The Abusive Buyer II

Irresponsible retailers take their toll on reps

By Richard Gottlieb

Paul waited at the airport luggage claim for his samples to come off the conveyer belt. It had been a six-hour flight and he was tired, but he also felt that exciting combination of fatigue and anticipation he always had when he sensed something big was going to happen.

He was in the Northeast for an important meeting with a major customer. Judy, a buyer for a retail chain, had seen his products at a show and had become extremely excited about them. "I want you to make an appointment to come and meet with me in my offices to discuss our carrying your line," she had practically shouted. "I'm really high on this product!"

As the cab transported him to Judy's offices, Paul pulled out his PowerPoint presentation and reviewed it for the sixth time. As he flipped open his laptop, he thought about how many dollars this trip was costing his company. His boss had told him not to worry—it was an investment that had a very high chance of a good return. Still, it was a lot of money.

At 3:45 p.m., Paul, a former high-school track star, approached the desk with the same feeling he used to have when he lined up for a big race. He planted his feet, he smiled, and he looked the receptionist straight in the eye. He could almost hear the starter pistol go off when he said "Good morning. I'm Paul Smith and I have a 4 o'clock appointment with Judy Jones."

The receptionist picked up the phone and called Judy's desk. "I'm sorry," she said, "but she's not answering. Have a seat and I will try again in a minute."

A little deflated, Paul moved to a chair in the corner and sat with his samples piled up around him. It was now 4 o'clock. He glanced at the receptionist, who shook her head "no." At 4:15 p.m., still no Judy.

Finally the receptionist called him over. "I'm sorry," she said, "but Judy is off-site today for another meeting. Angela, another buyer, will meet with you."

Paul, now feeling angry and foolish, sat in a small conference room half the size of what Judy had led him to expect. The substitute buyer came in and, with a wary look, said, "Unfortunately, I don't buy your category so I don't know a thing about it."

Paul felt a strange emotional brew of fear and anger. His face felt hot; he knew he looked angry—even a little crazed. His knew that snapping at a buyer could be professional suicide, but his adrenaline was sky high and the words just shot out of his mouth: "I am here at Judy's request, and it has cost me and my company a great deal of time and money for this trip!"

Angela looked uncomfortable and defensive, so he made a half-hearted apology and pressed on. What followed was an awkward meeting with a buyer who obviously didn't care for him or his products.

The meeting over, Paul walked out of the office and prepared himself for the phone call he dreaded. Would his boss believe him when he said Judy wanted to see the line? Would he lose his job over this? Would the customer ever see him again?

A growing problem

Paul's story is not a rare occurrence. Everyday, salespeople spend time and resources on business trips that are fool's errands. Why? Because buyers fail to live up to the promises of their invitations.

It is, of course, not the obligation of any buyer to buy what they see. It is, however, a civic necessity that a buyer who extends an invitation to a salesperson honor the terms of the invitation—providing the space promised, the time promised, the attention promised, and, most of all, the level of interest promised.

In an industry where travel is long and expensive, appointments must be seen as binding contracts. A promise to meet is an obligation to meet. The actual cost and the opportunity cost to the manufacturer and salesperson is so high that anything less is abusive.

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Stuff happens, and sometimes well-intentioned buyers just can't keep appointments. There are, however, some things a conscientious buyer can do if they know they cannot live up to the meeting agreement:

- If you know you are going to be unavailable to meet, call as soon as you find out and reschedule.
- If you cannot provide the space or time promised, let the buyer know how much space and time you can provide so they can plan accordingly, or even decline to come if they see fit.
- If you plan to have a substitute take the meeting, let the salesperson know ahead of time. And, don't substitute another buyer unless it is your manager. It's OK to go up the line, but not to go parallel or down. Otherwise, it's a placation that's condescending and unfair, both to the salesperson and the substitute buyer.

We live in challenging times in which the social fabric between buyer and seller can sometimes stretch thin. Buyers need to make an extra effort to fully honor their commitments. It's the right thing to do.

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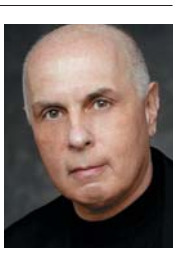

THE LEGAL DEPARTMENT

Melting Your Own Patent

WHO HASN'T WONDERED how they make those little frozen drops of ice cream that have become a staple at movie theaters? Well, it's not a secret. There's a patent (US 5,126,156) that explains exactly how Dippin' Dots does it. In fact, because of some missteps by Dippin' Dots, a federal appellate court just ruled that you can actually practice the invention and go into the "frozen alimentary dairy" business yourself. It's a story that provides a lesson in IP law to anyone with a clever new product.

Making and unmaking your case

After an initial rejection of its patent application on the grounds that the idea was "obvious," Dippin' Dots was able to convince the U.S. Patent and Trademark Office (PTO) that its ice cream invention was worthy of a patent after describing the significant commercial success of its product. The PTO accepted this submission of commercial success as evidence that showed the idea was "non-obvious," and awarded Dippin' Dots a patent.

But, it turns out that the Dippin' Dots story started earlier than the PTO was told. The inventor actually offered cryogenically prepared, largely beaded ice cream at a shopping mall in 1987 during a week-long test marketing effort. When this early sales evidence came to light at a trial against some former distributors who had gone into competition with the company, the Dippin' Dots patent was suddenly dead on arrival. Here's why:

Under U.S. Patent laws, an inventor is given a one year "grace period" from the start of commercialization of his or her invention to determine whether to file a patent application. But once that one year period is over—and that means exactly one year—the patent laws say your invention is dedicated to the public, and bar an inventor from obtaining a patent. So, because the 1987 sales occurred more than 18 months before Dippin' Dots filed its patent application, the company had waited too long to file for its patent. Subsequently, its own early sales were used against it to determine that its patent was invalid and should not have been granted.

The story does not end with the demise of the patent. The court also concluded that Dippin' Dots had misled the PTO when it submitted its declaration to obtain the patent in the first place. The company's combination of "action and omission" allowed the court to conclude that Dippin' Dots might have to pay the attorneys' fees of its competitors, whom it had sued for patent infringement. This is yet to be determined.

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Copyrights protect a toy as a tangible work of art for the life of the "author" or creator of the work plus an additional 70 years. Toy copyrights are usually classified as a work of visual art. **—United States Patent and Trademark Office**