



hio
Global Summit



Concurrent Breakout Session 1

Room #3

**Structuring Int'l Distributor
and
Representative Agreements**

Structuring International Distributor and Representative Agreements

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VORYS

Legal Counsel

Two Different Types of Commercial Relationships

- Principal – Distributor
- Principal – Representative

The Principal – Distributor Relationship

1. Distributor is an independent contractor.
2. Distributor takes title to, and possession of, products.
3. Distributor sells products to its customers.
4. Distributor's compensation is its profit, based upon the difference between the price for which it resells the products to its customers, and its expenses, including the price(s) at which it purchases the products.

The Principal – Representative Relationship

1. Representative is an independent contractor.
2. Representative typically does not take title to products.
3. Representative typically is paid for promotional services and obtaining orders for products from customers. Representative might play a role in assisting delivery of products to the customer.
4. Representative's compensation ("commission") is usually a percentage of the price of the products sold by the principal to customers solicited by Representative.

Two Different Directions/ Orientations of These Relationships



Principal and



Distributor *



Distributor and



Principal



Principal and



Representative *



Representative and



Principal

*Focus will be on these.

Top-Level Strategy

- Analyze the risks to Principal in the relationship.
- Work with U.S. counsel to develop comprehensive agreement – Address the risks, if possible.
- Retain competent local business counsel in the country where Distributor or Representative is located for assistance with several matters.

Tasks for Principal's U.S. Counsel

- Make sure intellectual property is protected in local country – trademarks, patents, copyrights.
 - Registration of the intellectual property.
 - Agreement provisions.
- In the Agreement address how Principal will get paid.
 - Managing foreign exchange risk.
 - Designate the currency to be used for payments.
 - Use of security interests is difficult.
 - Letters of credit favored.
 - What happens if don't get paid?

Tasks for Principal's U.S. Counsel (cont'd)

- Dispute Resolution.
 - Arbitration? (International Chamber of Commerce, Rules of Commercial Arbitration)
 - Choice of law – U.S. law (Ohio law).
 - Opt out of United Nations Convention on the International Sale of Goods.
- Compliance with U.S. Laws affecting international commerce.
 - Foreign Corrupt Practices Act (prohibits bribes).
 - Export regulations and end-user restrictions.
 - Agreement provisions restricting Distributor's sales to restricted end-users.
- Assignment of Responsibility for Importation Requirements, Duties and Tariffs.
 - Generally placed on the local distributor.
 - Representative conceivably could be obligated to assist.

Tasks for Principal's U.S. Counsel (cont'd)

- Termination of Relationship.
- Force majeure charge – consider inclusion of an “act or omission of the local government” or “laws and directives of the local government” as reasons for getting out of the Agreement.

Tasks for Principal's Local (In-Country) Counsel

- Product registration requirements, if any.
- Language required to be used for product labels and instructions.
- Confirming that the other party is a properly formed business entity.
- If other party is an individual, understand possible social program issues.
- Review of Distributor Agreement or Representative Agreement for conformance to local laws and legal procedures.
- Characterization of the relationship/legal protections for “agents.”
- Identification of any statutory protections against termination for Distributor/Representative.
- Compliance with laws regulating restrictions on competition (permissibility of grant of exclusivity in distribution agreements).

“Structuring International Distributor and Representative Agreements”

Practical Issues of International Distribution Agreements Targeting Most Success

Gary W. Enos, VP Business & Technology Integration
International Regulatory Affairs, Codonics Inc.



CODONICS

Defining Image Distribution

CODONICS - Who Are We?

- Codonics designs, manufactures, sells and supports medical imaging and information management devices globally
- World's largest supplier of dry multi-media imagers for medical applications
- 30,000+ medical products installed worldwide
- Introduced world's first DICOM medical imager in 1996
- Recognized leader in custom medical solutions for OEMs
- 200+ employees globally



CODONICS



CODONICS

Codonics -- Who we are

- 26+ years in business
- 200,000 sq. ft. facility
- 150,000 sq. ft. manufacturing
- 50,000 sq. ft. business offices



Home to:
Design, Engineering,
Manufacturing, Sales, Marketing, and
Support





CODONICS

- Codonics World Headquarters
- Satellite Offices
- Authorized Resellers



Integrated Healthcare Products



CURRENT PRODUCTS



UPCOMING PRODUCTS





*So You Want to
Increase Your Export
Sales...*

"GLOBALISATION RISKY? HOW DO YOU MEAN?"



Some Basic Preparatory Analysis... no surprises *(always surprises)*



EXPORT READINESS

- **Know the The Harmonized System (HS) and Harmonized Tariff Codes HTC:**
6-digit codes for general categories plus additional country specific import digits

By international agreement, most countries recognize the same first 6 "harmonized" digits...helps customs broker determine duties on items

Landed Cost requires mapping to country specific codes to determine full burden duty and local taxes

- **Apply for Commodity Classification Automated Tracking System (CCATS)** Number for your product and parts: an alphanumeric code assigned by the Bureau of industry and Security (BIS) for parts & systems descriptions
 - Used to ensure smooth export to restricted *and* often non-restricted countries
- **Export Administration Regulations (EAR)** Bureau of Industry and Security is charged with the development, implementation and interpretation of U.S. export control policy
- Determine need for **Export Licenses** (BIS and OFAC) and Import Licenses (issued locally)

<http://www.bis.doc.gov/licensing/exportingbasics.htm>

Forwarder, Clearance Broker and more... Import and Sales Requirements

Air & Sea ?...Local logistics costs (different taxes and duty on CIF Basis)

- Country specific forwarders to carry goods to some countries
- Often need a broker...some items and values not suitable for courier freight forwarders (FedEx vs NEC)
- Some countries require pre-inspection
- Who can import the goods? Know regulations in-country
- Who can sell the goods? Know regulations in-country
- Ease of re-export for Return to Factory or Exchanges



Regionalization of Product

Be prepared to meet local requirements:

- Electrical safety and marks
- RoHS harmful substances declarations
- Labeling including tech sheets and literature
- User Interfaces and language supports if applicable
- Package labeling and marks



"IMPLEMENTING THESE CHANGES WON'T BE EASY.
WE'RE PRETTY SET IN DOING THINGS THE WRONG WAY."

Establish Channel... Support Your Dealer

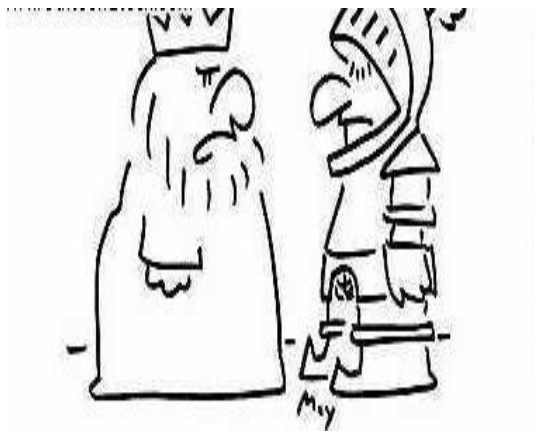


Single Tier or Multiple Tier?

Specific Territory/Region or Open: Define where applicable Non Exclusive Territories/Markets (be aware of countervailing requirements ie. EU)

Engaging channel requires priming and attention

- Training...sales and service
- Visits to support sales calls "buddy calls"
- Trade show support and/or attendance
- Assist to building the brand awareness
- Where applicable, provide or sell channel demos/samples/sell sheets
- Establish Luminary/Reference "Champions"



"My number one trading partner is my blasted mother-in-law!"

Secure Payment Methods

- Establish Credit and Payment Terms
- Know INCOTERMS...agreement for the purchase and shipping of goods internationally
- Agreements should account for currency fluctuation



"Hector owes us money. Get rough with him if you have to, Achilles."



NO, YOU CAN'T PAY IN CAMELS — BUT WE DO ACCEPT GOLDFISH!

Successes

Japan

- Develop Sales and Marketing
- Technical Support
- Service
- Administration (Contracts, Order, Accounting)
- MHLW approved facilities & products
- Yakuji Kyoka (Importer)
- OEM and Distributor Based (Multi Channel/Multi Tier)

Italy

- Established Master Distributor to Leverage Larger Sea Shipments to Sub-Dealers

EU in General

- Multi-country Literature, Users Manuals, Tech Breifs
- EC|REP anchored for regulatory compliance and CE
- Service with dealers and Portugal Service Center
- OEM and Distributor Based (Multi Channel/Multi Tier)



War Stories

Brazil:

- RTF (Difficulty to Re-Export)
- Taxes
- Customs (HTC) Codes
- Regulatory (ANVISA, Import Licenses, Appointing Distributors)

CHINA:

- RTF (Very Difficult to Re-Export)
- Taxes (Landing factors)
- Customs (HTC) Codes, Documenting materials/Descriptions
- Regulatory (SFDA, CCC)

Korea:

- Multiple Importers, Each with License Requirements (redundant processing)
- Customs (HTC) Codes, Working to Lowest Duty/Tax
- Regulatory (KFDA)

Indonesia:

- One Master Distributor/Importer
- Regulatory Listing Controlled & Released by Distributor
- Need to Investigate Channel for the Long Term



Summary

Once Channels are Established Via Solid Agreements:

- Work with Dealers to Promote
- Create Case Studies to Enhance Local User References
- Encourage Local Dealer Demo Unit Purchases
- Support with Local Ready Literature and Samples
- Engage Dealers at Trade Shows w/support

Thank You!

