



# FOCUS

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## Selling: The Most Vital Person In The Process

by Joel Casaubon, PTR A President

In an effort to bring you some new content, I thought it might interest some of you to hear about a personal experience regarding the sales process. At first glance, it may seem like this experience is directed more at the rep side of the association, but in reality it applies to all companies who have something to sell, whether you sell through reps or through your own direct sales force. Anyway, I hope you can relate to this experience as I did.

Many years ago while taking a "sales skills" program, I was asked by an instructor, "what or who is most important in the selling process?" The three choices are the product, the customer or the salesperson.

First, we should never doubt the need for having a product advantage. To earn the sale, we must be able to defend the cost of the product relative to the benefits of ownership. So product is definitely important.

The customer is the next choice. Obviously, the customer is important, because he or she is the revenue source, and ultimately the one who needs to be satisfied in order for you to run a successful business.

However, a strong argument can be made

that the salesperson is actually the key element in the sales process. Although you must have all three present for the sales process to be successful, the salesperson's role is the most important.



Joel Casaubon

The salesperson's role is much like that of an orchestra conductor. The orchestra has a lot of instruments that all make a lot of noise, but the conductor pulls it all together and makes music.

The salesperson, like a conductor, brings a project or sale together with the right product, budget, selection and solutions, insuring proper application and resulting in (hopefully) a satisfied customer.

To make a successful sale, it is most important to sell yourself first. I know we all do this because if we didn't, we wouldn't still be here. So as a salesperson, you should never sell yourself short, because it is you that is the critical piece of the sales process. ▲

### Counseling Service

PTR A's association headquarter's staff has experience on both sides of the desk — manufacturing management and sales agency management. These people are available for counseling on agency-principal issues and agency management issues at no charge.

PTR A's toll-free number is (888) 817-7872.

# 2008

## Another Great PTRA Conference Is In The Works! (April 16-19, 2008)

by Gord Jopling, Conference Chairman



Gord Jopling

Start planning now to attend one of PTRA's best conferences ever! The conference program will see some of our enjoyed traditional sessions with a few added wrinkles. We've lined up some interesting and provocative speakers, and we'll again have some breakout sessions with useable and practical take-home ideas. In it's third year, and back by popular demand, (with a few requested changes) are the principal-rep meeting/interview sessions — be sure to set your times up for meetings to make the most of the opportunity.

We will of course continue our traditional golf tournament. We're also working hard on a modified Fun Run/Walk. A Run/Walk with a purpose — A Run/Walk for Cancer! We'll have our traditional dine-arounds, and some free time to enjoy the exhilarating Monterey Bay environment. This year we have been able to solidify a wonderfully unique experience for the final soirée — a private evening at the Monterey Bay Aquarium; see Linda McKee's write-up below.

To make the most of the conference, be sure to arrive by Wednesday afternoon, and plan to join us for the closing banquet on Saturday evening. All in all, this will be a PTRA conference that you will never forget! (Unless of course you forget to block the dates, April 16-19, 2008). We look forward to seeing you there! ▲



## Private Evening At The Monterey Bay Aquarium To Round Out 2008 Conference

by Linda McKee, PTRA Conference Planner

**We could not have chosen a better location for our 2008 Annual Conference — Monterey, California!**

Monterey Bay, Fisherman's Wharf, historic downtown Monterey, Cannery Row — all are within walking distance of the Portola Plaza Hotel, host of the 2008 conference. Add to that Seventeen Mile Drive, world-class golf, shopping in nearby Carmel-by-the-Sea, winery tours, and last but not least, the world-renowned Monterey Bay Aquarium.

Conference Chairman Gord Jopling is putting together another great PTRA educational and networking program with some interesting new wrinkles. And to cap off the conference we will have our own private closing banquet at the Monterey Bay Aquarium! What could be better than eating and strolling around this fantastic aquarium in a sea of tranquility and beauty? Aquarium staff will be available throughout the evening to answer your questions and help you take full advantage of this unique experience.



Linda McKee

Please mark your calendars and save the dates — Wednesday, April 16 through Saturday, April 19, 2008. We do not want you to miss a single minute of the 2008 PTRA Annual Management Conference. ▲

# Mark your calendars now for the 36th Annual PTRA Conference

April 16-19, 2008

Portola Plaza Hotel • Monterey Bay, California



## Preliminary Schedule — 2008 Conference

### Wednesday, April 16

Afternoon Arrivals and registration  
Evening Welcome reception

### Thursday, April 17

Morning Conference program  
Afternoon Principal-rep meeting/interview sessions  
Evening Dine-arounds at great Monterey restaurants

### Friday, April 18

Morning Conference program  
Afternoon Golf/free time  
Evening Dine-arounds at more great restaurants

### Saturday, April 19

Morning Conference program  
Afternoon Free time  
Evening Closing banquet at the Monterey Bay Aquarium



## Non-Competes — A Growing Danger

by Mitchell A. Kramer, General Counsel to PTRAs



Mitchell A. Kramer

**In the past year, I have both written and spoken on the issue of post-termination non-competition agreements in manufacturer-rep contracts. This is a growing problem, and every member of PTRAs should be keenly aware of it.**

A large percentage of agreements offered to reps by manufacturers in our industry, and in other industries, contain, somewhere in the contract, a provision that at the end of the relationship the rep will not carry competing lines for a substantial period of time. Most of the agreements that I see have one- or two-year post-termination non-competition provisions.

Signing such an agreement can have a catastrophic effect on your business. In most states, courts will enforce such agreements and stop the rep from violating it. More and more manufacturers are, in fact, suing to enforce such agreements. In my review of cases of this type, courts rather freely enjoin the rep from carrying competing lines during the non-competition period. Judges tend to see these cases as ones between one business and another business. They tend to feel that businessmen can make a rational decision as to whether or not to agree on a particular provision in their contracts and so the courts will enforce those provisions.

We have seen manufacturers offer new contracts with such provisions even when the rep already has a contract in effect. In some cases, we have found that the manufacturer is attempting to sell its business. Having non-competition provisions with its reps, coupled with contracts that can be terminated without cause, make a manufacturer more saleable. The manufacturer sells its business, terminates its reps and the acquiring company either puts its own sales force in place or hires the rep's salespeople to represent it. In such situations, the rep faces loss of its business because its salespeople may leave. If you are sued by a manufacturer to keep you from competing with it, the cost of defense, whether you win or lose, can easily run between \$50,000 and \$150,000.

Having well-crafted non-competition agree-

ments with your own salespeople may avert a manufacturer stripping you of your business. We recently had a case in which a manufacturer actually sued the rep to enforce its post-termination, non-competition agreement while at the same time attempting to hire the rep's salespeople despite the fact that they had signed a non-competition agreement with the rep.

The second problem with post-termination, non-competition agreements, even if no suit is filed, is that other manufacturers may be afraid to engage you during your non-competition period. A manufacturer that signs you on in the face of an agreement not to compete faces being sued by your ex-principal for tortious interference with its contract with you. We have seen a number of cases of this type brought recently.

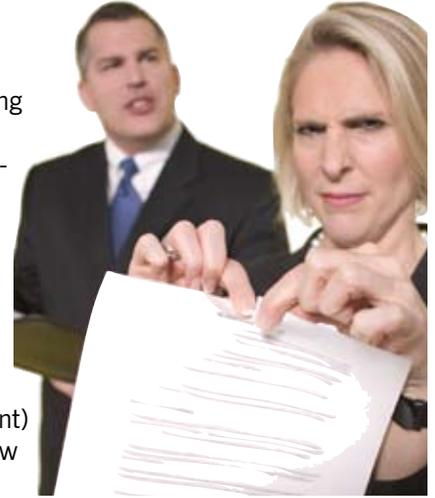
In negotiating rep contracts, I have found that many manufacturers will eliminate the post-termination, non-competition provisions if pressed. I have had other situations where manufacturers have agreed to pay the rep a substantial sum of money if it enforces the non-competition agreement. In almost all cases, we have been able to compromise the post-termination, non-compete so that it is only enforceable if the rep voluntarily quits the relationship or violates the contract and therefore is terminated for cause. If the manufacturer terminates the rep without cause or the contract simply expires at the end of its term, almost all manufacturers have agreed that in those circumstances there will not be a post-termination, non-competition agreement enforced.

My advice generally is never to sign a post-termination, non-compete agreement that could put you out of business. As an aside, you might request and get a clause in your contract that says that you will not hire the manufacturer's people and the manufacturer will not hire your people at the end of the relationship.

We recently did negotiate a contract with a one year post-termination, non-compete. However, in that case we negotiated an enforceable seven year contract with the manufacturer that was turning over an enormous book of business, creating a situation where my client, at the end of the relationship, will not need to have a competing line in order to support himself. But such situations almost never occur in the real world.

I urge all PTRA members, when they are offered a contract with a new manufacturer

or a replacement contract with an existing manufacturer, to look carefully at that contract to see if there is a post-termination, non-competition agreement. These can be phrased in an obvious way or may be phrased to prohibit the rep from contacting its prior customers for a period of time. In any event, study the contracts offered to you very carefully to see what you are being asked to sign. And, as we (and PTRA management) always recommend, have a lawyer review all contracts for your company. ▲



## 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.**

## Independent Contractor Classifications

Manufacturers who use reps, and reps who use independent contractor sub-reps, it's time to buckle your seatbelts. The IRS is clearly increasing the number of employment tax audits. It appears the IRS is using the traditional 20-point common law test to examine worker classifications. In the mid-1990s, the IRS issued a training manual for its examiners that changed the emphasis to three general themes. As the IRS returns to a more traditional analysis, the form SS-8 will emerge again as a critical tool in the process. Both the individual, who is either an employee or independent contractor, and the business owner, who might be either the employer or the payor of the independent contractor, would complete the form depending on how the IRS decides to rule.

In addition, the IRS has successfully established information-sharing relationships with States' agencies for various programs, such as unemployment compensation and workers' compensation, and with the federal Department of Labor. As a result, issues raised in any of these forums will be more likely to be questioned by the IRS as well.

## Nexus? Nexus!

For decades, the States have sought to increase the amount of use taxes collected and remitted by out-of-state manufacturers for the sale of goods. The Supreme Court has ruled that, unless Congress acts otherwise, the States could not impose a requirement on out-of-state sellers to collect and remit the use taxes unless the seller had a physical presence in the state. A connection referred to as the “nexus.”

As a result, many States have turned to income or franchise (in this context, franchise means “right to do business”) taxes. For such taxes, States have attempted to use a broader definition of “nexus” that involves a “significant economic presence” rather than a physical presence; in another words, a tax on “doing business” in the state.

In the two cases before the U.S. Supreme Court, the business taxpayers were challenging the definitions of nexus used by West Virginia and New Jersey. Among the arguments used by the business taxpayers were that the earlier sales and use tax nexus decisions should apply to the income and franchise taxes as well, and that there should be one consistent standard.

By declining to hear the cases, the U.S. Supreme Court is saying the narrower definition of nexus does not necessarily apply to these other taxes, and that the States can use different standards. The decision by the Supreme Court not to hear the cases will send a signal to the States to be even more aggressive. It also means that there is no easy answer to the question what constitutes “doing business” for taxation purposes. The existence of a factory sales office, a rep sales office, or even a sales activity (employee or rep) has been considered sufficient grounds in some States to aggressively pursue these “right to do business” taxes. ▲

## Lines Available

### Performance Controls, Inc.

151 Domorah Drive  
Montgomeryville, PA 18936  
www.pcipa.com

#### CONTACT

Perry Walraven, Sales Manager  
(215) 619-4927, fax (215) 619-4999  
E-mail: mpwalraven@pcipa.com  
or sales@pcipa.com

#### TERRITORIES OPEN

North America.

#### PRODUCT DESCRIPTION

DCD and ACD line of battery powered motor drives for AC/DC motors. Also high performance, high bandwidth power amplifiers. Includes “special” or “custom” motor drives and motion controls at “off the shelf” prices. DC or AC input 24-2200 V.

#### TARGET MARKETS

OEMs and project managers in scientific, medical, industrial, government contract or subcontract, especially where high performance and reliability are important to the customer.

## Member News

**Mahx F. Linster, Inc. (MFL)** is proud to announce the acquisition of **Ferguson Sales Company**, a leading manufacturers’ rep firm with offices throughout the Southeastern U.S. While there are numerous benefits to this acquisition, the most important aspect is that MFL has been able to add three experienced salespeople in key areas of its territory.

Tom Ferguson founded Ferguson Sales in 1994 after serving 15 years as vice president of Industry Machinery Systems, a power transmission rep firm out of New Orleans. He brings a total of 35 years of experience in the power transmission, bearing and material handling industries to MFL.

Kristian (Kris) Ferguson has been a salesperson with Ferguson Sales since its inception. During his 13 years with the company, he has handled territories in Louisiana, Mississippi, Alabama and Georgia. Recently he has been covering the state of Florida.

Ken Fuqua, during the last two years, has handled the Mississippi and Alabama territories for Ferguson Sales. Prior to that he spent 15 years with Motion Industries serving in various positions from inside sales, operations manager and outside sales.

### “Lines Available” Communication To Reps

Principal Members of PTRA may announce their interest in recruiting reps through our **Lines Available** service.

For more information and an application go to:  
**www.ptra.org**

## Member News

**QM Bearings** is happy to announce the addition of Scott Hatfield as regional sales manager for central Canada. Hatfield has over 20 years of experience in the bearing and power transmission industry for both distribution and manufacturing. Hatfield will be based out of Edmonton, Alberta.

In addition, QM has hired David Shephard as regional sales manager for the Northeastern United States. Shephard comes to QM with an extensive background in industrial distribution. He has worked in the industry for over 15 years and is based out of Scotts, Michigan.

For more information on QM Bearings visit [www.qmbearings.com](http://www.qmbearings.com).

**Ogura Industrial Corp.** is proud to announce the addition of Atsushi Amemiya to the position of application engineer. Prior to joining Ogura, Amemiya was with FCC Clutch Company, based at their U.S. operations in Indiana. Amemiya has been in the United States for the past 15 years. He graduated from Chiba National University in Japan with an M.S. in Engineering.

Amemiya will handle application engineering and will coordinate customer design requests with Ogura engineering in Japan. For more information on Ogura Industrial visit [www.ogura-clutch.com](http://www.ogura-clutch.com).

**QA1 Precision Products, Inc.** has hired Landgraf-McAbee, Inc. for the states of North Carolina, South Carolina and Virginia; and has hired the Smith Industrial Group for the states of Michigan, Indiana, Ohio, western Pennsylvania and Kentucky.

QA1 manufactures rod end bearings, spherical bearings, shock absorbers and ball joints, for more information visit their web site at [www.qa1.net](http://www.qa1.net).

**R.M. Hoffman Company**, located in Sunnyvale, California, is pleased to announce that it has recently been awarded an ISO 9001:2000 Quality Management System (QMS) certificate by SRI Quality System Registrar. R.M. Hoffman chose to go through the process of becoming ISO certified as a way of continuously improving and providing the best customer service possible. Visit their web site at [www.rmhoffman.com](http://www.rmhoffman.com).

In 2007, **Screw Conveyor Corporation (SCC)** celebrates its 75th anniversary with news of continued success and burgeoning growth — a tradition that has stretched through three generations of the founding family.

SCC founder Clarence Abraham was a gifted machinery designer who developed new manufacturing processes for flighting — the screw-like assembly still in wide use today in bulk material handling equipment. His son Donald brought to market new products and built production facilities in Mississippi, California and Kansas.

Today's generation of SCC leadership is Garry Abraham, who has doubled sales in the past four years and brought SCC into the international marketplace with the addition of Screw Conveyor de Mexico in Guadalajara, Jalisco, Mexico. SCC continues its tradition of innovation and growth through capital investment, a growing workforce and expanded sales reach via manufacturers' rep sales organizations. Visit SCC's web site at [www.screwconveyor.com](http://www.screwconveyor.com).

## Welcome New PTRA Members

### Principal Members:

Allen Murphy  
**Brevini Canada, LTD.**  
Toronto, ON Canada  
(416) 674-2591

### Representative Members:

Rod L. Flanigan  
**Syntek Engineered Sales, LLC**  
Riverton, UT  
(801) 302-3317

Jeff Buckley  
**The Buckley Group**  
East Syracuse, NY  
(315) 247-0046

## "Member News" Announcements

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](mailto:info@ptra.org)

## Calendar Of Events

### For Principals

#### Effective Rep Sales Force Management

November 7, 2007 • Los Angeles

*plus*

#### Managing Conflicts

November 8, 2007 • Los Angeles

[www.manaonline.org](http://www.manaonline.org)

### For Representatives

#### Building A Winning Hand For Your Rep Business

November 7, 2007 • Los Angeles

#### Managing Conflicts

November 8, 2007 • Los Angeles

[www.manaonline.org](http://www.manaonline.org)

#### Certified Sales Professional Program (CSP)

October 16-19, 2007 • Minneapolis

November 6-9, 2007 • Orlando

[www.mrref.org](http://www.mrref.org)

#### CPMR Certification Program

January 6-10, 2008

Arizona State University

[www.mrref.org](http://www.mrref.org)

## 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.

## 2007-2008 Board of Directors

### Officers

Joel Casaubon, CPMR  
President  
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Ron Haynes, CPMR  
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Jay Holder, CPMR  
Second Vice President  
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Don Elfstrom, CPMR  
Treasurer  
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Mike Richie, CPMR  
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