

LESSONS LEARNED | BY GERSON ROSENBLIOM

Read the Fine Print

How many dealer agreements have you signed in your career? Did you read every word? Me neither. In my business, I let time constraints dictate that I be somewhat lax in studying the documents that I signed. There were a few items I looked for, but in the end, my thinking was, “Do I want to do business with this company?” If the answer was “yes,” I signed on the dotted line.

Here’s the rub. Besides defining the rules of doing business, most dealer agreements contain language designed to protect the manufacturer in case something goes awry. I felt invincible and naively assumed that nothing would ever go wrong with my company. And it did.

Having an attorney review every contract is ideal, but it’s a financial burden. Here are some down-and-dirty guidelines. They *don’t* replace legal counsel — they don’t even resemble it — but they may keep you from overlooking some major pitfalls.

PERSONAL GUARANTEE EQUALS PERSONAL LIABILITY

When you see a personal guarantee, “Run, Forrest, run!” This onerous aspect of dealer agreements is a supplier’s inducement to grant credit. It gives them the right to collect an unpaid company debt from you personally (i.e. your personal bank accounts and your assets). Assuming that you have established a protective corporate structure for your business (you have, haven’t you?), signing a personal guarantee undermines safeguards you thought you had in place. Vendors have every right to protect themselves, but so do you.

A more reasonable form of protection for suppliers is a security agreement. Many dealer agreements include this, and it gives suppliers the right to remove their products from your premises if you don’t pay your bills. Read this carefully, as many suppliers write these agreements in a way that lets them

remove any items from your store, including items bought from other vendors and/or fixtures and equipment. You’ll need to be the judge of fairness.

CONFESS NOTHING

One of the single most potentially damaging clauses in any contract is the confession of judgment. This is one of those clauses that shows up in the agreement long after you’ve experienced EGO (eyes glazed over). Like so many legal clauses, it’s written in terminology that’s usually difficult for the

layman to interpret. But if you see these words together in any clause, you are likely signing away any rights you would have had to defend yourself. Sound scary? It should.

ADDITIONAL GUIDELINES

There are countless other contract clauses that space doesn’t allow for that are no less germane. So I’ll leave you with a few important overall guidelines.

Your rep’s explanation is not a substitute for reading the contract. Reps will try their best, but they’re just the gofers in most cases.

Just because you don’t understand something in the contract doesn’t make it any less significant. If you don’t understand it, you need to. Likewise, just because you think you understand it doesn’t mean that there isn’t some meaning beyond the obvious. If you don’t understand something, ask the supplier’s lawyers to explain it to you. But remember: Their primary interest is their client, not you.

Ultimately, your best advice will come from your own legal counsel. But once you learn this stuff, you’ll see the same basic language over and over again in many agreements. **MI**

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Misunderstanding a vendor agreement can be fatal. Take heed of these guidelines