

**JUST HOW FAR CAN THE SALES REP GO?
THE LEGAL LATITUDE FOR UNETHICAL BEHAVIOR**

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Introduction

It is often assumed that legal limits provide ethical limits as well. In the sales area, reliance on the law to define or describe what is appropriate can allow an organization's sales force to run ethically amuck. While numerous and varied factors contribute to determinations of the legality of certain actions, they don't go far enough to define ethically appropriate behavior. Intent, knowledge level of the client/buyer, content of written and verbal communications, may influence a legal determination. That legal determination, however, leaves a lot of latitude for sales representatives to engage in ethically questionable behavior. There is a whole range of behaviors which may be legally acceptable, yet judged by others (clients, sales managers, peers) as unethical. Thus, the firm, when setting guidelines for ethical behavior must go well beyond the law to formulate policy.

A sales representative's dealings with a client presents legal risks in three significant areas: (1) fraud, (2) breach of contract, and (3) promissory estoppel.

Fraud

Fraud is an intentional perversion of the truth for the purpose of inducing another in reliance upon it to part with something of value. The following are required elements: (1) a statement or representation made must be false, (2) the person making the statement must know it is false, (3) the receiver must be deceived, and (4) the receiver must suffer some damage (Calamari 1977)

The courts have long recognized that some forms of deceit may be employed without being subject to legal redress. Although the actions may be unethical, the law, in balancing the interests of deterring fraudulent actions and encouraging individuals to act prudently, imposes no liability.

Warranty Breach of Contract

A firm may be liable if statements made by its sales force are false, even if the actions do not constitute fraud. Such

statements may be determined to be part of a contract and represent a warranty. The requirements for warranty breach of contract are: (1) whether or not a warranty was provided, and (2) whether or not the goods or service performed in accordance with the warranty.

Warranties may be expressed (affirmations made as a basis for the exchange) or implied (suggest reasonable expectations for the product). This becomes complicated when the implied warranty is for a particular purpose. The sales rep's knowledge of the intended use is an essential element of the implied warranty as is the knowledge of the buyer. If the sales rep knows the product will not perform for the intended use, the firm may be liable. Conversely, if the buyer should know better, the firm may not be held liable (*Price Brothers V. Philadelphia Gear Corp.* 1981)

Promissory Estoppel

Even absent expressed or implied contract terms, a firm may be liable for representations of its sales force under promissory estoppel. Essentially, the firm is prevented from raising the lack of a contract as a defence. In the end, the courts may find that the sales rep had some responsibility to the client and breached that duty. The duty is not merely to be honest, but to foresee damages which may be incurred if claims made prove to be false. Promissory estoppel provides protection only to individuals who may reasonably rely on the claims of the sales rep. Thus, the more a client knows, the more leeway the sales rep has to make false statements.

References

Calamari, John O. and Joseph M. Perillo, (1977) *Contracts*, West Publishing Co., St. Paul Minn.

Price Brothers Co. v. Philadelphia gear Corp., 649 F.2nd 416 (1981).

West Ohio Digest, "Contracts," sections 324-355.