

YOUR PRINCIPAL'S REP AGREEMENT HAS JUST ARRIVED.
NOW WHAT?

You recently lost a valuable line due to the "restructuring" of your principal's company. There are a number of replacement lines available, most of which require a great deal of effort to build or rebuild. Your experience leave you confident you can turn a flat or declining trend into a growing line. "People don't fail," your Uncle Max used to say, "except when they fail to see an opportunity."

After interviewing several prospective manufacturers, responding to tough, direct questions while posing the right questions yourself, you find the right fit and enter into a handshake deal with a company you believe will be a long term player in the market and in your territory. The final step to sealing the relationship is for you and the manufacturer to execute a written representation agreement.

Based upon the custom in your industry, the manufacturer typically prepares the written agreement. (Some sophisticated and proactive reps send their own form of agreement to the prospective manufacturer/principal.) As an experienced rep, you know to expect an agreement heavily favoring the manufacturer. At the same time, you know the importance of making sure the agreement incorporates all of the terms of your handshake deal (and perhaps a few additional provisions in your favor).

Two copies of the written agreement arrive a few days later by mail from the manufacturer. You know that it really came from the corporate counsel, but you appreciate the personal note from the V.P. of Sales. While you are excited that the relationship seems to be going in the right direction, you know from experience and from the past rep association educational courses you have taken, that the first three steps are:

- "Read the Agreement"
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Too many reps just sign a copy of the agreement without thoroughly reviewing it, return one copy to the manufacturer, and put the other copy in the drawer to be dusted off when the relationship sours - but not you. You read the agreement carefully, even though it is neatly typeset and looks like it was intended never to be modified, altered, changed, or edited. You make notes in the margins with either conceptual modifications or actual changes to the agreement. For good measure, you add some terms and provisions that will benefit your rep organization. Some of the points you focus on include:

- PREAMBLE OR INTRODUCTION - Representative's business entity (e.g. Corp., LLC, etc.) must be recognized.
- APPOINTMENT - Clear exclusivity, i.e. "authorized, sole and exclusive Representative."
- TERRITORY - Clearly specified; exclusions (if any) by prior written agreement. Representative to be paid for services outside the Territory.
- PRODUCTS - Ideally "all products;"
- COMPENSATION - Clearly specified; include split commission and design-in credit, if relevant.
- COMMISSION PAYMENT - Payable (i) in month after shipment (preferred), or (ii) in month following payment by customer.
- COMMISSION STATEMENT - To accompany each monthly commission payment.
- ORDER ACCEPTANCE - Manufacturer to provide copies of all quotations, purchase orders and invoices.
- TERMS OF SALE - Set by Manufacturer; price/commission reductions, if any, by written mutual agreement.
- WAREHOUSING - Specify warehousing fee or buying arrangement; state responsibility for insurance, freight, taxes, damages, etc.
- RELATIONSHIP - Representative is independent contractor; parties to plan mutual goals and objectives.
- NO-PIRACY - Manufacturer will not hire any of Representative's personnel and vice-versa during and for a reasonable period after agreement is in effect.
- NON -COMPETITION - Avoid covenants not to compete, confidentiality agreements and trade secret agreements.
- TERM - "Evergreen" agreement is best; i.e. renewed annually unless terminated by either party in last 60 days and upon at least 60 days notice.

- POST-TERMINATION RIGHTS - Pay commissions on all purchase orders received prior to effective date of termination, and for a set period, based on length of service, after termination.
- ASSIGNMENT - Cannot assign agreement without permission.
- CONSTRUCTION - Preferably according to the laws of the Representative's home state/province if Sales Representative Protection Act adopted; otherwise, consider principal's state.
- VENUE - Any action for enforcement of agreement to be in rep's home state/province.
- DISPUTES - All disputes to be resolved in a court of law - no arbitration.
- NOTICES - To be in writing.
- SIGNATURES - Both parties sign on behalf of their respective business entities.

This is an important agreement for you and your rep organization, and while you have a reasonable comfort level with the business terms, you are unsure of the legalities. After some brief soul-searching and sage advice from a fellow rep who recently completed the CPMR course, you decide to engage an attorney who is skilled in rep law to review the agreement and make such further changes and modifications as may be necessary to protect you and your organization. She tells you about the various State Sales Representative Commission Protection Acts and how they apply to your agreement. She also counsels you about the post-termination commission clause so you will be paid on everything you sell when the purchase order is delivered prior to the effective date of termination, regardless of when it is paid for or delivered. She also cautions you about the likely enforceability of covenants not to compete, and explains the potential ramifications of signing a confidentiality or trade secret agreement. With a couple of other changes, the agreement is now ready to be signed by you and your new manufacturer/principal.

If the manufacturer or its attorney balks at your proposals, at least you have an experienced attorney at your disposal to negotiate the contract terms on your behalf. You are grateful for the legal advice, even though it involved some expense, because you know that the final signed agreement will serve you well through the term of your relationship with your new principal, and if necessary, thereafter. You pause to recall another of your old Uncle Max's favorite sayings: "Pennywise, but pound foolish."