Author’s Commentary

Commentary On
A Software Sales Dilemma

The elements of this case, “A Software Sales Dilemma,” are intended to foster discussion of the ethics involved in doing business in a global context. Linguistic, cultural, and legal differences between parties involved in transactions can cause confusion and make ethical decision-making difficult. Personal financial and professional consequences can also cloud issues. This commentary will address these questions from the points of view of the individuals involved as well as the companies and institutions the question may touch. Some additional details will be added here to help supplement the discussion.

Further Background

SpeechGenius was an early-stage venture-backed company preparing to make the sale of its stock public on the NASDAQ. Pressure on sales teams at early-stage venture backed software companies can lead to extreme ethical choices, especially when attempting to open new geographic markets far from the home office.

As SpeechGenius expanded into markets in Europe and Asia, it localized its products country by country and language by language. Each new localization was expensive for the company, in terms of both product development and sales cycle costs. SpeechGenius was also selling an enterprise class software product, which by its very nature had long sales lead times – up to 18 months. These long lead times were especially problematic in countries (such as Germany) where product localization took a long time due to the complexity of the spoken language. Some countries (such as Germany) also just have traditionally slower sales and purchasing processes. This “double whammy” was causing a big problem for Peter and Susan, who had already successfully established healthy lines of business in the U.K. and France, and who were making good progress in Spain, Italy, and the Nordics.

Susan’s team was responsible for both product development/localization and technical sales support. Susan and Peter and their teams collaborated on all sales

deals. Peter's team led all deals and acted as "relationship owners" with prospects and clients. Susan's team provided assistance as requested by Peter's team, including scoping potential client solutions, customizing the company's software, doing product demos, and attending sales meetings to answer questions and promote adoption.

Everyone on both EMEA teams had a financial stake in the successful IPO of SpeechGenius because everyone held substantial stock options. No one wanted to wait any longer to close a deal in the all-important German market. Additionally, both Peter and Susan felt that they needed to close a big German deal if they wanted to keep their jobs. Peter especially felt that the time was coming close when his bosses back in the U.S. would start thinking about replacing him if they didn't succeed soon in Germany. Susan did not disagree with this assessment.

Peter felt that he understood the culture and normal practices of doing business in Germany much better than Susan did. Peter argued that this proposal was within bounds of the cultural context. Susan did not feel that she could argue that this was untrue, because she in fact had little experience working in Germany, and Peter both spoke the language and had lived in Germany for some years as a youth.

Peter felt that the contract he was asking Susan to offer the German professor did not differ in any significant way from other contracts Susan had given in other countries. Susan disagreed markedly on this point, because in all other cases she had either been getting needed technical work output from the contract or had been sponsoring topic-appropriate student research as a way to develop relationships with targeted new hires who had particularly needed skills. From Susan's point of view, Peter was asking her to put a fake contract in place, which clearly violated the anti-corruption laws of the U.S., to which she and SpeechGenius were subject. She discussed her reasons for her discomfort with the proposal with Peter, but he did not alter his position and continued to pressure her to agree to the proposal.

Susan's Options

1. Susan could continue to refuse to put the proposed contract in place and continue to work with Peter using the existing sales process. This option is not likely to lead to quickly creating a big sales deal in Germany. Susan has a responsibility to SpeechGenius – its employees, customers, and investors – to make the German

market a success in time for the planned IPO. Also, taking this “passive” option will annoy Peter and substantially reduce the daily quality of the working relationship between Susan and Peter, which will in turn reduce the performance of the EMEA group overall.

2. Susan could insist on speaking with the German professor directly. It’s possible that Susan may be able to convince the German professor to do some actual work that would render substantive aid to her EMEA engineering team, thereby justifying the price of the contract. It’s possible that the German professor might then legitimately develop a positive opinion of the SpeechGenius product (having been exposed to the team and the product) and that this might lead him to make a positive report to prospective German buyers. Peter doesn’t want to introduce Susan because she doesn’t speak German and the professor isn’t comfortable speaking English. Peter doesn’t want Susan to ask the German professor for anything specific because Peter has already pitched the “no work” version of the proposed contract to the professor and doesn’t want to roll that back. Susan has a fiduciary responsibility to SpeechGenius that all contracts she signs on the company’s behalf are legitimate and legal. Also, Susan wonders why a respected professor would be willing to take a “no work” contract and wants to understand the professor’s perspective for herself.

3. Susan could propose an alternative means for getting third party endorsement for the product. While she doesn’t agree with the details of what Peter is proposing, Susan does appreciate that third party validation could be very helpful in securing a first major German contract. She doesn’t know where to start to try to generate an alternative to Peter’s plan, but she does recognize that the general direction is a good one. This choice makes a lot of sense logically, but she is already working every waking hour, and doesn’t know where she could find the time to work on this option, given her lack of familiarity with the German market and landscape. Susan would have to trade off other important responsibilities in order to find the time to pursue this option.

4. Susan could contact her technical line boss in California for advice. Susan could reach out to her direct boss in California to describe the situation and get advice. But this would require her to expose what she is nearly certain will be perceived as unethical behavior on Peter’s part to someone in senior management, who will then be forced to deal with the issue. She does not want to harm Peter’s reputation or position within the company, both because she wants Peter to succeed, and because she thinks it would cause a major distraction for SpeechGenius at a critical moment

in the company’s growth. Susan would also like to protect her own reputation as someone who does not “call home for help” very often – someone who is independent and capable in the field.

5. Susan could contact Peter’s sales line boss in California for advice. Susan could reach out to Peter’s direct boss in California to describe the situation, get advice, or ask for intervention. But this has all the same risks as option #4, along with the even greater risk that she would likely be doing serious damage to her working relationship with Peter. In a related way, Susan could ask Peter to call his boss for advice. But she thinks it unlikely that Peter would agree to do this.

6. Susan could contact SpeechGenius’s in-house counsel in California for advice. Susan could reach out to SpeechGenius’s in-house legal counsel to get clarification on whether the proposed “no-work” contract would in fact be problematic under anti-corruption law. She could either do this by saying that it was Peter’s idea, or she could ask in a hypothetical manner without saying where the idea came from. But she’s confident that the attorney will say that such a contract is a very bad idea, and that asking the attorney’s opinion will not help her solve her dilemma and will in fact only incur the risk of her own reputation being damaged by even bringing up the idea.

Discussions of these and other options that Susan has available will very likely touch on:

- What’s best for SpeechGenius’s current and future customers
- What’s best for SpeechGenius’s investors and shareholders
- What SpeechGenius is required to do as a corporation
- What are commonly acceptable business practices in different countries
- What are legal business practices in different countries
- What’s best for Susan, Peter, and others who work at SpeechGenius