Typical pitfalls in the daily life of a sales man

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MAIN TARGET OF A SALES MAN (I)

HITTING TARGETS
MAIN TARGET OF A SALES MAN (II)

MAKING PROFITS

MAIN TARGET OF A SALES MAN (III)

ALL IN THE BEST INTEREST OF THE COMPANY
MARKETS MAY BE(COME) DIFFICULT …

AND THE BONUS SEEMS NOT REACHABLE ANYMORE…

WHAT TO DO NOW?

How To Make Life Simple Again
IMPROVING CUSTOMER LOYALTY - THE EASY WAY?

- Going together for lunch?
- Football tickets for the whole family?
- Company discounts for private purposes?
- Invitation to a short holiday trip?
- Promotional gifts?

THE TRAFFIC LIGHT MODEL
GREEN TRAFFIC LIGHT

Socially common donations:

- The donation objectively lacks the ability to influence business decisions in an inappropriate manner and does not endanger fair competition

- The following aspects must be considered:
  - the affected business sector
  - the economic position of the actors
  - The value of donation

GREEN TRAFFIC LIGHT

Socially common donations:

- Smaller donations in the context of a business relationship:
  - The recipient may assume that the donor does not intend to influence him through the gift
  - A value of approximately 50 €
  - In public services only 10 €
  - Also direct/indirect grants to family members and other employees

Examples: promotional gifts, invitations to a dinner, discounts, tickets for events
GREEN TRAFFIC LIGHT

Socially common donations:

- Country specific conventions in the context of business relationships:
  - the acceptance of the gift is common by the country specific conventions of hospitality
  - Must be handed over to the company’s compliance office after receiving

Socially common donations:

- gifts without business background:
  - Gifts, hospitality, entertainment offered in the context of a private relationship
  - The relationship is private if it is maintained independently of the employee's connection to the company

Recommendation:
strictly separate business and private life, identify possible conflicts of interest at an early stage; avoid any semblance of possible partisanship.
YELLOW TRAFFIC LIGHT

Donation with reservation of approval

- Acceptance of the donation is neither generally permitted nor prohibited
- Before receiving the gift, the board must be informed and its assessment obtained
- After the information has been given, the donation may be accepted
- Only if it is impossible to inform the compliance officer in advance, the information may be given afterwards

YELLOW TRAFFIC LIGHT

Donation with reservation of information

- Invitations to a dinner/lunch may only be accepted if:
  - The occasion and scope is appropriate
  - The rejection contradicts courtesy
  - In-house meals (in canteens, buffets) are harmless
- Business trips, including a training or a factory tour:
  - Are only permitted if the invitation is appropriate according to reason and scope, in particular the company's reason is in the foreground, e.g. factory inspection, in-house trade fair, anniversary
RED TRAFFIC LIGHT

Prohibition of acceptance and granting of:

- **Money or money-like gifts:**
  - e.g. loans, vouchers, deferral of dept
  - Exception: pocket money for foreign guests

- **High quality gifts / exceptional invitations**
  - Those that are no longer objectively socially adequate
  - e.g. tickets for a world championship soccer or for a formula 1 race, game, ski holidays, luxury items

- **Benefits of sexual or indecent nature**

- **Problem: inviting partners also**

Quelle Bild: https://liliausik.wordpress.com

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RED TRAFFIC LIGHT

Prohibition of acceptance and granting of:

- **Private orders:**
  - from a company with which there is a business contact and which creates an advantage compared to the implementation by another company (example: company discount for private purchases)

- **Donations that:**
  - are granted based on upcoming operational decisions
  - are granted during negotiation processes
CODE OF CONDUCT

- In case of doubt, ask your compliance-officer / supervisor:
- In doubtful situations, it is better to politely refuse gifts than to accept them thoughtlessly
- Create transparency: document donations and decisions

- Remember the old military principle: “Reporting makes free!”

Quelle Bild: http://www.vegao.de

SEEKING SUPPORT FROM COMPETITORS?
HARD CORE INFRINGEMENTS

- Price fixing
- Market sharing
- Bid rigging
- Boycotts

REQUIREMENTS FOR A CARTEL: RIGHT OR WRONG?

- Continuation of participation?
- Harm of competition?
- Multilateral agreements (so bilateral agreements are ok)?
- Just listening, but no implementation is ok?
- Wrong price information cannot be considered as a cartel?
- Exchange of general market information?
- You need to be competitors?
- Requirement of proof in writing?
AGREEMENT VS CONCERTED PRACTICE

- any type of agreement (oral, written, recommendation, etc)
- any type of „coordination“

INFORMATION EXCHANGE

- Prices, discounts rebates
- Costs
- Profits and profit margins
- Commercial arrangements with wholesalers
PARALLEL MARKET BEHAVIOR VS CARTEL

Parallel market behavior is ok!

TRADE ASSOCIATION MEETINGS
DO’S & DON’TS AT TRADE ASSOCIATION MEETINGS

- Agenda circulated in advance
- Reminder to comply with competition rules
- Following of the agenda → no additional topics
- No „ad hoc“ meetings
- No participation at informal meetings before and after trade association meetings
- Protocol
  - Names of participants
  - Time of arrival and leave of single participants
  - Documentation of remarks, comments and objections regarding topics and discussions, in particular to end illegal discussions

DISTANCING OF AN INFRINGEMENT AT TRADE ASSOCIATION MEETINGS

- Discussion regarding competitive sensitive information
  → objection and documentation of such objection in protocol

- In case illegal discussion continues
  → leaving of meeting and documentation hereof in protocol (further presence will be interpreted as participation in the infringement!)

- Request copy of the protocol when leaving and/or afterwards via email by confirming at the same time to not participated in any illegal discussion
TRADE FAIRS

DISTANCING OF AN INFRINGEMENT AT TRADE FAIRS

- Discussion regarding competitive sensitive information → ending such discussion and objection hereto
- Report to the compliance department
- Letter from compliance department to other company in order to stop such conduct and avoid such future situations
"HUB AND SPOKE"

- Protect brand reputation
- Encourage dealer investment
- Prevent free-riding

LEGITIMATE MOTIVES FOR SALES MEN
SOLUTION: RESALE PRICE MAINTENANCE?

EXAMPLE – SUGGESTED RETAIL PRICING

Van: 
Verzonden: 
Aan: 
Onderwerp: Private

It is time for us to pull the reins immediately otherwise it will go wrong.
We have been trying to bring it back on track for weeks but this way it will not succeed.

Please guys, block these friends for 3 months, this will really work.

He just keeps going on.
I would like to request again to apply the prices of the attached price list.

I understand you have put us on block for delivery of all items carried by XXX because we have not adhered to the sales prices suggested by XXX.
I have also explained [xxx] what we do with XXX premium and the principle is ‘one strike and you’re out’ applies.

Please put him dry for 2 months then he will leave these tricks, talking will not help anymore.
SUGGESTED RESALE PRICES

- Maximum prices
- Recommended prices
- Minimum prices
- Fixed prices
- Both also for special offers

RESALE PRICE MAINTENANCE

- Passing on of recommended resale prices to retailer by supplier is no infringement as such
- BUT: In case this leads to an „agreement“ regarding minimum or fixed prices, then actual cooperation
- Incentives for keeping margins (eg by rebates) or punishment for not following recommended resale prices
- Additional contacting after sending recommended resale prices may lead to a concerted practice
- Prohibition of certain sales channels (eg internet)
INDIRECT EVIDENCE FOR RESALE PRICE MAINTENANCE

- Monitoring of resale prices for supplier by producer
- Agreement that the resale price of a competitor needs to remain within a certain band
- Passing on of information regarding resale prices of a competitor by a supplier (e.g. regarding price increases)
- Penalties for not keeping resale prices (e.g. by no reduction of the purchase price)
- Increase of purchase price only in case competitors keep a certain level or retail prices

WHAT MAY A SALES MAN STILL DO?

- Negotiate the purchase/sales price?
- Show an offer from a competitor?
- Tell the end sales price to the producer?
- Talk to the buyer about planned promotions other customers?
REMEMBER THE RED FACE TEST…

▪ … if it feels a bit suspicious / wrong – check first …

KONTAKT

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