"Is it ethical to withhold directly pertinent information from a prospect on a product development that is yet to be announced that is highly likely to delay the purchase decision?"

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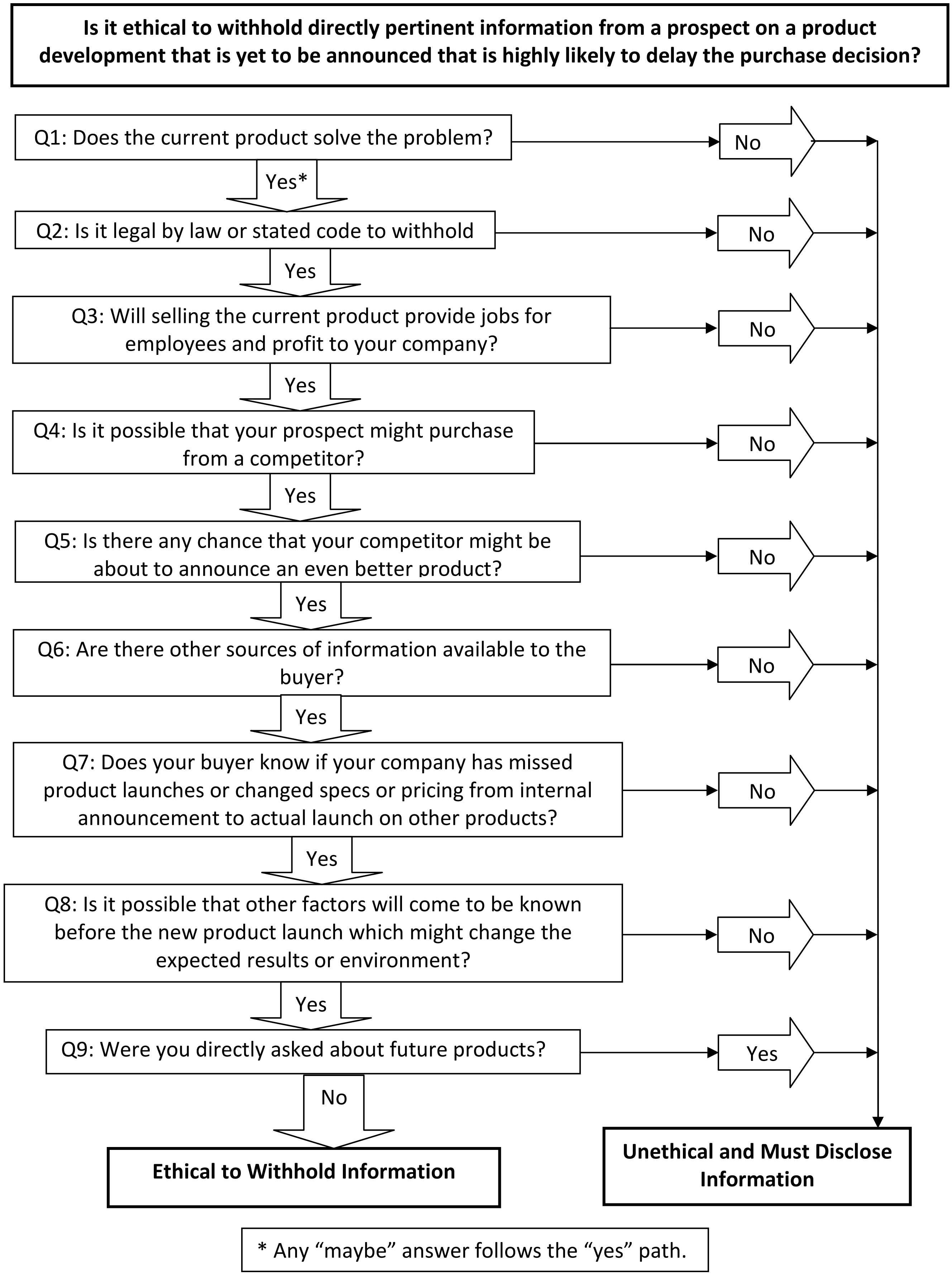
Ethical and Unethical Sales Behavior and The Question

The decision to disclose or withhold information during the sales process is endemic to salespeople. Bowie (2005) calls out the perspicuous issue that, "The seller usually has information the buyer does not know and could not reasonably be expected to know" (p. 62). Companies often attempt to keep product development secret, partially due to the cannibalization affect on current revenue if prospects delay purchasing until the new product is available—reflected in the ethical dilemma at hand. Buyers are able to do extensive comparison of available products using a range of technologies and strategies, yet are limited to the public knowledge base. But is any buyer capable of knowing yet to be announced information? Even after extensive research, the buyers and sellers may not have equal access to information.

The commonness of unequal information does not make the situation less confusing nor has it led to a collective answer to the issue. You find some who feel that it is clearly ethical to withhold information, some who feel equally confident that it is clearly unethical to withhold information, and others who feel that the decision is clearly multi-faceted. These incongruent answers are because most salespeople are not concerned with ethics until they face an urgent issue, such as having knowledge that they know could negatively impact a sale, and suddenly they seek a checklist solution. (Brinkmann, 2002) In this paper, I will define relevant terms and then answer the question: *"Is it ethical to withhold directly pertinent information from a prospect on a product development that is yet to be announced that is highly likely to delay the purchase decision?"* with "Yes." Figure 1 outlines a nine-question decision model to determine when it is ethical to withhold information.

Figure 1 Ethical Decision Model for Withholding Information



We start by defining key terms. Carson (2001) says, "We need to distinguish between deception, lying, withholding information, and concealing information" (p. 276). The New Oxford American Dictionary (2001) defines "Withhold" as, "Suppress or hold back," "Evade" as, "To avoid answering directly," and "Lie" as, "An intentionally false statement." The intent in a lie is the contingent determining element in answering the stated ethical question. The other key term is "information" defined at www.dictionary.com as, "News, advice, or knowledge." News and advice include opinions and interpretations. For example, advice to invest in the stock market because it is likely to go back up is based on opinion that past trends will repeat in the future. Salespeople are often asked for advice, which is likewise subjective.

Major Philosophical Positions

There are several schools of philosophy involved in the discussion of ethics. This section examines deontology or universalism, teleology or utilitarianism, relativism, absolutism, and legalism, and thoughts of Aristotle, Kant and Nozick—all of which form the decision model.

Deontology or universalism is concerned with specific actions and behaviors, and is also called non-consequentialist because future consequences are not important in determining whether the act is ethical or unethical. The criteria for ethical behavior for deontology is the methods or intentions of the person involved, meaning the world is black and white for deontology. (Mengüç, 1998; Piercy & Lane, 2007) In sales, lying to the prospect during the sales process is a deontological failure —lying is wrong regardless of purpose or future impact.

Absolutists are pure deontologists who anchor decisions in Kantian philosophy and his categorical imperative theory that people should follow rules because rules are inherently good. (Forsythe, 1980 in Tansey, Brown, Hyman, & Dawson, 1994) Holley (1998) proposes two absolutist rules for deciding how much information must be disclosed: the fairness rule—that the seller is to reveal what the buyer could not be reasonably expected to know—and the mutual benefit rule—that the seller is to reveal all the buyer needs to know to make a reasonable judgment. Mooradian (2004) concurs noting, "This condition requires that the salesperson not leave out information that the buyer would consider as having a potential impact on his or her decision" (p. 124). Carson (2001) reflects an absolutist view that "[Salespeople] should answer questions forthrightly and not evade questions and withhold information that has been asked for (even if this makes it less likely that they will make a successful sale)" (p. 288). However, question (6) of the model will determine that the buyer has a duty to perform due diligence for his employer, and the presence of other sources of information including the Internet, business associates, and competitors to the seller, reduces the disclosure requirements on the seller.

Brentano (1973) feels a categorical imperative cannot exist in an interactive world and that, "No ethical consequences can be deduced from it" (p. 33). Consider a Kantian imperative that one should never lie. You are taken hostage and to secure your release, you promise to pay your abductor a ransom. You are released but he is quickly arrested so you do not pay. Even an absolutist would see this as an acceptable lie—meaning that universal laws cannot exist and Brentano is correct. Sales is seldom a life and death situation, so the categorical imperative against lying stands but few other absolutist ideas will be relevant in the model.

Teleology or utilitarianism is the opposite of deontology. The criteria for ethical behavior in teleology is the long term balance of consequences or end results of the decision or action, making teleology consequentialist because the future consequences are most important in determining whether an act is ethical or unethical. The problem is the future must be analyzed and interpreted, meaning the teleological world is gray. Will a salesperson know exactly what will happen in the future with his company or the prospect as a result of the purchase decision at hand? Omniscience is impossible so the salesperson must rely on relativism.

Relativism is a form of teleology which is concerned with the applicability of universal rules, “the degree to which an individual 'rejects universal moral rules'” (Forsythe, 1980, p. 175). Relativism includes exceptionists who prefer rules but will deviate from them under special circumstances, and situationists who look at the total utility or value of the act before making a decision on course of action. (Tansey, et. al., 1994) As an example of relativism, some salespeople might feel it is acceptable to lie to a big company with extensive resources, but not the mom and pop start up running on a shoestring.

Legalism is the position that what is legal is ethical and what is not legal is unethical. “Since the lawless man was just seen to be unjust and the law-abiding man just, evidently all lawful acts are in a sense just acts; for the acts laid down by the legislative art are lawful, and each of these, we say, is just” (Mckeon, 1947, p. 399). If there is no written code indicating lying is illegal, does that mean it is ethical to lie to make a sale? The problem is that legalism requires an accurate implementation of utilitarianism—that a group can effectively define and carry out what is best for the most. Legalism will have a very narrow role in the model, only in the specific question of the presence or absence of laws regarding disclosure.

Nozick’s “every man for himself” entitlement theory is the antithesis of character based ethics and takes legalism literally—if an action is not illegal, then it is perfectly acceptable. According to Nozick, “We have no obligation to help those worse off than we are” (Singer as cited in Paul, 1981, pp. 42). Carson (2001) states, "There is no absolute moral prohibition against harming others (or risking harming others)” (p. 280). Both suggest a salesperson could work solely to his advantage and withhold information without fear of ethical lapse. Carson then dismisses the absolute view and states, “We can also show that deception in sales is wrong because it violates the golden rule” (p. 281), making Nozick too extreme for this model.

Aristotle is a major voice in ethics. Aristotle is neither a deontologist concerned with specific actions nor is he a teleologist concerned only with the future—he is concerned with intent which is an outgrowth of character. In his view, it is possible to perform a right action with wrong motives. “Aristotle’s more detailed discussions of the virtues make clear that it is with respect to how one feels and not simply how one acts in light of one’s feelings that one is said to be virtuous” (Kosman as cited in Rorty, 1980, p. 108). This reminds us of Jesus and his arguments with the scribes and Pharisees who felt that strict adherence to the law was the key to righteousness, while Jesus proclaimed that intent based on character was more important than any specific act. The model will show that intentional deception in sales is a moral failure.

Stepping Through the Model

The ethical decision process is about how moral standards are applied to define ethical or unethical behavior. (Batory, Neese, & Batory, 2005) Each step of the model reflects various ethical philosophies and should be answered yes or no. When the answer is maybe, follow the yes path. The sequence of the first eight questions is not significant, but a “no” answer to any of them results in a “not ethical to withhold” answer and all other questions become non-relevant. The ninth question is the final decision rule that must have a yes or no answer.

Question (1): “Does the current product solve the problem?” The halakhic teaching of *Lifnei ivver* “was originally understood to prohibit the giving of unwise business advice, but it was eventually extended to prohibit the sales of goods, which though legal, are physically or morally detrimental to the welfare of the buyer” (Green, 1997, p. 26). If the product being considered does not solve the problem at hand, the salesperson is providing bad advice by accepting the transaction and fails the canonical guidance. Both deontological and teleological perspectives agree that selling a product which fails to solve the problem is unethical—misrepresentation today and creating a problem in the future are unethical. Relativism moderates this position saying, “There is ordinarily no obligation to refuse to sell a legitimate product because the purchase is judged not to be in the buyer's interest” (Holley, 1998, p. 637).

Question (2): “Is it legal by law or stated code to withhold the information?” Some positions such as realtors and financial advisors are under specific requirement to disclose all information. If such laws govern this transaction, deontology and legalism say breaking the law is, by definition, unethical. "Many salespeople take the law to be an acceptable moral standard for their conduct and claim that they have no moral duty to provide buyers with information about the goods they sell, except for information that the law requires” (Carson, 2001, p. 277).

The halakhic teaching of *Li-fenim-mi-shurat ha-din* is that one should conduct themselves beyond the letter of the law, that the letter of the law is the minimum but the spirit of the law is the foundation for ethics. This canonical concept requires higher levels of honesty and avoidance of misrepresentation to protect the consumer from harm, as a failure to disclose is misrepresentation that could result in harm. (Green, 1997) *Li-fenim-mi-shurat ha-din* becomes a teleological concept that although the act today is legal, the affect down the road is detrimental. However, the model question asks only, “Is it legal?”

Question (3): “Will selling the current product provide jobs for employees and profit to your company?” This is an economic and utilitarian question. In contrast to some interpretations of Christianity, Judaism, “[Recognizes] the importance and legitimacy of the profit motive” (Green, 1997, p. 22-23). “Profits are not the purpose of the firm, but rather a condition of its future existence” (Bowie, 2005, p. 29). To keep a firm going is a utilitarian behavior in that profits are good for a community as money in the form of wages and taxes support communal needs, so the community wants the seller to make a sale as long as it is done honestly. One might ask, “Can I be expected to act in ways which might make my company uncompetitive when many people in the company are depending on me” (Holley, p. 635)? Carson (2001) responds, “Salespeople… have duties to their employers” (p. 284) so the unequivocal answer is, “No!”

Question (4): “Is it possible that your prospect might purchase from a competitor?” The salesperson is to act in the best interest of the company. Both Plato and Aristotle answer, “What is a good X?” with, “What is the purpose of an X?” In other words, does it do what it is supposed to do? “We can say in general that a salesperson is supposed to act toward achieving a particular goal: getting people to purchase a product” (Holley, 1998, p. 633). Therefore, to fail at selling is to fail at being “a good X.” For Aristotle, a salesperson could be a good salesperson in that he does sales well, but he may not be ethical if the result of the transaction is an unfair exchange due to unequal information. (Bowie, 2005) However, if there is no competition, disclosure carries minimal risk of increasing the likelihood of failing as a salesperson.

Question (5): “Is there any chance that your competitor might be about to announce an even better product? This also gets to the role of a salesperson which is to sell. Even if asked about your competition, there is no reason to speak on their behalf. Carson (2001) references Ebejer and Morden who, “[Do not] require salespeople to divulge information about the virtues of what competitors are selling or about what price competitors are charging” (p. 290). Doing so would be a teleological failure on your part against your employer, co-workers, and stockholders.

Question (6): “Are there other sources of information available to the buyer?” This question gets to the buyer fulfilling his duty to his employer. The problem is, “A customer who doesn't ask questions, might know so much that he doesn't need any further information, or he might be so ignorant that he doesn't know what questions to ask" (Carson, 2001, p. 291). The halakhic teaching of *Genevat da'at* "Calls for active disclosure of relevant information whenever it is reasonable to suppose that non-disclosure would create a false impression" (Green, 1997, p. 26). The rabbis felt this was important when the buyer lacked expert knowledge.

However, two thousand plus years later the balance of power has shifted and today's buyers have considerable access to information. Their failure to appropriately conduct due diligence is their own ethical lapse in performing their role for their company. "It is almost negligent for us [as buyers] not to take the time and make the effort to educate ourselves" (Radin & Predmore, 2002, p. 82). It is not incumbent upon the salesperson to do the work of the buyer. Under the principle of caveat emptor, "Sellers are not legally obligated to inform prospective buyers about the properties of the goods they sell" (Carson, 2001, p. 277). Buyers can hire independent consultants to give objective advice and the Internet contains a plethora of information. From a practical perspective, "Salespeople simply don't have the time to give all customers all the information that Holley deems necessary for an acceptable exchange. It cannot be a person's duty to do what is impossible" (Carson, p. 283).

Question (7): "Does your buyer know if your company has missed product launches or changed the specs or pricing from the internal announcement to actual launch on other products?" We need only look to Microsoft to see that announced product launch dates and capabilities are often inaccurate. If a buyer knows that schedules and specs can change, then comments by the salesperson can be withheld because the buyer must perform due diligence, including looking for other sources of information.

Question (8): "Is it possible that other factors will come to be known before the new product launch which might change the expected outcome or environment?" This question reflects teleological concerns. Can the salesperson be certain that the prospect will buy right now if information is withheld? Is it possible to know that nothing inside the buyer's organization could make the new product less effective than expected? We are assuming that the buyer would act properly upon receiving the withheld information. Mooradian (2004) discusses this concern when writing, "It will also depend upon decisions made after the sale" (p. 130). Due to uncertainty of such yet-to-be announced developments, withholding the information is in the best interest of the buyer due to what may happen between today and the actual release date. The salesperson would need to make assumptions regarding interactions within the company, which he could not know. There is too much uncertainty and only God is omniscient.

Question (9): "Were you directly asked about future product developments?" This is the final and most important question. If you were not asked, withholding is proper because a salesperson who indicates that a yet-to-be announced product development is going to be available creates an implied promise and must take responsibility for fulfilling that promise.

If you were directly asked, then you must answer honestly and provide the information. To fail to do so violates the deontological perspective because your proximate action is dishonest. Withholding information to a direct request also violates the teleological perspective because the future consequences of your failure to disclose could be negative for the buyer. Even Milton Friedman moderates his profit oriented position by disallowing lies:

> There is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits as long as it stays with the rules of the game, which is to say, engages in free and open competition without deception or fraud. (Bowie, 1973, p. 22)

Robert Townsend, former chief executive officer of Avis that, “If a company needs a corporate code of ethics, it should tack up the Ten Commandments” (Solomon, 1993, p. 202-203). Commandments seven and eight found in Exodus 20:15-16 (King James Version) declare, “Thou shalt not steal” and “Thou shalt not bear false witness against thy neighbour.” Lying and stealing are further tied together in Leviticus 19:11, "Ye shall not steal, neither deal falsely, neither lie one to another." If we mislead and it causes someone to make a decision that he or she would not otherwise make, we are in effect stealing some of their limited resources that cannot then be employed in a profitable endeavor. The New Testament continues to speak against lying in Luke 6:31 (Revised Standard Version): "Do to others as you would have them do to you" which Carson (2001) uses as the basis for his model and Colossians 3:9 (KJV), "Lie not one to another." Answering an untruth to question (9) would be deception and therefore unethical.

Summary

In sum, the ethical issue of withholding information is clear. For Jesus and Confucius, ethics are both deontological and teleological. If the intention is to deceive by non-disclosure or withholding, then withholding information is not ethical due to the deontological issue of lying and the teleological issue of future harm. For Confucius, “The *junzi* is also one who can see what is appropriate (right) for a situation and does it” (Sim, 2007, p. 32). However, if withholding is based on providing information as requested, and the other qualifying questions are answered in the affirmative, the model shows that it is ethical to withhold information.

Even Jesus withheld information. In John 6:70 (KJV), Jesus says, “Have I not chosen you twelve, and one of you is the devil?” As we now know, what was left out of this story was that Judas would betray him. This does not mean that Jesus lied or was deceptive. He simply provided the information as it was requested. Our standard should be no different.

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