It's A Non-Competitive World Out There!

Last month I wrote about the three most important characteristics to look for in a salesperson, one of them being *a competitive nature*. (The others, as I hope you'll remember, were *intelligence* and *an appreciation of the finer things in life*.) This month, I have some thoughts about non-competitive issues—specifically the issue of non-compete agreements between printing companies and their salespeople.

This reflects one of many quick/digital/small commercial printers' greatest fears, the idea that you'll hire and train a salesperson and that person will do good work for you for a while, then leave you and take his/her customers away too. Let me get this on the record right from the start, that can only be an issue if you do a lousy job managing that salesperson in the first place!

Here's one of the most basic principles of printing sales management. You should never let a customer be the salesperson's customer, you must act to make sure that he/she becomes *your customer*.

Broadening The Bandwidth

The key is to broaden the bandwidth between your company and your customer. You can't let the relationship be limited to your salesperson and his/her contacts at the customer company. It's important that the people at the customer company have relationships with other people at your company; your CSR's, your typesetter/designer, maybe even your production manager—and if we're talking about significant customers who you really don't want to lose, those relationships need to include you as the owner too!

Beyond having some relationship with the printing buyers at your customer companies, it's a good idea for you as the owner to establish some relationships at a higher level—perhaps owner-to-owner or owner-to-senior manager. If you make all of this happen, you really can "bulletproof" yourself against losing customers if/when a salesperson leaves.

I've gone out to talk to customers many times after a salesperson has left—both as a sales manager and as a consultant—and the message has always been the same: "Yes, John or Jane is leaving us, moving on to what he/she thinks will be a better opportunity, and we expect that you've been asked—or that you will be asked—to transfer your business to his/her new printing company. Well, what I came out to remind you of today is that John/Jane was only one of the people at our company who was involved in the work you've been giving us…*and the rest of us want to keep your business!*"

I have never lost an important customer in a situation like this, at least not permanently. I have been in situations where the buyers wanted to give the new company a chance, and I always told them I appreciated their relationship with the salesperson. "If things don't work out, though—if it turns out that the people at the other printing company can't support John/Jane as well as we have—there won't be any hard feelings at all when you come back to us." I hope you'll see how important it is not to burn any bridges in a situation like this.

I have also found that it's very helpful to bring others with you on these calls, especially a CSR who has been working with this particular customer. The conversation might be that "it's really been Mary here who's been doing most of the work on your orders, and for now, we think the best idea will be for you to work directly with her. If there are projects on which she needs to come out here to talk to you, she'll be happy to do that, or else I'll come myself. Yes, things may be different for a while, but we're committed to making sure that it's just as easy and convenient to work with us as it always has been."

Now, this all assumes that you've been taking good care of this customer in the first place. If you have, you're really pretty safe when you employ this strategy. If not, you were probably going to lose the customer anyway, regardless of whether your original salesperson was working the account or not.

Another Level Of Protection

A non-compete agreement gives you another level of protection. I have to admit that I've become much more of a proponent of this sort of agreement recently that I have been in the past. Five years ago, I would have said that you simply don't need a non-compete agreement as long as you manage your business as I have described above. Now, though, I think the additional level of protection is worthwhile. Non-compete's are tricky, though, and often difficult to enforce—especially some of the agreements I've seen in the printing industry.

A few years ago, I got a call from a printer who was facing a situation where a former salesperson was violating a non-compete. The agreement said that the salesperson could not work for another printing company within a 200 mile

radius for a period of five years after termination or separation for any reason. Apparently the salesperson had contacted a lawyer who told her that the agreement was not enforceable, and I told the printer that I thought the lawyer was probably right. The guiding principle behind a non-compete agreement is to protect the old employer from being damaged when an employee goes to work for a new employer, while still allowing the employee to use his/her skills and experience to make a reasonable living. If the provisions of the agreement are unreasonable, the chances are pretty good that a judge will throw it out.

What Is Reasonable?

So what would be reasonable? I think a reasonable term for any non-compete agreement would be one year, and I'd be happy enough with six months. As for other limitations, all I'd really care about is that the salesperson stay completely away from any customers he/she developed while under my employ, any prospects that he/she "registered" while under my employ, and any of the other customers in my Top 10 or 20 or 50 accounts—whatever number best represents the 20% of customers who probably represent 80% of your business. I think a competent judge would say "that sounds very reasonable, stay away from those people!" And with those restrictions, I'd be perfectly willing (maybe not happy, but still perfectly willing) to let a salesperson go to work for any of my competitors, even the printer across the street! Remember, our society doesn't permit slavery. You cannot prevent a former employee from making a reasonable living in his/her chosen field. All you can do is try to protect yourself from any direct harm.

By the way, let me define "registered" because this is an important concept. I think you should be keeping track of any salesperson's prospect list, if for no other reason than to be sure he/she is working on enough real prospects. I have all of my sales coaching clients sending me—and regularly updating—their prospect lists, so I know who they're working on. I have most of these salespeople using ACT contact management software, and any prospect entered and qualified into the database is considered "registered." Another way to do this might be to have every qualified prospect entered into your PrintSmith, Printleader or Printers Plan database.

Proprietary Information

Another of the common provisions of a non-compete agreement would stipulate that a person may not bring proprietary information from his/her former employer to any new employer. This is also an important concept, but for enforcement purposes, we should really think about what sort of information would be considered truly proprietary. I've had printers tell me that their greatest fear is that a salesperson would leave and bring a copy of the company's customer list to a new employer. I say, why would that be a big deal?

Folks, it's one thing to know who you're selling to, it's another thing completely to win those customers away from you, especially if you've been doing a good job in terms of quality and service, and managing your business "defensively" as I described above. And please consider this…if a knowledge of who your company is selling to is really that important, why don't printers require non-compete or confidentiality agreements of every employee? It's not hard to find a press operator who has worked for two or three or more printers in the same city, and those people certainly know who the biggest customers of each company are. Experience has shown that customer's don't change printers when a press operator moves around, so why should the situation be all that different with salespeople?

Now how about pricing information? That would certainly be considered proprietary, but what harm does it do when a salesperson knows how much you've been charging customers or quoting with prospects when the primary component of the non-compete agreement prohibits him/her from talking to those people in the first place? Sure, the other printer may send another salesperson—one who's not bound by a non-compete with you—to call on those people and quote lower prices, but do you think some competitor hasn't been doing that all along? Defending against competitors offering lower prices is simply a fact of life in this business. And it might be very difficult to prove that those prices were a result the misuse of proprietary information.

Intimidation

Many quick/digital/small commercial printers have told me that they understand that a non-compete agreement might not stand up in a court, but they want one anyway for it's intimidation value. That makes sense to me, but it also means that we have to consider what might be truly intimidating. This may sound backwards, but a more reasonable set of provisions that's more likely to stand up in front of a judge should be more of an intimidating factor than a 200 miles/5 years limitation. I wouldn't be afraid to challenge something as unreasonable as that.

If you want to maximize the intimidation factor, I would also build a provision into the agreement that any party found in violation of the agreement must pay all legal expenses, both his/her own and the expenses of the aggrieved party. In addition to the intimidation factor—the risk involved in trying and losing—a provision like this could reimburse you for the cost of suing to defend yourself against a violation.

Poor Performers

How about the situation where you fire a salesperson who has signed a non-compete? This is another area where a judge might be reluctant to enforce your agreement. It would be one thing if a salesperson was fired for something not strictly related to sales performance—for example, one of my clients fired a fairly solid sales performer a while back for getting into a fight with another employee. It's another thing entirely when you fire someone who simply hasn't performed.

One of my neighbors tells a story about the firing of a salesperson in his industry a few years ago, and an attempt to enforce a non-compete agreement when this salesperson took a job with a competitor. "You fired him for being a lousy salesman," the judge said, "you should be thrilled that he's going to work for your competition."

Expert Opinion

Another one of my clients is going through a situation now that will probably go all the way to a courtroom. He has asked me if I would be willing to testify as an "expert witness," describing the printing industry's attitudes toward who "owns" an account. I will do that, of course, but I've been thinking that I might be able to save my client some money by publishing my "expert opinions" in this magazine, so here goes:

In my opinion, a salesperson has no claim to "own" a relationship and therefore take that customer along when he/she leaves the company who employed him/her when the relationship was established. To put it succinctly, creating that relationship was what the salesperson was paid to do during employment, so the printing company has in fact "paid to own" the customer relationship.

Experience has shown, though, that many printing companies have abdicated their ownership of accounts by allowing a salesperson to take the business away—by not managing defensively as I have described previously. I still maintain that this situation does not deliver "ownership" of the account to the salesperson when that salesperson brings the business value of his/her established relationships to a new printing company, unless that "ownership" is specifically granted by the new company in a written agreement. Again, it's a question of being paid to deliver the business value of those relationships. More often than not, a salesperson changing employers is promising that at least some of his/her customers will come along, and that is part of both the hiring decision and the compensation decision for the new company.

If I were a salesperson, of course, I would ask for written acknowledgement that the customers I was bringing along were mine, and that I could take them away if I ever decided to leave the new company. If I were the owner of that new company, I'm not sure I'd make that agreement. In any event, I would manage defensively to make sure that every customer—even any customers a new salesperson brought along with him/her—became my company's customers, not just the salesperson's customers.

Closing Thought

Here's a closing thought for today. Please remember that I'm a sales & marketing consultant, not a lawyer. You should absolutely consult with your attorney before entering into any legal agreement. Hopefully my thoughts on this issue will help you and your lawyer to develop something that will work just the way you want it to.