

PRACTICE MANAGEMENT

## Ways to quell the feud between legal and sales

By Eric Esperne

**F**euds have been, and probably always will be, a fact of human existence. They always involve competing interests and a clash of cultures and personalities. England vs. France for example. Or the Red Sox vs. the Yankees.

Feuds go on in business too. Microsoft vs. Apple started over the first version of Windows and has recently been revived by Apple's TV commercials depicting the PC as a chubby office guy.

Then there is the feud between the in-house legal department and the sales force.

The ages old feud of Legal vs. Sales cuts across all vertical industries and across all sizes and shapes of companies.

It is by far the single biggest obstacle to an in-house counsel representing his or her

corporation's interests in a transaction. The legal work involved is relatively easy in comparison.

There are a number of things you can do to quell the feud between legal and sales. The recommended measures discussed below will also make your sales contracts more effective. Included are both systemic improvements which require buy-in from executive management and cooperation with sales, and quicker fixes that you can implement yourself.

**Organic and Empowered Contracting.** Sales people don't see the connection between what they are selling and the contract or license for it. Often times sales only inquires about the contract when it is holding up a deal or when they think the customer will sue. Sales people view contract negotiation as the lawyers' business, not theirs, because 1) it involves a lot of nasty legal words like "indemnification" and 2) it means having to argue with the customer.

At the same time, divorcing themselves from contract discussions leaves sales people feeling they have lost control of the deal, which makes them nervous.

Road shows—visiting sales offices, having lunch brought in, and attempting to convince sales people in a friendly way that legal has final say about contracts—go unattended and don't help anyway.

What does work is collaboratively writing contracts with sales and giving sales the lead in presenting contracts and negotiating changes.

This organic and empowered approach

accomplishes two things: 1) sales gets the connection between the deal and the contract and 2) sales doesn't feel a loss of control. The process is somewhat more complicated than what I describe here. The process doesn't ignore giving and following legal advice. It does require complete buy in and cooperation from sales at all levels.

This approach also produces a better contract document that captures the seller's business value proposition.

**Standard Contracting.** Standardization of contract terms and of alternate terms (or positions) not only helps sales people take the lead, but also earns their trust by avoiding inconsistency from deal to deal on legal's part.

Sales people are sharp. They remember disputes over terms in prior deals and what legal ended up accepting. On legal's part, it is impossible to remember on a department-wide basis everything agreed to in every deal.

Standardization may not sound appealing to some in house counsel because it takes away the "art of the deal" aspect of their jobs. Unlike organically developing contracts, standardization doesn't require the buy-in and participation of sales, but they are still highly advisable.

**Playbook.** Putting together a "playbook" for contract presentation and negotiation is essential for sales and legal to work as a team. The gist of a playbook is to make interaction between sales and legal a matter of processes, not a matter of



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personalities.

Many activities that occur in sales transactions can be put into the playbook including points of contact, decision making, signatories and document control. Using a playbook eliminates miscommunication and misunderstanding between sales and legal personnel working on a contract, and it implements the legal department's positions on contractual issues in an unemotional and clear manner.

Playbooks can be written and introduced by legal departments alone, but again, cooperation with sales is advised.

**Streamlined and Business-like Contracting.** Another way to approach improving legal's relationship with sales is to reduce the amount of negotiation with customers. Online contracts and taking advantage of UETA (Uniform Electronic Transactions Act) are one way.

Approaching contract documents, in particular their language and appearance, as business documents rather than legal documents is another way. Scripting and streamlining contract presentation and negotiation is another way.

These techniques are not simple cosmetics, rather they are strategic,

enterprise-wide business processes that require executive management's buy in. Operational cost savings is another huge benefit of streamlined contracting and should be included in making a case for implementation.

**The Liaison and The Decisionmaker.** In dysfunctional corporate settings and in companies that are new and immature, the implementation of formal, corporate-wide techniques for improving interaction between sales and legal may be infeasible, and only quick fixes can be had.

The converse of the playbook idea is to place emphasis back on personalities, in particular on one (and only one) person designated as a liaison. The liaison is usually an existing staff lawyer who is energetic and agreeable, or a consultant from the outside who has experience in corporate sales contracts and is self-assured.

At worst the liaison serves as a scapegoat for disagreements and reduces tensions. At best the liaison can both keep work moving and serve as a catalyst for implementing more meaningful improvements. Implementation only takes a change in job description or a consulting contract.

A second but less likely quick fix is to obtain the consent of an executive manager to make final decisions on contract issues where resolution by sales and legal appears unlikely and there is a danger of losing the

business. The executive can be the GC, the CEO, the VP of Sales or VP of Finance. Having someone to render a final decision keeps disputes from lingering. Like the liaison, the effect of a decisionmaker is simply to reduce tensions.

**Perspective.** Finally, you can help yourself improve your working relationship with sales by reminding yourself about the nature and mission of corporations. This is a subtle but critical application of self-discipline that makes a world of difference.

Corporations are just that, corporate bodies of people. When a corporation acts, it should never be the work of just one person, regardless of how bright and well intended that person is, a.k.a., lawyers. Next, remember that corporations exist to make money and returns for owners and shareholders. Limiting liability or building an IP portfolio are not ends in themselves and they should never be addressed any way other than within the context of the profit motive.

Also recognize that sales people are the personification of the corporation in the eyes of customers. The better they look, the better the corporation looks.

