

Do You Speak Business-ese?

By Michael C. Ross

In-house counsel need to understand and use general business and industry-specific lingo and jargon. For example, in corporate insurance policies, what laypeople call a “deductible” is a “retention.” M&A lawyers have shortened “confidentiality agreement” to “confi.” In corporate executive relocation programs, the transaction is a “relo.”

Some euphemisms soften reality, using a neutral or friendly name to make something more palatable. Would raw fish, raw beef, and calf pancreas sell nearly as well as sushi, carpaccio, and sweetbreads? Labels like these are useful and usually harmless.

There are, however, euphemisms that dull the senses and mislead their users. Fuzzy language can reflect fuzzy thinking (or no thinking at all). Some familiar examples of the euphemisms that can lead to trouble are: resume “embellishment,” “dissemblance,” “pretexting” (recall Hewlett-Packard Company’s imbroglia a few years ago), “padding” time sheets and expense accounts, and “spinning” (as in those “hot” IPO allocations to CEOs).

Here are some recent entries.

- **Window dressing:** Although this term was used to describe purchases and sales of stocks by portfolio managers to “pretty up” their portfolios before quarter-end and year-end, its more recent application is to the end of quarter reduction of short-term debt by financial institutions.

The institutions claim that the trading in repurchase agreements (“repos”) just before and shortly after quarter-end reflected market conditions and the needs of their clients. Perhaps it is just a coincidence that the trading consistently significantly decreased short-term debt just prior to the end of the quarter, and trades shortly after quarter-end significantly increased the level of short-term debt at the beginning of the next quarter. The practice might not have become so prevalent and attracted Securities and Exchange Commission attention if it had been called “reducing short-term debt temporarily to avoid its reflection on the balance sheet.”

- **Green washing:** Companies are responding to activists and consumer demands by claiming that their products and services are “eco-friendly” in many different ways. Some are labeled “green,” “natural,” “sustainable” or “energy-saving.” Unfortunately, many claims are misleading or false. These promotions might be less common if people called them “vague or incomplete statements about contents and processes.”

- **Quote stuffing:** According to media reports, some traders were placing large orders to buy or sell stocks and canceling them a fraction of a second later. It is unclear what, if any, legitimate purpose there is for the practice. Regulators suspect that high-frequency traders are attempting to profit from tiny discrepancies in stock prices created by the slow-down in electronic trading caused by the orders, or to distort prices and liquidity in order to buy or

sell at artificial prices. If the huge orders that are intended to be canceled almost immediately were called "intentionally false orders designed to mislead other traders," maybe traders would think twice before using them.

- Robo-signing: As the volume of mortgage foreclosures increased dramatically, so did the need to file court affidavits about the loan files. Some bank employees reportedly were each able to file thousands of affidavits

each month simply by omitting the review of the loan files. Perhaps these clerical employees decided to do so on their own, but one suspects that higher-level employees approved or knew of the practice. If the high-volume processing were called "falsifying under oath statements that will be filed in court," it might have been "stopped in its tracks."

These are just a few examples. Know any others? Send examples to me at mross230@aol.com.

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