

## Information Disclosure in Sales

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The issue of information disclosure is an important topic for a number of areas of applied ethics. Discussions in medical ethics often deal with the question of how much information should be given to a patient by health-care professionals. A central topic of journalistic ethics is what kind of information the public has a right to know. In business ethics, discussions of information disclosure have dealt with areas such as disclosure of health and safety risks to employees, financial information to stockholders, and product safety information to consumers.<sup>1</sup>

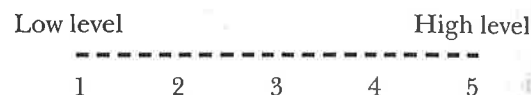
One area of business ethics which seems inadequately explored, but holds both theoretical and practical interest, is the question of exactly how much information a salesperson is obligated to give to a potential customer in selling a product. Unlike the field of health care in which roles such as physician or nurse are paradigms of professions which carry with them clearly recognized responsibilities to serve the best interest of the patient, a salesperson is not generally thought to have such a professional responsibility to customers. In fact it is usually expected that the activity of sales will involve a primary pursuit of the interests of the seller. While there are legal obligations to disclose certain types of information, the question of what moral responsibilities a salesperson has is open to dispute.

An attempt to resolve the matter and specify a salesperson's moral responsibilities to disclose information raises two important theoretical questions: (1) To what extent can ethical argument help to define the moral responsibilities of a social role when these are only vaguely defined in a culture? and (2) How

is empirical information about common practice relevant to making normative judgments? This paper considers these issues in the context of an examination of ethical responsibilities for information disclosure in sales. . . .

### MORAL GUIDELINES AND SOCIAL ROLES

Suppose we imagine the various options with regard to a salesperson's duty to disclose specific information in some situation to lie along a continuum with one end of the continuum representing a requirement for a high level of information disclosure and the other a requirement for a minimal level of information disclosure:



If we assume that a salesperson has a responsibility to answer a customer's questions non-deceptively, we could represent various points on the continuum as rules requiring particular levels of additional disclosure such as the following:

1. *Minimal Information Rule:* The buyer is responsible for acquiring information about the product. There is no obligation to give any information the buyer does not specifically ask about.
2. *Modified Minimal Information Rule:* The only additional information the seller is obligated to give is information a buyer might need to avoid risk of injury (safety information).

3. *Fairness Rule:* In addition to safety information, a seller is responsible for giving the buyer any information needed to make a reasonable judgment about whether to purchase the product which the buyer could not reasonably be expected to know about unless informed by the seller.
4. *Mutual Benefit Rule:* In addition to safety information, the seller is responsible for giving the buyer any information needed to make a reasonable judgment about whether to purchase the product which the buyer does not possess.
5. *Maximal Information Rule:* A seller is responsible for giving the buyer any information relevant to deciding whether to purchase the product.

What considerations might move us toward one end of the continuum or the other? One approach is to take the perspective of the buyer. A person attracted by the ideal of the golden rule might ask, "What would I want the salesperson to tell me if I were purchasing the product?" . . .

Trying to get a determinate answer from a moral ideal such as the golden rule also leads to some implausible conclusions. Suppose, for example, that what I would want as a buyer in some situation is an objective analysis of the merits and disadvantages of this product in relation to competing products. Does this automatically imply that the information should be supplied in the desired form by the salesperson? To think so is to disregard the salesperson's role as an advocate of the product. A jury member may need enough information to formulate a reasonable judgment of guilt or innocence, but it would be far-fetched to conclude that this gives the defense attorney a responsibility to provide all the necessary information. To think so overlooks the attorney's role as an advocate (as well as the responsibilities of others in the legal system).

These considerations suggest that deciding how much information a salesperson should provide depends upon an understand-

ing of the nature of the salesperson's role. While there are various types of sales, we can say in general that a salesperson is supposed to act toward achieving a particular goal: getting people to purchase a product. Describing the activity as sales probably also implies that the method of achieving this goal is some type of persuasion rather than coercion. But determining the proper limits of this persuasion calls for some conception of the context of sales activities. If, for example, we viewed selling a product as a kind of game (a metaphor which has been applied to many business activities), then supplying or withholding information might plausibly be viewed as strategies employed to win (make the sale). If the game is like poker, we could even imagine that essentially deceptive strategies (bluffing) could be an accepted part of the game.<sup>2</sup> Someone adopting this picture might argue that a salesperson should disclose information only when it is strategically advantageous to do so.

However, this picture of sales activities is clearly deficient. Part of the problem is that it presupposes relatively equal parties who know that they are involved in a game and what the nature and goals of this game are. Even if this is adequate as an account of some business situations, it hardly seems to apply as a general picture of the buyer-seller relationship. Furthermore, efficient functioning of the buyer-seller relationship presupposes a higher degree of trust than game metaphors would suggest to be appropriate. Buyers must depend to some extent on information they receive from sellers, and if we imagine that the information is not reliable, we are imagining a situation which, if widespread enough, undermines the ends for which the marketplace exists.

On the other hand, the need of the buyer to depend on the seller is not as great as the need of a patient to rely on the objectivity and good judgment of a physician. In that case it

seems necessary to build into the professional role a duty to seek the patient's well-being, which limits and overrides the physician's activities as a profit seeker. The professional requirement is connected with the extreme vulnerability of patients to the pure pursuit of economic self-interest by physicians.

While buyers are generally less vulnerable than patients, there are cases where the interest involved is significant enough to call for certain limits on self-interest in the pursuit of a sale. For example, suppose that use of a product involves some danger of physical injury which the buyer is unlikely to know about. Withholding the information is in effect subjecting the buyer to a risk of physical injury which she/he does not voluntarily agree to accept. Given the importance of avoiding physical injury and the vulnerability of virtually everyone to hidden dangers, there would be a strong moral reason for modifying the minimal information rule to require that such risks be revealed. The limit here could be stated in terms of applying a general principle of non-injury to sales situations, perhaps something like "Do not act in ways which are likely to result in injury to another person without the informed and reasonable consent (explicit or implicit) of that person." . . .

### REASONABLE EXPECTATIONS AND BUYER KNOWLEDGE

The moral credentials of what I have called the fairness rule rest upon the claim that this rule assures fair treatment of all parties. I shall interpret this to mean that a system utilizing this rule gives all parties to a transaction an adequate opportunity to protect their individual interests. If information is needed but unavailable, it should be revealed; if it is needed and available, the party who needs it can seek it out.

We should notice, however that applying this rule depends upon assessing what the buyer can reasonably be expected to know. How is this assessment to be made? Is the seller to think about what buyers in general can reasonably be expected to know, or about what some subgroup of buyers of which this buyer is a member can reasonably be expected to know, or perhaps about what this individual buyer can be expected to know? Different answers to this question yield different requirements about what information needs to be disclosed.

Suppose I am selling antiques, and I am dealing with a person I know to be a collector and retailer of antiques. It seems plausible to suggest that I would be justified in assuming this person to have a certain level of knowledge about the value of antiques. Suppose it becomes evident to me that this dealer is not aware of a distinction between the item I am selling and a more valuable item with which it might be confused. Do I have an obligation to enlighten him?

According to the mutual benefit rule, the answer would be yes. If we interpret the fairness rule to be relative to the individual person, we would have to determine whether this individual buyer could be expected to know this distinction, and it is unclear how such a determination is to be made. So perhaps the most promising way of applying the fairness rule is to regard "what a person can reasonably be expected to know" as applying relative to some relevant class membership. In this case I might have obligations to reveal to someone acting as an expert only what that person could not be expected to know, even with expertise in the field. Of course, in a particular case I might have good reason for revealing more: say, for example that I have a long-term relationship with this individual which has been mutually beneficial and that she would regard my withholding information I know she does not have negatively, possibly resulting in the

disruption of the relationship, but this need not imply that there is a moral obligation to reveal the information.

If we interpret the fairness rule to apply relative to group membership and if we distinguish at least between cases in which the buyer is reasonably regarded as an expert in knowledge of some area from cases in which the buyer should not be regarded as an expert, the rule provides different guidance about what should be revealed to experts as opposed to what should be revealed to nonexperts. Should the class of nonexperts be subject to further division? Perhaps the general public could be divided into sophisticated consumers and unsophisticated or naive consumers. Given this distinction, the fairness rule would imply that a salesperson is obligated to reveal more when dealing with an unsophisticated consumer. The main problem with making this distinction is that it would be difficult in practice to determine the type of consumer being dealt with in a particular transaction. I might become aware that I am dealing with a particularly naive consumer, but how much effort must I expend in making such a determination?

From a practical point of view it would probably be more realistic to have some expectations of a level of information to be revealed to the general public which would result in informed and reasonable judgment in the vast majority of cases. Exactly how much information this is would depend on what level of informed judgment is high enough and what percentage of customers making such a judgment is good enough. Assuming that such a determination could be made, the fairness rule on this interpretation would require disclosure of information sufficient for a reasonable judgment by a high percentage of customers falling in the relevant class.

But what if in the course of a sales transaction it becomes evident that a particular buyer has not been given enough information to

judge reasonably (e.g., because this buyer is more uninformed or naive than might be expected of the average buyer)? Or what if the buyer is using misinformation which the seller did not cause but could correct? If the fairness rule is to be interpreted to require that information be supplied in such cases, then it is functionally equivalent to the mutual benefit rule in these cases. This would probably be distasteful to most advocates of the fairness rule, since the whole point of a rule less stringent than the mutual benefit rule is to place some responsibility for acquiring information on the buyer rather than the seller. To build in a requirement that misinformation or ignorance must be corrected seems to defeat much of the purpose of the rule.

If the seller could distinguish between those buyers who could have acquired the relevant information with an appropriate level of effort and those who could not because of unavoidable deficiencies or circumstantial difficulties, it would be possible to make allowances for the latter class, but not the former. But except in obvious cases, such a distinction would often be difficult to make. So a decision to act in accordance with the fairness rule probably means deciding to withhold information both from the culpably irresponsible as well as many of the unavoidably ignorant.

## VULNERABILITY AND DEPENDENCE

It is relatively easy to think of some cases in which withholding information seems unconscionable. The financial advisor who sells to an elderly widow with very limited resources a risky investment without making the risk clear surely exemplifies substandard ethics. The failure to disclose in such a case takes advantage of one who is in a vulnerable position. Whatever we might say about exchanges in which both parties have adequate opportunity to protect their

interests, we must still take into account that some individuals may be relatively defenseless, either permanently or temporarily. A disclosure rule which allows such people to be exploited when their vulnerability is apparent would fail one of the most basic of ethical tests. So if the fairness rule is to be ethically defensible, some restrictions must be built in to limit the pursuit of self-interest at the expense of those who might be persuaded to act in ways which are clearly contrary to their interests.

Some writers have raised the general question of whether a salesperson needs to behave paternalistically.<sup>3</sup> This way of putting the question can be misleading, since paternalistic action involves overriding or limiting another's choice or ability to choose. While a salesperson may occasionally have such a responsibility when dealing with individuals who are incompetent or behaving in clearly irrational ways, 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. However, the question of how hard to push a sale when it appears to diverge from a customer's interest can arise fairly often. It is all very well to say that the customer is the one who should decide what is in his/her interest, but if the salesperson is strategically withholding information crucial to making such a judgment, this defense seems hollow.

Consider the case of a person of very limited education, intelligence, and sophistication who lives on a small social security income and needs roof repairs. A salesperson recommends and makes the case for a total reroofing with the finest materials available, a choice which will mean using up a small savings account and acquiring a significant debt. The salesperson makes no attempt to explore cheaper alternatives, and the customer is not sufficiently astute to inquire about them. What seems to make nondisclosure objectionable in this case is the customer's limited capacity to protect his own interests. He relies on the salesperson

to provide not only information but a kind of guidance. To follow a policy of revealing only as much as an average customer would need in effect deprives this very vulnerable customer of what he needs to know, but is unable to learn without help.

Examples involving extremely vulnerable consumers suggest that even if the fairness rule were a sufficient guide to disclosure in some cases, there are situations in which the relationship between salesperson and customer involves such an imbalance of power that the customer is not adequately protected. In such cases the buyer is dependent on the seller for information, and failure to provide crucial information becomes more like a betrayal of trust than an admirable competitive move.

While cases involving extremely vulnerable individuals furnish the clearest illustrations of the limits of the fairness rule, we can see problems with this rule even in transactions involving more skillful buyers. Suppose Simon wants to buy a rocker-recliner. Because he has children who have been rough on furniture, Simon tells a salesperson that he is especially concerned about finding a piece that can endure their abuse. Simon notices that a particular manufacturer has advertised a "lifetime warranty" on its chairs. He assumes that this means that anything which goes wrong with the chair is covered. The salesperson knows that the lifetime warranty does not include the kind of damage children are likely to inflict on the chair, but does not mention this, nor does she mention that a cheaper chair of a lesser-known manufacturer with a more limited warranty is actually more likely to provide the kind of durability this customer seeks.

What is apparent from this kind of example is that ordinary customers often interpret the salesperson's role to be not merely an advocate for a particular product but a kind of consultant who can be relied upon to help the customer satisfy particular needs. Withholding information of relevance to attaining such satisfaction

would often be a refusal to accept a role the customer is expecting to be performed.

While we can imagine the marketplace working without salespeople functioning as consultants, the complexity of the modern marketplace often makes it practically necessary, even if not absolutely necessary, to rely on sellers to provide information which could have been attained with enough effort but is not likely to be possessed by the average consumer because of a variety of limitations, including limitations of time. As a result the salesperson comes to be relied upon to provide the customer with enough information to enable him or her to satisfy particular needs.

This kind of dependence of customer on salesperson is avoidable only with great difficulty. It is a dependence brought about by complexities involved in navigating the marketplace under social conditions such as ours. The vulnerabilities brought about by such practical necessities create a need for building into the salesperson's role some degree of responsibility for providing information needed by the customer to judge how to satisfy his or her needs and desires.

Hence, the fairness rule is inadequate as a general account of what a salesperson is obligated to disclose. While there may be certain limited contexts in which such a rule can function, they would primarily involve individuals with significant expertise in a particular area and an implicit willingness to protect their own interests. Under such conditions it might be permissible to disregard the interests of the buyer, but we should not be misled into thinking of these as paradigmatic of the buyer-seller relationship generally.

### THE MUTUAL BENEFIT RULE

How far is a salesperson obligated to go in serving the customer's interests through information disclosure? The strongest kind of obligation

which could be advocated would claim that a salesperson must seek to produce optimal benefit for the customer. Such a requirement would mean that a salesperson might often have to direct a customer to buy merchandise from a competitor offering superior or equal quality for a lower price. In effect it could virtually deny the salesperson's role as an advocate for her own company's products.

The maximal information rule calls upon the salesperson to provide any information relevant to deciding whether to purchase a product. Presumably this would include objective comparisons of the strengths and weaknesses of various alternatives. It would place on the salesperson the responsibility for supplying customers with the sort of analysis we expect from a *Consumer Reports* product test. While we can imagine such a requirement, it is difficult to see how it could work without undermining the competitive structure of the market.

What seems to be needed is a rule which could still allow the salesperson to function as a product advocate but limit that advocacy in ways conducive to fulfillment of the customer's needs. The mutual benefit rule requires the salesperson to disclose enough information to allow the customer to make a reasonable judgment about whether to purchase the product. How strict a requirement this is depends on how we interpret "reasonable." We need not interpret this term to designate an optimal choice. In most cases there are a range of products and purchases that could satisfy a particular customer's needs. Given varieties of product features, some may be better in some respects and worse in others, but equally satisfactory. Furthermore, there are many equally reasonable ways of evaluating how much money a particular product feature is worth or how much time and effort should be expended in shopping. It can be entirely reasonable to patronize a store with knowledgeable and reliable salespeople even if that occasionally means paying a higher price for comparable merchandise.

Thus, we could loosely interpret the mutual benefit rule to require that the salesperson provide enough information for a customer to make a judgment which is satisfactory, given his or her particular needs, desires, and budget. This need not imply a requirement to make extensive inquiries about the particular customer's situation (though some products such as life insurance or financial investments or home purchases might make such knowledge necessary). In most cases a salesperson could make general assumptions based on what most customers in the market for this kind of product are concerned about. As distinctive concerns or needs become apparent, however, this standard would require them to be taken into account. Hence, for example, in the rocker-recliner case described earlier, the customer's concern about damage children might cause is relevant to what information this customer needs.

The distinction between the mutual benefit rule and the maximal information rule is that the latter requires disclosure of all information relevant to a purchase decision, while the former requires disclosure only of enough information for a reasonable judgment. Suppose we compare the two with regard to disclosure of price information. All relevant information would probably include clear cost comparisons to products with similar features sold by competitors. But given the above interpretation of "reasonable," the mutual benefit rule would allow disclosure of the price of a product without comparative information as long as the price is not so much out of line that the purchase could not be judged competitive. Requiring that comparative information about price be furnished only when the price is clearly uncompetitive is probably equivalent to a requirement to price one's products competitively, something most merchants would say the market generally requires them to do anyway.

The mutual benefit rule, even with the permissive interpretation I have given it, builds in some protection of customer vulnerabilities.

The spirit of this rule of information disclosure would mean a salesperson should not knowingly encourage choices which would be against the interests of someone in the customer's position. Notice that is not the same as saying that the salesperson should always promote the choice he or she would have made in the customer's position. The salesperson is free under this rule, as I have interpreted it, to advocate a range of reasonable choices.

Such a rule would require the disclosure of defects which might significantly diminish the value of the product. Unlike the fairness rule, this requirement would apply regardless of whether the defects could be discovered with a reasonable amount of effort. It would not, however, require disclosure of all details which might be regarded as negative unless they clearly bear on a purchaser's central concerns. Hence, one selling a house ordinarily need not disclose that the next-door neighbors are obnoxious, but would be required to disclose that the city planned to construct a major freeway a hundred yards away or that the foundation has a crack which will soon need repair.

With a relatively loose interpretation of what counts as a reasonable judgment, the mutual benefit rule comes closest to satisfying the important ethical and practical concerns. Hence, there is good reason to regard this rule as our primary norm for information disclosure in sales. This conclusion is consistent with the possibility of recognizing specialized contexts in which buyers need fewer protections. So, for example, we might regard the fairness rule as adequate for situations in which buyers are representing themselves as professionals in the relevant field.

## CONCLUSION

I have attempted to use ethical argument to render more precise the extent of a salesperson's obligation to disclose information to a customer. The argument takes into account

features of the contemporary marketplace which call for locating the disclosure requirement somewhere in the neighborhood of a permissively interpreted mutual benefit rule. Even if my argument is correct, it does not establish precisely what information needs to be revealed in every case since the concept of "reasonableness" used in interpreting the mutual benefit rule can be highly elastic. Nevertheless, it does furnish a guideline for ruling out some clearly unethical conduct as well as some conduct which some people's moral intuitions would allow.

#### NOTES

1. E.g., R. Faden, and Tom Beauchamp, "The Right to Risk Information and the Right to Refuse Workplace Hazards," in *Ethical Theory and Business*, 6th ed., ed. Tom Beauchamp and Norman Bowie (Prentice Hall, Englewood Cliffs, NJ, 1992). Frederick, Robert, and Michael Hoffman, "The Individual Investor in Securities Markets: An Ethical Analysis," *Journal of Business Ethics* 9 (1990): 579-89. Louis Stern, "Consumer Protection via Increased Information," *Journal of Marketing* 31 (1967): 48-52. Richard DeGeorge, "Corporate Disclosure" in *Business Ethics*, 4th ed. (Prentice Hall, Englewood Cliffs, NJ, 1995), 284-93.
2. Albert Carr, "Is Business Bluffing Ethical?" *Harvard Business Review* 46 (1968): 143-53.
3. James Ebejer, and Michael Morden, "Paternalism in the Marketplace: Should a Salesman Be His Buyer's Keeper?" *Journal of Business Ethics* 7 (1988): 337-39. Kerry Walters, "Limited Paternalism and the Pontius Pilate Plight," *Journal of Business Ethics* 8 (1989): 955-62. George Brockway, "Limited Paternalism and the Salesperson: A Reconsideration," *Journal of Business Ethics* 12 (1993): 275-79.