

Swimming with Sharks

Specialty stores can profit from mass retailers

By Richard Gottlieb

Over the course of the year I attend a number of trade shows, and when I do, I like to educate myself by talking to the exhibitors. As a result, I spoke recently with the president of a toy manufacturing company that did a lot of business with specialty toy and gift stores. I innocently asked her, "Do you sell to the mass?"

She gave me stricken look and then, as if by magic, seemed to grow taller right before my eyes. She squeezed each and every inch out of each and every joint, each and every tendon, each and every muscle and each and every bone in her body. Quivering in an aroused state of indignation, she retorted, "No, we absolutely do not sell to the mass market! We would never think of selling to the mass market! We are loyal to the specialty market!"

Well, of course I exaggerate. She really didn't grow tall like Alice in Wonderland, but she sure was up in arms. Her loyalty to her specialty market customers was certainly admirable, but I wondered, Was it wise? Was she helping her own company and her customers by not selling to the mass market?

Well, here is a contrarian thought: Maybe, just maybe, manufacturers could help themselves and their specialty customers by actually selling to the mass market. Maybe specialty retailers could help their business by feeding off of their biggest competition, rather than fighting against them.

"Specialty retailers could help their business by feeding off of their biggest competition, rather than fighting against them... By cooperating rather than competing, [specialty retailers] might actually build their customer base."

When you think about it, big mass merchants are a lot like sharks that eat everything in their path. There are, however, some very smart fish—pilot fish—that swim with the sharks and eat what they miss. Maybe specialty retailers can emulate those smart fish and eat, rather than get eaten? By cooperating with the big boys rather than competing, they might actually build their customer base around items that mass retailers would consider too niche to be worth their effort.

This would work particularly well with products that come in varying levels of complexity, quality and price. Why? It's because mass market retailers are interested only in a low opening price point and possibly two or three additional SKUs. They want to sell a lot of just a few items. They are therefore not in business to satisfy the enthusiast consumer who wants to drill down deep into a particular pastime or indulge themselves with a little well-earned luxury. That enthusiast customer is the domain of the specialty retailer.

By using the mass merchant to make a company's basic products visible to legions of shoppers, the man-

ufacturer builds brand recognition and potentially new enthusiasts who will only be able to find the advanced products they want at specialty retailers.

And manufacturers could do even more. They could cross-sell pieces with the products being sold in the mass market that identify more advanced versions, or include a Web site address with a store locator that includes local specialty retailers that stock the more big-ticket items in a product line. A downloadable coupon that carries the name of the specialty retailer in the consumer's zip code—as well as a map of how to get there—could be the icing on the cake.

Making it happen

But specialty retailers don't have to wait for the manufacturers to take action to begin feeding off of their bigger rivals. Here are some additional ways that smart, pilot fish retailers can take advantage of the big, mass market sharks:

- Swallow hard and offer, for a price, to assemble the product the consumer just bought up the street from the big box competitor. Hire some high school kids to do the work and ask them not to rush so the customer has to spend additional time looking around the store. You may even want to offer to assemble the product for free if the customer spends a specific amount of dollars. And to further amplify your message, how about slapping on a sticker that says, "Put together by the elves at ..."?

- Use a time delay strategy when running ads for better versions of the products that are being promoted by your big competitors. Don't run them at the same time, but wait a month or two. This strategy recognizes the time element involved in a consumer's love affair with a new hobby or pastime. They use the new, entry level products for a time and then want to move up. By giving them a couple of months with the product, you may hit them when they are ready to move to a more advanced version.

- Visit your mass market competitors and become friendly with the folks at the service desk as well as the employees in the toy department. Let them all know that if they get a request for an item they don't carry, they can send the customer to your specialty store. How does that help the mass merchandiser? By making the consumer happy without sending them to a large mass market competitor. That way they win—and you, the specialty retailer, wins as well.

Pilot fish and sharks benefit each other...maybe specialty and mass retailers can, too.

THE LEGAL DEPARTMENT

Protect your IP at shows

AS WITH MANY THINGS in life, advanced preparation is the key to successfully protecting your intellectual property rights at a trade show. Stopping infringement early—at a trade show introduction—is an effective way to reduce your losses. Briefly, here's the minimum you need to do to have a chance at stopping the pirates:

1. Secure Your IP Rights - Now

If you come to a show without confirming you own the intellectual property you think you own, enforcement will be futile. "Emergency" intellectual property rights are available. Expedited processing can result in a design patent issuing within months, possibly as little as one month. Utility patent rights of a provisional kind may also be obtained in a similar time frame. The Copyright Office will grant your copyright registration application in less than two weeks, under the right circumstances, and you can pre-register your incomplete, copyrighted works (such as video games) in a matter of days.

2. Learn the Rules

Each trade show handles disputes differently. Some have resolution procedures to which you must agree when applying to be an exhibitor. Many limit attendees, so you will need to determine who will walk the show looking for knock-offs for you. If it's your attorney, you will need to get advance clearance for her. Taking photos is generally prohibited, making documenting infringement a challenge, so plan accordingly. When you find pirates, some shows have individuals designated to contact for disputes—know who they are and use them.

3. Investigate in writing

The time to write a cease and desist letter is not after you spot a knock-off at the show. Come with such letters pre-written, missing only the name of the product and/or company. Bring a portable printer and paper. Fill in the blank when you identify an infringer, then hand deliver the letter. Take products off displays. Better yet, identify potential infringers before the show starts through thorough investigation, and stop them before they get to the show. And if a letter doesn't do the trick, have a lawyer's motion for a temporary restraining order ready to be filed in court. It can cause quite a stir when you walk up to a booth with U.S. Marshalls at your side and have them seize infringing products at your direction (with a court's blessing of course).

Without planning, your days at Toy Fair (or other shows) could seem like an eternity as you watch your ideas being stolen with little recourse. Get prepared in advance, and stop the bad guys.

—Marc S. Cooperman

IP litigator Marc S. Cooperman is a partner with Banner & Witcoff Ltd., Chicago. He can be reached at mcooperman@bannerwitcoff.com. For details about TIA's Toy Fair IP policies, go to www.playthings.com/LegalJanuary2007.

Intellectual property theft costs American corporations upwards of \$250 billion a year and an estimateed 750,000 U.S. jobs; on a global basis, trade in illegitimate goods tops \$600 billion annually. —Office of the United States Trade Representative