How Manufacturers Can Grow Their Business with Private Label

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In challenging financial times, it is important for manufacturers to consider profitable business alternatives. One such alternative is entering into a private label agreement. Under a private label agreement, products are manufactured by one company but sold under the name or brand of another company, often a well-known retailer. The resulting private label products are often referred to as "store brands," as opposed to "name brands," which are products sold under the name of the manufacturer.

This article will cover some of the factors to determine if a private label arrangement is the right business move and considerations that a manufacturer should think through and discuss with its counsel when negotiating the contract.

Is a Private Label Arrangement the Right Move?

There are several factors that help determine whether a private label deal is the right move for a manufacturer, some of which include: sales potential of the product; the manufacturing process; and quality.

A manufacturer that produces products with significant sales potential and that satisfy a mass market is usually the most successful in a private labeling arrangement. When a manufacturer's name brand product has been pre-tested and consumers are already familiar with it, the product should be desirable in a private label arrangement as it can now be sold in a new package and self-sell.

Another key factor in determining if private labeling is the right business move is the manufacturing process. It is important for the manufacturer to consider its ability to produce a substantial amount of the product, be reliable and ensure on-time delivery. The ability to meet a retailer's needs plays favorably in this type of arrangement.

Finally, it is often important to ensure that the private label product is of high quality. Consumers increasingly expect a store name product to have equal or greater quality to brand name products. It is important to factor this favorable consumer perspective into the product and label development process.

One major benefit for a manufacturer in a private label arrangement is that it does not have to incur advertising expenses to promote the products. Retailers become responsible for advertising and marketing costs of the private label products.

Factors to Consider when Negotiating a Private Label Agreement

There are several factors to consider when negotiating a private label agreement. In addition to the considerations provided below, it is essential for a manufacturer to have discussions with its counsel regarding its specific needs in order to ensure that the agreement accurately covers all of the necessary elements of the deal.

Exclusivity is an extremely important issue to consider during the negotiation process. The manufacturer should look to be free to continue to sell products under its own brand and to other private label retailers. It is recommended that a manufacturer should not allow any one retailer to account for more than 15 percent of its sales, and, therefore, should not give away exclusive rights, if possible.

Minimum order requirements for the private label product should be discussed during the negotiation of the agreement. This establishes the minimum amount of the product the retailer must order within a specified time period. If possible, the manufacturer should negotiate to keep this amount high.

Intellectual property should be protected in a private label agreement. The manufacturer must retain all of its intellectual property rights, including trademarks, trade dress, service marks, patents, and copyrights, in its company, products and all related materials.

Parties to a private label agreement may exchange confidential information and, therefore, should protect that information by including a confidentiality clause in the agreement. The manufacturer should restrict the sharing of its confidential information to the greatest extent possible.

Additional provisions that may be discussed during the negotiation and drafting stages of the private label agreement include quality control, term of the agreement, order procedure, pricing, billing and payment methods, delivery, labeling obligations, warranties, limitations on damages, insurance and indemnification obligations.

Conclusion

Manufacturers, always looking to generate additional revenue, are finding private labeling an increasingly attractive option. Many have created separate divisions specifically for the purpose of manufacturing private label products. This is true even if the manufacturer has a well-known brand of its own. As the trend continues to gain popularity, companies should consider expanding their business to include a private label strategy.