FAMILY ENTERPRISE IN THE SPOTLIGHT: KEY TAKEAWAYS FROM THE SACKLER FAMILY ENTERPRISE STORY

By Patricia Angus

Introduction: Prior to the COVID-19 pandemic, the opioid crisis was considered by many to be the greatest public health threat to the well-being of Americans. As the crisis evolved, it became increasingly tied to the name of one family: Sackler. Over time, numerous Sackler family members were sued, the family name was tainted, and major charitable organizations turned their backs on some of their most generous donors. Much has been written about the crisis and the Sackler family's role in it. Thousands of lawsuits have been filed against the family. There is no shortage of information on this story. Yet, there has been little discussion of the implications of this experience for other family enterprises. What can business-owning families learn from the Sackler story, even as the story evolves?

Brief Background

The Sackler family enterprise story has been widely reported. A blockbuster New Yorker article provides both chronology and criticism. Books including the just-released Pharma include extensive background, especially as it relates to the development of Oxy-Contin, the painkiller at the center of the crisis. Artists and activists have led protests, hosted performance art exhibitions, and pursued a formal effort to raise awareness and seek redress from Sackler involvement. The family has been highlighted in Forbes lists of billionaire families, among numerous other public profiles online and in print. There is also extensive coverage of the countless lawsuits that have been filed and are pending. Following a brief review of some historical highlights, this article poses four key questions with related takeaways.

Historical Highlights

Over the past century, there are a few pivotal moments in the history of the Sacklers' family, businesses and philanthropy. Sophie and Isaac Sackler arrived in the US as immigrants from Eastern Europe in the early 20th century. They settled down in Brooklyn, where they raised three sons – Arthur, Mortimer, and Raymond – and owned a grocery store. Their sons all pursued medical degrees, focusing on psychiatry. Arthur became known for transforming medical advertising, especially the promotion of valium in the post-WWII years. The three brothers went into business together in the early 1950's, taking a small pharmaceutical company and growing it exponentially in the ensuing decades.

Mortimer and Raymond took the lead in the business, especially after the purchase of the company that would become Purdue Pharma. Upon Arthur's death in 1987, his estate sold his company shares to the rest of the family. In the mid-1990's, Purdue Pharma introduced OxyContin as a "miracle" drug that would provide pain relief through a time release formula that was positioned as being less addictive than its competitors. Raymond's son, Richard Sackler, led the company for a period of time, but for the most part executive leadership positions were held by non-family professionals. Multiple family members from both branches held positions on the board of directors.

The company first came under scrutiny in 2007 when a lawsuit was filed against it for the promotion and misuse of OxyContin. At that point, the company and several top executives paid civil fines. The company then obtained FDA approval of a re-formulation of OxyContin that was purported to be less addictive. Richard and other family members on the board received extensive communications from company staff about sales and marketing strategies related to the drug. There is evidence that company executives were alarmed about the widespread mis-use of OxyContin as the opioid crisis became more public. In one HBO documentary, Purdue Pharma was specifically highlighted as a leading cause of the crisis. Despite public scrutiny and staff discomfort, the board placed continued pressure on the company to increase sales and profits. By 2016, the opioid crisis was widely acknowledged to be a public health issue in the US. By 2017, lawsuits were filed against the company, and this time the suits included Sackler family members by name. Media coverage was relentlessly focused on the role of the Sacklers. The family eventually sought to settle the lawsuits. In September 2019, Purdue Pharma declared bankruptcy.

Key Takeaways

What can families, particularly those who manage and govern their businesses, learn from the Sackler story? There are several key questions that help pinpoint the key takeaways to date.

Question 1: Were all Sacklers at fault?

The question of "fault" is quite complicated in this situation. Even though lawsuits included family members who had no day-to-day involvement in the business, it's not entirely clear that they all had actual knowledge of the business's activities. Further, it's unlikely that any Sackler family member could have singlehandedly stopped or changed the business practices that caused the crisis. However, there is one fairly clear distinction that the press has been reluctant to draw, and which has impacted all descendants of the original three brothers. And that is the fact that that, after Arthur's death, his descendants were no longer owners of the company as it developed and marketed OxyContin. While many observers and pundits will cast guilt upon Arthur for his medical marketing practices, it seems quite overreaching to consider his heirs responsible for actions that occurred after their ownership ended. Indeed, Arthur's daughter, Elizabeth Sackler, has called Purdue Pharma's role in the opioid crisis "morally abhorrent." A few articles have made note of the distinction, but they are in the minority.

Takeaway 1: It doesn't matter whether family members were actually aware or involved in what was going on in this case. The courts – and the court of public opinion – did not hesitate to cast aspersion across all descendants of Sophie and Isaac Sackler. This is a cautionary tale. All members of a family that owns a business must be aware and understand the actions and behaviors of the business and of other family members. Each must assess whether the ethics practiced by others match their own value system. And if not, they must determine what they can do to make changes. For it is clear that you can be deemed to be at fault through no fault of your own.

Question 2: Why were family members who were not active in the business sued for the company's activities?

Despite the assumption that "family businesses" are run by family members, most Sacklers, including those on the board, had very little involvement in day-to-day business operations. Top executive positions were filled with non-family members for quite some time before the crisis hit. This should have provided protection for the family under the long-held legal principle of the "corporate veil." This legal concept maintains that a corporate entity is to be considered separate from its owners and board. Under this theory, so long as proper corporate governance formalities are followed, a company can be sued but its owners and board cannot. There are limits to this protection, however, and any owner or board member should be aware of that. Board members are not supposed to be directing day-to-day operations. And if they are considered to have known, or if they should have known, of activities that violate civil or criminal laws, the protection disappears. That's what happened here. The allegations point to knowledge and involvement of family members, especially those on the board, that actually went beyond the usual "one step removed" knowledge of non-managing owners and board members.

Takeaway 2: If you're on the board of a family business you must understand your legal responsibilities and protections. Clear boundaries should be drawn between day-to-day business vs the roles of owners and board members. Further, the corporate veil should not be assumed to provide protection. As a practical matter, it is best to have the company you own live up to the values and practices that you stand behind.

Question 3: Why were some of the family's philanthropic donations rejected or returned?

Charitable organizations, especially large cultural institutions, rely heavily on the tax advantaged contributions of major donors such as the Sackler family. There have long been assertions that these good deeds are attempts by families to "greenwash" their nefarious activities. Indeed, some family donors explicitly use their donations as an attempt to un-do some of the harm done by ancestors. But, until recently, charitable recipients have rarely rejected a donation based on a donor's behavior. The Sackler story shows that this is no longer the case. In an age of 24/7 media, the court of public opinion has been brought to bear on the non-profit sector. The treatment of the Sackler family today is only a harbinger of the type of scrutiny that may be applied in the future.

Takeaway 3: The relationship between donors and charitable organizations is increasingly being held to a higher moral and ethical standard, and not just in the US. Source of funds matters for the charitable recipient, as much for legal as for public relations purposes. Think about how you make your fortune if you intend to use it contribute to good causes later.

Question 4: How did we get here?

So, how did Sackler family members who weren't even involved in the business become the subject of public ire? How did family member owners and board members become so involved or knowledgeable about day-to-day business that they risked losing one of the most fundamental legal protections available – the corporate veil? And how did the philanthropic world turn against some of its most generous donors? There are no simple answers to these questions, which go far beyond the Sackler family enterprise story.

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Takeaway 4: As a member of a family enterprise, you'll need to look to the past (including family and business history) and future as you consider your role and potential implications of the actions of others. Clear values, transparent governance, respect for rules, and open communication are more important than ever. They'll protect you, your family, the enterprise, and perhaps most importantly, society.

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