



Power-Motion Technology Representatives Association

FOCUS

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President's Perspective

by Mark S. Tsatsos, House of Motors, Inc., Golden Valley, MN, PTR A President

If you recently paid your PTR A membership dues for the upcoming year you probably noticed an increase over last year's dues. In fact, this is the first increase in PTR A dues in over ten years, and to be honest we had fallen a little behind in sustaining our Association without losing money.

However, there is more to the increase in your dues than just maintaining the status quo. We made a decision earlier this year to ask the professional folks at MANA (Manufacturers' Agents National Association) to take over the responsibility of managing our Association. As a result, we now have access to the experience and talents of a much larger and vastly more experienced association management team, including several folks on the MANA executive staff with CPMR credentials and/or many years of management of successful manufacturers' representatives firms.

In addition to the many professional benefits of membership in PTR A you have enjoyed so far, we are adding the following new benefits for our members:

- A free one-year subscription to *Agency Sales* magazine and an opportunity to continue the subscription at half price following the free year. (I personally think this is the best trade journal for running my business I have been exposed to.)
- Automatic invitations to local and regional rep trade association meetings throughout North America.
- Automatic invitations to attend

MANA educational seminars for representatives at sister association prices.

- Automatic invitations to Allied Members to attend MANA manufacturer seminars at sister association prices.

• New links on the PTR A web site to rep trade association meeting and seminar schedules.

- A new link on the PTR A web site to the MANA Special Reports order form, a compilation of the very best special reports, books, and Agency Sales articles dealing with the business of manufacturers' representatives and the suppliers who use them.

• Periodic mailing of new reports and position papers dealing with the hot issues of our business, developed by PTR A and/or other representative trade associations.

- Member Counseling — The experienced executive staff at PTR A headquarters are available by telephone, email, fax, letter, or even personal visit for business and interrelationship counseling with both Active and Allied Members.

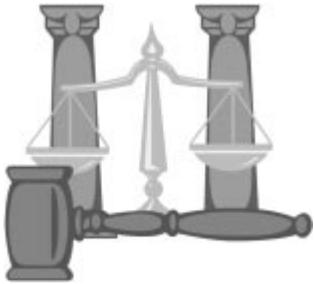


Mark Tsatsos
PTR A President

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Non-Compete Clauses

by Mitchell A. Kramer, PTRS General Counsel



We have all heard urban myths — crocodiles attacking people in sewers, Jimmy Hoffa under Giant's Stadium. They sound real, but they are not. The distribution industry has such an urban myth. The myth is that non-compete clauses in representative contracts can be ignored because they do not mean anything. That myth is false. In almost every state, a tightly drawn non-competition agreement will be enforced by the courts. Even if the non-compete requirements are overly broad, the courts, in many states, will narrow them in order to enforce what the court feels is proper.

If you are sued to enforce a non-competition agreement, even if you win, and it is quite likely that if the facts are against you, you will lose, your legal fees will be very high. Even worse, if you have signed a broad agreement not to compete after you cease representing the manufacturer, it is probable that other manufacturers that have even one overlapping product, will not engage your company. Such principals will be more concerned with defending a claim for tortious interference with contract than they will be anxious to name you as its representative.

Non-competition provisions in representative contracts come in many forms. Does the non-compete provision end when your representation ends? If so, so long as you are only prohibited from carrying products that compete with what you are selling in only the geographic area in which you are selling them, such restriction is usually acceptable. Except in unusual cases, an agent is comfortable agreeing not to compete with products it sells for its principal in the territory in which it represents the principal.

Post-termination non-competition agreements are another matter. Almost any time one loses a line and begins representing a competing line, it will lose a certain percentage of its business. If the representative is out of the market for any length of time, it is much more

difficult to hold onto customers.

Our clients have generally been successful in eliminating post-termination non-competition agreements. Manufacturers sometimes will insist on retaining post-termination non-competition agreements when its representative is terminated for cause. But before the contract is signed, most manufacturers will agree to not have non-compete provisions, if the contract is terminated by the principal or not renewed. Certain states, such as Pennsylvania, have decided that when an employee is fired, a post-termination non-competition provision will not be enforced. The reason for this rule is that if the employee is not worth keeping the employer does not need protection from him. It is likely that the same rule would apply to sales agents. It should be emphasized, however, that most states have not adopted such a rule.

California is the only state, as of now, that has a law that prohibits post-termination non-competition agreements in virtually every case (there are certain exceptions, such as where the company is sold and the sellers are prohibited from competing with it).

The treatment of non-competition clauses varies widely from state to state. Some states have laws governing limitations on competition. All states have court decisions dealing with such issues and the decisions vary widely, both from state to state, and often from court to court within a state. Most non-competition issues that get to court result from the filing of an injunction action by the principal. An injunction is a request to the court to stop certain activities or to force one to do something. These are always cases in equity which means that they are always tried by a Judge without a jury.

Preliminary injunctions, that is, a request to stop something that is imminent, are often tried by the court within days or weeks after the lawsuit is

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Junk Fax Legislation

The recently-passed U.S. Senate Bill (S714) eliminates the need for businesses to get written permission to send faxes to companies with which they have an established business relationship (EBR). A regulation of the FCC requiring this written permission and detailed recordkeeping of these "permission slips" was about to take effect on June 30, 2005.

The term "established business relationship" meant a prior or existing relationship formed by a voluntary two-way communication between the sender and recipient with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the recipient regarding products or services offered by the sender, which relationship has not been previously terminated by either party. There was no time limit on the duration of the established business relationship.

S 714 in no way weakens your right to file complaints against those businesses that send you junk faxes where you have no EBR with that business, nor may you send junk fax solicitations to companies with which you have no EBR.

Passage of this bill means you will not have to seek written permission from your customers, vendors, principals or reps to send them faxes and keep records of their responses.

There are however, some restrictions if your fax to a company with which you do have an EBR is an advertisement, as opposed to normal business communication.

All unsolicited advertisement faxes must have an opt-out notice.

- The notice must be clear and conspicuous and on the first page of the unsolicited advertisement.
- The notice must state that the recipient may make a request to the sender of the unsolicited advertisement not to send any future unsolicited advertisements to a telephone facsimile machine or machines and that failure to comply, within the shortest reasonable time, (the

FCC is charged with the responsibility of establishing what is a reasonable time) with such a request is unlawful.

- The notice must include the legal requirements for how the recipient must make the opt-out request. Those requirements are that the request identifies the telephone number or numbers of the facsimile machine or machines to which the request relates; the request is made to the telephone or facsimile number of the sender of such an unsolicited advertisement and the person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine.
- The notice must include a domestic contact telephone and facsimile machine number for the recipient to transmit such a request to the sender and a cost-free mechanism for a recipient to transmit a request.
- The telephone and facsimile machine numbers and the cost-free mechanism must permit an individual or business to make such a request at any time on any day of the week.

Finally, the opt-out notice must comply with the other requirements of current law, which requires that any unsolicited fax being sent contain in the margins at the top or bottom of each page the date and time the fax was sent, the identification of the sender of the message, and the telephone number of the sending machine.

Current fax lists are grandfathered from the rules regarding how and from where the sender obtained the fax number. You can send an unsolicited advertisement, which is sent based on an established business relationship with the recipient that was in existence before the date of enactment of the Junk Fax Prevention Act of 2005, if you possessed the facsimile machine number of the recipient before the date of

PTRA Mission Statement

The Power-Motion Technology Representatives Association (PTRA) is an association of independent manufacturers' representatives and manufacturers dedicated to promoting the sales representation (rep) function in the power transmission and motion control industries. PTRA will strive to offer all members opportunities for education, information exchange, networking with other reps and manufacturers, plus an array of quality services designed to improve career performance and professional stature.

Let PTRA call attention to your successes, growth and changes! Send in the enclosed Quick Report Form at anytime and we'll include your news in the next edition of FOCUS. Or, send us an e-mail: info@ptra.org.

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New Rules For E-mail Marketing And Communication



The new rules for e-mail marketing may impact the way you currently use e-mail for marketing to and communicating with your customers. P.L. 108-187 has had the unintended consequence of restricting how businesses use electronic mail to advertise to their customers. When it first passed, most people assumed that the law would apply only to “consumers” because the main focus of the rhetoric surrounding the legislation was pornographic material and unsolicited e-mails from businesses targeting consumers. However, the Federal Trade Commission (FTC) regulations that have been issued apply to business-to-business communications, as well.

What’s my bottom line, you ask?

Given the potential for an FTC suit, you may want to consider the following:

1. A statement that can be seen on the first screen that your message is indeed an ad or solicitation to sell.
2. Add a “no more e-mail” opt-out message at the bottom of your e-mail.
3. Include your current physical address after the opt-out message.

These suggested statements can be facilitated by a macro that you automatically key into any marketing or advertising e-mails that you send, so this may not place an additional burden on your marketing budget.

If you have any specific questions about your obligations under this law, please consult with your own attorney or PTRAs legal counsel. ▲

President’s Perspective

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All the above are all new member benefits. They are additions to the long-standing reasons that your company is and remains a member of PTRAs. These traditional member benefits include:

- Our Outstanding Annual Conference — attended every year by over half of our Active and Allied members (see the conference announcement on page 5).
- Our Printed Member Directory — distributed annually to over 500 North American and international industry professionals
- Our Online *Locator* — helping Allied Members locate prospective representatives and Active Members look for additional manufacturers to represent.
- The Lines Available Section of our Web Site — where Allied Members can place targeted ads for immediate representation requirements.
- Sample Contracts — Sales Representative Agreement, Employment Agreement, and Sub-Representative Agreement, prepared by PTRAs Legal Counsel, Kramer & Kramer, LLP.

- Access to Legal Counsel — brief consultation at no charge with our Legal Counsel, Mitchell Kramer; or upon request, personal counsel from someone who understands our business, and our unique needs.
- Your Web Site — web site design, maintenance and hosting by PTRAs Webmaster, Creative Cyberservices, who understand our business.
- Insurance — avenues to group medical, group life, dental and disability insurance through the experts at RepCare, who also understand our business.
- Plus — access to the MRERF CPMR program, legislative advocacy, our quarterly *Focus* newsletter, and recognition as a professional in a circle of professional specialists.

PTRA membership is an investment with quick return if you choose to take advantage of the many benefits of membership. Thank you for your continued support. **Block off April 26-29 on your calendar now for our 2006 Conference in Cancun!** ▲

Members' News

The WRISCO Agency has officially changed its name to **Smith Industrial Group, Inc.**, effective June 1, 2005. Charlie Smith, president, purchased the WRISCO Agency on January 1, 2005, after 18 years as a sales rep and later sales manager.

Smith Industrial Group will continue to provide experienced sales representation in the Ohio, Michigan, Indiana, Kentucky, western Pennsylvania and Upstate New York markets. For more information visit their new web site: www.smithindustrialgroup.com or e-mail Charlie Smith at: charlie@smithindustrialgroup.com.

N.O. Holder & Associates, Inc., Greenville, South Carolina, announced that Keith Mosley joined the organization as an equity partner on April 1, 2005. Mosley brings 24 years experience in the motion control industry. He has opened an office in Rocky Mount, North Carolina and will cover eastern Virginia and eastern North Carolina. Keith Mosley and his wife Elizabeth are the proud parents of three boys.

Please welcome the Mosleys to PTRAs and plan on meeting them in Cancun in 2006. He'll be the guy with the big fish!

Hilco, Inc. has made the decision to add four to five applications engineers to the Hilco sales team. These application engineers will be located throughout Hilco's territory in an effort to bring more value-added service and support to their outside sales engineers, distributors and customers.

Craig Catlett has been hired as the first Hilco applications engineer. Catlett comes to Hilco with 20+ years of knowledge and experience in the automation field. Catlett's office will be located in Chattanooga, Tennessee.

Chris Bernard has joined the Hilco sales team where he will be covering south Georgia. Bernard comes to Hilco with a solid track record of success in south Georgia. His experience and knowledge in the field have equipped him to serve the needs of Hilco's distributors and customers. Bernard is located in Douglas, Georgia, which is centrally located in his area of responsibility. ▲

Welcome, New PTRAs Members

Active Members:

Bond Canada

Mississauga, Ontario
Greg Stephen
(416) 252-8421

R.L. Matus & Associates

Waxhaw, North Carolina
Doug Hall
(704) 243-2960

RPM Midwest Sales

Addison, Illinois
Mike Miller
(630) 458-9511

Allied Members:

IDC Industries

Warren, Michigan
Paul Anglin
(586) 427-4321

Servo Dynamics

Chatsworth, California
Mike McWilliams
(818) 700-8600

34th ANNUAL PTRAs CONFERENCE

April 26-29, 2006

CasaMagna Marriott Resort
Cancun, Mexico

Chairman: Jay Holder, CPMR

N.O. Holder & Associates, Inc. • Greenville, SC
jay@noholder.com • (864) 244-8854

Mark your
calendars
NOW!

Non-Complete Clauses

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filed. There have even been cases where a party has gone into court without the other party being present, or even given notice, and gotten a temporary restraining order, that is, an order stopping a party from doing something. Such an order generally is only good for 10 days and within that 10 day period, the court will have a hearing on a preliminary injunction. Even though there is a procedure for a full trial on a permanent injunction, in non-competition cases the decision on the preliminary injunction is usually the end of the case. By the time the case would come to trial, the time for the non-compete to run is probably over.

You need a sharp eye to read a non-competition clause in a contract and figure out what it is that you are being asked to sign. Such contracts deal with products, territory and length of time.

On products, are you being asked to not compete with the products that you are selling or with all products manufactured by the company that you are representing? On territory, are you being asked to refrain from competing in the territory in which you represent the manufacturer or are you being asked to refrain from competing in a broader area? Are you being asked not to sell to customers to whom you sold for the principal, or is the non-compete restriction something else? On the issue of time, are you being asked to refrain from competition while you represent a manufacturer and also after you represent the manufacturer and, if so, for how long

after you stop representing the manufacturer?

The trade secrets provisions of representative contracts play into the non-competition area, but are usually somewhat less important. You should be aware, however, that sometimes a non-competition provision can be snuck into a trade secrets provision.

If a manufacturer comes to you with a substantial bank of business, it may not be unreasonable, if you resign the line, to require you not to compete for a few months so that the manufacturer can fill your company's slot and have sufficient time to hold onto the business. It is quite another thing if a manufacturer, with no business, engages you to represent it, reaps the benefits of your successful market penetration, terminates you, and then has the right to keep you from competing.

As with many areas of your business, considering how to deal with a contract that is offered to you which includes restrictive covenants requires business judgment, negotiation and probably legal advice.

Our law firm is now seeing more and more contracts offered with one and two year post-termination non-competes. We are also beginning to see the effect of such contracts on companies that have recently been terminated by manufacturers that have gone direct or have sold out to larger companies.

The whole area of non-competition with principals is one fraught with danger for the future success of your business. It should be treated as such. ▲

Junk Fax Legislation

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enactment. The fax, however, must include the opt-out notice.

Congress has given the FCC discretion to decide whether to impose time limitations on how long a sender can rely on the initial contact that created the established business relationship.

With respect to providing the cost free method of opting out, Congress has granted the FCC authority to exempt classes of small businesses from that requirement if it decides the cost of providing a cost-free mecha-

nism is unduly burdensome.

Members should keep in mind that it is still unlawful to send advertisement type faxes to prospective customers or clients with which they do not have an EBR.

As a result of the above, it would seem that the safe thing to do when sending business faxes would be not to send blast faxes to companies with which you have no established business relationship (unless you have their permission). ▲

Choosing The Right Rep Or Principal



Selecting And Evaluating Your Sales Channel Partners



There's nothing worse than finding out six months down the road you made a wrong choice in signing up your sales partner, right?

Or maybe you've been working with a manufacturer (or a rep) for several years already and the relationship sometimes works, but most times just doesn't quite make it.

Sound familiar? Then the MANA fall 2005 seminar program might just be the ticket for you.

This program is designed for professional sales companies and manufacturers. Both reps and principals bear responsibility for making sure there exists a strong potential for a mutually profitable long-term relationship before signing on the dotted line, and both sides need to face up to reality when an existing relationship is marginal. The cost to both sides resulting from a bad relationship is unacceptable in today's competitive environment.

The question is, what criteria do professional sales companies and manufacturers use in selecting or evaluating sales partners? Do you use criteria or have a formal template to evaluate a prospective or existing partner? Would it be helpful to know what your prospective channel partner expects from you today?

That's what this seminar is all about — you will learn during interactive sessions what's important to each side of the relationship. Then you can use this information, not only in evaluating a potential partner, but to put your best foot forward during the interview process and the ongoing relationship. That's why we are offering this seminar to both professional sales companies and manufacturers. You will learn from each other and from a MANA executive who will facilitate the program.

Improve your profitability by learning to select the correct sales partners.

Price:

- \$59 for PTRA members, this session will bring a substantial return.

CPMR? Earn 0.4 CPUs.

Cancellations: Full refund if cancellation is received five business days prior to the seminar.

Location

Date

Santa Ana, CA	Monday, August 29
Milwaukee, WI	Monday, September 12
Edmonton, AB	Tuesday, September 27
Rochester, NY	Friday, September 30
Montreal, PQ	Monday, October 3
Hartford, CT	Friday, October 7
Newark, NJ	Monday, October 10
Philadelphia, PA	Thursday, October 13
Indianapolis, IN	Friday, October 14
Chicago, IL	Tuesday, October 18
Toronto, ON	Tuesday, October 25
Cleveland, OH	Wednesday, October 26
Detroit, MI	Thursday, October 27
Minneapolis, MN	Friday, October 28
Cincinnati, OH	Friday, November 11
Oakland/	
San Francisco, CA	Monday, November 21

Go to www.MANAonline.org, click on "Education/ Seminar" and "Agent Seminars" for more information or call MANA toll-free at **(877) 626-2776**

Calendar Of Events

September 13-16, 2005

MRERF Skills for Sales Success (for Active Members), Chicago Area

September 20-22, 2005

Keystone 2005 — “Many Industries — One Profession” (for Active Members), Louisville, KY

September 29, 2005

MANA Rep Sales Force Management (for Allied Members), Chicago Area

October 18-20, 2005

PTDA Industry Summit Bally's Las Vegas, Nevada

October 19, 2005

MANA Starting from Scratch Seminar (for Allied Members), Chicago Area

October 20, 2005

MANA Do-It-Yourself Marketing (for Allied Members), Chicago Area

November 15, 2005

MANA Rep Sales Force Management (for Allied Members) Baltimore, Maryland

January 8-12, 2006

MRERF CPMR Certification Program (for Active Members), Phoenix, AZ

PTRA Code Of Ethics

The position of the representative is unique as the liaison between the distributor, the customer, and the manufacturer represented. Therefore, I believe it to be my responsibility:

- To hold my business in high esteem and strive to maintain its prestige.
- To keep the needs of my distributors always uppermost.
- To respect my distributors' confidence and hold in trust personal information.
- To render continuous service to my distributors, customers, and manufacturers.
- To employ every proper and legitimate means to persuade my customers to use the proper equipment for the application, if known, but to rigidly adhere to the highest standards of business and professional conduct concerning these recommendations.
- To present accurately, honestly, and completely every fact essential to my distributors' and customers' final decisions.
- To perfect my skills and add to my knowledge through continuous thought and study.
- To conduct my business on such a high plane that others emulating my example may help raise the standards of our vocation.
- To keep myself informed with respect to my manufacturers' policies, rules, and regulations and observe them in both letter and spirit.
- To respect the prerogatives of and cooperate with all others whose services are constructively related to ours in meeting the needs of our distributors and customers.

2005-2006 Board of Directors

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