

Out of change and chaos comes opportunity

The election is over and now we can begin to go about a more normal daily existence while watching a new president take over the USA. Regardless of what your party affiliation is, at least the election is OVER!

Over the past few weeks, we have seen a major manufacturer eliminate its entire rep network and begin to rely solely on its “to-be-hired” direct sales teams and their channel.

We have also seen a major manufacturer eliminate its entire distribution support team, eliminating the ability for the distributors to do any demand creation, thus reducing the distribution margin to “fulfillment only” in 2017.

Mergers and buyouts continue on the semiconductor side with another major acquisition underway — immediately after this newly acquiring company has just swallowed another semiconductor company.

So what does this all mean to us and what can we do about it?

Frankly, not a lot, other than to continue to work hard to demonstrate our strong value proposition as a manufacturer, rep or distributor. It’s time to strut our stuff! Show ALL how we deliver a strong value proposition to the CUSTOMER on their behalf.

Someone once said, “If you get the customer into your tent, everyone else will follow!”

So how can each one of us work harder or better or smarter to get this done? Perhaps we cannot work any harder. After all, there are only so many hours in the day.

Can we work better? I am not sure. Can we do better territory planning, better pre-call planning, better overall preparation, more calls per day, etc.?

Can we work smarter? How so? Can we take advantage of better productivity tools, software enhancements to our daily lives in note taking to PC transformation, better use of YouTube videos on our websites, etc.?

One way to work smarter is to collaborate better with our new ERA member constituency — distribution.

Oh, I know that we have always been (or supposed to have been) working together — the reps and the distributors — but have we really? We often hear, “We are both competitors to each other! How does that work?” Competitors on a specific socket at a specific customer, for sure. On agreed-to customers and agreed-to sockets, however, we are PARTNERS. Together, we are stronger in front of the customer and in front of our common manufacturers.

It is time for us — reps and distributors — to unite, to stop being lone rangers trying to go it alone at the customer, to show the manufacturer who “has the juice” with the customer.

Who cares who gets the credit when a new design is won or a new order is booked? We WON IT, TOGETHER! Manufacturers should be thrilled that their reps and their distributors are working together, for this is the sales model that they have designed and one that they want to see work!

I know that this is not easy. Each one of us has an

example of how someone violated the sacred trust of selling and took an order direct versus putting it through the partnered distributor. OR how a distributor ended up booking the socket in another competing supplier on its line card versus the rep’s line. We carry all of these transgressions around like the books around Jacob Marley’s neck, and we continue to bring them up as the reason why a rep will not work with a distributor or a distributor will not work with a rep.

Guess what? It’s time to cut the chains, to turn the page, to forgive and forget, and to recommit to WORK TOGETHER as one team, rep and distributor, because it is what the manufacturer wants!

All rep commissions and distribution margins come from the manufacturers. We get NO revenue from the customer. It is critical that we keep the manufacturers HAPPY by working hard TOGETHER to mutually hit the sales and marketing goals set out by them.

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EXECUTIVE COMMENTARY: Working together

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As Ben Franklin said, “We must, indeed, all hang together or, most assuredly, we shall all hang separately.”

Let’s commit that 2017 is the year of collaboration and create opportunity for our rep company and our distribution company for our common manufacturers out of the chaos that appears on the horizon. We have no other choice. We want to reduce or eliminate any more surprises in 2017! ■

LEGALLY SPEAKING: Commission recovery

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on ESP, sales reps and principals generally follow this practice of looking out for their own interests, and no fiduciary relationship arises between them.

Windows to protest can and do slam shut

Preventing ESP from recording a complete victory in the case, FoBP invoked the contract provision effectively requiring all complaints with commission payments to be brought within 30 days. As is common after a sales rep successfully procures sales, many orders from customers in ESP’s territory came into FoBP directly without notification to ESP. Accordingly, when ESP received its monthly commission check, it had no way to know if additional, unreported sales were made by FoBP and not commissioned.

Although ESP’s suit pleaded that FoBP not only failed to pay commissions during the contract term, but also failed to disclose the orders on which the commissionable were due, denying it a fair opportunity to complain about the non-payment, the court proved surprisingly unconcerned. Without disclosure by FoBP of the sales made, ESP literally needed ESP to discover and timely complain of the non-payment, yet the court still enforced the 30-day provision and denied this portion of ESP’s commission claim.

This adverse ruling could easily be viewed as a mistake by a busy Cook County trial judge. Plainly, the court should have construed the 30-day period as running from the time ESP discovered that uncommissioned sales were made, not 30 days from when the sales were made and concealed. Yet, the court may well have felt some sympathies for FoBP or its counsel, and elected to hand one piece of the dispute to the defense in order to deliver a more balanced outcome.

Exemplary damages awarded

After listening to all the evidence at trial, the judge applied the Illinois Sales Rep Act as written and awarded ESP exemplary damages on top of the commissions determined to be due. This was no small feat.

Many Illinois judges misread the mandatory language found in the statute providing that manufacturers who fail to timely pay commissions due “shall be liable in a civil action for exemplary damages in an amount which does not exceed three times the amount of the commissions owed to the sales representative” as optional. The authors often encounter judges who erroneously refuse to award exemplary damages under this statute, reasoning that even though the withholding of commissions was unfair and in breach of the parties’ contract, the manufacturer did not act maliciously or near criminally, a standard not contained in the statute.

Fortunately for ESP, its assigned judge understood the statute to require an exemplary damages award once FoBP was shown to have failed to timely pay the commissions due, and he entered an appropriate sanction for such failure on top of the commissions found owing. At press time, the court was still considering the amount of attorneys’ fees and costs to award under the statute as well.

Worth the fight

Undoubtedly, FoBP believed that by forcing ESP to litigate every argument it could devise, regardless of the credibility, it would wear out ESP’s spirit or finances and prevent the suit from ever reaching trial. By seeing the fight through to the end, ESP enjoyed not only the satisfaction of the trial victory, but a rare exemplary damages award as well, plus the expected reimbursement of its litigation expenses. The inapplicable defense arguments attempted here should find no more success in other commission recovery actions, and ESP authorized this article in order to get that important message out. ■

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