Point of
Purchase
Advertising
Industry

Standards *of* Practice

M A N U A L

Issued by

Point•Of•Purchase Advertising International

Point-Of-Purchase Advertising International (POPAI) is the trade association of the point-of-purchase (P-O-P) advertising industry dedicated to serving its more than 1600 members by promoting, protecting and advancing the industry's broader interests through research, education, trade fora and public policy efforts.

To advance the evolution of P-O-P advertising as a strategic advertising medium integrated into the marketing mix globally.

1) Establish P-O-P advertising as a measured medium, on par with print, broadcast and other measured ad media; 2) Capitalize on the increased use of technology for unprecedented opportunities for an expanded role for P-O-P advertising; 3) address members' changing needs as business becomes more global; 4) be more inclusive of those engaged in activities relevant to P-O-P advertising; and 5) enjoy a business environment characterized by ethical business practices, expanded opportunities for and preservation of rights as a communications medium.

P-O-P advertising will be recognized as the most effective advertising medium.

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"Revised, 2001"

P-O-P Industry Ethics as established by Point-of-Purchase Advertising International

P-O-P professionals are expected to comply with the following standards:

Abide by all federal and state laws while maintaining the highest level of integrity and honesty;

Communicate clearly and comprehensively all relevant company policies prior to entering into a business relationship, including pricing and ownership issues;

Posses awareness of and adhere to P-O-P industry trade practices and standards as issued by POPAI.

All members, when making annual dues payments, are asked to sign a form illustrating that they, and their companies, comply with the industry's standards of practice, as published by POPAI.

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P-O-P Advertising Industry Standards of Practice

Planning and Development

When the marketing plan of the brand marketer, retailer, or agency includes the utilization of P-O-P advertising, he or she might elect to assign the development to a P-O-P advertising producer.

Some producers have staff and facilities to plan, design, produce, and distribute. Some specialize in planning and development, but contract with other facilities for production and distribution. Some also use external design sources. In some cases the brand marketer does the planning and development and contracts only for production and distribution.

Because of the differences both in the activities and services afforded by producer companies, as well as in the desires of various client companies, it is critical that both parties be fully aware of just what each other's contribution will be before undertaking a particular project.

Competition for both projects is often based upon both price considerations and the producer's ability to meet the client's creative and design objectives within a prescribed budget or marketing plan.

Planning is a cooperative effort

In the great majority of instances, planning and development of utilization of P-O-P advertising takes place with the producer, the brand marketer, agency and the retailer working together. Few advertisers find it economical to maintain a staff with the variety of skills necessary for the creation of their programs. The most efficient planning takes place when a sense of teamwork is fostered among the brand marketer, the producer, agency and the retailer who has the final say of whether P-O-P will be allowed in the store. For this reason, the P-O-P producer should be consulted in the initial stages of the development of the entire marketing campaign.

The role of the brand marketer or agency

The brand marketer or agency usually delegates the P-O-P planning phase to specialists within their companies. These specialists may be sales promotion mangers, merchandising managers, brand managers, account executives, strategic planners or merchandising departments functioning with responsibility for planning and development. They are guided by designated budgets in evaluating the development of P-O-P programs that meet their objectives.

Also, the brand marketer's purchasing agent is sometimes charged with acquiring P-O-P. Such an individual is most often governed by strict policies and criteria surrounding the methods of purchasing, bidding and acquisition procedures (see section V). Purchasing agents may buy a variety of materials in addition to P-O-P advertising.

The role of the producer

In the planning stage the producer, through sales representatives and his or her department, counsels the brand marketer, retailer or agency on such matters as size, form, and function of P-O-P advertising materials. To do this the producer should have a working knowledge of marketing, customs, laws, and special limitations in particular fields of distribution, and the basic materials available to him or her.

The role of the retailer

The retailer has the last word when it comes to the placement of P-O-P advertising for all of the store's P-O-P programs. If the program does not meet the specific criteria for various display elements, it will not even obtain retail placement. In some cases, the retailer itself may purchase P-O-P. In that case, their role is interchangeable with that of the brand marketer.

Ownership and allied consideration

If brand marketer, retailer or agency and producer are to work together harmoniously and effectively, there must be a clear understanding of the ownership of designs and materials used in the process described below.

Design/Idea ownership

Since development of P-O-P advertising can be, and most often is, the result of varying degrees of participation by the brand marketer, retailer, agency and producer, it is imperative that initial discussions clearly define such issues as ownership, payment and production participation to all parties' mutual agreement.

The producer has full copyright ownership of a design he or she independently creates in tangible form and submits to a brand marketer, retailer or agency. Conversely, the brand marketer, retailer, or agency has full copyright ownership of a design independently created by them. In either case, the originator has the responsibility for clearly stating and protecting ownership in advance.

Notice of ownership

When appropriate, the producer should use a notice on his or her submissions such as the following statement, or his or her own version of same, in identifying his or her creative submissions, and should include appropriate copyright notices based on the advice of legal counsel:

"Warning: This prototype / creative design is the exclusive property of ______, and is protected under the copyright laws of the United States and other countries. All persons to whom this prototype / creative design is displayed agree that they will not make any use of, or disclose to any third party, this protoype / creative design, without the express, written permission of ______. Any unauthorized use of this prototype / creative design may constitute a violation of the United States Copyright Act."

This is common used wording throughout the industry and is respected by the ethical brand marketer, retailer or agency for which or whom the design has been created.

Artwork or other elements provided to the producer should likewise carry protective language for the brand marketer, retailer, or agency, including appropriate copyright notices.

Patents

Affixing "Patent Applied For" or "Patent Pending" on presentations by the producer, when such procedure has not been instituted, is not permitted by law.

When a patent has been received, it is important to identify all protected art, samples, and production with appropriate information, including the serial number issued by the U.S. Patent Office.

Producers respect each other's rights

To protect themselves from copyright infringement and to avoid other possible legal liability, producers should refrain from bidding on or reproducing designs or models created by other producers, unless the brand marketer, retailer or agency has secured a copyright release from the original producer.

In cases in which the brand marketer supplies creative designs, he or she should assure the producer that the sketch, model, or previously produced display, is the advertiser's, retailer's, or agency's property. If the brand marketer does not volunteer such a statement, the producer, for their own protection, should consider including in his or her letter of proposal a statement to read as follows:

"You have asked us to quote on this design, which you assure us you own."

The brand marketer's, retailer's and agency's "protective release"

Certain companies receive large numbers of "unsolicited" suggestions. To guard against suits resulting from such suggestions, many companies request a release or disclaimer of confidentiality before they will consider, or even look at, an idea. In practice, this procedure may tend to discourage the generation and free flow of ideas, and as such, should be weighed in this light and in the light of protection deemed necessary as the advertiser, retailer or agency in its application as a standard policy to P-O-P producers.

Ownership of production materials and devices

Ownership of intellectual property used in the production of a display created by a producer remains the property of the owner/producer unless otherwise agreed upon. Clear ownership of this property should be established at the outset -- especially if the costs of tools and dies are to be amortized in the cost of the project. In addition, ownership of tools and dies particularly, if costs are to be amortized, to be agreed upon by the parties.

It is particularly important to determine ownership in advance at which point there is a large initial production expense such as for tools, dies, plates, etc. When such materials or devices are purchased and/or invoiced as a separate item, the brand marketer, retailer, or agency may acquire the ownership.

Speculation
Research on, and the analysis of, the attitudes and practices of brand marketers, retailers, and agencies and producers on the subject of speculation was undertaken in an effort to promote clearer concept of the term "speculation". This study was undertaken to reduce the waste of dollars and effort resulting from a lack of understanding.

What is speculation
Speculation may be defined as follows: Where more than one producer is asked to develop a solution to a problem in the form of ideas, themes, copy roughs, sketches, engineering, prototypes, or any other method...without agreement as to compensation. Further, speculation also occurs when a producer presents unsolicited material to a prospective client.

Cost considerations
The key to mutual understanding and satisfaction for all parties lies in "prior agreement"... a clear understanding of the financial obligation of all parties.

Number of submissions
The brand marketer, retailer, or agency should advise as to the number of submissions he or she has invited. This will enable the producer to assess whether or not, or to what extent, to finance speculative, creative development for the submission.

Long-term assignments
Since campaigns are often modified, new products are introduced, and budgets are cut or increased, it may become more difficult for both advertiser and producer to work within original parameters set many months previously. Therefore, it is important to achieve prior understanding of the indefinite nature of the project.

Alternatives to the original plan and redefinition of parameters should also be discussed during the course of these assignments.

I. Production
The following are generally accepted industry practices regarding terms of production.

Pre-production samples
Pre-production samples can fall into two categories: production models (handmade, final samples, finished art, etc.) and first production shots (mold shots, press proofs, die strikes, etc.).

Practices dictate that the advertiser or retailer should request, and the producer should supply, pre-production samples for final approval as circumstances warrant.

Because there is a major expense involved in the creation of samples, it should be clarified in advance who will bear the cost of creation of these samples. Price estimates should be provided in advance to the advertiser or retailer if development costs will be assessed.

Modifications

Changes or additions by the brand marketer or retailer to the approved design or specification are often made at the expense of the advertiser and the matter should be clarified. Additional charges can result from brand marketer delays in supplying instructions, copy, material and/or information that, necessarily, must come from the brand marketer.

When changes are requested, the party making the changes should be advised specifically of their resulting impact in the area of additional costs as well as delays in any originally agreed-upon timetable, delays in delivery, and additional expenses necessitated by these changes, such as overnight freight charges, to meet deadlines.

Brand marketer/retailer/agency furnished materials

All materials furnished by the brand marketer, retailer, or agency are accepted by the producer at a previously agreed-to handling and storage charge. The producer must exercise reasonable care for these materials, and the responsibility for same should be clearly understood in advance by both parties. Brand marketers, retailers, and agencies should receive assurances that their materials are protected.

When the brand marketer, retailer, or agency furnishes materials, production spoilage is allowed only as mutually agreed upon when the order is placed.

Under many contractual arrangements, in the event of shortage or spoilage of brand marketer/retailer/agency furnished materials, which is not the fault of the producer, the producer has the right to bill for face order, plus agreed upon overrun. This, too, is a matter of negotiation between the parties.

Overruns

Normally, a 5 percent overrun shipment constitutes completion of the order.

Overruns are typically charged or allowed at the unit price of order. To avoid subsequent misunderstanding, the percentage of overruns should be agreed upon at the time the order is placed.

Warranty

Law implies certain warranties and agreements. In addition, parties may want to consider additional agreements; such as: freedom of defect and materials and workmanship, etc. Other warranty considerations may be agreed upon by both parties.

Cancellations

If the parties have agreed on a right of cancellation and the advertiser cancels the order, the producer would normally be entitled to compensation for all material ordered and work completed to date of cancellation.

Terms

As a general rule, orders are accepted for shipment and/or invoicing as soon as merchandise is manufactured, unless otherwise negotiated in the original agreement.

In the absence of specific information contained in a purchase order or other agreement, it appears that the terms of Net 30 days, F.O.B. Factory are common. These are subject to variation by parties.

II. Distribution

The producer ships the completed signs and displays in compliance with the client's distribution agreements. The following are accepted industry practices:

What constitutes delivery

In the US where it is common to ship F.O.B. to a designated place, "delivery" takes place when the common carrier accepts shipment. The parties are free to vary such terms and discuss the agreement.

Producers providing storage may incur obligations if the material is damaged or lost and are advised to consider purchasing adequate insurance.

Freight Charges

Prepaid freight invoices for transportation charges are due and payable upon presentation by the producer. Interstate Commerce Commission (ICC) regulations demand that carrier bills be paid by the shipper within seven days. If the producer prepays the freight, a reasonable service charge may be added to the cost of the freight. Alternatives include shipping collect or shipping prepaid in client's name and having bills sent directly to the advertiser's accounts payable department.

Drop Shipments

When the brand marketer, retailer, or agency contracts to have shipments made to a number of points, the producer generally makes such shipments at an extra charge, based upon mutually agreed rates. The drop-shipping charges may vary according to the number of destinations and the amount of handling involved.

Lost or damaged merchandise

Freight companies require that lost or returned merchandise be reported by the consignee to the transportation company at once, and claim made to them. If the package has been signed for as having been received in good condition, the consignee's claim should be made for concealed damage.

Late delivery

Agreements often provide that the producer is not liable for damages due to delay in shipment, unless the delay is caused by the producer.

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Antitrust Compliance

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Introduction

The Antitrust Manual has been prepared for distribution to members of the Point-Of-Purchase Advertising International ("POPAI"). The manual is not intended as a substitute for company counsel or independent legal advice. The antitrust laws, while reflected in only a few short statutory enactments, are complex and important. Compliance with them requires a thorough analysis of each company's product line, structure, and business operations. A general manual such as this cannot foresee all problems. This manual is brief, in view of the areas with which it is concerned. It is intended as a general introduction to the field, and consists of two parts. The first is an antitrust compliance guide which, it is hoped, individual companies will find useful for the purpose of adapting and distributing to their employees. The second is a proposed, short compliance program offered as a suggestion, with the realization that it will require shaping and modeling in accordance with company needs. The antitrust laws do not impact only on big business. They apply with equal force to businesses of all size. Of course, some laws deal specifically with monopolization or an attempt to monopolize and thus are of greater concern to companies with larger market share. However, the bulk of antitrust concepts are applicable to all, particularly as companies structure the sales and distribution of their products and relationships with competitors.

Part I

Compliance Guide

"The United States economy is one of the strongest and most productive in the world. Although the credit for our economic success goes to the hard work and creativity of American workers and businesses, it is our national policy of competition that spurs and rewards that work and creativity. History has shown that societies that promote vigorous competition among private companies have lower prices, better products, and greater consumer choice.

The antitrust laws are the basis of this national policy." (U.S. Federal Trade Commission, Promoting Competition, Protecting Consumers. www.ftc.gov/bc/compguide/index.htm).

The Antitrust Statutes

The Sherman Act

The basic antitrust law of the United States is the Sherman Act. Its first section contains a simple statement of antitrust principles. It prohibits every contract, combination or conspiracy which is in restraint of trade of commerce. It is applicable not only to commerce or trade among the United States, but also with foreign nations. This law generally reach-

es consensual arrangements among companies. This does not mean that only a formal agreement of contract in restraint of trade is prohibited. Any kind of combination or conspiracy, and any kind of understanding, can fall within the prohibition of the Sherman Act. The agreement can be informal, indirect, and even simply inferred from conduct. This is why it is our Company's policy to conduct our business absolutely independent of any competitors. Our product development, design, pricing, and sales efforts are determined independently. Of course, we independently consider what we know about the marketplace and the conduct of our competitors. However, we arrive at both the knowledge and our conclusions based upon independent study and not by consulting or contacting any competitors in the industry. The second section of the Sherman Act makes unlawful any monopolization or attempt to monopolize using unreasonable methods or combination or conspiracy to monopolize trade or commerce among the states or with foreign nations. Most violations of Section Two require only one actor, possessed of the ability and the intent to monopolize a defined product market in a prescribed geographic area. The law can be violated by relatively small companies, if they possess the requisite power in a properly defined market.

Clayton Act

The Clayton Act is another major antitrust law. It is basically a civil statute which contemplates injunction actions brought by the government and damage suits, including treble damage actions. The Sherman Act, on the other hand, not only authorizes civil actions, but also criminal prosecution for its violations. The Clayton Act is more detailed than the Sherman Act. For example, it declares it unlawful to sell one's products on the condition that the purchaser will not buy the products of a competitor, where the effect is to substantially lessen competition or create monopoly. The well-known Robinson-Patman Act, prohibiting price discrimination, is also a part of the Clayton Act. Other parts of the Clayton Act deal with interlocking directorates of competing companies, mergers and other business acquisitions. Perhaps the most important part of the Clayton Act is that which impacts on exclusive dealing arrangements with customers, an area which will be discussed further in this guide.

Federal Trade Commission Act

While this law is not considered technically to be an antitrust law, it prohibits unfair methods of competition and is used, in effect, to supplement the provisions of both the Sherman and Clayton Acts. Unlike the other laws, it does not provide for a private right of action but contemplates only enforcement by the Federal Trade Commission. It is an important tool in government antitrust enforcement.

Foreign Law

These guidelines focus only on U.S. law. However, it is important to remember that the laws of many other countries are simi-

lar, and sometimes more restrictive, than U.S. law. Where products are sold abroad, or other international business is concerned, applicable foreign law must also be considered. It is also important to know that the U. S. antitrust laws can reach conduct which affects the foreign commerce of the United States.

What Happens If You Violate the Law?

The consequences of violation are very serious. Under the Sherman Act, there may be both criminal and civil consequences. Very heavy fines for corporations and individuals are provided. In addition, significant jail sentences can be imposed for violations, and the government has an announced policy of seeking jail sentences as the primary punishment for price fixing and other per se violations of the antitrust laws. The consequences to personal reputations and families should be obvious. Antitrust violations can also be enjoined by court action in civil proceedings. In addition, anyone injured by an antitrust violation can sue for damages and recover treble (i.e., three times) damages in addition to attorney's fees. Defending these kinds of actions can literally cost hundreds of millions of dollars. In many cases, violations give rise to class action suits brought by persons on behalf of themselves and all others who are similarly injured. The amounts involved in such suits are staggering.

The Don'ts of Antitrust – In Brief

Please be sure that in all of your actions you conform to the following summary guidelines:

- *Don't ever discuss pricing with competitors. In fact, don't attend meetings at which pricing is discussed. If you are ever present at such a meeting, protest and leave immediately.*
- *Don't agree in any way, shape or form, to divide or allocate customers, markets or territories.*
- *Don't attempt to restrict the resale activity of a customer, or attempt to control the customer's resale price. (There are circumstances where non-price restrictions and certain maximum resale price setting may be lawful, but the Company does not permit them except as a policy determination approved by counsel.)*
- *Don't talk to customers about the prices changed by the Company to others.*
- *Don't talk to customers about other customers or about whether or how you will sell to other customers.*
- *Don't insist that a customer buy exclusively from the Company (some such agreements may be lawful under limited circumstances, but this, too, is done only as a policy matter with the advice of counsel).*
- *Don't ever require a customer to buy one product in order to obtain another.*

- *Don't make sales or purchases conditional upon reciprocal sales or purchases.*
- *Don't even suggest that a purchaser should buy from the Company because we purchase from his Company.*
- *Don't charge different prices to customers who may compete with each other. This also means that bidding must be handled with great care and in consultation with the Company's counsel.*
- *Don't disparage the product of a competitor unless you are absolutely certain you can prove your statement to be true.*

These don'ts are necessarily broad and brief. Some of them will now be discussed more fully. However, this guide is not a complete statement of the antitrust laws. If ever in doubt, please speak to your supervisor and feel free also to contact the Company's counsel. They will assist you in every possible way.

Understandings or Other Arrangements with Competitors

It is natural that in the course of your business career, you will deal with the employees of a competitor. Many of them are your friends, and have been for years. You will see each other at trade association meetings, trade shows, and other industry events. The law does not interfere with these fine relationships. Many times, competitors act in common as when they come together under the auspices of a trade association to enhance the industry, promote its welfare, or oppose or support certain government policies or legislation. This is all part of the legitimate democratic process.

At the same time, dealing with competitors probably presents the area of greatest danger under the antitrust laws. The simple rule is that any kind of understanding with competitors, no matter how informal and regardless of whether in writing or not, which relates in any way to prices, production, territories of sale, customers, or markets, is going to be clearly illegal under the law and could very likely lead to criminal prosecution.

Price Fixing

Very simply, there is no justification whatsoever for any kind of price fixing arrangement with one or more competitors. It is one of those violations considered illegal per se. This means that the courts do not even have to look into the effect on the marketplace or competition to find it unlawful. It is also clearly criminal conduct. Price fixing does not mean agreeing on a higher price. It includes anything which stabilizes prices – making them higher, lower, or keeping them the same. You cannot agree on maximum prices or minimum prices. The only safe course of conduct is to avoid discussion of any kind on prices. Do not signal pricing activities to competitors. Companies and individuals have been found guilty of price fixing

when they have engaged in consciously parallel action, which most persons would not think of as an agreement. And be sure to avoid jokes on the subject. They are generally not funny, and can haunt you in a future investigation.

Remember also that many terms of a sale bear on prices. You cannot agree on discount terms, premiums, extras, standard warranties, after-sale service or the like. All of these may have the effect of price fixing. Illegal conduct is complete when you reach the agreement, even if it is never carried out. Even the suggestion of an illegal agreement can itself be illegal, with serious penal and other consequences. If you are ever in a situation where illegal price fixing (or, in fact, any other illegal conduct) is proposed or even hinted at, bring the matter to the attention of your supervisor and Company counsel. Remember also that it is Company policy not to distribute price lists to competitors and not to ask them of competitors. This policy must be strictly adhered to.

Markets, Customer and Territory Allocations

Another kind of activity which is illegal per se is an arrangement by which competitors divide up markets (geographic or product) or customers. It is illegal to agree, for example, that one company will sell in one area of the country or to one group of customers, while the competitor sells in another area or to a different group of customers. It is also illegal to agree that one competitor will make one product or line or products while another makes a different product or line of products. Although different, an agreement among competitors to limit new technology or product introduction, or product quality, is also clearly illegal and must be avoided.

Refusals to Deal and Boycotts

It is a general principle of law that a company has the right to select its customers. Our Company, for example, can refuse to deal with somebody except under unusual circumstances (such as with intent to drive that person out of business or to establish or maintain a monopoly). This freedom is restricted and cannot go beyond a unilateral refusal to deal. It is Company policy, to prevent clear illegality, that no employee may discuss dealing with a customer with another customer, competitor, or any third party. If you are asked to participate in such a discussion, decline and report the incident to your superior or to Company counsel.

Another kind of per se violation of the law is a concerted refusal to deal or a group boycott. Sometimes, one or more companies do not like another, because of the latter's method of competition, pricing, or general business dealing. It is unlawful to get together and decide to punish that person by refusing to deal in any way. Even if the third person is someone who has committed conduct you think is reprehensible, or is a poor credit risk, a refusal to deal must be decided upon and carried out independently, unilaterally and without discussions among or with other companies.

Price Discrimination

The Robinson-Patman Act, part of the Clayton Act, is a law that prohibits price discrimination. The rules are complex, and it is for this reason that employees must follow all announced pricing policies and price lists of the Company. Variations will be permitted only after consultation with a superior, and on the advice of Company counsel. Basically, the law prohibits a supplier from selling a product at different prices to two or more different competitors.

One cannot discriminate in price between purchasers of commodities of like grade and quality where the effect may be to injure competition or substantially lessen competition. The competition thus protected is not only among our customers, but may extend to purchasers from our customers. Protected competition may also include the Company's own competitor in some circumstances. This law does not apply to the sale of services, but only to the sale of goods or services performed in connection with the sale of goods. The law prohibits direct and indirect price discrimination, and employees are urged therefore to be exceedingly cautious in varying any terms or conditions between competitors in any way. Not only actual sales prices are involved. The prohibition extends to such matters as rebates, allowances, credits, advertising allowances, and services. There are some circumstances when price discrimination is allowed.

For example, it may be allowed if a company can prove that a lower price simply reflects the passing on to the purchaser of cost savings in manufacture, sale or delivery of the product. But if there is a charge of discrimination, the company has the burden of proving the cost justification and this is often very difficult. In addition, a company can lower its price to meet the competition of competitors. Generally, the lower price must be to meet – not beat – the competitive price. Meeting competition, while a defense, can also be difficult to prove. Other situations may also suggest pricing differentiation which is justifiable, such as different, or custom products, or absence of competition among our customers. However, such distinctions are generally complex and must not be made without executive and legal approval. It is the Company's policy not to permit the lowering of prices under these defenses unless the circumstances have been thoroughly reviewed with Company counsel, who makes a complete record of the transaction and its justification.

Dealing with Agents, Brokers and Distributors

Products in our industry often reach the ultimate user through the efforts of intermediaries of various kinds – such as those who buy and resell in their own name or those who solicit orders for a commission. Some of these transactions are ad hoc; others reflect an ongoing supplier – dealer relationship. They can be non-exclusive or exclusive arrangements. For convenience, we will refer to those who buy for resale as

dealers or brokers and those who solicit orders for a commission as agents. Relationships with dealers or brokers can often give rise to problems under the antitrust laws. In general, it is the policy of the Company to conduct its business with dealers or brokers on the basis of equality, permitting them to determine their own resale prices and terms of sale, and permitting them to deal in competitive goods and within territories of their choice. Where these policies are departed from concurrence of the Company's counsel must be secured. A violation of the law in dealing with dealers or brokers can sometimes be per se, and sometimes not.

We have already mentioned some per se violation of the antitrust laws. They, as you will recall, are those activities which are considered so reprehensible that they are automatically illegal, without any inquiry into their effect on the market. Other activities are different. They may be legal or illegal depending upon all of the circumstances. To sustain their legality, however, requires a great deal of technical skill. It must be shown that they are justified under what is called the rule of reason. Such a justification can only be undertaken with expert legal advice, and employees of the Company are urged to discuss these matters with counsel and Company executives at all time.

Resale Price Maintenance

Resale price maintenance is unlawful. The Company is not permitted to require dealers or brokers to follow resale prices set by the Company. It is possible for a manufacturer to furnish its dealers or brokers with suggested resale prices, but suggestion must mean only suggestion. It is illegal to go further and take any action for the purpose of enforcing the suggested resale price list. Some agreements setting maximum resale prices (but not minimum resale prices) may be lawful. This is, however a complicated issue which involves consideration of both state and federal law, making advance legal advice necessary. Under limited circumstances, it may be possible for the company to refuse to renew the agreement of a dealer or broker who maintains a consistent pattern of undercutting prices.

Never take it upon yourself to make such a decision. It is to be made only after the most careful inquiry possible by Company management and in consultation with Company counsel. Of greater importance is the fact that you are urged and required to refrain from discussing the resale price activity of any dealer or broker with any other dealer or broker. If complaints are received about the cutting of prices by competing dealers or brokers, they should be handled with the greatest of care in order to avoid even the appearance of impropriety.

Again, Company counsel must be consulted before you respond, react, or deal with any such situation. Complaints as to pricing activities by dealers or brokers should be thoroughly discouraged. Remember – there is no justification for agreeing with

others to blacklist or boycott anyone or to terminate a dealer or broker, because of pricing activities.

Exclusive Dealing and Requirements Arrangements

Manufacturers sometimes enter into arrangements with dealers providing that the dealer will not handle competing products, or that the manufacturer will not sell to anyone else within a certain territory. In general, these agreements are not per se illegal, but are subject to the rule of reason. While exclusive dealers may generally be appointed, it is more likely to be of questionable legality where the dealer undertakes in the agreement not to deal in a competing line of products.

Consequently, it is Company policy not to impose such a restriction on a dealer unless approval has been obtained from Company counsel on a case-by-case basis. Agreements with agents, however, may permit more restrictions. However, approval for these restrictions must be obtained from Company counsel as well. Distribution agreements sometimes restrict the rights of the dealer or broker in other respects. For example, they may require the dealer to purchase minimum requirements from the Company. They may prohibit the dealer from reselling the produces outside of certain territory or to certain customers. These provisions are also subject to the rule of reason. Because their justification, if any, can only be made after a thorough inquiry into all of the facts and circumstances, they will likewise be considered on a case-by-case basis with the advice of counsel. Although such restraints may be more justified where an agent is concerned, they are also subject to approval by the Company's advisors. As you can see, agreements with agents and dealers are complex instruments requiring the careful cooperation of management and the Company's legal advisors. Consequently, such agreements may be negotiated and concluded only pursuant to authority granted specifically by the President of the Company, who will do so in cooperation with Company counsel. When sales are made abroad through agents and distributors, local law may differ sharply from United States law. In such cases, the Company prepares written agreements with the advice of counsel which vary in numerous respects from arrangements with United States agents and distributors.

Tie-ins

When a manufacturer or supplier is prepared to sell a product only on condition that the buyer will also purchase a different product, the transaction constitutes a tying transaction. The product which the purchaser may not want, but is required to purchase, is the tied product. The other is the tying product. The courts sometimes refer to a tying transaction as per se illegal. More correctly, the rule of reason seems to apply in the sense that the transaction is not illegal unless there is a certain amount of market power represented in the tying product. In other words, the tying product must be so strong or desir-

able that the purchaser is compelled to buy the tied product. This does not mean that the Company cannot offer a package of products. However, it will then be necessary for the Company to attach different prices to each of the products and to permit the products to be purchased separately. There are some occasions when a package of products may lawfully be sold and when what would otherwise be a tying agreement is lawful.

For example, the two products, may upon closer examination, be only one single product, or strong quality control elements may be involved in products where a high degree of technology is involved. Because this area, also, is complex and because the penalties for mistakes are severe, it is Company policy to attach a separate price to each product and to agree at all times that each product may be purchased separately. Any variation from this policy will be permitted only if it is a published Company statement, approved by the appropriate Company official and company counsel.

Terminations

There is a great deal of litigation arising out of the termination of dealers and agents. A termination is, of course, not necessarily unlawful. In general, U.S. courts will uphold reasonable provisions of a contract, even when they permit a manufacturer or supplier to terminate on short notice. There are some exemptions, however, in a number of states and under laws dealing with franchises and commission agents.

Furthermore, foreign laws frequently extend protection to agents and dealers in a manner unknown in the United States practice. Consequently, distribution and agency arrangements are entered into only pursuant to a general Company policy that has been constructed in consultation with Company counsel. In all of its dealings with agents and dealers, it is the Company's intention to adhere to a policy of fairness, affording to intermediaries a reasonable notice of termination, explaining reasons for termination in a firm but honest manner, affording to the dealer or agent a reasonable chance to minimize financial losses and affording to the intermediary an opportunity to complete sales which may then be in process or in progress and to retain the profit from these sales. The Company considers termination to be a serious event. It is not undertaken lightly, but only when considered to be in the best interests of the Company.

Termination is never used by the Company in order to bring a dealer in line such as in attempting to enforce pricing or other distribution policies. Termination is undertaken only when the Company has concluded that there is no other alternative, that the dealer has been doing an improper or poor job or violating the contract or that termination is otherwise in the best interest of the Company. No termination of a dealer or agent is permitted except upon the approval of the President of the Company.

Electronic Commerce

The world of commerce is constantly changing, and the computer and electronic commerce have brought swift and dramatic challenges to all businesses. Among the most exciting developments is the opportunity to do business electronically. Websites, business to business (B2B) communications and business to consumer (B2C) enterprises have grown in remarkable proportions. The ability to deal in this fast moving, efficient manner, has also spawned the creation of B2B exchanges in which sellers and buyers, often competitors, cooperate to conclude transactions. These activities are not exempt from the normal antitrust rules described in this guide. However, the rapid, evolving nature of electronic activity leaves many questions that are difficult to answer. Company policy prohibits any participation in electronic commerce activities without the approval of the President of the Company.

Trade Associations

It is probably true that in no country are there as many people involved in voluntary attempts to improve their lot and that of others as in the United States. This is reflected in the myriad of charitable, educational and business associations which exist throughout the country. Trade associations play a prominent role in American industry. Businesses come together in trade associations for a variety of reasons. They do so to enhance the conduct of their business, the state of the industry and the economy, and to express to the public and government their legitimate business needs. Frequently, they are called upon by governmental agencies for advice in arriving at government policy at home and abroad. Their representatives testify before Congressional committees, and assist government agencies in economic and other studies. Association-sponsored expositions, trade shows, and seminars educate the public as to products and educate both suppliers and customers as to the state of the art. They are also intended to increase the skills of association members and their employees. Unfortunately, the privilege of association has sometimes been abused by illegal conduct under the antitrust laws. Because trade associations almost always bring competitors together, their meetings can be suspect. They can provide a forum for the kinds of illegal conduct which have been discussed in this guide. Consequently, it is Company policy to permit involvement of employees in trade association activities only when those activities are responsible and lawfully carried on.

Employees involved in trade association activities must be certain that:

- *Minutes are kept of all meetings of the association's directors, executive committee, general committees, and general membership*
- *Competent counsel is present at each meeting (where such presence is advisable in the opinion of counsel) and available for advice on antitrust and other matters*

- *No discussion whatsoever is held at any such meeting dealing with any subject matter which may be unlawful, particularly those matters described in this guide such as pricing and dealing with third parties*
- *The trade association is formed and operated in good faith for the benefit of the entire industry and conducted in such a fashion as to afford to all members of the industry a reasonable opportunity to benefit from its activities and participate in its activities. POPAI is a trade association which, we believe, adheres to these principles and we are proud to be counted among its members. Membership in other trade associations may not be undertaken without the approval of the Company President. If during the course of any association activity any matter comes to your attention which you suspect may involve a violation of the antitrust laws, please bring the matter to the immediate attention of Company management.*

A Word on Licenses

This guide has been concerned with the distribution of the Company's products, and not with technology licenses. However, it is important to know that there are many antitrust considerations involved in the negotiation, drafting, and carrying out of technology license agreements. Illegality may be reflected in tying or other contracts, as in an agreement to grant a license for one kind of technology only on the condition that royalties be paid on another technology; or, an agreement to pay royalties on products which are not patented in order to obtain a patent license. Similarly, restrictions on the right of a licensee to deal in competitive products may be illegal, as are many package licenses which bundle a group of patents together. Licenses are usually (but not always) analyzed on a rule of reason basis, but the problem areas indicate the need for careful analysis. For this reason, all such agreements are handled by Company counsel or with their advice.

Other examples of potential antitrust problems in licensing are the following:

- *The payment of royalties on total sales rather than on the products covered by the licensed technology.*
- *The payment of royalties after the expiration of the licensed rights.*
- *Restrictions on the resale price of products produced under the license.*
- *Agreements to assign or exclusively license improvement inventions.*
- *Provisions for cross-licenses and the pooling of patents.*

Conclusion

This document has been drafted to assist each of you in complying with the Company's policy to adhere strictly to the antitrust laws of the United States. This guide is only a beginning. There is, as we have noted, a great deal more to the fulfillment of the Company's objectives. We hope that this will assist you in recognizing a number of the problem areas that exist. If any of them comes to your atten-

tion, please do not hesitate to call them to the attention of your superior and to Company counsel. We want to help you help the Company achieve its goal of maximizing profits in a lawful, constructive way.

Part II

A Program for Antitrust Compliance

There is no legal duty imposed on your Company to establish any program for antitrust compliance. But it is good business to do so for a variety of reasons. Company management owes a duty to the shareholders and to the Company to conduct business in a lawful manner. If this duty is not carried out, the company may suffer severe criminal and civil penalties, as well as excessive costs in defending an antitrust action. A properly constructed compliance program may assist the Company in avoiding antitrust complications and litigation. The first element of a compliance program is an understanding of the basics of antitrust laws, some of which have been reviewed in the guide contained in the prior section of this pamphlet. The guide suggests why it is that compliance is important: avoidance of lengthy, difficult and expensive litigation; avoidance of criminal and civil penalties for both the Company and its executives; avoidance of damage judgments including treble damage judgments; and protection of corporate and personal reputation and goodwill. Finally, there is both the explicit and implicit commitment to a lawful and creative business environment. A proper compliance program will be constructed with the Company's specific business in mind. It will vary depending upon the nature of the Company's products, its distribution arrangements and size. It is not possible, of course, to suggest a compliance program in a document such as this which will meet the needs of every company.

The following is a brief suggestion for a simple compliance program:

An Antitrust Audit

Periodically, a Company is well-advised to conduct an audit or investigation of the entire Company from the viewpoint of compliance with antitrust laws. Minimally, such an audit should consist of the following:

- Reviewing the Company and its place in the industry to determine in general its market share, the geographical areas it serves and the nature of competition. This will assist the Company in evaluating the lawfulness of its activities, including distribution, licensing and acquisition agreements.
- A review should be undertaken of trade associations to which the Company belongs. An executive should be assigned the responsibility of maintaining a list of such associations. Reasonable guidelines (such as those published by POPAI) for participation in trade association meetings should be prepared. Company counsel should meet periodically with attendees at trade association meetings to discuss

the meetings and to maintain an ongoing overview of antitrust compliance. POPAI maintains a strict and inflexible policy of adherence to the antitrust laws.

- Pricing and other customer relations: a review should be undertaken of the Company's pricing policy. Price lists should be examined and sales staff interviewed for determination of compliance with Company policies. All ongoing contracts with customers should be periodically reviewed.
- All contracts and arrangements with dealers and agents should be reviewed. New contracts must be studied, and a policy arrived at for contract compliance dealing with such matters as dealers or agent relations, pricing, and termination. Of particular importance is a review of any desire to decline to sell to a customer or dealer.
- All technology licenses to which the Company is a party should be reviewed with a view to antitrust compliance. In addition, personnel in charge of contract administration should be interviewed to determine any breach or other conduct under the agreement which might indicate the necessity for amendment or enforcement of contract provisions.
- A review should be undertaken of all joint ventures to which the Company is a party. Joint ventures sometimes lead to antitrust involvement at the time they are established, or during their conduct. Particular attention should be paid to joint ventures with companies that are or may be in any line of business competitive with that of the Company, with a view to avoiding the spill-over effects of coming together under the umbrella of a venture.
- Where appropriate, counsel should be asked to develop checklists and model contracts covering licensing, distribution, and joint ventures. While a model contract or checklist will never be sufficient to cover all possibilities, they may be helpful in instructing Company personnel in appropriate licensing policies with the requirements of the law.
- All correspondence, meetings, and relationships with competitors should be reviewed. Some of this review will, of course, be undertaken in connection with a study of trade association activities; other meetings with competitors should also be reviewed.
- Each Director of the Company should be asked to submit a report identifying any other companies in which the Director serves in a similar capacity.
- A review should be undertaken of the Company's purchasing procedures. Remember, it is as unlawful to accept any improper price under Robinson-Patman as it is to exact it.

Education

The Company should create a program of education involving its employees. The guide to antitrust compliance, if adopted, should be distributed to all appropriate employees. This should cover all officers,

directors, sales personnel, and administrative employees. In addition, one or a series of meetings (depending upon the company, its structure and size) should be periodically conducted with key executives and counsel to educate employees in current issues and developments in the antitrust field. Antitrust compliance is not simply a legal matter, it involves not only the assistance of Company counsel, but the full cooperation of all personnel.

This document is for informational purposes only. Always obtain legal counsil before making decisions of legal consequence.

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Intellectual Property Ownership

Prepared by POPAI : Stephen R. Bergerson, Fredrikson & Byron, P.A., Minneapolis, MN

Introduction

While the concept of intellectual (intangible) property is rooted in the U.S. Constitution itself, it is now finding its way into the consciousness of many people in America's creative service businesses.

Intellectual property law came of age as business people and judges recognized the substantial economic value of ideas and/or their creative executions.

This document addresses basic business and legal issues that all who wish to benefit from the commercial exploitation of intellectual property need to understand. It also updates the information provided in the original POPAI's Standards of Practice Manual.

Intellectual property shares a critically important attribute with its tangible property counterpart: the law treats both as property. Just as one cannot take or use another's tangible property without ethical or legal consequence, one cannot do that with their intellectual property either. Someone owns it, and those who use or exploit it without the owner's permission do so at their own peril.

The four types of intellectual property law are patents (ideas), copyright (the creative expression of ideas), trade secrets (proprietary business information) and trademarks (marketing communications symbols).

This paper reviews the protection which the law provides to each, with emphasis on copyright.

In the past few years, Congress has passed the Intellectual Property and Communications Reform Act, the Digital Millennium Copyright Act, the Anti-Counterfeiting Consumer Protection Act and the Fairness in Music Licensing Act. This unusual level of legislative activity convincingly demonstrates the importance which Congress attaches to protecting copyright rights.

Copyright Protection

Copyright law protects the creative expression of ideas, known as "works of authorship." They include:

- literary works;
- musical works, including any accompanying words;
- dramatic works, including any accompanying music;
- pantomimes and choreographic works;
- pictorial, graphic, and sculptural works;
- motion pictures and other audiovisual works; and sound recordings.

Copyright does not protect ideas themselves; only how they are creatively expressed in a "tangible medium of

expression" (negatives, canvas, film, software, video and audiotape, sculptural materials, paper, etc.) from which they can be perceived, reproduced or otherwise communicated. For example, an idea for a P-O-P advertising design is not protected by copyright until it is tangibly expressed (the idea may be protected as another type of intellectual property, however).

The level of creativity entitled to copyright protection is minimal, and the protection is automatic from the instant the idea is tangibly expressed. Registering the work with the U.S. Copyright Office is not required, although it does provide substantially greater remedies for infringement if done within 90 days of its first publication or before the infringement (whichever occurs first).

Ownership gives the copyright owner powerful rights, including the right to do and/or to authorize any of the following:

- to reproduce the work in copies or phone records;
- to prepare substantially similar derivatives of the work;
- to distribute copies of the work to the public by sale or other transfer of ownership, or by rental, lease or lending;
- to perform the work publicly (in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works); and
- to display the work publicly (in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual works).

As Copyright owner, the work's creator controls this bundle of rights, subject to one very important exception: a work made for hire. If a work meets the Copyright Act's strict requirements of a 'work made for hire,' then the person or entity for whom it was created is the owner, not the creator.

There are only two ways that a work can qualify as 'for hire'. The first is when it is created by an employee within the scope of their employment (doing what they were hired to do). The second is when an independent contractor (non-employee) signs a written agreement to that effect and creates a work for use as a contribution to a: (i) collective work, (ii) audiovisual work, (iii) translation, (iv) supplementary work, (v) compilation, (vi) instructional text, (vii) test, (viii) test answers, or (ix) atlas.

Since only these nine kinds of works can qualify as "for hire," an agreement which uses "for hire" language cannot transfer copyright if the work is not on the list. The only way for a commissioning party to obtain copyright to works not on the list is to have the creator assign (transfer ownership) the copyright in writing.

For example, if an independent contractor (producer/supplier) is commissioned to create a P-O-P advertising design and does

not sign either a work-for-hire or copyright assignment agreement, he or she retains copyright ownership in the work and the commissioning party (assuming they pay the creator) obtains only a limited license to use the work for whatever purpose, geographical area, product/service category, media and period of time the parties originally contemplated. If the commissioning party exceeds such limitations or subsequently produces a substantially similar derivative, it infringes on the creator's rights and subjects itself to the considerable economic consequences provided by the Copyright Act.

In September, 1998, Congress extended the already considerable length of time for which copyright protection existed by tacking on another 20 years. Previously, most copyrights lasted the life of the author plus 50 years. Now, copyrights which were still in effect on that date got a new twenty year lease on life, and works created after then are protected until 70 years after the author dies. If the work is a work made for hire, the copyright is good for the lesser of 95 years from the first publication or 120 years from the year of creation, whichever occurs first. In any event, copyright lasts a long time, so it's not easy to find a work that is in the public domain.

One final — and often surprising – important copyright concept: the Copyright Act explicitly recognizes a two-track ownership system. It provides:

"Ownership of a copyright, or of any of the exclusive rights under a copyright, is distinct from ownership of any material object in which the work is embodied. Transfer of ownership of any material object, including the copy or phone record in which the work is first fixed, does not of itself convey any rights in the copyrighted work embodied in the object; nor, in the absence of an agreement, does transfer of ownership of a copyright or of any exclusive rights under a copyright convey property rights in any material object."

For example, purchasing a negative, video master or any other medium in which a creative work is embodied does not affect ownership of the copyright to work expressed in or on it. The opposite is also true. In other words, it's 'buyer beware'.

Patents

Patents protect ideas. But not all ideas. The U.S. Patent and Trademark Office must be convinced that the idea is "novel," "useful" and "non-obvious." Only then it is considered to be patentable invention. Patents owners control the exclusive right to make, use, license or sell the idea for a period of 14 to 20 years (depending on whether it is a utility, plant or design patent).

As with copyright ownership issues, patent law can hold some unpleasant surprises for the unwary.

It differs dramatically from copyright law with regard to ownership between an employer and employee. Generally, an employee owns their inventions, subject to

three rarely-allowed exceptions: (i) a carefully-worded contract; (ii) when an employee is specifically hired or subsequently directed to invent a particular invention; and (iii) when an employee, through words, silence, actions or inactions, causes the employer to rely on an apparent right to use the invention.

Most states prohibit employers from including patent ownership provisions in employment agreements and from requiring employees to assign inventions as a condition of either employment or continuing employment. Nearly all courts have refused to apply the `hired to invent' doctrine (number ii above) to independent contractors, and most are reluctant to apply it even to actual employees.

The courts also apply the third, so-called "shop-rights" exception very grudgingly. Even when they do, the employer acquires only a royalty-free, non-exclusive, non-transferable license to the patent. Only a few courts have been willing to apply it to independent contractors.

Trade Secrets

A trade secret is (1) information which is not generally known or readily ascertainable, (2) gained at its owner's expense and (3) provides it a competitive business advantage. Neither the originality or creativity of patents or copyrights are required.

Formulas, patterns, compilations, programs, devices, methods, techniques or processes may qualify as trade secrets, as may principles of engineering, logic and coherence in computer software. Even generally-known information, when uniquely combined or applied, can qualify.

A trade secret's owner has the exclusive right to use, license or sell the information as long as it remains a secret. Trade secrets lose their protection, however, if others discover them through "proper means", including reverse engineering.

The law requires trade secret owners to use reasonable precautions to keep them secret, such as restricting physical or computer access, using guards, personnel badges and limited access areas, controlling copying and dissemination, notifying employees of a trade secret's sensitivity, marking information as "secret", "proprietary" or "confidential," and obtaining confidentiality agreements from anyone with whom they are shared, and then only on a "need to know" basis.

Trademarks

A trademark is any word (or combination of words), symbol or device which marketers use to distinguish their goods or services from others'. Examples include the word Kodak, McDonald's golden arches symbol, the Levis orange tab device, the NBC chimes music, the color pink for Owens Corning insulation, Kellogg's Tony the Tiger character and the "You're in Good Hands with Allstate" slogan.

First, trademarks should be distinguished from the creative works protected by copyright (with which they are often con-

fused). Music, photos, designs, illustrations, and other creative works, which are used as trademarks are separately protected by copyright law. As discussed in the copyright section of this paper, anyone who commissions an independent contractor to create a trademark should be sure to obtain copyright ownership of creative work, or a license to use it as trademark.

Once a trademark is used in the normal course of business, its owner acquires exclusive rights to use it in the area of actual use (if no one else has previously used it there or previously obtained a state or federal registration for it).

If a trademark is registered in one or more states (it must be used there first), its owner has exclusivity in those states if no one has previously used it there or federally registered it.

The owner of a federal trademark registration gains national exclusivity, even in areas where it has not been used, subject to existing state registrations others who have previously used the same or a confusingly similar mark in the same or closely-related product/service category anywhere. The lesson: always have a search conducted before using a trademark, and give serious thoughts to federally registering it.

In addition to national exclusivity, federal registration is accompanied by significantly more legal rights and stronger legal remedies that are available to owners of all other trademarks. Federal registrations are valid for ten years and can be continuously renewed for additional ten-year periods (unless, like zipper, nylon, milk of magnesia and escalator, among many others, the word becomes generic with the public).

Trademark owners can prevent others from using the mark (1) in a manner which is likely to cause confusion, deception or mistake in the market (2) in a disparaging manner and (3) in a manner which dilutes its distinctiveness (by altering, tarnishing or diluting its distinctiveness). The owner can often also recover damages and sometimes triple damages, expenses and attorneys' fees from infringers.

In recent months, POPAI made available on www.POPAI.com two powerful tools to assist members in safeguarding their intellectual property.

The first is "spec label" language that assists intellectual property owners in expressing that ownership to prospective and actual business partners, clients, et al. Members can view this "spec label" language and download the language in order to affix it to creative designs.

The second is POPAI's Intellectual Property (IP) Registry, which serves as an online repository for images of creative designs. This on-line innovation provides, for those images that members upload for only $25, time- and date-stamps in the event of a subsequent dispute over ownership. If such a dispute were to arise, the time- and

date-stamps on the images, could be used as proof of an earlier-made assertion of ownership. Members can access the IP Registry.

Conclusion

Anyone whose employee or independent contractor creates intellectual property — copyright, patent, trademark or trade secret — ought not leave the question of usage rights to or ownership of it to chance unless they wish to allow the often surprising and usually mysterious twists and turns of intellectual property law to determine that for them. A much easier solution is a well-drafted written agreement.

First, a written contract can specify whatever ownership or usage rights the parties actually agree to.

Second, it can expand an intellectual property owner's rights beyond those provided by law. For example, an employee who agrees not to use trade secrets following employment faces substantially greater restrictions than one who merely signs a non-compete agreement.

Finally, contract rights can be litigated in state courts, which are often more expeditious and less expensive than federal courts (where long, complicated and expensive patent and copyright cases must be litigated). And no matter what court hears a case, contract issues are always more straightforward and easier to resolve than unaddressed intellectual property issues.

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Intellectual Property Case Study

Scenario A

P-O-P Supplier A sees a P-O-P advertising display that has been produced by P-O-P Supplier B. Supplier A thinks, "I can do better than that," and approaches Brand Marketer, whose display they saw and makes a proposal. Brand Marketer is interested and asks for quotes on producing the unit both "as is" and with the suggested changes. What are the legal implications for each?

Answer

Assuming that Supplier B, who manufactured the display, also created it, both Supplier A and Brand Marketer are headed for trouble. If Supplier A manufactures it "as is," he/she will be copying Supplier B's design and infringing on the copyright which protects it. Even if A makes changes in the design, he/she will still infringe on the original, if the new version is "substantially similar" to the original, since the Copyright Act gives a copyright owner the exclusive right to create "derivative" (substantially similar) works. Brand Marketer, at whose request the "new" display is made, will also be infringing on B's copyright.

If B did not register the copyright within three months following the fist public use of the display or before the infringement, it will be entitled to recover whatever actual damages and any profits of the infringement it can prove to be attributable to the infringement. If it did register within that time period, it would be entitled to whatever statutory damages (up to $20, 000) and attorney's fees a judge thinks reasonable under the circumstances. If the infringement was willful, the judge may award additional punitive damages of up to $100, 00 and a federal prosecutor might be persuaded to bring criminal charges.

Scenario B

P-O-P Supplier creates a "substantially similar" version of someone else's P-O-P display with similar graphics, the ability to hold the same amount of product and the same materials, and takes the display prototype to Brand Marketer along with a competitive quote. What should Brand Marketer do?

Answer

Since the Copyright Act prohibits the unauthorized creation of substantially similar ("derivative") works, A has infringed on the original creator's copyright rights. And, since Brand Marketer would also be liable should it proceed, it should include a written assurance from A that the design is his/hers and that he/she will hold Brand Marketer harmless from any liability for copyright infringement. Of course, if Brand Marketer knows that A's concept was not original, it should decline the proposal.

Scenario C

Retailer reviews a proposal from Brand Marketer, which includes the means to merchandise its products in Retailer's store, paid for by Brand Marketer's co-op funds and based on Retailer's volume. P-O-P Supplier A has developed merchandising equipment working in concert with brand Marketer. Retailer informs Brand Marketer that it wants the co-op funds, but will have Supplier B produce the equipment proposed by Brand Marketer or Retailer will not accept the proposal. What are the possible implications?

Answer

Assuming Supplier A created the concept for the merchandising equipment and didn't transfer any patent or copyrights to it, Brand Marketer should advise Retailer that allowing Supplier B to produce the equipment could expose both Retailer and Supplier B to A's infringement claim. Should Brand marketer proceed on the basis demanded by Retailer, Brand Marketer would most likely be sued for having facilitated and participating in the infringement activities.

Scenario D

Brand Marketer commissions a design from supplier, obtains a bid, then check bids it with three other producers and returns to Supplier saying it must do the job for the lowest bid price. Must Supplier comply?

Answer

Why Supplier may decide to comply for business reasons, it is under no legal obligation to do so, if it has retained copyright ownership of the design. And, if Brand Marketer gives the assignment to a Supplier which has made a lower bid, both could be liable for damages.

Question 1

Is a P-O-P invention which is patented in the U.S. protected elsewhere, such as Canada and Mexico? Is the same true for copyrights and trademarks?

Answer

Each country has its own intellectual property laws, and patent, copyright, and trademark protection must be usually obtained from each. There are often significant advantages to seeking trademark protection in other countries promptly (usually within six months) after obtaining suck protection in the United States. And most industrialized countries are members of a treaty that automatically grants copyright protection in all member countries once it is protected under the laws of any one. Since copyright in the U.S. automatically springs into existence when a work is created, the work is protected in all member countries as of the same point in time. The extent of the protection however, varies from country to country.

Question 2

Copyright protects the expression of ideas, but not in the ideas themselves. What protects ideas?

Answer

Ideas themselves are protected if they are patentable, qualify and are treated as trade secrets and/or are disclosed within the context of a confidential relationship.

Question 3

Can a design be patented one time to cover al of Europe, or dos it need to be patented in each individual country? What about copyright or trademarks?

Answer

Like all non-European countries, each European country has its own individual intellectual property laws, and copyright and trademark protection can only be obtained by complying with each. See the answer to Question 1 regarding copyright.

Final Note

This document is conceptual only and should not be used to resolve specific issues, since each circumstance is unique and must be analyzed in light of its own facts.

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V

Purchase Principles and Standards

National Association Of Purchasing Management Principles And Standards Purchasing Practice

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Preamble

The distinguishing characteristic of a profession is the ability to combine ethical standards with the performance of technical skills. In fact, "professional" is described in Webster's New Collegiate Dictionary as "characterized or conforming to the technical or ethical standards of a profession." Webster's goes on to describe "ethic" as "a theory or system of moral values, the principles of conduct governing an individual or group." In order to achieve stature as a profession, the purchasing profession must establish and subscribe to a set of ethical standards to guide our individual and group actions.

These Principles and Standards of Purchasing Practice with Accompanying Guidelines are established to encourage adherence to an uncompromising level of integrity. They are designed to heighten awareness and acceptance of appropriate conduct. They are not intended to supplant company policies pertaining to ethical practice. These Principles and Standards of Purchasing Practice with Accompanying Guidelines are intended to be a model for your consideration. Further, they are recommended as guidelines to all those who influence the purchasing process, such as buyers, engineers, quality control personnel, sales representatives, as well as company presidents.

Our profession must strive to achieve acceptance and adherence to this document by all those who influence that process. The goal has been to convey the principles and standards which our profession considers just, fitting, and correct. An underlying precept is that a member should never use his or her position for personal gain.

Although no set of principles and standards can be all-inclusive, these were established to cover major domestic and international purchasing issues. The same basic issues that apply in domestically also apply in international purchasing. These must include a sensitivity to and consideration of other cultures including the laws, customs, and practices of other nations.

Information contained in this document is intended to provide insight in handling difficult day-to-day issues. Bear in mind that standards and guideline's cannot take the place of good judgment. When in doubt, consult your company mangers, professional colleagues...and your conscience.

Each section of the document contains:

- *A standard statement.*
- *Clarification of the ethical issues con-*

tained in the statement.

- *Practical means of applying the established guidelines.*

1. Perception

Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and relationships.

The results of a perceived impropriety may become, over time, more disruptive or damaging than an actual transgression. It is essential that any activity or involvement between purchasing professionals and active or potential suppliers which in any way diminishes, or even appears to diminish, open and fair treatment of suppliers is strictly avoided. Those who do not know us will judge us on appearances. We must consider this and act accordingly. If a situation is perceived as real, then it is in fact real in its consequences.

The following are recommended guidelines in dealing with perception:

- Situations may occur in which, through uncontrollable circumstances, one finds oneself in a business relationship with a personal friend. The perception (as well as the potential) of a conflict of interest should be discussed with one's superior, and a reassignment of buying responsibility should be considered.
- Business meeting locations should be carefully chosen if environments other than the office may be perceived as inappropriate by the business community or by coworkers.
- Noticeable displays of affection may give an impression of impropriety and should be avoided. Conversation which delves excessively into the realm of personal affairs should be avoided.
- Positive action should be taken to alleviate suspicions or misgivings toward purchasing activities.

2. Responsibilities to the Employer

Demonstrate loyalty to the employer by diligently following the lawful instructions of the employer, using reasonable care and only authority granted.

The purchasing professional's foremost responsibility is to achieve the legitimate goals established by the employer. It is the duty of the purchasing professional to ensure that actions taken as an agent for the employer will benefit the best interests of the employer to the exclusion of personal gain. This requires application of sound judgment and consideration of both the legal and the ethical implications of our actions.

The following are recommended guidelines in dealing with responsibilities to the employer: Understand the authority granted and apply the legal and ethical concepts embodied in the agency relationship with the employer:

- Obtain the maximum benefit for monies expended as agents for the employer.
- Avoid any activities which would compromise, or form the perception of compromising, the long-term best interests

of the employer.

- Promote the concept of competition to reduce the potential for any charges of preferential treatment.
- Ensure exercise of reasonable care by maintaining up-to-date knowledge of applicable laws, purchasing techniques, and management responsibilities.
- Promote the analysis of least total cost, and resist decisions based on more narrow or parochial considerations when considering make-or-buy decisions or inter-company transfers.

3. Conflict of Interest

Refrain from any private business or professional activity that would create a conflict between personal interests and the interests of the employer.

Purchasing professionals have the right to engage in activities which are of a private nature and outside their employment. However, purchasing professionals must not use their positions in any way to induce another person to provide any benefit to themselves, or persons with whom they have family, business, personal, orfinancial ties. Even though technically a conflict may not exist, purchasing professionals must avoid the appearance of such a conflict. Whenever a potential conflict of interest arises, the purchasing professional should notify his or her supervisor for guidance or resolution.

The following are recommended guidelines in dealing with conflicts of interest:

3A. Conduct to be avoided

- Engaging in outside business, or employment by an outside company, which may encroach upon their primary responsibility of loyalty to the goals of their employer, even though there may be no other conflict.
- Engaging in business, or employment by a company, which is in any way competitive with, or in conflict with, any products, activity, or objective of the employer.
- Engaging in business with, or employment by, a company which is a supplier to the employer. Making use of employment with the purchasing professional's company, or association with its products, to further outside business or employment.
- Owning or leasing any property with knowledge that the employer has an active or potential interest therein.
- Lending money to, or borrowing money from, any customer or supplier.
- Using the company name (unless authorized) to lend weight or prestige to sponsorship or a political party or cause, or endorsing the product or service of another company.

3B. Personnel investments

Ownership of stock in a supplier of goods or services, competitor, or customer is not in itself wrong, provided that the interest is solely of an investment nature. However, such ownership should be reported to the employer for review and

guidance to avoid the potential for any impropriety. Indirect interests are considered to be of the same significance as direct ownership where the interest is held by members of the immediate family of the purchasing professional.

3C. Outside activities

Prior approval by the employer should not be required for outside educational, professional, political, philanthropic, social, or recreational activities in which an employee may engage on their own time and at their own expense. Purchasing professionals must not make use of a company position in any of these activities, or permit any association with such activities which might be detrimental to the company's business or reputation.

3D. Conflict of interest statements

Conflict of interest statements, to be completed upon joining a company, and at least annually thereafter, are encouraged. These statements may take the form of a signed reaffirmation to the employer's ethical standards' policies, and/or may encourage the purchasing professional to list and evaluate anything of value accepted from a customer or supplier during the year.

3E. Self-evaluation procedure

Purchasing professionals are expected to perform an annual self-evaluation of their outside interests which have the potential of being at variance with the best interests of their company, or their professional representation of this association.

4. Gratuities

Refrain from soliciting or accepting money, loans, credits, or prejudicial discounts, and the acceptance of gifts, entertainment, favors, or services from present or potential suppliers that might influence, or appear to influence, purchasing decisions.

Gratuities include any material goods or services offered with the intent of, or providing the potential for, influencing a buying decision. As such, gratuities may be offered to a buyer, or to other persons involved in purchasing decisions (or members of their immediate families). Having any influence concerning the purchasing process constitutes involvement. Those in a position to influence the purchasing process must be dedicated to the best interests of their employer. It is essential to avoid any activity which may diminish, or even appear to diminish, the objectivity of the purchasing decision-making process. (See "Perception," page 1.)

Gratuities may be offered in various forms. Some common examples are monies, credits, discounts (including prejudicial discounts which are greater than those commonly given or are artificially created solely as a favor to the purchasing decision-maker), supplier contests, sales promotion items, product test samples, seasonal or special occasion presents (Christmas, birthday, weddings), edibles, drinks, household appliances and furnishings, clothing,

loans of goods or money, tickets to sporting or other events, dinners, parties, transportation, vacations, cabins, travel and hotel expenses and various forms of entertainment. Although it does not occur as frequently, the offering of gratuities by a purchaser to a supplier is as unethical as the acceptance of gratuities from a supplier. Extreme caution must be used in evaluating the acceptance of any gratuities even if of nominal value, and the frequency of such actions (the collective impact) to ensure that one is abiding by the letter and the spirit of these guidelines.

The following are recommended guidelines in dealing with gratuities:

4A. Gifts/Entertainment

Money, loans, credits, or prejudicial discounts are not to be accepted.

The solicitation of gratuities in any form, for yourself or your employer, is unacceptable.

Items of nominal value are sometimes offered by suppliers as a gesture of goodwill, or for public relations purposes. Nominal value should be established in individual company policy, and describes those items which are so insignificant in value that they would not be perceived by the offeror, recipient, or others as posing an ethical dilemma. For purposes of clarification, nominal value should not exceed $25 or the company policy. The occasional acceptance of such items (i.e., edibles, other than business meals, promotional, novelty items) may be justified if refusal would cause undue embarrassment or strain on the business relationship.

Gifts offered exceeding nominal value should be refused, returned with a polite explanation, or if perishable, either returned or donated to a local charity in the name of the supplier.

If concerned that a business relationship may be impaired by refusal of a gift, seek direction from management.

In some circumstances items which could be considered a gratuity in other instances may be a bona fide business activity. In the case of any gift or entertainment, extreme care should be taken to evaluate the intent and the perception of acceptance of such an offer to ensure:

- *It is legal.*
- *It is in the best interests of your employer to participate in such an activity.*
- *It will not influence your buying decisions.*
- *It will not be perceived by your peers and by others to be unethical.*

Product test samples may be offered by suppliers. If test samples exceed nominal value, purchasing should consider issuing a document to cover the transaction. This document should clarify the responsibility for the cost of the samples and should address any obligation for sharing test results with the supplier.

4B. Business meals

Occasionally during the course of business

it may be appropriate to conduct business during meals (either breakfast, lunch, or dinner).

Such meals shall be for a specific business purpose.

Frequent meals with the same supplier should be avoided.

The purchasing professional should be in a position to pay for meals as frequently as the supplier. Purchasing professionals are encouraged to budget for this business activity.

4C. International Purchasing

In some foreign cultures, business gifts, meals, and entertainment are considered to be part of the development of the business relationship and the buying and selling process. Acceptance of business gifts, meals, and entertainment of nominal value may be appropriate in accordance with country customs and your company policies.

In many foreign cultures, business is frequently conducted in the evenings and over weekends, which may be the only time when key executives are available. Under these circumstances, it is understood that purchasers would be expected to accept or provide for meals and entertainment when business matters are conducted. This is typically a more sensitive issue during the initial phase of the business relationship and may be tempered as the relationship progresses.

Reciprocal gift giving of nominal value is often an acceptable part of the international buying and selling process. When confronted with this - when company policy does not exist - an appropriate guide would be to ensure that actions are in the best interest of your employer, never for personal gain.

The definition of nominal value may be higher or lower than U.S. nominal value due to custom, currency, and cost of living considerations and is often guided by the duration and scope of the relationship. The purchasing professional must carefully evaluate nominal value in terms of what is reasonable and customary. When in doubt, consult your company managers, professional colleagues, and your conscience.

5. Confidential information

Handle confidential or proprietary information belonging to employers or suppliers with due care and proper consideration of ethical and legal ramifications and government regulations.

Purchasing professionals and others in positions which influence buying decisions deal with confidential or proprietary information of both employer and supplier. It is the responsibility of the purchasing professional to ensure that such information, which includes information which may not be confidential in the strictest sense but is not generally known, is treated in a confidential manner.

Proprietary information requires protection of the name, composition, process of manufacture, or rights to unique or exclu-

sive information which has marketable value and is upheld by patent, copyright, or non-disclosure agreement. Others in the organization may be unaware of the possible consequences of the misuse of such information. The purchasing professional should therefore avoid releasing information to other parties until assured they understand and accept the responsibility for maintaining the confidentiality of the material. Extreme care and good judgment should be used if confidential information is communicated verbally. Such information should be shared only on a need-to-know basis.

Although some of the categories listed below must be shared with others within the purchasing professional's own company, this should be done only on a need-to-know basis. Information from one supplier must never be shared with another supplier, unless laws and government regulations require that the purchasing professional disclose such information. Laws and regulations must always take precedence over these guidelines. If the purchasing professional is unclear regarding disclosure requirements, an attorney should be consulted. When a purchasing professional learns of costs or profit experience, or other supplier information not generally known, it is the responsibility of the purchasing professional to maintain the confidentiality of that information.

Some examples of information which may be considered confidential or proprietary are:

- Pricing
- Bid or Quotation Information
- Cost Sheets
- Formulas and/or Process Information
- Design Information (drawing, blueprints, etc.)
- Company Plans, Goals, Strategies, etc.
- Profit Information
- Asset Information
- Wage and Salary Scales
- Personal Information about Employees or Trustees Supply Sources or Supplier Information
- Customer Lists or Customer Information
- Computer Software Programs

The following are recommended guidelines in dealing with confidential information:

- If a formal policy concerning confidential information does not exist, purchasing should work with legal counsel to develop one.
- The attitude of the purchasing professional regarding the preservation and proper disbursement of confidential information should be one of vigilance; i.e., divulging information only on a need-to-know basis.
- When transmitting confidential information, document the information in writing, and clearly label it as confidential.
- Consider use of a formal confidentiality agreement (i.e., disclosure or non-disclo-

sure agreements) clarifying parameters for use of the information and responsibilities inherent in its use.

- When dealing with any information, whether or not classified as confidential, extreme care, sound judgment, and integrity should be exercised in determining the effects of its use, and in providing adequate protection based on its content.

6. Treatment of Suppliers

Promote positive supplier relationships through courtesy and impartiality in all phases of the purchasing cycle.

It is the responsibility of the purchasing professional to promote mutually acceptable business relationships with all suppliers. The reputation and good standing of the employer, the purchasing professional and the individual will be enhanced by affording all supplier representatives the same courtesy and impartiality in all phases of business transactions. Indications of rudeness, discourtesy, or disrespect in the treatment of a supplier will result in barriers to free and open communications between buyer and seller, and ultimately in a breakdown of the business relationship.

In addition to courtesy, the purchasing professional should extend the same fairness and impartiality to all legitimate business concerns who wish to compete for orders. It is natural and even desirable to build long-term relationships with suppliers based upon a history of trust and respect. However, such relationships should not cause the purchasing professional to ignore the potential to establish similar working relationships with new or previously untested suppliers.

The following are recommended guidelines for maintaining cooperative relationships with suppliers:

- Establish parameters for bidding, re-bidding, and/or negotiation prior to issuance of a request for quotation or similar document. This will help ensure the procedure allows fair, consistent, and unbiased treatment of each prospective bidder and that the process is understood by them prior to bidding. As a general rule when re-bidding, all initial bidders should be given the same opportunity to re-bid.
- Maintain confidentiality regarding a supplier's prices, terms, or proprietary information. Such information should not be divulged to other suppliers unless required by governmental regulations.
- Avoid unreasonable demands for price cuts, special consideration, or unattainable delivery schedules.
- Achieve a prompt and fair resolution of problems regarding orders, service, or payment of invoices.
- Return telephone messages promptly and courteously.
- A friendly, cooperative, and yet objective relationship extended to all suppliers will help to avoid the appearance of partiality in business dealings.

7. Reciprocity

Refrain from reciprocal agreements that restrain competition.

Transactions which favor a specific customer as a supplier, or influence a supplier to be a customer, constitute reciprocity, as does a specific commitment to buy, in exchange for a specific commitment to sell. However, the true test for reciprocity is in the motive, since the process may be less vague than a written or formal commitment. In any such transactions the additional issue of restraint of trade places both the individual's and company's reputation for fair, competitive procurement and high ethical standards under increased scrutiny. In organizational structures where purchasing and marketing functions report directly to the same individual, the potential for reciprocity may be greater.

Purchasing professionals must be especially careful when dealing with suppliers who are customers. Cross-dealing between suppliers and customers are not antitrust violations. However, giving preference to a supplier who is also a customer should occur only when all other factors are equal. Dealing with a supplier who is also a customer may not constitute a problem if, in fact, the supplier is the best source. However, a company is engaging in reciprocity when it deals with a supplier solely because of their customer relationship. The professional purchaser must be able to recognize reciprocity and its ethical and legal implications.

The following are recommended guidelines in dealing with reciprocity:

- Reciprocity effectively weakens the purchasing function. Purchasing strategy must include a positive effort to oppose any corporate or organizational commitment to any form of reciprocity.
- Purchasing professionals should become sufficiently knowledgeable of the provisions in the antitrust laws to recognize a potential legal problem.
- If a purchasing professional believes the potential for reciprocity may exist, legal counsel should be sought.
- Lists of suppliers should not knowingly be provided to sales or marketing for their use. The purchasing professional should recommend that such a list not be used to avoid the potential legal and ethical problems inherent in such use.
- Reciprocity, due to its potential to restrain trade, is both a legal and ethical issue which may result in legal sanctions against the company, its management, and/or its procurement personnel.

8. Federal and State Laws

Know and obey the letter and spirit of laws governing the purchasing function and remain alert to the legal ramifications of purchasing decisions.

Purchasing professionals should pursue and retain an understanding of the essential legal concepts governing our conduct as agents of our companies.

The following are recommended guidelines for abiding by federal, state, and local laws:

- Interpretation of the law should be left to legal counsel.
- Situations when legal counsel needs to be sought should be identified, bearing in mind that the best use of counsel is in preventive analysis and planning, rather than defense for action-taken.
- The intentional pursuit of loopholes in written law is unacceptable.
- Professional purchasers involved in governmental procurement must understand and apply statues which specifically regulate that particular branch of government.

Some of the laws and regulations which the purchasing professional should be aware of are:

Uniform Commercial Code

The Sherman Act

The Clayton Act

The Robinson-Patman Act

The Federal Trade Commission Act

The Federal Acquisition Regulations

The Defense Acquisition Regulation

Patent, Copyright, and Trademark Laws

OSHA, EPA and EEOC Laws

Foreign Corrupt Practices Act

United Nation's Convention on Contract for the International Sale of Goods (UNCISG).

9. Small, disadvantaged and minority-owned businesses

Encourage all segments of society to participate by demonstrating support for small, disadvantaged, and minority-owned businesses.

It is generally recognized that all business concerns, large or small, majority- or minority-owned, should be afforded an equal opportunity to compete. Adhere to all applicable laws and regulations. However, most government entities and many corporations have developed specific guidelines and procedures to enforce policies designed to support and stimulate the growth of small business and those owned by minorities or other disadvantaged groups. Such businesses are dependent for their survival and expansion upon being given the opportunity to compete in the marketplace with their larger competitors.

The following are recommended guidelines for support of small business and those owned by minorities and other disadvantaged groups:

- Adhere to all applicable laws and regulations.
- Actively strive to attain corporate and/or government policies and goals regarding purchases from small businesses and those owned by minorities and other disadvantaged groups.
- Participate in local and/or national organizations whose purpose is to stimulate growth of these entities.

- Seek new sources of supplies and services.
- If in a supervisory position, encourage employees to support small businesses, minority-owned, and those owned by other disadvantaged groups.

10. Personal Purchases for Employees

Discourage purchasing's involvement in employer-sponsored programs of personal purchases that are not business related.

The function of purchasing is to supply the material requirements of the employer. Personal purchase programs divert organizational resources which dilute the effectiveness of the purchasing function. In certain states, trade diversion laws prohibit personal purchases for employees when such materials are not manufactured by the employer or required for the health or safety of the employee.

There are incidents where personal purchase programs are justifiable as in the instance of work-related safety gear, hand tools, and computer hardware or software for business-related work performed at home.

If management decides to establish such programs, the following are recommended guidelines in dealing with purchases for employees:

- Avoid using employer's purchasing power to make special purchases for specific individual's non-business use.
- If personal purchase programs exist, the purchasing professional should make certain that the arrangements are fair to suppliers, employees, and employers, and the programs are equally available to all employees.
- Use caution to ensure employer-sponsored programs do not force special concessions on the supplier.
- If such programs are used, the supplier should be made aware that such purchases are not for the employer, but for the employees.

11. Responsibilities to the Profession

Enhance the proficiency and stature of the purchasing profession by acquiring and maintaining current technical knowledge and the highest standards of ethical behavior.

Purchasing professionals have an obligation to master the basic skills of the profession, as well as keep abreast of current developments in the field.

It is equally imperative that purchasing professionals reflect those same standards through their combined actions in professional groups or associations. Since the activities of groups are highly visible, attention needs to center on actions taken as a group. Each individual member of a group should consider it an obligation to support only those activities which uphold the high ethical standards of our profession.

The following are recommended guidelines in dealing with responsibilities to the profession:

- Support the development, recognition, and application of technical and ethical standards.
- Achieve and maintain technical knowledge through continuing education and certification.
- Support professional development and interchange of ideas through membership in professional organizations.
- Actively seek change in established ethical standards when technology or environment may make reassessment necessary.
- Group or association leadership should ensure that all policies, practices, programs, and activities continue to be relevant to the objectives of the group, consistent with majority desires, and in the best interests of our profession.

12. International Purchasing
Conduct international purchasing in accordance with the laws, customs, and practices of foreign countries, consistent with United States laws, your organization policies, and these Ethical Standards and Guidelines.

Purchasing professionals must be particularly cautious when operating in the international arena. Numerous customs are different from those in the United States, but the differences are only of a relative degree rather than basic differences in kind. Although important in all business dealings, international business transactions dictate a need for a knowledgeable, common sense approach, with close scrutiny to the intent of each party's actions.

The following are recommended guidelines dealing with international purchasing:

- Be especially sensitive to local laws, customs, and cultural differences.
- Utilize your company management chain of command, company counsel, and other available resources for guidance whenever you are uncertain of actions to take.
- When confronted with issues such as facilitating type payments (e.g. to low level government employees) which may be permissible in certain circumstances, be guided buy or company policy and by the Foreign Corrupt Practices Act which species such payments must be of ministerial or administrative nature.
- Recognize that, in most foreign countries, United States laws are not applicable. Therefore NAPM's "Reciprocity" and "Small, Disadvantaged, and Minority-owned Businesses" Standards and Guidelines may not apply, nor will United States laws afford protection to cover agreements with firms in other countries.

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Acknowledgement

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