad faith with intent to extort profits? Yes.* The Internet Corporation for Assigned Names and Numbers (ICANN) principles parallel many of the concepts of the ACRA and the above issue. The sequence goes (i) the domain name is identical or confusingly similar; (ii) the registrant has no rights or legitimate interests in respect of the domain name; and (iii) the domain has been registered and is being used in bad faith. The major form of cybersquatting usually takes the form of attempting to extort payments from the legitimate owners (OIU). This may not have been the original intent of Dr. Phast, but it certainly was a diversion of his by November 27th and 29th (SEE below). The intent factor in this instance was that Dr. Phast applied for multiple domain-names registration that are known to be identical or confusingly similar to others.

b. **[Typosquatting]** *From the facts given for this date, are there indications that Dr. Phast was intentionally including possible "typosquatting" terms for registration? Yes.* Typosquatting involves registering names that are minor typographical variations on trademark and brand names. The expectation is that surfers will encounter the 'typo' site when they mis-key the desired domain name (eg. www.netcsape.com, telsra.com, microsotf.com, altavsita.com, altavisto.com or amazom.com). For this date note the following registered names: "iou.runners.edu," "oivy.edu," "oivyrunners.edu," and "oivyuniversity.edu." Note the slight misrepresentations or spellings of each. Typosquatting is actually a subcategory of cybersquatting and is addressed similarly for ICANN and ACRA purposes.

November 4, 2005 [Cyberpiracy]

Do the actions of Dr. Phast and his brother of registering domain names similar or identical to OIU trademarks for the purpose of diverting Web traffic from those sites to the specific IOU site constitute a violation of ACRA and ICANN principles as discussed above (November 3, 2005)? Yes. Cyberpiracy involves the same behavior as cybersquatting, but with the intent of diverting traffic to an infringing site. The key factor is that it is a "bad faith" diversion of Internet traffic for financial gain. Here, Dr. Phast gained a benefit by confusing surfers, who may believe that the address is operated by OIU and not IOU. The "intent" and "bad faith" factors are similar to cybersquatting as described above. As to cyberlaw and domain name disputes, federal and state courts generally have followed the principles set forth by ACRA and ICANN.

SEE "November 12, 2005" below for the issue and discussion from the perspective of "pagejacking." Compare and contrast.

November 5, 2005 [Keywording & Cyberstuffing]

Is Dr. Phast's practice of submitting OIU's trademarks as keywords through numerous search engine groups for IOU's various Web sites enough to cause initial customer confusion? Yes. There can be very subtle legitimate uses in some instances of keywords that relate to a competitor, but this is not the situation with Dr. Phast. His subscribing words to the search engine groups were blatantly that of his competitor's name and trademarks and constitute an infringement, especially taken in context with the many other actions of Dr. Phast and his brother. The bad faith principles of ICANN and ACRA (SEE above) are alive and well in this instance. With the *combined* use of *metatags* (SEE "Nov. 1 & 2" above) and *keywording,* Dr. Phast is entering into the practice of *cyberstuffing*, an action to fool search engines by including as many infringing keywords as possible on his pages in an attempt to ensure that his Web page will come up in the first five or ten listed by a search engine. This practice, in the context of Dr. Phast's overall actions can only strengthen evidentiary facts as to the bad faith intent of Dr. Phast.

November 6 & 7, 2005 [Linking]

Is the practice of building hypertext links from one site to another site without permission or licensing from the original linked site a violation of the linked site's rights or generally against principles of civil law? No. One of the most fundamental elements of the Internet is linking to other sites. The culture of the Internet expects linking to flourish unhindered by property rights claims by the linked site's owner. A U.S. district court found there was no copyright infringement by use of a link, because linking did not copy the page. The general answer is based on the theory that going online creates an implied license for anyone with a computer to view the Web site. Hence a surface link to a home page does not generally require permission. Conversely, it is argued that site owners wishing to block access to unauthorized or unknown outsiders may simply use password protection, cookie technology, or some other authentication scheme to exclude unwanted downloads. The facts of the Case Study indicate the linking of benign generic information on the regional attributes of university life in the Oxford-Cambridge area. No infringement or violation involving intentional bad faith here.

November 8, 9, & 10, 2005 [Framing]

Is the practice of displaying the content of another Web site inside your own Web site with a frame or window where the user never leaves the framer's site and the frame conceals the identity of the original site safe from actions involving infringement of copyrights and trademarks? No. The practice is a step beyond linking. Framing raises the linking site's value by free-riding on the linked site's value. It deals with the control by the framer in manipulating the other sites content on its own framed page. Linking does not create the same type of confusion as framing, which gives the viewer the impression that the framed information is connected to the framing site. A framer may even appropriate a competitor's content and hide it, so that an unsuspecting user is transported to the appropriator's site even though he or she cannot see the appropriated material. This is a violation of trademark and copyright law.

November 11, 2005

[No issue in the sense that OIU does not have a cause of action against IOU. The six businesses advertisers do have a potential cause of action against IOU. Each advertiser pays IOU one cent a hit which is really a fraud on the businesses because IOU uses techniques of mousetrapping, pagejacking, and others that will count each hit several times. The negative covenant (implied) in the contract between IOU and an advertiser would suggest that each advertiser would receive one cent for each individual that entered the contracted for site. Generally, this is a U.S. Federal Trade Commission situation with help from the U.S. Department of Justice, Antitrust Division. SEE the third paragraph of the Introduction of Case Study Issues above.] There are additional federal fraud charges regulated by the Federal Communications Commission, the Patriot Act, etc. that may also be available.

November 12, 2005 [Pagejacking, Metatags, Cyberpiracy & Redirects]

Is the action by Dr. Phast in copying the entirety of the OIU Web Home Page, including the imbedded text messages and metatags, and inserting a "redirect" command imbedded in the copycat OIU site that would immediately reroute the user to www.iou.edu, a legitimate approach in attracting potential customers to the IOU site? No. Here, following surfer search engine results that would list a variety of related sites, including the bogus copycat site developed by Dr. Phast, the surfers assume from the listings that the Dr. Phast site contains the legitimate information they are seeking and click on the listing. The selection by the surfer of the so-called OIU site immediately reroutes or redirects the OIU surfer to the IOU Home Page and away from the Web pages they were intending to visit. This "pagejacking" technique is prohibited under the Federal Trade Commission Act that prohibits unfair or deceptive practices affecting commerce.

SEE "November 4th, 2005" above for the issue and discussion from the perspective of "cyberpiracy." Compare and contrast.

November 13, 2005 [Mousetrapping & Pagejacking]

Is the action by Dr. Phast to incapacitate the "back" and "close" buttons on the IOU site that would continuously return the surfer to the original copycat OIU site or other registered Domain Name sites in a seemingly unavoidable endless loop considered an unfair and deceptive practice by the Federal Trade Commission? Yes. The technique described here ("mousetrapping) is actually a follow-on to the "pagejacking" process described above under November 12, 2005. After the deception of alluring the surfer to the IOU site, the mousetrapping technique, under the control of IOU, prevents the surfer from leaving the IOU or similarly controlled sites of IOU. Again pagejacking and mousetrapping is prohibited under the Federal Trade Commission Act, which prohibits unfair or deceptive practices affecting commerce since these techniques involve the improper diversion of consumers away from Web pages they were intending to visit. Though there has been very limited enforcement of these violations, in September 1999, the Commission filed suit in federal court and obtained a preliminary order stopping these activities and suspending the Internet domain names of the defendants. Since then, the Court has entered default judgments against two defendants and a stipulated permanent injunction against a third, baring them from future law violations. A fourth defendant has evaded law enforcement authorities in Portugal.

November 14 & 15, 2005 [Cybergripers & Domain Protest Sites]

Is the proper registration of www.oldivyuniversitysucks.edu an abuse of the ICANN principles when registered by a direct competitor against the commercial interests of the named competitor and as a perceived benefit of the registrant? Yes. This issue of "Cybergripers and Domain Protest Sites" is not decisive for all situations. There are always questions of free speech (maybe a U.S. Constitutional issue) and the right of parody for starters. Some sites may approach being scandously and disgustingly abusive and blatantly responsible for statements that are libelous. There may be claims of infringement of trademarks and copyrights and confusion of the surfer. It has been suggested by a few so-called experts that a new organization, The Dot Sucks Foundation, be created as a special zone outside trademark restrains "to enable citizens to improve civil society." Generally, these cases are addressed on a case-by-case basis. At this point, ICANN actions, arbitration, and courts have tended to favor the corporate plaintiff. In this Case Study, it appears with a certainty that IOU, a competitor, had no legitimate interest in the domain names and that it registered the names in bad faith to directly injure its competition. The intent and bad faith are strengthened by adding the metatags.

SEE "November 26, 2005" relating to additional discussion on First Amendment Freedom of Speech.

SEE "November 1 & 2, 2005" relating to the issue of metatags.

November 16, 2005

SEE "November 14 & 15, 2005" relating to the issue of "Cybergripers and Domain Protest Sites."

SEE "November 5, 2005" relating to the issue of keywording.

November 17, 2005

a. SEE "November 13, 2005 relating to the issue of mouseclicking.

b. [Issue of this date related to facts of November 19th] **[E-mail Bombing, Spoofing, Cybertresspassing]** *Is there a legitimate common law cause of action against IOU as to its participation in a scheme of sending 100,000 daily E-mails to OIU that essentially overwhelmed OIU's computer equipment to be inoperable?. Yes.* The operative facts in this instance are that OIU was responsible for E-mail "bombing" (sending large amounts of data, such as numerous E-mails, in an effort to consume additional system and computer network resources of OIU) 100,000 daily "spoofed" (disguising an e-mail to make it appear it was mailed from an address different from the one from which it was actually mailed without the permission of the user of the actual "spoofed" address) that was the major factor in rendering OIU's computer equipment inoperable. Legal precedents are as follows. The legal action here for "bombing" is intentional "trespass to chattel" (personal property). OIU's possessory interest was invaded by IOU that caused harm to OIU's personal property or diminution of its quality, condition, or value as a result of OIU's actions. Damages and injunctive relief have been awarded. For "spoofing," The U.S. Federal Trade Commission has relied on "unfair and deceptive practices" under Section 5 of the FTC Act and with violating Section 521 (15U.S.C.Section 6821). Though the facts are somewhat different in this instance, there is a probability that the principles and concepts of "unfair and deceptive practices" would be addressed. In these instances, there has been injunctive relief. [Note that the issue of "spamming" is not addressed because there are no causes of action by OIU to file against IOU.]

November 18, 19, 20, 21, 22, & 23, 2005 [Dilution by Tarnishment]

Do the facts and outcomes of the evidence presented (in the listed dates) bring forth a probably cause of action for infringement of trademark specifically by dilution by tarnishment that would allow both equitable remedies and damages? Yes. The basic reasoning for "dilution by tarnishment" is found under "Introduction," second paragraph above. There is enough information to indicate that IOU willfully intended to trade on the recognition of the OIU trademarks. Additionally, there is more than likely enough information that IOU intended to harm the reputation of OIU. As to damages, there is enough intent and bad faith (scienter) on the part of IOU through its various planned infringement actions to warrant assessment of actual and likely damage to the distinctiveness or reputation of the various OIU trademarks. These identified paragraphs are mostly evidentiary as to existing and potential dilution of trademark when all the activities of IOU became known to OIU. Making a list of negative outcomes from this Case Study would be a good start. Integrating IOU's actions with these negative outcomes at the end of the Case Study will give insight as to the possible impact and potential damages encountered by OIU.

November 26, 2005 [Freedom of Speech & Due Process of Law]

a. *Under facts of this Case Study, do "First Amendment Freedom of Speech" and "Due Process of Law" provisions of the U.S. Constitution protect IOU from OIU requests for equitable relief or damages. No.* The U.S. Constitution protects free speech against government censorship unless the censorship is very closely related to a compelling governmental purpose, such as the prevention of fraud, defamation, riots, or subversive activities. Though political speech is given the greatest protection, commercial speech is also protected by the First Amendment. The content of commercial speech receives a somewhat lower level of constitutional protection, balanced against the need for truthfulness (and control of confusion) in the marketplace. Because some types of speech fall outside of the protection of the First Amendment, the government may regulate and even completely ban such content as unfair methods of competition, deceptive advertising, infringement of copyrights and trademarks, and defamatory speech. As previously discussed, the blatant actions of IOU for infringement and unfair method of competition would go beyond the limits of protecting free speech.

As to Article 8, Section 1, clause 7 of the U.S. Constitution, Congress has explicit power of legislation in the areas of patents and trademarks. The application of this provision has been the Lanham Act and its various amendments (generally granting certain intellectual property monopolies, helping the public not to be confused, and protecting the reputation of a holders) and the establishment of the U.S. Patent and Trademark Office. As to cyberlaw and the Internet, and especially domain names, the courts have been at least mildly reluctant to rule on infringements of trademark owners' rights, but have basically followed the principles of the ICANN "intent" and "bad faith" approach discussed previously. There are also the various exemptions under Section 102 of the Lanham Act, some which apply to trademarks.

As to the Due Process of Law provision of the U.S. Constitution, at this point IOU has not been denied and there certainly has been no taking of "life, liberty, or property" from IOU.

November 27, 2005

SEE "November 3, 2005" for issue pertaining to cybersquatting. In this instance Dr. Phast has completed another element beyond the November 27, 2005, of the sequence by attempting to extort payments from the legitimate trademark owner, OIU.

November 29, 2005

SEE "November 27, 2005" relating to cybersquatting issues.

November 30, 2005:

Are the various actions of Dr. Goode on this date of the type that might be chargeable as a federal criminal felony count of extortion against Dr. Goode? Yes. Here, there is a definite twist to our factual scenario. All of the sudden Dr. Goode has created her own personal entry into the criminal justice system, totally unaware of her actions to do so, and the potential of disaster to her own cause. The problem is that Dr. Goode used a legal white paper that was designed for internal OIU use as a management tool for making decisions. The mistake is that Dr. Goode used a minor part of the information from the document to *directly* "threaten" Dr. Phast and his brother with "fear" of an *actual* immediate serious criminal prosecution under the "force" of what appears to be an official color of right to do so if the brothers do not comply with her exacting wishes (a definite final "take-it-or-leave-it proposition) under Section 1 of the Sherman Act. Such direct threats of force and fear of immediate serious criminal prosecution are definite factors in considering whether or not the action of Dr. Goode would be considered "extortion" and punishable with a fine and/or up to 20 years in prison *via* the Hobbs Act.

Though there is a number of state and federal statutes that could illustrate this issue, The Hobbs Act (U.S. Code: Title 18, Part 1, Chapter 95, Section 1951 entitled "Interference with commerce by threats or violence) addresses the situation well. The U.S. Supreme Court has declared that Congressional intent of the Hobbs Act is expansive enough to include such intangible views that are induced by wrongful use of actual or threatened forces or fears that would include wrongful unfettered access under color of official right to deprive respondents exclusive control of their rights whether they are direct or indirect, actual or potential, beneficial or adverse. The words in the previous paragraph that are either *italicized* or in "quotation marks" fit the model requirements of the Hobbs Act as to requirements for "extortion." Dr. Goode was, in effect, attempting to by-pass the criminal justice system on her own (sort of a vigilante approach) in interfering and depriving the brothers of their "due process" rights of defending an apparent crime. The essence of this is that the government handles crimes in their entirety for society. The Hobbs Act has been strengthened recently to meet the challenges of a technology age through inclusion of applications addressed by The Patriot Act, various wire and data fraud statutes, etc.

The question at this point is how Dr. Goode should have conducted herself on the eventful day of November 30, 2005, to protect herself from such apparent criminal acts as discussed above? The legitimate approach was to couch her threats to Dr. Phast and his brother in terms of "civil" liabilities only. It is permissible to threaten a civil law suit if demands are not completed. This is part of the negotiation process. The Sherman Act, as amended by the Clayton Act and the FTC Act of 1914, also includes civil liability approaches with treble damages. If she were still looking at the criminal approach, she still makes the demands as before and documents said demand in detail, but withhold the threats of criminal prosecution. If the demands are not completed to her satisfaction, she could go to the FBI with the documentation and request a review for possible prosecution. Decisions would made as to criminal viability by the FBI, Department of Justice (FBI actually an agency within the DOJ), or other government officials, as appropriate. There are other approaches possible that will not be discussed, such as various intentional torts, including the intentional inflection of emotional distress, quasi-contracts, constructive bailments/trusts, etc.

In closing, the many indiscretions of Dr. Phast, as listed throughout the dates prior to November 30, 2005, were discussed and resolved from a civil law perspective using various statutes, case law interpretations, and even international conventions to resolve the issues. The introduction of criminal law approaches for this last date is timely from the perspective that the business community and society are relying on it as never before because of such features of today's fast changing events and the likes of Enron, World Com, etc., and the beat goes on.

CONCLUSION

The world of Cyberlaw is quickly maturing. In Cyberspace we are dealing with Cybercrimes and defining Cyberjurisdiction within the Cybercommunity, and some are resolving civil disputes through CyberSettle.com. There is concern with Cyberterriorism, Cyberstalkers, Cybertrespass, and Cybervandalism. In daily transactions there are Cybernotarys, Cyberbills, Cyberchecks, CyberCash, CyberGold, and a growing business population becoming Cybergroupies. With all this tumultuous change taking place on an almost daily basis, the transition has been outstandingly orderly as to developing methods of resolving disputes. Existing Common Law principles, U.S. Constitutional concepts, statutes, and administrative laws have integrated well, for the most part, within the new evolving CyberWorld, as elaborated and experienced throughout this Case Study. Examples, such as the Sherman Antitrust Act of 1890 (through amendments and case law), are very applicable today and integrate very naturally into the CyberIssues of the day. The key is to stay informed, continue learning, and advancing our knowledge as we travel through the many CyberAdventures of this intriguing CyberJourney.

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DEEP SOUTH FOREST PRODUCTS: MANAGEMENT UNFAIR LABOR PRACTICES DURING UNION DECERTIFICATION?

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CASE DESCRIPTION

This case examines the process by which the unionized employees of a firm take steps to decertify their labor union as their bargaining agent. Further, the case examines certain actions taken by the firm's management during the decertification process, and whether those actions are illegal as defined by the provisions of the National Labor Relations Act.

The case has a difficulty level of three, appropriate for junior level students. The case is designed to be taught in one class hour, and is expected to require one to two hours of outside preparation by students.

CASE SYNOPSIS

A firm and its employees' labor union(s) often share a tense and adversarial relationship. From time to time, employees may decide that the bargaining advantages provided by their union no longer secures them the wages and benefits they seek, and they may seek to have the union decertified as their bargaining agent. This case examines this scenario, and demonstrates how a firm's management can legally express its views to its employees regarding the pros and cons of a union decertification. This case is an effective teaching tool for students in a labor relations course, a human resources course, and can also be used in the introductory management principles course.

INSTRUCTORS' NOTES

Learning Objectives

The twin learning objectives of this case are:

1. Briefly describe to students the process by which a union may be decertified and lose its recognition as the bargaining agent for a firm's employees.

2. Demonstrate to students the difference between legal and illegal activity involving a firm and its employees' union as specified under provisions of the National Labor Relations Act.

QUESTIONS

1. Under Section 8 of the NLRA, to what extent can a firm express its views to its employees regarding a labor union and its activities?

A firm's management can legally express its views about a labor union in either written, printed, or visual form, if such expression contains no threat of reprisal or force or promise of benefit.

2. The UFCW union alleges that the August 28-30 speeches constitute an illegal act, in that Jim Green promised that he would *"not forget the employees hard work,"* and the company would *"not cut wages or take away any fringe benefits if the employees voted the union out."* Do you think these statements constitute an illegal act? Why or why not?

Green's pledge not to forget the employees' hard work does not mention employee wages or benefits. Also, this statement occurs in the context of an apology for past racial discrimination. It does not promise any reward if employees reject the union. Further, the statement that the company would not cut wages or take away benefits refers to existing wages and benefits. This is not a promise of new wages or benefits. Thus, these statements are legal within the provisions of the NLRA.

3. Would your answer to Question 2 be different if Jim Green had promised to increase employees' fringe benefits if the employees voted the union out?

Yes, a promise of higher wages and benefits if the employees rejected the union would constitute an illegal act.

4. Would you consider the statements in the company newsletter, the *Tall Pines,* to constitute an unfair labor practice? Why or why not?

The statements do not contain any promise of benefits. On the contrary, the newsletter states, *"I can't make any promises because that would be illegal."* Also, the newsletter does not contain a threat of force. Thus, the statements in the newsletter do not constitute an illegal act.

5. Jim Green, in his No Cut Guarantee to employees, made some guarantees to employees. Were his guarantees illegal?

The guarantees do not contain any threats or promises of benefits to employees. Thus, the guarantees are legal and do not constitute an unfair labor practice.

6. Do you think this statement by Jim Green constituted an unfair labor practice? *"Many people have asked how they can get out of the union. Well if you have any questions about how to do that it's covered by the checkoff authorization on the last page of your contract – page 55, which requires you to give the company written noticed of stopping your dues. Or you can just see Personnel."*

This statement does not encourage employees to resign from the union or to revoke their dues checkoff authorizations. Under Section 8c of the NLRA, an employer may lawfully furnish accurate information in response to employees' questions if it does so without making threats or promises of benefits. That is what occurred in this situation.

7. Do you think the 8% across the board wage increase on November 22 was legal? Why or why not?

The wage increase went into effect the day after the collective-bargaining agreement had expired. Deep South had withdrawn its recognition of the Union, and had no legal responsibility to bargain with it. Thus, the wage increase was lawful.

EPILOGUE

On October 12, 2004, A hearing was held before an administrative law judge involving the complaints filed by the UFCW against Deep South Forest Products. On January 15, 2005, the judge rendered his opinion as to whether Deep South had committed any unfair labor practices and had violated any provisions of the NLRA. The judge ruled that Deep South had not engaged in conduct in violation of the Act, as alleged. The judge issued an order that the complaint filed by the UFCW be dismissed in its entirety.

SUMMIT ENTERPRISES

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CASE DESCRIPTION

The primary subject matter of this case concerns cost/managerial accounting – more specifically, transfer pricing and divisional performance evaluation. Secondary issues examined include cost estimation and cost-volume-profit analysis. The case has a difficulty level appropriate for junior level courses. The case is designed to be taught in a one hour class period and is expected to require three hours of outside preparation by students.

CASE SYNOPSIS

The case involves the application of transfer pricing, divisional performance analysis, cost estimation, and cost-volume-profit analysis. The setting is a diversified corporation with one division requesting services from another division. The objective of the case is for students to think about appropriate transfer prices and the use of ROI for service-oriented divisions, as well as to have students provide solutions for break-even points, operating leverage, and high-low cost estimates. Students often have trouble seeing how seemingly disparate topics in cost/managerial accounting relate to one another and this case offers an illustration of how a variety of topics are woven into one scenario.

INSTRUCTORS' NOTES

Recommendations for Teaching Approaches

The case involves the application of several managerial accounting issues relating to two divisions within a diversified corporation. The central context has one division requesting services from the other division. The case integrates topics pertaining to transfer pricing, divisional performance analysis, cost estimation, and cost-volume-profit analysis.

The case is appropriate for both undergraduate and graduate cost/managerial accounting courses. Students should have had prior exposure to all of the topics mentioned in the previous paragraph, so if the case is covered in an introductory cost/managerial accounting course, it would probably need to wait until near the end of the course.

The case begins by describing two divisions within a diversified corporation. Next, there is a discussion of how one of the divisions can take advantage of a new venture. The case concludes with a plan of how this division wishes to involve the other division in the venture.

Some of the assignment questions require numerical computations while others are discussion-oriented. None of the numerical computations are lengthy. Students are first asked to address cost-volume-profit issues, namely break-even point determination and the application of operating leverage. The remaining requirements, with the exception of one task to estimate costs using the high-low method, involve analysis of proposed transfer prices and divisional profit and ROI.

DISCUSSION QUESTIONS

1. How many hours does the Norwich Division need to work in order to break even? How many hours need to be worked for Norwich to attain its target ROI of 35 percent?

Norwich's break-even point is obtained as follows:

fixed costs / contribution margin per hour = $860,000 / ($60 - $40) = 43,000 hours

The hours needed to achieve the target ROI is determined as follows:

(fixed costs + target profit) / contribution margin per hour = [$860,000 + .35(900,000)] / ($60 - $40)
= 58,750 hours

2. Presuming that the hours needed to achieve the target ROI of 35 percent is full capacity, calculate Norwich's operating leverage (i.e., contribution margin divided by pretax income) and use that to determine its expected percentage increase in pretax income for 2006.

The 2006 revenue is expected to be $3,525,000 ($60 x 58,750 hours). Since this represents a 13 percent increase over 2005, the 2005 revenues were $3,119,469 ($3,525,000/1.13). Dividing $3,119,469 by the $60 hourly rate yields 51,991 hours worked in 2005. This is used to determine the operating leverage, as follows:

[($60 - $40)(51,991)] / [($60 - $40)(51,991) - $860,000] = 5.78

Multiplying the 5.78 operating leverage by the 13 percent expected increase in revenues yields an expected 75 percent increase in pretax income for 2006.

3. If you were Dan White, would you agree to Shelley Greenberg's request to supply heating installation at the requested rate of $45 per hour?

Dan White would not be likely to agree to the $45 rate. Since the Norwich Division is operating at full capacity and can receive a rate of $60 per hour, White would be forfeiting revenue (and contribution margin) of $15 per hour by agreeing to Shelley Greenberg's request.

White's decision to reject Greenberg's proposal is reinforced by the corporate policy of evaluating performance using ROI. The reduction in revenue and contribution margin will decrease Norwich Division's ROI.

4. Using the high-low method of cost estimation, determine the estimated "other incremental costs" per pool for the new pools. Presume that these are variable costs.

The estimated "other incremental costs" per pool for the new pools is determined as follows:

($107 million - $98 million) / (3,040 – 2,740) = $30,000 per pool

5. Discuss how Summit Enterprises would benefit from the deal with the hotel chain. Provide support by computing the incremental profit to Summit from the introductory order of six pools. (Hint: Use Exhibit 1 to determine the time required for Norwich to install the heating system in each new pool.)

Each of the new pools would require Norwich to work 125 hours ($5,625/$45 or $7,500/$60, from Exhibit 1). The introductory order would benefit Summit Enterprises in the short-run to the tune of $27,000, which represents the incremental profit from the introductory order, as follows:

Chittenden revenues: $42,000 x 6 pools	= $ 252,000
Norwich revenues lost: $60/hr. x 125 hours x 6 pools	= (45,000)
Incremental revenues for Summit Enterprises:	$ 207,000
Incremental costs for Summit Enterprises: $30,000 x 6 pools	= (180,000)
Incremental profit for Summit Enterprises:	$ 27,000

Another way to obtain the $27,000 is as follows:

Price of new pool	$42,000
Heating System Installation	(5,625)
Other Incremental Cost	(30,000)
Total Cost	$(35,625)
Profit	$6,375

Chittenden incremental profit: $6,375 x 6 pools	= $ 38,250
Norwich profits foregone: ($20/hr.* - $5/hr.**) x 125 hours x 6 pools	= (11,250)
Incremental profit for Summit Enterprises:	$ 27,000

* $60/hr. - $40/hr.
** $45/hr. - $40/hr.

Over the longer run, there should be even greater benefits to Summit from this introductory order. The hotel chain has indicated an interest in purchasing 40 to 50 additional pools during the coming two years. The per pool profits on these would be even greater than for the first six. Moreover, this deal with the hotel chain should give Chittenden the visibility and opportunity for launching sales of the new pool. Chittenden's excess capacity can be utilized to earn additional profit.

6. Evaluate the reasonableness of the proposed transfer price of $45 per hour. Should Summit Enterprises institute a general policy on transfer prices?

The $45 per hour transfer price is not reasonable. It would not be fair to Norwich Division, since it is operating at full capacity and would stand to lose $15 per hour. Moreover, Chittenden could pay the full $60 rate and still show a profit on the introductory order. From Exhibit 1, a transfer price of $60 per hour would result in a profit of $4,500, as follows:

Price		$42,000
Heating System Installation	[125 hours x $60]	(7,500)
Other Incremental Cost		(30,000)
Total Cost		$(37,500)
Profit		$4,500

At a rate of $45 per hour, Chittenden would show a profit of $6,375 per pool (as computed in question 5). Just because Chittenden's normal profit margin has been reduced by this introductory offer does not mean that other divisions should also be expected share in the reduced profits. Greenberg has no real justification for insisting on a $45 per hour transfer price because they should undertake the introductory offer even at $60 per hour and will earn a profit.

It would be advisable for Summit to set up a transfer pricing policy for the future. Now that there is some demand for inter-divisional services, there are bound to be situations when Norwich has excess capacity but the $60 market price would pose a barrier to the transfer of services that should benefit Summit.

7. Suppose that Norwich was not operating at full capacity and could service Chittenden without affecting other revenues. How would your answer to part (6) change?

If Norwich was not operating at full capacity and could service Chittenden without affecting other revenues, then any transfer price above the variable cost of $40 would benefit Norwich. So, in that case, $45 would be a reasonable transfer price.

8. (a) Discuss the use of ROI for a service-oriented division like Norwich.

Service-oriented divisions like Norwich typically do not have the amount of invested capital that a manufacturing division would have. Rather, a service division is labor intensive, and these "people assets" are not reflected in the balance sheet. Hence, a service division's ROI may not be comparable to that of a manufacturing division. So, while a 33 percent ROI might be impressive in most settings, it may not be all that great for a division like Norwich, which has invested capital in vehicles, tools, and other equipment, but not in manufacturing facilities.

(b) Compute the projected 2006 return on revenues for Norwich.

To highlight the point made in part (a), note that Norwich's annual profit is projected at $315,000 (.35 x $900,000). As a percentage of the $3,525,000 revenues ($60/hr. x 58,750 hours), this amounts to a profit margin (i.e., return on revenues) of 8.9 percent compared to its projected ROI of 35 percent.

URBAN OUTREACH MINISTRIES' ORGANIC GARDENS: DEVELOPING A SUSTAINABLE, TRIPLE-BOTTOM-LINE BUSINESS FOR A NONPROFIT SOCIAL ENTERPRISE

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CASE DESCRIPTION

The primary subject matter of this case is a for-profit or nonprofit organization developing and implementing a triple-bottom-line strategy, including concern for people, profit, and planet, to help assure the profitable sustainability of its operation in the long run. Secondary issues include the challenges of developing a business plan that will accomplish the desired results, identifying and weighting relevant stakeholder values in order to develop organizations that maximize the value of stakeholders in the long run, and issues of the competency and capacity of the management team, including the Board of Directors, to implement such a strategy. The case has a difficulty level of 3 to 5 and works well in the undergraduate senior Business Policy Strategy class, first-year MBA, as well as final policy course in MBA. It can either be used requiring 50 to 75 minutes of class time with no outside preparation or 30 minutes to 2 to 4 hours of outside preparation.

CASE SYNOPSIS

Nonprofits or for-profits with an explicitly responsible social agenda, from microenterprise to highly scaleable operations, are increasingly venturing into new territory--how to do social good, make money, and be responsible to relevant stakeholder groups, especially the people, profit, planet of the triple bottom line. This case study can give useful insights to potential clients and consultants inside and outside the classroom who have been previously assumed to not be affected by triple-bottom-line/sustainability issues. In this post-Enron era, these issues are seen as a basis for strategic competitive advantage that will help maximize a profit or social agenda. These issues will be increasingly relevant to doing business in the 21st century.

The executive director of the nonprofit Urban Outreach Ministries engaged a team of consultants to do a business plan for an organic garden that would be environmentally friendly, provide jobs, and job training for Urban Outreach's target immigrant population. In addition, it

would generate profits, which could help support other Urban Outreach activities and its outreach. A preliminary feasibility study showed a profit the first year if the $200,000 startup and land costs would be donated. What should the executive director do with the study results?

What are the critical factors for long-term success in an entrepreneurial startup within an organization? Social responsibility, triple bottom line, sustainability, ethics, values, and environmental consciousness are issues increasingly vital to business and nonprofits in this post-Enron era. What else needs to be measured? How does one compare/weigh social return on investment?

INSTRUCTORS' NOTES

Discussion Questions

1. **A homework assignment at the same time case is assigned would be to define and give examples of social enterprise, double bottom line, sustainability, triple bottom line, and social responsibility. Use the Starbucks triple-bottom-line mission statement (http://www.starbucks.com/aboutus/environment.asp) to frame Organic Gardens' mission statement.**

Note to Instructor: A mini-lecture, "Background Notes on Corporate Social Citizenship, Social Responsibility, Triple Bottom Line, Social Enterprise, Sustainability," is helpful for background information for the instructor or the students. It was developed for "Is It Time to Unleash a Social Enterprise Internet Business on the Global Multibillion Dollar Wedding Industry? A Case Study" and would be in the most recent "Instructors Notes" edition. This could also be secured from the lead author. This is a relatively new emphasis within schools of business and is possibly somewhat new territory for some.

Social enterprise: Practitioners usually mean nonprofit earned income activities. Increasingly, consulting firms are applying social enterprise to both for-profit and nonprofit organizations, which suggests a double-bottom-line perspective. Business schools view social enterprise as a continuum from profit-oriented businesses engaged in socially beneficial activities as an explicit priority of the Ben and Jerry type who must make profit goals; on through to nonprofit organizations which engage in mission supporting commercial activity that generates funds for a sustainable or even profit making operation, which can be used to support mission (run and taxed as for-profit operation); to mission supporting commercial activity that supports the mission in process of generating the revenue and the "profits" from which go to support the mission goals and operate under nonprofit rubric. The Harvard Business School Business Plan Competition has a Social Enterprise track, which includes nonprofit or for-profit business plans for entrepreneurs with an explicitly social agenda.

The bottom-line, double-bottom-line, triple-bottom-line, social enterprise, socially responsible organization, and sustainable business have different meanings to different groups. The differences impede global best practices efforts, defining what should be included as the body of knowledge and practice in the discipline whatever it is. In academia, it is not uncommon to see double bottom line, triple bottom line, social enterprise, socially responsible, ethical, and sustainable to be used somewhat interchangeably.

Sustainability in *1987 United Nations Report* is defined as development that meets the “needs of the present without compromising the ability of future generations to meet their own needs.” It recognizes the interdependence of society, the economy, and the environment.

According to Chris Laszlo in *The Sustainable Company*, Island Press, 2003, this is all a part of the redefining corporate responsibility. “It originates with changing social expectation as expressed by consumers, employers, investors, business partners, local communities, and environmental activities.” One would add the Enron type issues that fill the paper today. Laszlo notes the underlying logic of what he feels is a market-driven phenomenon--“if you want your business to succeed, here is a new set of performance standards you have to meet” (p. 17). This is reflected also by incidence of international reporting standards.

International reporting standards such as the Global Reporting Initiative GRI 2000 (revised 2002) and socially responsible investing guides of stakeholder performance--INNOVEST--Planetary Ethics.

Sustainable business practices in the United States have usually started with environmental issues for big business--it is a broader concept that deals with assessing stakeholder impacts/values relative to some absolute standard and relative standard. It is easier to talk about measuring shareholder value, but business in the United States has not been that oriented to measuring value in terms of impact on other stakeholders.

Bob Willard in *The Sustainability Advantage--Seven Bottom Line Benefits of a Triple Bottom Line* notes: “The return on investment from aggressively improving company-wide sustainable development knowledge and initiatives can make other traditional investment opportunities seem trivial. Whatever company captures these benefits soonest will have a significant competitive edge.” This leads to easier hiring of the best talent, higher retention of top talent, increasing staff/employee/team productivity, energy savings, reduced expenses, reduced risk--easier access to donor/investors--“The benefits are there for the taking.”

Triple bottom line refers to identifying relevant stakeholders, including the shareholders, and assessing the negative or positive impacts that will occur. The stakeholders are often broken out in people, profit, and planet designations. The consulting class at XYZ

University operates on a triple-bottom-line approach for a for profit or nonprofit based on identifying the relevant stakeholders--regardless of size of business or nonprofit, the type of value or cost to each as a result of this existing or proposed operation, and determining a weighted importance--at least a rank ordering of stakeholders.

The authors recommend stating mission statements much as Starbucks does. The Starbucks mission statement serves as a helpful model to spell out the values that will be important to use as guidelines in evaluating a plan such as the organic farm. Starbucks has a clearly delineated triple-bottom-line mission statement which was sent to the executive director of Urban Outreach Ministries in the transmittal package.

The Organic Gardens mission statement as recommended by the student consultants in the Mission and Defining Principles is already a triple bottom line as it includes people, profit, and planet.

2. How to determine if this is a good business plan? What makes a good business plan?

A. *Answering this can be done by assigning roles to pairs of students.* Task is to evaluate this feasibility study from vantage point of different stakeholders. Have students prepare 2-minute critique and present to class. This allows for discussion of who are the stakeholders and shareholders. How do needs differ? Business plans are used to secure funding, as part of strategic planning process, to recruit, to help track a business, for PR to donors, for supplies, investors, creditors …
Stakeholders/shareholders might include:

- *Clients*--those who are being trained--learning the skills and being employed. Are these good skills to have? Can clients make living wage? Will clients feel good about products and process?
- *Banker's perspective*--can Urban Outreach pay back the money? Is this low risk?
- *Potential investor perspective*--good return on money. Social investor's return might be that investor values being able to create jobs and enhance the community.
- *Marc, the executive director*--will this increase the viability of his organization? Will it help grow the number of clients? Marc is an entrepreneur. Developing Organic Gardens will motivate him. It might keep him involved at probably lower salary than he could get someplace else (someplace which might not be as exciting, challenging).
- *Potential angel*--an investor might find this very appealing to help create jobs and make the community better off.

- *Donors*--good cause that can enhance public image. Enables donors to sponsor projects that enhance community. Organic Gardens would increase numbers of people served and meet social needs which system cannot/is not otherwise meeting.
- *Social investor*--good cause that social investor can believe in. The target market population has potentially high unemployment rate. The need for Organic Gardens as job creator and training opportunity is critical issue. It will be self-sustaining and even more than break-even. Social return is important and should be more fully developed in the plan.
- *Owners*--Marc had indicated he wanted employee ownership in future. Does this plan deal with that? Are there development and growth opportunities or just more work?
- *Board of directors*--Does the mission of the proposed garden directly help secure the mission of Urban Outreach Ministries? Is this an efficient use of limited resources? If Urban Outreach has to tap donors for $200,000, would that prevent Board from raising enough funds for Urban Outreach Ministries? The board of directors helps educate public, create good will to develop more donors, and provides access to foundations. Does this help keep the executive director? There is no indication of the board's support for this kind of project.
- *Local grocery stores*--fresh source for organic products. This would provide healthy alternatives to local retailers. Buy locally is often an appealing advertising campaign.
- *Customers*--willing to pay for normally hard to find produce, worms, and compost. Customers would be willing to pay more, which should contribute to profitability.
- *Local partners*--partnering opportunities at various levels. For example, a local Starbucks that would be across the street from the garden might offer to train baristas from same population. The Starbucks could feature fresh produce in luncheon salads. Could provide space for monthly lectures on "organic gardening in the city," "organic gardening in window pots." Expertise borrowed--ask local Starbucks managers to be on Urban Outreach Ministries' board or serve as informal advisor.
- *Employees*--they will be able to benefit with more nutritionally healthy food. This may also encourage Urban Outreach Ministries to see how it incorporates South Baldwin Health and Fitness into employee benefits. Healthy employees reduce insurance costs. There are potentially lower costs of absenteeism due to illness and increase motivation and commitment. Organic Gardens provides growth opportunities . . . new experiences.

- *Student consultants*--a good growth experience for students and urban organic garden scene. Gives students an inside view on how an organization operates making them better prepared to serve on boards and help solve community problems. There is an opportunity to network.

B. *"Generic assessment of business plans"*--This could be given to the two-person teams that were utilized in part A or divide class into teams of 3-5 or assign individually for discussion in class. Attached is a generic business plan evaluation. How important is each factor? This generic evaluation has one set of weights, which is currently being used for a business plan competition. This generic assessment does not include the triple-bottom-line issues.

Exhibit 1: Business Plan Evaluation

Executive Summary Overall	2	4	6	8	10	12	14	16	18	20
Does it describe the mission statement and values driving the organization?										
Does it adequately describe the opportunity?										
Does it adequately describe the idea?										
Is the value proposition compelling?										
Is it well written and succinct?										
Management Team	1	2	3	4	5	6	7	8	9	10
Does this management team have the skills required to execute the plan?										
Does this team have the experience to lead a new venture?										
If this management team is weak in either necessary skills or experience, do they list the advisors or mentors who can help them?										
Market Opportunity	2	4	6	8	10	12	14	16	18	20
Have they adequately described the market and economic opportunity?										
Have they clearly stated their value proposition?										
Does their plan actually provide a roadmap for entering the proposed market?										
Competitive Strategy	1	2	3	4	5	6	7	8	9	10
Have they described their target customers?										
Who are they?										
Where are they?										
Do they know who their competitors are?										
Who are they?										
Where are they?										
Does the plan state the team's competitive advantage?										

Exhibit 1: Business Plan Evaluation										
Products and/or Services	1	2	3	4	5	6	7	8	9	10
Does the plan clearly and sufficiently describe the proposed product or service?										
Have any manufacturing requirements been addressed (if appropriate)?										
Does the plan describe how the product or service will be priced?										
Marketing and Distribution Strategy	1	2	3	4	5	6	7	8	9	10
Does the plan contain an operational marketing strategy?										
Is the plan realistic about how it will build or win market share?										
Is the distribution plan clearly defined and reasonable?										
Are contingencies and alternatives addressed?										
Projected Financial Statements	2	4	6	8	10	12	14	16	18	20
Are the financials consistent with the overall plan?										
Are the assumptions and projections detailed and realistic?										
Are contingencies and exit strategies addressed?										
Does the plan describe the funding need as well as the anticipated use of the funds?										
Other Comments/Feedback										

C. Evaluation of triple-bottom-line issues. Do the criteria adequately reflect the needs of Organic Gardens? Ask students to critique the plan using the judging criteria presented in 2B. Do the criteria adequately reflect the triple bottom line of concern for people, profit, and planet? What could be added, if anything, to correct that? Authors purpose a separate triple-bottom-line section is recommended such as adding to the current criteria included in the "generic" evaluation form.

Triple-Bottom-Line/Sustainability Aspects of Plan

- Does it describe how benefits to people will be manifest--living wage, people valued?
- Does it describe how impact on and of environment is considered?
- Do operations of business/organization improve the local community?
- Do operations improve environment or at least not make it worse off?
- Does it acknowledge fiduciary responsibility to owners, society/relevant shareholders?
- Are relevant stakeholders identified and importance clarified?

2 4 6 8 10 12 14 16 18 20 22 24 26 28 30

The weighting is given a 30 here, but this would be good question for class.

Measurements as to the value of any plan ultimately must be based on criteria of the client/business owner and where the business/organization wants to be in the long run. The “conventional wisdom” for next 10 years will be to use the triple-bottom-line/sustainability guidelines as a basis for an effective strategy that will enhance the probability of maximizing the positive impact and minimizing the negative impact on the relevant stakeholders in long run.

D. Other options to be considered--are there other options which should be considered? Is Organic Gardens' option being considered in a vacuum? Are there other potential social enterprises that would have a bigger payoff and still meet needs of executive director and Urban Outreach? An organization has finite resources. The value of this proposal needs to consider the alternatives. The SWOT analyses need to be compared. That process should involve the management team as well so the process becomes a capacity building experience.

3. Put on your consultant hat. Are there red flags that you see?

- At this point, these studies are out of context. South Baldwin Fitness is in its own space. The garden is yet another venture.
- There is not much indication that the executive director will slow down long enough to do the critical capacity building and organization planning necessary to implement a successful social enterprise strategy for Urban Outreach Ministries.
- There may be tax and legal issues, which should be addressed. Does Organic Gardens fit adequately under the umbrella of Urban Outreach Ministries? Will it need incorporated as a separate entity?
- Probably need to talk about using “profits” to grow the garden--provide more of mission of the garden. The issue was not addressed adequately.
- If the proposed organization is a triple bottom line, is the board supportive of the project? Are employees/staff in support of idea?
- Executive director may be too entrepreneurial for Urban Outreach Ministries.
- There is no solid information that the garden would work. Interview other organic gardens. Are the productivity figures meaningful?
- What kind of contract is executive director on? What succession training is going on?
- Are there other sources of revenue, including fundraising, that would be better use of resources--greater return in long run?

- What is the opportunity cost of the Organic Gardens project? How receptive will the community be? Will it have same outcomes as predicted? What, if anything, will have to be given up to pursue the Organic Gardens project?
- the success rate of small business is so bad and actual profitability of most social enterprises is so questionable that Urban Outreach Ministries needs to realistically assess and weight the objectives/mission/need for the organic garden. Is it to be a major source of funding for other programs? That should be rethought.
- Consider sustainable operation as a financial goal. Is it realistic that property will always be donated? Board development of the financial model would be desirable. How that will be financed is unclear.
- Is it likely to be able to get $200,000 donated to make $38,000 profit? More clarification is needed on the costs and benefits.
- Organic garden may take years to get "organic" designation. What impact would that have on value of project?
- It is unclear as to the actual demand for organic garden. What are the trends nationally and locally?

4. What needs to be done now?

The answer to what needs to be done now is "almost everything." The executive director may want to clarify what the best use of resources is at this time. The executive director has been with organization less than a year and as executive director for about 8 months. This is time for some strategic planning, board building, and folding the two organizations together then reassessing how this might fit in. How is the South Baldwin Health and Fitness doing? What needs to be done with it, if anything? What would be the minimum expectations for an organic garden? How many should be created? What other quantified measures of success should be achieved for each garden? This model assumes donation of $200,000 startup and land costs. Is that a realistic model? The triple-bottom-line benefits are a part of the mission. There is no assurance that the executive director's board is as committed to those values as the executive director is. Those values are critical in creating the desired number of jobs, training the desired number of people, and providing the desired number of pounds of fresh local organic produce.

Are there other options which should be considered--other potential social enterprises that would have bigger pay off and still meet needs of executive director and Urban Outreach Ministries? Are there better funding sources than through entrepreneurial activity?

5. What is the need in the market for these urban organic gardens?

This is possibly the area that needs much more scrutiny. What is the need? How big is it? How long will it be an unmet need? Is Organic Gardens really going to be able to capitalize on that need? This is then another whole issue to deal with. There are currently over 900 community gardens in Vancouver, British Columbia, with a goal to increase to 3,000 by 2010. British Columbia is at a hobby level mostly. The international numbers are in the millions with roll of community gardens feeding, in some cases, entire cities (http://thetyee.ca/Life/2006/09/12/UrbanAgriculture).

The summary information included does not give a good answer to this question. This is an important question and issue. Further, it would be critical to be able to sell the range of benefits to potential investors, to the board, to the team. Even if the dollar need is not clear, there may be many other needs that can be met with an organic garden.

6. If you were a consultant to Marc, what advice would you give him on how he should proceed? What should he do with the feasibility study and why?

It is time for a strategic plan for Urban Outreach Ministries. Board development is needed. Urban Outreach is expanding on a fragile base and immature infrastructure. There is a need for capacity building. Where do we want to go with Urban Outreach Ministries? What role should the board have in this? What is needed on the board? What skills, abilities, knowledge, and contacts are needed? What are our critical measures of success for Urban Outreach Ministries? Who are our relevant stakeholders? What are our sources of funds and expenditures?

VERMONT TEDDY BEAR COMPANY

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CASE DESCRIPTION

This case is intended for use in undergraduate business ethics, marketing, entrepreneurship or management courses. The primary subject matter of this case concerns an dilemma that faced a company in the business of making people feel good. This case allows the student to carefully evaluate the situation that occurred and decide whether the company made appropriate or inappropriate decisions. The case is designed for one to two hours of class time and is expected to require two to four hours of outside preparation.

CASE SYNOPSIS

Remember when you had a teddy bear as a child? Perhaps you still have it. How could a simple stuffed toy cause an business dilemma? That is just what has happened to the Vermont Teddy Bear Company. This small business has approximately 290 employees in a factory in Shelburne, Vermont, and does most of its business over the Internet or by mail (Gram, David, 2005.)

The Vermont Teddy Bear Company is the largest hand-crafter of teddy bears in North America. Approximately 450,000 "Bear-Gram" gifts (teddy bears) will be delivered around the world this year (http://ir.vtbearcompany). There are over 100 bears from which to choose for any occasion. The situation that has developed in 2005 is especially interesting for a company that is located in a state that demands appropriate conduct, following standards set by Ben & Jerry's. This company set a high standard for being socially responsible with their "Save-the-Rainforest" campaign. (Gram, David, 2005).

What actually happened? The Company decided to market a bear called "Crazy for You" for the recent Valentine's Day holiday. They began selling the bears in January, 2005 and were sold out by early February. The $69.95 brown bear comes with a straitjacket and commitment papers that read: "Can't Eat. Can't Sleep. My Heart's Racing. Diagnosis: Crazy for You"(Gram, David, 2005, p.1). Complaints began to roll in. Mental Health groups felt that in marketing this bear the Vermont Teddy Bear Company was showing insensitivity toward those who are mentally ill. The CEO of the company decided that they would no longer manufacture the bear, but continued *the sale of those bears that were already in inventory. (Gram, David, 2005). Will this decision cause problems for the Vermont Teddy Bear Company or will they escape unscathed?*

INSTRUCTORS' NOTES

Recommendations for Teaching Approaches

Learning Objectives:

- ♦ Students will learn the importance of companies maintaining appropriate marketing strategies and will acquire awareness of the consequences of insensitive behavior.
- ♦ Students will understand the importance of businesses acting in a socially responsible manner.

Position in the Course:

This case may be used in a course to add to a discussion about social responsibility. The student should have exposure to the meaning of this term before the case is introduced.

Student Preparation:

Students should spend two to four hours reading the case and relating their reading to textbook topics, such as marketing strategies and social responsibility, as well as to assigned outside readings.

Related Theories:

Students may relate this case to the study of codes of ethics, ethical behaviors of business executives, and a study of companies who have violated social responsibilities.

Teaching Methods:

The instructor should serve as moderator of the class discussion about the case.
The instructor could divide the class into groups and have each group discuss the case separately and then come together to discuss as a class.
The instructor could assign the case to one group in the class for presentation.

EPILOGUE

Following the controversy surrounding the Valentine's Day "Crazy for You Bear," and the decision not to pull the bear from its 2005 Valentine's Day offerings, speculation began regarding the long-term effects on the company. On May 16, 2005, the company signed a merger agreement to be taken private by an investment group led by the Mustang Group, a Boston-based private equity investment group (http://ir.vybearcompany.com/index.php?id=185).

Elisabeth Robert, President and Chief Executive Officer of Vermont Teddy Bear stated, "This transaction brings significant value to our stockholders and enables Vermont Teddy Bear to continue to build upon our leading position in the industry. As a private company, we will no longer face the challenges of a small company trying to comply with increasingly complex public company requirements" (http://ir.vybearcompany.com/index.php?id=185).

The statement made by Ms. Robert may reflect the effects of a new law called the Section 4 of the Sarbanes-Oxley Act, which requires companies to assess the effectiveness of internal financial controls and have auditors verify the assessment. The higher costs of maintaining a public company could also have contributed to Vermont Teddy Bear's decision to become private, according to Lawrence Carrel (2005, May 17). On the other hand, the choice to be taken private so soon after the Valentine's Day problem could be interpreted as running from a mistake. We will probably never know the impact of the dilemma created by Ms. Robert, who agreed to discontinue production of the "Crazy for You Bear," but refused to discontinue sales of the questionable bears that were already produced until all were sold.

DISCUSSION QUESTIONS AND ANSWERS

1. Was the Vermont Teddy Bear Company wrong to continue selling the bears?

There may be differing views about this question. The student needs to provide support for his/her answer. Many will decide that the company should have stopped selling the bears immediately after the criticism began. The fact that they agreed to stop the production of this particular bear does not appear to be enough to show that the company recognized their mistake. The comments by the CEO Robert did not help as she sounded as if money was more important than good will. Other students may agree that the company was not wrong to continue to sell the bears remaining in inventory. They will see this not as a right or wrong issue, but as a business decision.

2. Did the company respond appropriately to the criticism from the public? What would you have done if faced with the problem?

The company responded quickly by allowing a round of interviews to those who requested one. They also held a meeting with the Vermont chapter of the National Alliance for the Mentally Ill and other local mental health advocates, to discuss the problem in early February, 2005. The company also removed the bear from the radio advertising campaign that was currently being run. Again, they did not stop selling the bear until the inventory was depleted, which may cause many students to argue that the company did not respond appropriately. For the second part of the question, the student will provide a personal response, which may include ideas such as admitting in a press release that they did not realize the problems that would be caused and that they did not intend to be insensitive. The spokesperson would agree to stop production immediately.

3. Has the company been criticized unfairly or are they insensitive as accused?

There may be differing views on the situation. However, the customer is always right. Companies in the past have been rewarded for prompt response to problem situations having followed the lead of Johnson and Johnson in the Tylenol situation. In that case, all products were recalled immediately. The Vermont Teddy Bear Company could have recalled the bears and modified the product to avoid being insensitive. That would have shown the public that the company cared and yet would have minimized the cost of lost sales.

4. How can this marketing mistake cost the company in the future?

Perceived insensitive behavior, whether true or not, can lead to serious problems and will be punished by all stakeholder groups.

a. Stockholders could sell off their stock, causing stock values to decline.
b. Employees could leave and the future applicant flow could decline, causing productivity to decline.
c. Customers could reduce their purchases of current and future products, causing a reduction in sales and profits.
d. Suppliers could place the company on a COD basis, making it more difficult to produce future products.
e. Creditors could raise the rates charged on credit or refuse to grant future lines of credit.

5. How does the situation with Vermont Teddy Bear relate to inappropriate conduct by other businesses during recent months?

Recent problems with other companies have forced some into bankruptcy, company officers have been sued and charged with fraud, and boards of directors have been chastised for allowing inappropriate behavior. Firestone and other firms that failed to recall defective products have had a great deal of negative publicity. Lost sales may be very costly to regain. A company may never overcome lost profits, even with major spending in marketing and public relations.

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THE FEDERAL GOVERNMENT VS. YORK COUNTY: A TRANSFER PRICING CASE FOR MANAGERIAL ACCOUNTING STUDENTS

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CASE DESCRIPTION

The primary subject matter of this case concerns transfer pricing. Secondary issues examined include opportunity costs, sunk costs, the use of progressive levels of critical thinking skills, the application of classroom knowledge to real life situations, and effective communication skills. The case has a difficulty of level of two and is appropriate for sophomore-level students in managerial accounting classes. The case is designed to be taught in a 1.25 hour class and is expected to require 2.5 hours of outside preparation by students, preferably working in small groups. Alternatively, the case could be assigned as a project that requires minimal classroom time.

CASE SYNOPSIS

During their college experience, students are exposed to facts and theories in many different subject areas. By the time they graduate, students are expected to have developed critical thinking skills. They should be able to apply what was learned in the classroom to real life situations and be able to effectively communicate their analysis and conclusions. This case is derived from an actual situation occurring between the federal government and York County, Pennsylvania in 2003, as described on National Public Radio's Morning Edition. The case requires students to assume the role of a consultant to York County. They need to identify the conflict, consider relevant theories, analyze the situation from both parties perspectives, and suggest a reasonable solution to the conflict.

INSTRUCTORS' NOTES

Recommendations for Teaching Approaches

This case can be discussed in class and/or assigned as a project to be completed outside of class. The suggested student questions are designed to help students analyze the situation in a logical manner. A prior version of this case was administered to managerial accounting classes at a regional state university. Written responses to the student questions generally indicated that students working in groups of 2-3 earned higher grades than either individual students or those working in larger groups.

Students can be provided with the opportunity to improve their analytical and written communication skills by requiring that answers be turned in before class discussion. Discussing the case in class offers students the opportunity to improve their verbal communication skills and exposes them to alternative ways of analyzing the situation.

The student questions were formulated after considering the Issues-Theory-Analysis-Conclusions (ITAC) model by Wolcott and Lynch (2002) which adapts critical thinking theory to business situations.

STUDENT QUESTIONS AND SUGGESTED SOLUTIONS

Observe the Situation and Identify the Conflict

1A. What is the primary dispute in this case?

INS wants to reduce what it pays York County to house detainees from $60 to $38 per person per day and York County does not want to accept the offer.

1B. Identify typical materials, labor and overhead costs that would be incurred by York County to house INS detainees?

Materials: food, medical supplies. Labor: guards, supervisors, translators, medical personnel. Prison facility overhead: Depreciation, interest, payments in lieu of real estate taxes, insurance, utilities, maintenance and repairs. Administrative overhead: administrative salaries, office salaries, professional fees, office supplies, telephone, utilities, depreciation of office furniture and equipment.

Consider Relevant Theories

2A. What managerial theories or concepts specifically relate to pricing decisions between somewhat related parties?

Transfer pricing, opportunity costs, sunk costs. Transfer pricing theory provides guidance to determine "a fair transfer price" when one division of an organization (in this case, the government) provides products or services to another related division of the same organization (Horngren, 2002: 397). Opportunity costs are the cost of a foregone benefit when choosing between mutually exclusive opportunities. Sunk costs are costs that have been incurred in the past.

2B. What is the general decision rule for the identified theories?

A transfer price should fall within a range. The buyer should not pay the seller more for the product or service than it would cost to buy the product or service from other providers. If a seller is at full capacity, it should not accept an amount less than it can obtain from other buyers. If the seller has excess capacity, it should not accept an amount less than the incremental costs of providing the additional products or services. Within the above range, relative bargaining power and skill will determine how the profit will be divided. The upper and lower price levels represent opportunity costs. Sunk cost are irrelevant in future decisions.

Analyze the Situation from Both Parties Perspectives

3A. What motives might INS officials have to renegotiate the daily cost to house INS detainees?

The officials might be acting for personal gain or to meet the agency's needs. For example, individual officials might be trying to make themselves look good in order to get a promotion. Alternatively, INS may be facing budget cuts or have written guidelines that do not optimize behavior in this particular situation.

3B. Should York County automatically assume that INS wants to reach an agreement with them?

No. INS may want to centralize its operations and close smaller or more distant locations. There is also the possibility that the prisoners are being moved to another state or location in order to pump federal funds into that area and reward prior political support.

3C. If York County refuses to renegotiate the daily rate to house detainees for INS, what four main options does the federal government have?

The federal government can either accept the $60 per day rate, move some or all of the inmates to another facility, release the inmates, or leave them in the York County prison and refuse to pay the higher rate.

3D. If York County refuses to renegotiate the daily rate to house detainees for INS, what additional costs and benefits would be incurred by the federal government under each of its four main options?

If the federal government pays the $60 rate it will maintain the status quo. If the federal government moves some or all of the detainees, then it will incur moving costs and will likely have to pay higher daily housing fees per detainee at alternative facilities. There are no financial benefits to INS for making the move unless it is made for political reasons.

If the federal government releases the prisoners (as is sometimes done when jails become overcrowded), it will save the cost of holding the prisoners but will likely incur social costs due to increased crime and bad publicity.

If the federal government leaves the detainees in the York County prison and only pays the lower rate, it will put York County in the position of having to file a lawsuit or go to arbitration in order to collect the difference. This can result in future legal fees, bad publicity, and an inability to move additional prisoners to that facility.

3E. If the INS officials choose to act in an apparently irrational or unfair manner, what can the York County officials do about it?

York County officials can complain to their senators and representatives and have them apply political pressure at the federal level. They can also leak the story to the press. Either of these actions could be effective if the INS officials were intending to move the prisoners for personal or political reasons.

3F. If York County refuses to renegotiate the daily rate to house detainees for INS, how will each of the federal government's four main options affect York County?

If the federal government accepts the $60 per day rate to house detainees, then the status quo will be maintained and there should be little or no change in York County's revenues or expenses.

If INS moves some or all of the inmates to another facility, then York county revenues will fall by $60 per day for up to 550 current detainees. Some expenses will also decline. If the INS wing of the prison is empty, then expenses for food, medical care, guards, supervisors, translators, utilities, maintenance and repairs should decline proportionately. However, as the prison is also used for detaining other inmates, it is likely that there will be little change in the overhead related to the rest of the prison facility or the administrative overhead costs.

If INS releases the detainees, then revenues will decline as discussed above where INS moves all of the detainees. If the detainees stay out of trouble, the expenses will also change as discussed above. However, if the detainees get in trouble with local law enforcement departments, then it is likely that they will wind up back in the York County prison and the county will lose the revenues but will not be able to cut costs.

If the INS leaves the detainees in the York County prison and refuses to pay the higher rate, then York County will be put in the position of having to file a lawsuit or go to arbitration in order to collect the difference. This could take years and cost a lot of money to fight. If York County retaliates by releasing the prisoners, they will get the bad publicity and have the same problems as if INS released the prisoners.

If York County loses the INS prison revenues, there will be less money available to make payments in lieu of taxes to support local governments. There will also be increased local unemployment and reduced local spending. This could have a material negative effect on the local economies.

3G. If the INS does leave the prison, what alternatives does York County have regarding the prison?

York County can look for alternative sources of revenue. For example, it could contact other county or state prisons that are overcrowded and offer to house inmates for a fee. York County could also investigate the possibility of converting the facility to another use.

3H. If York County accepts the $38 per day per detainee offer by INS, what effect will this decision have on York County's expected revenues and expenses.

York County's revenues will drop by $22 per day, per detainee for 550 current detainees. Expense should not change unless York county reduces its level of security.

3I. If York County chooses to negotiate a new rate somewhere between the current rate and the INS desired rate, which costs identified in question 1B must be considered and which can be ignored to determine the lowest acceptable rate to charge INS?

York County must consider the incremental direct and controllable costs that relate directly to the INS detainees. These would include: 1) materials: food, medical supplies; 2) labor: guards, supervisors, translators, medical personnel; 3) and some of the prison facility overhead: additional insurance, utilities, maintenance and repairs.

The prison facility overhead related to depreciation and interest expense are in effect sunk costs. They will not change whether or not INS abandons the York County facility. Payments in lieu of real estate taxes are voluntary payments to local governments and can be terminated if necessary. In addition, the prison wing is over 20 years old and is probably close to fully depreciated and any related debt should be close to being paid off.

Most of the administrative overhead can be excluded from determining the lowest acceptable detainee rate. Administrative salaries, office salaries, professional fees, office supplies, telephone, utilities, and depreciation of office furniture and equipment are necessary to run the non-INS portion of the prison and will probably continue with little change.

Any amounts negotiated in excess of the incremental direct and controllable costs can be used to offset the overhead. In addition, if the prison operates at a higher occupancy rate, then the overhead rates will be less per detainee.

Choose a Course of Action and Justify Your Decision

4A. As a consultant, what do you suggest that York County do? Please explain your conclusions and limit your response to no more than three (3) paragraphs.

I would suggest a two pronged approach. First, I would test the resolve of the INS administrators to move the prisoners and ask my senators and representatives to apply political pressure to maintain the $60 per day per detainee rate. I would also make sure the press knew what is going on.

If I determined that the INS was very serious about moving the prisoners, then I would offer to negotiate a new rate. Ideally, the County and INS would divide the overhead in a mutually advantageous fashion. For example, reduce the $60 rate by no more than half of the overhead included in the rate. Both sides could still feel like they won something if they "split the difference."

EPILOGUE

Subsequent to the story's airing on NPR, the contract dispute caused the number of detainees to temporarily decrease. However, an agreement was eventually reached between the federal government and York County for $47.41 per detainee per day. The prison as of this writing was at capacity. The parties “split the difference” and increased utilization, which helped make up for the lower overhead rate.

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COST ALLOCATIONS FOR HOSPITAL MANAGEMENT

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CASE DESCRIPTION

The primary subject matter of this case concerns structuring cost accounting information. A secondary issue is the focus on how the information might be used and to this end there are no numbers in the case. Depending upon the requirements chosen by the instructor, this case could be successfully used in an undergraduate cost accounting or accounting information systems course. It could also be an effective tool for an MBA-level managerial course. Level of difficulty would therefore be at the four or five level. The case is designed to be discussed in one and one-half hours and should take students no more than five hours of outside preparation.

CASE SYNOPSIS

This hospital-based cost accounting case is unique in its lack of numerical information. The objective is to make students focus on the way the information should be structured and the way the information may be used rather than completing some financial reports. For most students this is far more challenging than it appears at first .Jamesville Hospital has grown rapidly, but its accounting system is still very basic. The financial records are adequate, but the hospital's growth has challenged the management team to provide improved information about revenue and cost centers in preparation for developing information about the costs of the various procedures. The real issue in this case is that as the hospital grew, its accounting system did not evolve in a useful, practical or logical manner. Few departmental managers actually use the data generated by the current accounting system so the hospital has no real way to manage its costs.

INSTRUCTORS' NOTES

Teaching Approaches

Jamesville Hospital has grown rapidly, but its accounting system is still very basic. The financial records are adequate, but the hospital's growth has challenged the management team to provide improved information about revenue and cost centers in preparation for developing information about the costs of the various procedures. The real issue in this case is that as the hospital grew its accounting system did not evolve in a useful, practical or logical manner. Few departmental managers actually use the data generated by the current accounting system so the hospital has no real way to manage its costs.

The case is unique and particularly challenging because no financial information is provided. The information is descriptive in nature and requires that students think about the underlying accounting concepts and applications without the complications (or crutch) of dollar amounts or quantities.

Because of the unfamiliarity of most students to medical settings, this case is best used with teams. The unfamiliarity coupled with the complete lack of numbers poses a challenge in guiding the teams to a meaningful analysis. Introduction of the case is not difficult because the students automatically assume an accounting case with "no numbers" will be easy and the "solution" will be brief. Depending upon the course level and the topics to be emphasized, an instructor may want to spend an hour answering questions for the entire class at some mid-point in the assignment when the students have realized the depth of the case.

LEARNING OBJECTIVES/KEY TOPICS

This case allows the instructor to tailor the students' learning objectives to the topics emphasized in the class. Some learning objectives/key topics that can be stressed include:

- Analytical/critical thinking
- Role of accounting information in decision making
- Relevant information for decision making
- Assigning costs to customized procedures (job order costing)
- Assigning costs to standard procedures (process costing)
- Overhead allocation design
- Use of ABC in a non-traditional setting
- Selection of cost drivers (allocation bases)
- Allocation design for support department costs
- Limitations of cost allocations
- Joint processes and joint costs
- Variance analysis
- Behavioral impact of cost accounting
- Accounting system design (or redesign)

POSSIBLE QUESTIONS FOR CASE ANALYSIS

1. Review the chart of accounts in Table 2. For each account, determine the need to designate any accounts as "controlling" and then to establish subsidiary accounts. For any subsidiary account, determine how that account is to be defined (what costs are to be collected in that subsidiary account). For example, should account 6000 Salaries be a controlling account with subsidiary accounts for nursing salaries at each site and other salaries at each site?

In general, the students will initially take the easy way out and respond that all accounts should be control accounts and should have subsidiary accounts. After a discussion of materiality, students should begin to realize that some accounts do not need subsidiary accounts while others may need many more than three subsidiary accounts.

While student answers may vary, most students will recognize that 6830 Postage probably doesn't need to be broken down into subsidiary accounts. In particular, those accounts that appear to have less activity (no matter the materiality) are also items that would not typically be broken down any further (see accounts 6682, 6684, 6690 6735, and 6890)

At the other extreme, tracking utilities for each site would seem to have intuitive appeal. The medical accounts could be sorted into subsidiary accounts depending upon location or procedure, as is appropriate to the hospital's interesting in tracking those costs and the relative materiality. The biggest item to break down is clearly that of 6000 salaries – depending upon the sophistication of the students, the instructor may encourage the students to consider range of possibilities. For lower level students, two subsidiary accounts (Nursing Salaries and Other Salaries) may be sufficient while graduate students might be encouraged to think about narrower subsidiary accounts based on possible decision making (e.g., Nursing Salaries by sites, Professional Salaries by area, and related fringe benefits traced to these accounts) .

2. Review the cost classifications from Table 3. Redo using the information from Table 2 and any changes recommended as a part of question 1.

This question will throw many students into a panic to make changes where (possibly) none is needed. Unless the students recommend making changes to the accounting system (the way the costs are currently accumulated), any changes are merely superficial. As indicated in Question 1, postage should probably remain as a part of the indirect, non-traceable costs of the hospital.

A simple example of a cost pool that could be reworked is Information Systems. Information Systems contains accounts 6301, some of 6310, 6541 and occasionally some items from 6546. Some of these costs are related to services provided to specific centers while others are generic. Astute students might group these costs under the umbrella of Information Systems with subsidiary accounts for cost/revenue centers and a generic subsidiary account for services that are not traced to any cost/revenue center.

3. Make a list of questions to be asked and any further information needed to refine the proposed cost allocation system along with explanations of why the information might be useful.

Most students want an appendix of medical terms; this request allows the instructor to branch into a discussion of continuous learning, including such issues as who is responsible for an employee's clarification of unknown processes and terminology. Another common and reasonable request is for clarification of exactly what does each expense account include. This, too, presents the instructor with the opportunity to touch on the need to know more than accounting rules and regulations.

4. Based upon your reviews for parts 1 and 2, list suggested changes to the accounting system.

The suggested changes are limitless. Some reasonable, obvious ones are

- ♦ A better numbering system (one where each digit has meaning and expenses are grouped by similar characteristics);
- ♦ a breakdown of some of the large expense accounts into smaller, more defined accounts (salaries is particularly troubling as is depreciation); and
- ♦ development of a system with ease of expansion.

5. Review the cost pools and allocation bases from Table 4a. Based upon (your recommendations above and) the information gleaned from the JH narrative, write a memo recommending and explaining changes in the cost pools and allocation bases.

Student responses will be varied. The students who have been led to this point with previous questions (especially questions 1 and 2 above) will be better equipped to respond meaningfully, but if the instructor has just finished discussing cost allocations (service departments, ABC costing and overhead bases), the class will be able to offer suggestions in pools and allocation bases readily.

At the lowest class level, not many students will change the cost pools (or the suggested changes will be minor). However at all levels, many students will immediately ascertain that better allocation schemes are available and suggestions sometimes have to be reined in by the instructor as to what is practical. A typical response that is impractical relates to the long-distance usage on the telephone cost pool; students want to track and assign this cost without much reflection.

The most creative area for student reflection is the cost pool of Nutrition/Cafeteria. It is worthwhile to spend class time discussing the potential for change in this cost pool and its allocation base. This discussion provides a natural segue into the uses of different bases by the reimbursement accountant and the cost accountant. Instructors should take care to emphasize the available information that is simply ignored in the cost accounting implementation.

MANAGING CLIENT RELATIONS: THE CASE OF PETER VOSEK

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CASE DESCRIPTION

The primary subject matter of this role play case is the interpersonal skills needed to handle a difficult client situation involving power and trust. Since difficult situations often stem from people having different goals, different approaches, and/or different personal styles, diagnosing and attending to these differences are fundamental to resolving both the interpersonal and task-related issues. Resolving difficult situations and retaining the relationship often requires planful dialogue – communications that: (1) are open to and respectful of the others' point of view,(2) treat others' as equals in the situation, and (3) seek to understand the others' views and the assumptions underlying those views. The role play case has a difficulty of five (graduate). It is designed to be used within 50-80 minutes. No outside preparation is necessary.

ROLE PLAY CASE SYNOPSIS

The "Peter Vosek Case" and roles for a role play (totaling 4 pages) present the same management consulting engagement from different perspectives. Peter, the officer in charge (OIC) of the engagement, and Joan, the job manager for one of the five teams on the project, relate their perceptions of the different stakeholders involved in this project and the challenges of managing these stakeholders.

CRC (a top tier international management consulting firm) is hired by a chemical manufacturer to lead a large service implementation project. Early in the project, Peter's counterpart on the project, the Corporate Manager of Service, is replaced. Peter finds it difficult to maintain a good working relationship with his new counterpart, Senal Dhola. His project is falling behind schedule, and he finds himself in a situation in which he has little access to the top management team of the company. We see Peter pondering how to turn the engagement around and prepare an effective, mid-engagement presentation for the top management group.

Joan Charoen is the job manager (senior associate) for the information technology (IT) team on the project. Joan has created a collaborative environment for her team, which is composed of both CRC consulting staff and managers from the chemical company. Joan believes the senior members of the consulting team need to actively strategize ways to gain buy-in for the project from the company's top management.

INSTRUCTORS' NOTES

The context for these cases is a large consulting engagement with a major multinational client. This engagement lasted more than a year and involved 25-30 consultants. The case reflects actual events, although disguised. The project billed over $6 million dollars in its first year. Resources that might be of use to both the instructor and students include David Maister's books on running a professional services firm (1993), on being a consultant (1997), and on becoming a trusted advisor (Maister, Green, & Galford, 2000). His web site is very rich and user-friendly.

O'Shea and Madigan (1997) share their observations on the dark side of consulting – something of which the CEO, Shawn Walsh, seems aware. Fombrun and Nevins (2004) have edited a useful resource book on consulting, involving many of this industries best writers and researchers. Williams (2001, 2004) explores the issues of trust in professional service relationships. Stumpf (1999) addresses the career progression for consultants – something on the mind of Joan Charoen. Stumpf and Longman (2000) discuss the key skills and approaches to management consulting. Stumpf, Doh, & Clark (2002) explore the structure and work processes of management consulting.

Teaching Objectives

The combined case and role play activities have four objectives. The first is to have all students learn how to look at an engagement from multiple perspectives – their 'personal' perspective, that of their officer in charge (OIC), that of their consulting company (CRC), and that of the client leadership.

The second objective is to permit participants to assume Peter's role so that they can examine and then experience the challenge of re-building trust and fostering cooperation in a hostile environment (i.e., distrustful and uncooperative). Peter may be in interaction with the client or members of his team.

A third objective is to permit participants to assume Joan's role so that they can examine and then experience the challenge of trying to contribute insights to a consulting team from a position of low power, and to practice leading more senior members of a team.

The fourth objective is to have all students observe use of two interpersonal strategies -- perspective taking (i.e., imagining how a situation is relevant for another person's goals, concerns or well-being) and threat-reducing behavior (i.e., behaving in ways that minimize the threat to clients).

Teaching Process

Have the students read the Peter Vosek case. To the full class, ask the following questions.

1. What dilemma does Peter Vosek face?

Possible Responses: Peter is leading an engagement that is falling behind schedule. His counterpart, Senal, is distrustful and uncooperative. In addition, Peter has very little access to the top management team of the company. Peter must turn the relationships around. However, Peter seems to have little understanding of his key stakeholders. He has not tried to look at the situation from his counterpart's perspectives. Nor has he tried different strategies to rebuild trust with his counterpart. His one strategy of working harder seems bound to failure because he actually needs his counterpart's cooperation to move ahead in an efficient manner.

Peter, while in charge of this project, is becoming increasingly distant from the client. He needs a strong, trusting relationship with Senal – which he no longer has. He needs access to more senior client officers – which he no longer has. He needs the ideas of his team to be considered openly and taken as useful advice – which is may no longer be the case.

2. What should Peter do to deal with the situation?

Possible Responses: Have participants create a map of Peter's choices and possible responses to each option. With whom might Peter meet, and how should he proceed. Peter could call a senior partner at CRC for advice, or possibly even the client service partner. He could ask for a meeting with both the more senior CRC person and Senal, or possibly Senal alone, to discuss the deteriorating relationship. He could pressure his team to attempt to still deliver the project on time and budget if everyone works longer, harder. He could go to meet with the CEO and share a step-by-step plan for getting back on track and then attempt to deliver on it. He could meet with his job managers (or some of them, e.g. Joan) to solicit their ideas on the current status of the CRC-client relationship.

For any of the options suggested by the students (post these on a board), have the class consider, what outcome is Peter seeking? Are their possible negative outcomes that might not be immediately obvious? Do any of these options address Senal's goals or emotional involvement with the issue?

Often student responses focus on the task (getting the project done, on time, on budget, and approved for implementation by the client), not the process or emotional aspects of the situation. What may be missed in their comments are the relationship elements that exist with both the client and Peter's term. Peter needs an outcome that begins to repair his relationship with Senal, provides him with more open access to Senal, yields more timely information on the client's needs and concerns, and leads to greater influence with Senal and other client leaders in the future. Peter needs to listen to and leverage the knowledge being gained about this relationship by his team, and to support his team's relationship building efforts at their client contact level. Continuing to 'work them longer and harder' will NOT solve the problem with the client.

3. How should Peter deal with Shawn Walsh and the rest of the top management team?

Possible Responses: There is a strong tendency for the class to encourage Peter to meet with members of top management, including the CEO. The students often believe that Peter and Shawn Walsh need to "talk it out." This would be a mistake as Peter has yet to begin to understand the situation from the client's point of view – something he might develop through an open and trusting conversation with Senal, or possibly Joan Charoen. Also note that at this point Shawn's gender is ambiguous – and students will often assume the CEO is a male. The idea of male-bonding often underlies some student suggestions. Going to more senior client counterparts is beyond the scope of authority for most OICs. CRC's client service officer, probably a senior partner that has worked with this company for 5 or more years, may be a resource for Peter, and is a more appropriate person to take CRC's concerns to the CEO – possibly including Peter in this meeting, but not necessarily so.

In is helpful to draw a simple organizational chart showing the client roles, and the CRC roles parallel to each other. This highlights the reality that Peter has both a CRC boss and teams to manager, and that Senal has at least two levels of management to serve, plus working effectively with Peter and the CRC team. This chart can be used to identify the many possible relationships and potential attendees to any meetings suggested by students to address the issues. When students suggest involving people that are not at the same level on this chart, ask them, "Why should the more senior person attend such a meeting? How might the less senior individuals feel if they learn that you are meeting with their boss and they are not there?" The responses to both these questions are negative for the relationship.

In the case of involving a more junior person (e.g., Joan Charoen as a job manager, a role generally two levels below the OIC role), how candid are they likely to be? How willing will they be to actually confront the real issues – their boss's incompetence or failure to connect with the client? Even if they willing and able to highlight the relationship issues that they see, how likely is it that the OIC would hear and act on this information?

4. What personal qualities and interpersonal skills are needed for Peter to successfully lead this client?

Possible Responses: There are leadership, relationship management, collaboration, and trust building skills that could be identified as needed by Peter. Specific leadership skills might be his ability to effectively challenge the situation, inspire a shared vision, and empower his team. Building relationship skills include understanding others, being able to take another's perspective, putting others at ease, showing concern for others, and demonstrating respect for others. Collaborative skills include communicating well across boundaries, learning from others, creating synergies across boundaries, seeking win-win outcomes, and sharing useful expertise. Trust-building skills include the ability to generate confidence, engender mutual respect, being dependable, and being open to and with others.

5. If the course has an interpersonal skills focus, develop a plan for the role-plays – using one or both of the roles below.

After participants have discussed Peter's choices, have them decide on Peter's first set of actions. With whom should Peter meet? Select role play as appropriate. Provide the bios of both Senal and Shawn Walsh to each of the people playing those roles so that they understand their relationship to one another. Do not give the bios to the participant playing Peter. After the role-play, have the group discuss the strategies Peter used to gain a better understanding of Senal's and Walsh's perspectives and to gain their support. Also discuss other strategies that might have been helpful. You may want to hand out the bios to everyone for the later discussion.

OUTCOMES OF PETER VOSEK CASE

If no role plays are going to be enacted, you can provide Peter Vosek Case Outcomes below. If role plays are part of the class, do not provide the case outcomes until after all role play activity.

Peter Vosek Case Outcomes

Peter Vosek, a partner at CRC, reflected on his last engagement, a large service implementation project for a chemical company. The yearlong project ran over budget and missed several deadlines. In the end, his teams had delivered a quality project, but the engagement didn't go well in many ways.

Peter recalled his last conversation with Joan Charoen, the job manager for the information technology (IT) team of the project. Joan had stated her views very clearly.

Joan said, "As far the IT team was concerned, we were able to maintain a high level of collaboration between our staff and the client members of the team. Everyone had ownership of the plan and it was a very positive experience. There was a sense of enjoyment and fun on this project because we actually delivered an outstanding result despite all of the problems with the company's top management. We not only achieved our objectives, but we were the only stream of the project that actually delivered on time, in budget. Still, we were shot in the foot. The overall project could have been much more effective."

She continued, "I believe the success of the project in terms of how it could have been was seriously compromised by the fact that CEO involvement didn't happen. In the earlier phase of the project, particularly through the diagnostic phase, there should have been more focus on gaining stakeholder buy-in and much more emphasis on really understanding where the senior people stood on the major issues. In the end, we were seen to be good in the operations area, but not owning the Firm's strategic agenda. We didn't get follow-on work – and there were opportunities."

Peter reflected on Joan's comments as he prepared for his next engagement. Over the next few years, Peter worked collaboratively with a senior partner in CRC on two large engagements and several smaller ones. These engagements were successful. Peter left CRC a few months ago to run a start-up.

Joan received a promotion to Principal a year after the chemical company engagement. She keeps in contact with several of the senior managers that were on her IT team. CRC has not worked with the chemical company recently, but Joan believes that opportunities will arise in the future, especially as her client contacts continue to advance in the company.

Joan commented, "Now, I always engage in stakeholder management. I ask myself the question, 'What is the senior executive landscape -- the hierarchy of stakeholders -- in this organization? Who do I pit against whom at the top level in the organization so that we get the right level of involvement early on and bring our recommendations to bear? Sometimes you need bring in some senior partners. People who aren't directly on the project, but who actually have the direct relationships you need to get to the right people"

ADDITIONAL INSTRUCTORS' NOTES FOR ROLE PLAYS

The cases were written to be gender neutral on Senal and Shawn's roles so that the instructor could have a class discussion without using gender as a variable in the discussion. In the actual roles, we have left Senal to be either male or female, depending on the person taking the role. As for Shawn, we learn that the CEO is female. This permits a class discussion of how gender can affect one's interpersonal approach. Consider the following interpersonal analysis as a framework for using and discussing the role play cases.

Peter faces two interpersonal issues with respect to Senal: a lack of trust and a lack of cooperation. Peter does not look at the situation he is in from his client's perspective. He is unaware of the pressures Senal faces in his/her new position as s/he tries to manage the project and manage the CEO's impressions. Further, Peter does not adjust his behavior with respect to Senal's. He does not try to assess his/her needs explicitly through dialogue nor does he experiment with different approaches in order to determine the working style that will make Senal less apprehensive. Peter's failure to take the client's perspective and failure to adjust to the clients needs decreased Senal's trust in him over the course of the engagement.

Second, Senal's decreased trust in Peter and his lack of understanding of Senal's situation are both factor that may contribute to her lack of cooperation.

After conducting one or more of the two role plays below, you can provide the Peter Vosek Case Outcomes.

Role Play 1- Peter and Senal

Role Specific Information for Senal Dhola, Corporate Manager of Service (do not provide to Peter)

Senal Dhola received a MS in chemical engineering from Carnegie Mellon University and worked in the chemical industry for several years before receiving a MBA from Wharton, Senal, who has just been promoted to Corporate Manager of Service, was hired seven years ago by the current, VP of Sales, also a Wharton MBA.

Senal is working on developing closer relationships with Chem-E's top management team and currently has the strongest relationship with his/her boss, the VP of Sales. They are both avid skiers. Senal also gets along well with the VP of Manufacturing, but has not been able to "connect" with the CEO, Shawn Walsh, a fact which concerns Senal. With his/her promotion, Senal feels under close scrutiny by the entire top management team.

Role Play 2- Peter and Shawn Walsh, CEO

Role Specific Information for Shawn Walsh, CEO (do not give to Peter)

Shawn Walsh is one of the few women CEOs in the chemical industry. Shawn received a BS in chemical engineering from Stanford University and worked for Alcoa for several years before receiving her MBA from Harvard. Shawn wants her company, Chem-E, to become a global supplier of industrial chemicals. Chem-E currently serves three primary industries--paint & coatings, petrochemicals, and water treatment -- but also serves industries ranging from dyes and pigments to foods and beverages to adhesives.

Shawn realizes that service is critical in the chemical industry. To succeed in the global marketplace, Chem-E will need to gain the ability to provide 'package deals' for overseas companies that require a large number of different products in the same shipment. They will need to adapt to world time operations and to serve their global customers around the clock, providing earlier shipments that can save customers time and money. And finally, Chem-E will need to develop its e-business capabilities. Shawn feels that consultant's are a "necessary evil" in this process. She is adamant that her top management team hires consultants only when necessary. She expects her *top people to show vision and leadership in their dealings with consultants not the other way around. Shawn is tough, hard-driving, and feared.*

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NOTE

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ADAMS JEWELRY

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CASE DESCRIPTION

The primary subject matter of this case concerns the operational philosophy and actions of a small retail jewelry store. Secondary issues examined include the nature of the jewelry and diamond market, selecting an appropriate target market, developing a merchandise mix to satisfy target customers, pricing and promotion strategies for a small retail jeweler, and store location decisions. The case has a difficulty level of four, appropriate for senior level. The case is designed to be taught in one class hour and is expected to require one hour of outside preparation by students.

CASE SYNOPSIS

Jack Adams owns and manages an independent jewelry store in Florida. He is facing a number of issues concerning the store's competitive effectiveness in the local jewelry market. The immediate decision is whether he should move from his long-established store location. Although his store is not very up-to-date, it is in a high-traffic location and receives a lot of exposure. He caters to a middle class clientele, but fancies his business as a higher quality, upscale operation. Thus, there are issues of image and positioning in the local jewelry market among competitors. Other questions concern his lack of effective promotion activities and hours and days of operation. All of Jack's decisions relate to the issue of his customer service and marketing orientation. The case also incorporates global dimensions as it describes the nature of the diamond market.

INSTRUCTORS' NOTES

Recommendations for Teaching Approaches

This case is designed for use in a variety of undergraduate business courses to help students learn about the operation of a typical small business organization. The case offers students an opportunity to evaluate the marketing philosophy and actions of a small retail jewelry store. It provides insights into the jewelry and diamond markets and describes the operations of a small local independent retailer in this sector. Students may critique the retailing approach and develop improved strategies for the small business. It is very suitable for a written report and/or oral presentation by students. It can also be used for examination purposes. The case lends itself to a variety of Small Business/Entrepreneurship courses, Marketing courses (such as Retailing and Services Marketing), and Business Strategy. Faculty and students should access one of the many diamond industry websites, such as www.gia.edu, for a comprehensive discussion of diamond characteristics, including cut, carat, color, clarity, and prices. This will aid class interaction on these matters. Faculty may want to cover the following elements in their discussion of the case.

DISCUSSION ISSUES

Planning

Ask students how effectively Jack Adams appears to plan for his store's future. Jewelers need to plan for selling seasons such as Mother's Day, Valentine's Day, and, most importantly, Christmas. Planning includes forecasting for the future based on current data received from the market. Unfortunately, Jack not only failed to plan for inventory but also failed to open Adams Jewelry during the busiest shopping day of the year, the Friday after Thanksgiving. Another weakness in Jack's planning was that he did not anticipate changes in the global diamond market. Jack should have detected the price increase trend in diamonds and gold. Rather than being reactive, he should have been proactive.

He could handle financial issues more effectively. This includes finding better and more flexible methods to finance new inventory purchased from wholesalers. As the case mentioned, customers were turned away and bought from other jewelry stores as a result of lack of inventory (especially larger diamond stones).

Jack should also evaluate his priorities. Is it more important to invest $15,000 to grow the firm and improve its effectiveness in numerous ways, or to finance changes in his personal situation, such as adding a room to his house or buying a new truck? The business is what pays for other bills, not the other way around.

Environmental Scanning

Ask students to critique Jack Adams' effectiveness with regard to environmental scanning. Have them provide specific examples where they feel the process was weak. It is important to scan the environment to gather information regarding potential threats and opportunities. Jack did not keep up with the competition and pay attention to who was entering and exiting the local market. Several stores emerged in Jack's city after he opened Adams Jewelry. These stores include Marvin's, Transitions, The Jewelry Place, Roland Samson, and several others in the regional mall. He should ask himself "Why are they entering the market and what are they doing right to grow that fast while I am not?" He should also try to find opportunities available in the market. An example includes visiting the stores in the mall and asking for their service and repair business. The case illustrated the lucrative nature of this service.

Another point that scanning will reveal is what style of jewelry and designs are selling in the market. People's tastes change over time. What worked for customers ten years ago may not work today. Therefore, carrying beautiful and desirable designs is as important as the high quality stone that is embodied in the design.

Customer Orientation and Service

Ask students to illustrate examples of good and bad service cited in the case and explain how that confirms the existence or lack of a customer orientation as part of the marketing concept. Although the staff is congenial with customers, Jack should seek training on personal selling. He should learn to start conversations with customers and not be so serious and introverted. He needs to establish greater rapport and share his expertise with customers, particularly given his valuable diamond knowledge. He should also learn how to deal more effectively with wholesalers. For example, Jack needlessly low-balled the part-time wholesaler who offered to sell him jewelry bought from pawn shops at 30% below wholesale value. Jack does not fully understand that wholesalers are not only suppliers but can assist him in his marketing. They can refer customers and, perhaps most importantly, offer their insights about the market to the retailer. Wholesalers are more in touch with the jewelry market in terms of supply and demand than are jewelers. Also, it is important to treat people fairly and recognize that the source of the merchandise and the price that was paid for it should have no bearing on the price that should be offered for it. The case mentioned that Jack offered the wholesaler a price equivalent to 50% below wholesale value for his merchandise just because he knew that the wholesaler's merchandise was bought from a pawn shop and the cost was assumed to be quite low. By doing so, Jack passed up an economic opportunity to make a higher return on the merchandise if he bought it. Instead, the wholesaler sold to another store for a more equitable price and probably will not consider Jack for future dealings.

Image and Positioning

Ask students to describe the image and positioning they believe exists for Adams Jewelry. Ask them to provide evidence to support these perceptions the market may have. Jack wants to position his products as medium- to high-quality. However, his customers are upper-lower to middle class; and his strategy has been to offer a low-cost approach for customers. Jack would like to attract more affluent customers to his store. There are two issues involved in the store's current image and positioning. First, due to the higher quality of the jewelry Jack wishes to buy and sell in his store, he will have to demand a higher price for them than usual. The problem is that his positioning strategy does not fit with his customer profile. His customers are looking for inexpensive items that they can afford and also want a flexible payment method. Second, factors such as Jack's comfortable attire at work (wearing shorts), the interior of the store (shabby carpet, discolored window drapes, and dated display fixtures), and Ralph's son (Barry) appearing behind the sales counter do not reflect a high-quality jewelry operation. If he wishes to position his products as high quality and wants to attract affluent customers then he must change his and his store's appearance.

Promotion

Have students evaluate the promotion philosophy of Adams Jewelry. Ask them to recommend a course of action that would build Jack's business while conserving his meager resources. Jack needs to pay very close attention to promoting his merchandise. He should have conducted a marketing audit to find out why his previous promotional activities did not work and why he does not sell more jewelry on his website. Seemingly minor issues such as proofreading copy on his website may be significant stumbling blocks to attracting more upscale and educated customers.

The electronic sign purchase illustrates an important issue. His action shows that he does not carefully evaluate feedback and advice or recommendations from others who may have better jewelry marketing insights than he. He was advised to purchase a sign to place outside; instead he bought a less expensive (but rather ineffective) one and placed it inside. The issue of affordability was more important than promotional effectiveness.

Another important issue to mention is that Jack should scan competitors' ads in the local media, including newspapers, TV, radio, and also note event sponsorships by them. By doing so he will know the selection of inventory they carry and their special prices. He will also know if a newcomer in the market is having a grand opening and what prices, etc they are offering. Jack should also visit the competition. He needs to get out from behind his repair bench and see what the competition is doing. He apparently has little direct knowledge of his adversaries.

He should consider a low-cost, guerilla-style ad campaign that makes the most of his lack of dollars. He should focus on ways he can generate favorable word of mouth and buzz while not breaking the bank. However, many issues need to be resolved prior to doing anything. For instance, any advertising in an upscale manner will not be congruent with the current look of the store, Jack's casual attire, and his merchandise mix.

Jack might also want to consider having only a promotional website rather than one designed to also sell merchandise. Since the latter is greatly more complicated, he may simply want to switch the orientation to an Internet presence that favorably showcases his store, location, personnel, services provided (illustrating the fine quality of jewelry craftsmanship that is provided by the store), and perhaps quotes prices for standard work.

Location

Ask students to evaluate whether Adams Jewelry should make the move to a new location or stay put. Moving to a new location takes thorough planning and preparation. A careful examination of the current situation will probably reveal that Adams Jewelry' current location is better than the one to which he is planning to relocate. Saving a small amount of money in rent should not be an overriding concern. Given that the difference in rents amounts to the sale of one typical ring each month, the rent costs should not be the deciding issue. More important is the issue of the store's image and customer convenience. The current location can probably generate more money assuming that the factors contributing to the problem are resolved. If Jack were to move to a perceived "classier" location, will it make a big difference? His present location, once remodeled, could accomplish his goals. The limiting factor seems to be not so much the store's location, but Jack's marketing and business philosophy. If he were to continue wearing shorts to work, stick with his dated display cases, etc., a new location will not help greatly with the image and attracting a more upscale clientele. Also, the case alludes to a limited amount of store parking. If Jack and his mother occupy the two spots in front of the new store, where will customers park?

PATAGONIA: CLIMBING TO NEW HIGHS WITH A SMALLER CARBON FOOTPRINT

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CASE DESCRIPTION

The primary subject matter of this case concerns corporate environmental responsibility. Secondary issues examined include strategic intent and marketing dynamics. The case has a difficulty level of three, appropriate for junior level students. The case is designed to be taught in one class hour and is expected to require three hours of outside preparations by students.

CASE SYNOPSIS

The California outdoor clothing and equipment company, Patagonia, has set a very high standard for firms seeking to be environmentally sensitive. The privately-held company has created a culture of reducing its impact on the environment through product design and manufacturing, energy usage, and waste management. The case explores the methods by which Patagonia reduces its "carbon footprint" and asks if other firms can follow its lead.

INSTRUCTORS' NOTES

Teaching Objectives and Target Audience

This short and simple case seeks to begin a discussion of the desirability of developing an environmentally friendly approach to business. The case looks at the activities of one company and asks students to think about the possibility of this expanding this approach to other companies. The main objective of the case is to provide a backdrop for further discussions concerning the driving and restraining forces for the greening of global businesses. Students should be able to discuss reasons why firms resist adopting an environmentally friendly company position, in addition to promoting its universal adoption.

The case is best suited for an undergraduate audience. Courses that seem most appropriate for its use include basic management, marketing, international business, and an introduction to business course.

Teaching Approach and Strategy

This case can be used in a number of ways. The case can be assigned for a general class discussion in which the case is distributed for reading outside of class. The case is even short enough to be read in-class if necessary. The case could also be assigned as a group project. Since the case is heavily focused on the expression of opinion, it is not suitable for examination purposes. Evaluation of the analysis should be conducted on the basis of thoughtfulness and the extent of critical thought.

ANALYSIS

The case includes four discussion questions. Those questions and possible answers are provided below.

1. Is green business good business? Explain. Why aren't all companies green businesses?

Most students will feel that green business is good business, at least as it relates to issues of social responsibility. There may also be an argument for the potential of increased profitability generated through savings in energy consumption and recycling. While a case can be made that all companies have a social responsibility to reduce their impact on the environment, the argument that all companies will see financial benefits from doing so isn't necessarily a sound one. In many cases an environmental audit can uncover areas for improvement in environmental impact done with cost savings; however, in some cases the reduction will include additional costs. This is the reason not all companies are aggressively pursuing environmental friendly policies. In other cases, companies may not see the need or benefit of becoming a green company. If consumer awareness increases, this need/benefit may increase. Governmental regulation may also be a driving force of increased environmental action on the part of companies.

2. What is the difference between green marketing and green business?

Green marketing is focused on product design and communication of the "green" benefits of products. Green business is a broader term encompassing a change in the way a company does business throughout their organization.

Students should also present arguments about the impact of customer needs and satisfaction on the successful implementation of "green business" activities. Companies which myopically focus on the "greenness" of their products without consideration of their customer base or other external factors may fail. For instance, Phillips introduced the

"Earthlight" in 1994 seeking to promote environmentally friendly light bulbs and reduce energy usage. The product failed miserably; it cost the consumer $15 per bulb compared to $0.75 per bulb for traditional incandescent bulbs and what's more the new bulb didn't fit in traditional lamps. Ottman, Stafford, and Hartman (2007) note that "the environmental positioning of the original EarthLight product appealed only to the deepest green of consumers….. In practice, green appeals aren't likely to attract mainstream consumers unless they also offer a desirable benefit such as cost savings or improved product performance." Phillips, cognizant of their earlier failure, later re-introduced the product with a new name – Marathon – a new design, and a new positioning strategy. The Marathon name was the focus of the marketing campaign emphasizing cost savings over the – much longer – life of the bulb. Ottman, et al (2007) note that "the new value proposition triggered sales growth of 12% in a flat market."

3. Can a corporation be environmentally sensitive and still be responsible to shareholders? Is this easier for a privately held company?

This question, on the surface, is related to the first question in that it explores the impact environmental policies have on financial performance. The question really looks beyond financial performance and addresses the issue of responsiveness to shareholders in a more multidimensional fashion. The viewpoint should be the long-term viability of the firm and this perspective should include issues of sustainability and survivability. As environmental issues become more salient, it is prudent for managers, including financial managers, to become more aware of the organization's impact on the environment and methods of reducing this impact. In the case, Patagonia, a family-owned company does not have to concern itself with shareholders, and in some ways has an easier time in implementing an environmental strategy. However, this should not be an excuse for management of public companies to avoid taking action on environmental issues for the reasons previously mentioned. The case of Nike, below, can be used to support the idea that publicly held companies can, and should, be environmentally responsible as part of their broader corporate responsibilities.

4. Do you think all businesses should follow Patagonia's lead in its environmental practices? Explain.

Since this case is primarily directed at an undergraduate audience, it is probable that many students will agree that all companies should follow, at least to a certain extent, the lead of Patagonia. Patagonia has a somewhat unique customer following and has carved a niche in its industry. Others who follow Patagonia's lead may not be able to duplicate its success. While students may provide dire consequences for inaction on the part of other companies, including the end of animal and/or plant life on earth, it is unlikely that many companies will match Patagonia's approach. The extent of the adoption environmental policies will depend somewhat on the industry, the firm's size, and the financial resources to make the organization greener as well as the level of consumer awareness created by the media and formal education. Patagonia's customers are particularly well educated and mostly well-off financially. From a Maslow's hierarchy perspective, they can focus on such higher level concerns.

Nike is an excellent example of a company that has seemed to follow in Patagonia's footsteps by conducting business in a green manner and not just doing green marketing. Nike, states in its' 2005 and 2006 Corporate Responsibility Report "being half green, or somewhat responsible, is not good enough." Nike set several key environmental targets to be achieved by their fiscal year 2011: "1) all Nike footwear will meet or exceed standard set in their sustainability index, 2) all Nike brand facilities and business travel will be climate neutral, 3) seventeen percent reduction in footwear waste, and 4) thirty percent reduction in packaging and point of purchase waste." (Nike FY05-06 Corporate Responsibility Report) Nike's CEO, Mark Parker, notes that "today, corporate responsibility no longer exists on the periphery as a check on our business, but is assuming its rightful role as a source of innovation within our business." Clearly, Mr. Parker views green business, as a part of corporate responsibility, as being good business.

Indeed Patagonia serves as a model for eco-friendly business practices. Students should be encouraged to identify other environmentally friendly business practices that they have personally seen. For instance, IKEA no longer provides free plastic bags for consumers to take home their purchases. Customers may purchase a large reusable bag for $0.59 or simply load their purchases into their car (Environmental Leader, 2007). IKEA projects that the number of plastic bags used by their US customers will be reduced by at least 50% from 70 million to 35 million in the first year. Students will also be likely to identify fast food companies such as McDonalds who in 1991 switched to more environmentally friendly packaging from the Styrofoam that was previously used (Cummings, 1991). It should be noted that the switch to paper was driven by a letter writing campaign organized by environmental activists and teachers. They may also mention initiatives such as Starbucks' practice of reducing the price of a cup of coffee by 10 cents if the customer brings their own cup, thereby reducing cardboard in landfills (Starbucks, 2007).

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