A Balanced Portfolio

Sales reps should choose clients carefully

By Richard Gottlieb

This article asks sales reps to consider the differing levels of risk that their clients may represent and how they might balance their client portfolios accordingly. It is also meant to sensitize clients to how much risk they may represent to their reps; a future column will address what they can do to offset this risk.

I have worked with a lot of sales representatives over the years and my sense is that too many look at each client as a unique opportunity that has no bearing on any other client, other than the use of valuable finite time or an obvious conflict. Maybe, however, it's time for them to begin assessing potential and current clients in terms of portfolio diversification. In other words, what impact does each added client have on his or her financial and professional goals?

In assessing a portfolio, one of the benchmarks is determining risk. A strong client portfolio, just like an investment portfolio, needs to be balanced between high and low risk. But what constitutes risk in a client? Well, here are some ways of looking at it.

"It is not always easy for independent sales reps to find clients that fit the ideal portfolio. It is, however, important to try."

Obvious risk: If an account has upside potential but is brand new to the market place, it could mean that the representative is investing a good deal of time (which, let's remember, is definitely worth money) with little chance of a payoff. There is risk, but the representative knows that going in.

Moderate risk: This is the client that pays a reasonable commission each month but is late with the checks and is, ominously, getting later. This client may be paying off now but the rep will need to consider the potential for the client to declare bankruptcy. There is risk here, but it is less easy to assess.

Not-so-obvious risk: This may actually be the highest risk of all. The rep has handled an account for many years, the line is mature, and it pays off monthly with a substantial check. In fact, the line is a mainstay of his business. That sounds great unless you consider that sometimes clients become so big (or think they are) that they begin to believe that they don't need reps anymore. They fire their reps and hire their own salespeople. A client that seems to represent a very low risk may in fact be quite the opposite due to the threat of this sudden—and many times unexpected—loss of substantial revenue.

A different kind of risk: Finally, there are those clients that damage a sales representative's reputation. Maybe they don't ship an important order on time; they produce too many defectives, or try to change a price at the last minute. This kind of risk may not be readily quantifiable in dollars and cents, but the loss of reputation to a sales representative is similar to the loss of brand equity. It may mean a weaker relationship or a fall from "preferred representative" status, and this can mean the loss of lines and sales.

A low risk client is one that pays a regular monthly commission, has a solid history of shipping quality products on time and as promised, pays its commissions promptly and has a management team that values its representative relationships.

There are other variables to consider as well. One big one to look at is where a representative is in his or her career. This can have the same impact on calculating an ideal client portfolio as determining investment risk in a stock portfolio—whether one is starting out in one's career, is at the mid-point or is ready to cash out of his or her business soon.

Let's look at each of these in light of an ideal portfolio and the reality of filling it:

Starting out

A rep who is new to the business will be more inclined, by necessity as much as anything else, to take on higher-risk clients. The challenge for these representatives is to try to find one or two lines that provide some semblance of income (lower risk) while trying to develop his or her future by taking on new emerging companies (higher risk) that may be the cash cow of the future. Due to the challenge of finding sufficient revenue-producing clients, this type of representative is frequently better off working for a mid-career or cash-out rep.

Mid-career

A sales rep at mid-career is looking for some diversification between low-risk, income-producing clients and clients that, though carrying risk, may have a major upside. It is also important not to have a portfolio that depends too much on one "low risk client" for the large percentage of revenue. That "low risk" client may in fact be a "not so low risk" client and, by suddenly dropping the rep, putting what has been a successful rep out of business.

Ready to cash out

A sales rep who is looking at the end of his or her career may well be thinking about selling his or her business. His or her ideal portfolio, in this case, has to be considered in terms of how it might look to a potential purchaser. A portfolio of low-risk, income-producing clients makes a great deal of sense for this rep.

No matter where a rep is in his or her career, and no matter how one assesses risk, it is not always easy to find the clients that fit the ideal portfolio. It is, however, important to try. It may just mean the difference between having to find a new career and successfully earning a well deserved early retirement.

Richard Gottlieb is president of Richard Gottlieb & Associates, provider of business development services to the toy industry. He is also author of Ambassador to the Kingdom of Wal-Mart. *He can be reached at richard@usatoyexpert.com.*

THE LEGAL DEPARTMENT

'Doodling' with IP Rights

THE RECENT OPINION in Fisher-Price and Pilot Corp.'s battle over the Magna Doodle trademark can provide practical guidance to savvy businesses, who should take away at least two lessons from the court's decision in favor of Fisher-Price. This month's column will discuss the first of these.

History of design

For many years, Fisher-Price distributed the very popular Magna Doodle drawing toy. Fisher-Price was a licensee of Pilot Corp. (PCA), who owned a patent to the product and the name Magna Doodle, plus several related trademarks. As is common, over the course of the companies' relationship, Fisher-Price (with PCA's consent) changed the design of the product and packaging. At the end of 2003, though, the relationship soured and the license agreement was terminated.

Fisher-Price then developed a new product, Doodle Pro, with a design and packaging nearly identical to the last version of the Magna Doodle it sold. Not surprisingly, PCA found a new licensee for the Magna Doodle and its new product bears the same Magna Doodle logo as the last Fisher-Price version, though the packaging differs.

A licensing lesson

However, PCA did not like the fact that Fisher-Price was still using packaging and product design on its Doodle Pro that was nearly identical to the design Fisher-Price used while it was a Magna Doodle licensee. PCA sued, claiming that the "trade dress" (i.e., the total look) of Fisher-Price's new product infringed on Magna Doodle's prior design. Because the two designs were nearly identical, it sounds like PCA should have had a pretty good case, right?

But there's one problem—the court found that PCA did not own the trade dress to the Magna Doodle packaging and design. Even though PCA owned the trademark, and licensed it and the patent to Fisher-Price, the court found that the packaging and product design belonged to Fisher-Price.

The court found two key facts persuasive: (1) because Fisher-Price created the packaging and product design, it should be presumed to the owner; and (2) the license was "silent" regarding which party would own the trade dress. PCA argued that the term "mark" in the license included "trade dress," and that toy industry custom would require trade dress rights to be transferred by Fisher-Price. The court rejected both arguments.

Leaving intellectual property ownership decisions to the courts is a risky business. PCA could have required Fisher-Price to transfer ownership of Magna Doodle's trade dress as part of the license, but it didn't. Don't "doodle" with your trademark and make the same mistake.

Marc S. Cooperman is a partner with Chicago's Banner & Witcoff Ltd. He specializes in intellectual property litigation. Email him at mcooperman@bannerwitcoff.com.