

How Valuable Is Your Lawyer?

There are many stories on record of U.S. agents and manufacturers who did business together for years on a handshake or word of honour, with few serious problems. Then one party fell ill, or one of the companies was acquired by a third party that did not approve of the manufacturer's marketing strategy. The sad results of such cases justify the wide acceptance within the United States of a written, signed contract between a manufacturer and an agent.

What kind of lawyer should you hire to help you with the drafting of appropriate clauses for your particular agreement with a U.S. agent? In general, hire a reputable lawyer who is familiar with international business agreements and who has considerable experience negotiating agreements between manufacturers and their U.S. agents. Make certain that your lawyer has experience drafting Canada-U.S. business agreements and overseeing the final contract. Your lawyer also should be knowledgeable about litigation procedures south of the border and willing to work with your accountant, who should be aware of all the financial ins and outs of doing business across the Canada-U.S. border.

Further, your lawyer must be familiar with, and up-to-date on laws in the U.S. states. Remember that, unless a contract specifically provides for its governing law, it is interpreted according to the law and usage of the place where it is to be performed. Some U.S. states are more liberal than others in their interpretation of the clauses of contracts. Some states have statutes which provide after-termination commission rights.

Be aware of the realities of signing agreements that become binding contracts between international business partners. Hire an expert.

Type of Contract

The type of agreement you, your agent and your lawyers draw up, and eventually sign, will depend on the nature of each party's responsibilities and requirements. Some of the various types of agreements are Marketing Agents Agreement, Sub-Agent (independent contractor) Agreement, Sales Agency Agreement, and Sales Representative Agreement.

If you are a first-time exporter to the U.S. with a newly appointed sales agent, the specimen agreement in Appendix 4 (Guideline Information for Preparation of Manufacturers' or Suppliers' Sales Agency Agreement) is provided as a general outline on issues to be covered. Remember that your agreement must be tailored to satisfy the specific requirements of you and your agent; therefore, the specimen agreement might not contain some clauses necessary for your agreement.

Today it seems that almost 90 per cent of contracts omit the servicing responsibilities, if any, of the manufacturers' agent. This is a potentially dangerous omission. In some industry sectors, it is common to ask agents to perform after-sales servicing, stocking of spare parts, or even warehousing. Only you and your agent can determine what will work best for you.

Finally, get your written agreement signed. It does not become a formal legal contract until it has been signed by both parties. Many lawyers advise having a contract state that it is valid for a fixed term, at which time each party will evaluate the relationship before a renewal of the contract is arranged.