Product Counsel: How to Manage Risk AND Create a Delightful Customer Experience

Published on June 7, 2017

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Take risk. To be sure, I mean take *appropriate* risk. As a driver, I (mostly) stay near the speed limit. As a mom, I occasionally let my teenage daughters out of the house. But as a lawyer, and more specifically, an in-house product lawyer, I evaluate and take risk every day. It has not always been easy for me.

As a young lawyer, trained in a top-notch law firm, I heard the word "risk" all the time. I dropped the word liberally in the memos I drafted to firm clients. I warned dealmakers of the perils that might ensue from a particular course of action, advising them that "it's a business decision."

But as I trained, I learned that risk is not inherently a bad word. A very smart banker once told me that a good business is built on consistent wins, but a ***great*** business is built on strong wins - with some losses.

In my company, and in most tech companies, our business model, client teams, and customers demand that we take risk. Lawyers tend to be excellent issues spotters, but we may need more training to evaluate risk and develop practical business-driving solutions.

Our legal team recently undertook a project to reevaluate a handful of existing legal disclosures on our company website, with a goal of simplifying the user experience. You know what I'm talking about: the text that often appears next to a clickable button, such as "standard text charges may apply" or "don't use a password you use on other sites." These warnings may have managed risk down, but they may create more friction for our customers.

To help, I developed a primitive framework:
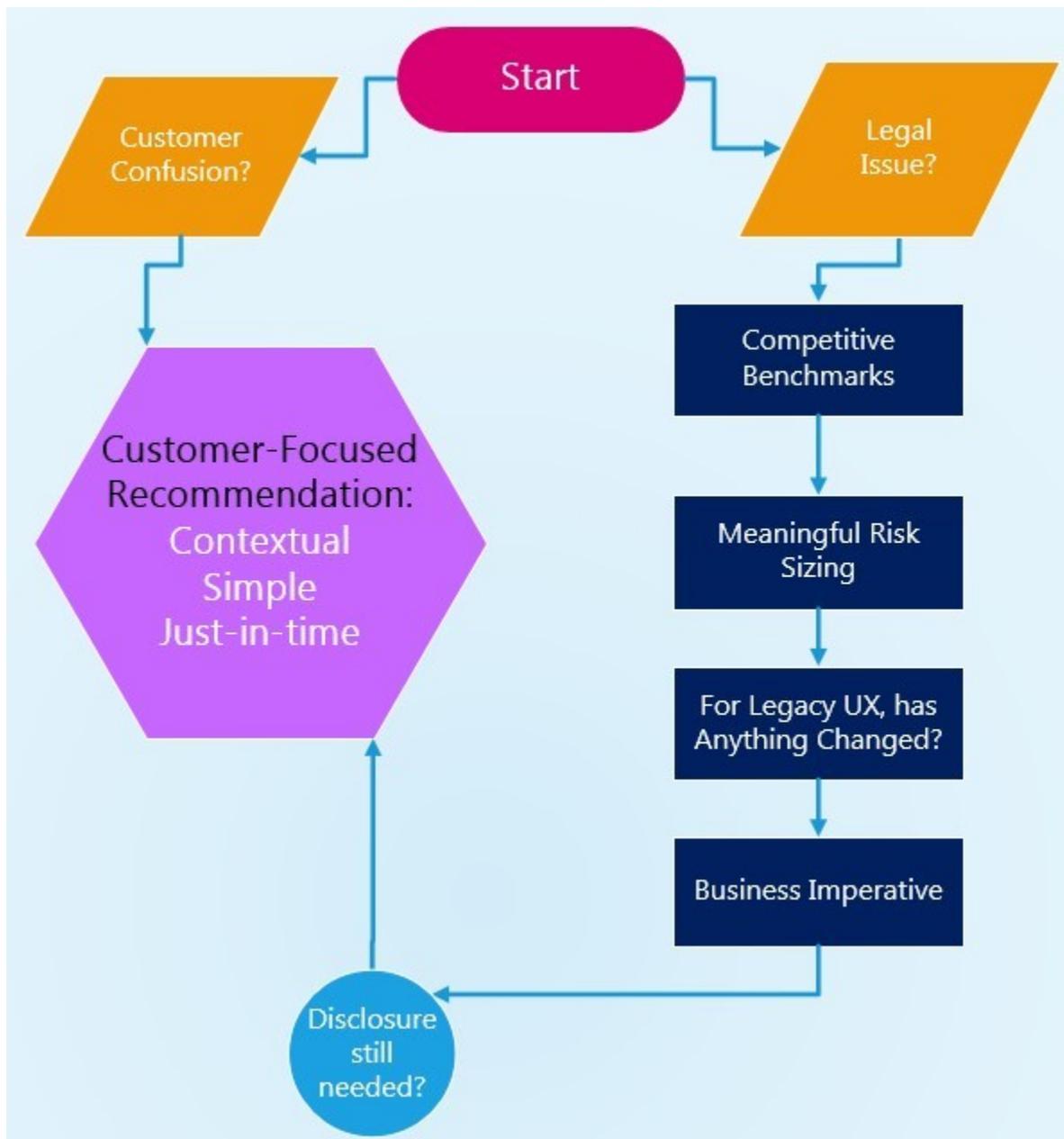
Where we have a legal disclosure, we START by asking: Why do we have this "legalese" here? Is it to reduce CUSTOMER CONFUSION or are we trying to address a LEGAL ISSUE? If the disclosure is to reduce confusion, then offer language that is customer-focused, making sure it is contextual, simple, and just-in-time. For example, in running a marketing promotion, it may be appropriate to tell the customer "no purchase necessary." Helpful!

If, however, the disclaimer is intended to mitigate legal risk, ask:

(1) What are the COMPETITIVE BENCHMARKS? Has the industry evolved such that our customers (or regulators) are more accustomed to a certain user experience?

(2) Check the RISK SIZING. What are the actual costs that might flow from a bad outcome? For example, a long-term global program would presumably carry more risk than a limited-time program offered to a select group of customers.

(3) If the disclosure has been around for a while, ask if ANYTHING HAS CHANGED? For example, in the early years of mobile, websites often felt cluttered with warnings and explanations. Now, iOS users usually know that a ">" means that more information is available, off to the right. Time to drop the "Learn More" reference.

(4) Remember to consider the BUSINESS IMPERATIVE, the business downside of adding more information than is necessary. For example, most tech lawyers agree that we want customers to agree to a website's terms of use, managing down a variety of risks. But we also know the website business is likely to crater if we publish the entirety of the terms on the website's home page. Hence, the origin of the link!

After evaluating a particular legal risk in light of the above, it may still be appropriate to use a legal disclosure. So keep it CONTEXTUAL, SIMPLE, and JUST IN TIME.

With this framework, it has become easier to decide when and how to provide a legal disclosure for our website customers. Now I need something similar to help me decide if my teenager is ready to learn to drive!

#productcounsel #takingrisk #nervousmom