



ASSOCIATION OF SALES & MARKETING COMPANIES

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ASMC STRONGLY OPPOSES DELHAIZE PREFERRED BROKER PROGRAM

Mark W. Baum, President and CEO of the Association of Sales & Marketing Companies (“ASMC”), indicated that ASMC strongly opposes Delhaize America’s proposed “preferred broker” program which was announced yesterday.

Baum indicated the Delhaize program has both significant legal and business issues that ignore the rights of Manufactures to choose how they bring their products to market and would set a very dangerous precedent, if it ever was implemented. He stated that: ***“Delhaize is attempting to use its economic power, with faulty legal demands, to force manufacturers to use their designated broker when the right to select the Agency which represents a Seller has always been the Seller’s”***. The sales and marketing agencies are required by their contracts, their ethics and the law to take their direction and control from their Manufacturer Clients and not the Power Buyer. In effect, Delhaize is trying to abrogate those legal requirements by telling Manufacturers that Delhaize will make the decision of who has a right to represents the Manufacturer at Delhaize banner stores like Food Lion, Hannaford Bros and Sweetbay.

While Delhaize’s proposed program allows a Manufacturer to sell its products “directly” to Delhaize banner stores, Baum believe this is a non- option which is the equivalent of a lockout and restraint of trade. ***“Manufacturers use sales and marketing agencies in selling their products because their syndicated model of sharing labor with other manufacturers generates economies of scale”*** he remarked. He pointed out that a recent study on Maximizing the Impact of Outsourcing by Bain & Company estimated that, on average, using a sales and marketing agency costs 23% less than using a direct sales force. The actions by Delhaize not only threatens this syndicated model but significantly weakens the Manufacturers who participate and then are forced to cancel their legally binding contracts (exposing them to claims of tortious interference of contract) because of the wrongful Power Buyer demands in order to sell and service exclusively through Delhaize’s selected brokers at Delhaize’s banner stores.

Manufacturers have always been precluded under the Robinson-Patman Act, as well as state price discrimination and unfair trade laws, from paying commissions or providing an allowance to a buyer’s in-house broker because they become an unlawful discount in lieu of commission. Similarly a broker representing a manufacturer cannot remit commissions to a buyer. When a Power Buyer exercises control over the manufacturer’s broker, it raises the question of whether they become the Power Buyer’s in-house brokers. The use of such economic power by Delhaize can lead to breaches of responsibility involving violations of law.

ASMC is aware that thin margins in the highly competitive grocery market, especially in a recessionary economy, generates new retailer initiatives in an attempt to reduce or save costs. However, Baum stated that: **“ASMC will always challenge all such proposals that may violate the law or undermine the rights of manufacturers and their chosen sales and marketing agencies”**.