



Prepared by a member firm of Lexwork International, this document is part of a series on trade law reports. This document is part of a collaboration between Lexwork International law firms and globalEDGE.

This overview is intended as general information. This information is not legal advice. The reader should consult an attorney with knowledge in this area of law to determine how the information applies to any specific situation.

Disclaimer: Lexwork International is an association of law firms and is not a legal body separate from its constituents. All member law firms subscribe to the objectives appearing on the Lexwork International [website](#). However, neither Lexwork International nor any member firm has any control over the services provided by any other member law firm, and therefore, has no responsibility for their acts.

URL: <http://globaledge.msu.edu/resourceDesk/tradeLaw.asp>

Akana K.J. Ma
akm@aterwynne.com
(503) 226-8489

Douglas D. Morris
ddm@aterwynne.com
(503) 226-8416

Thomas M. Karnes
tk@aterwynne.com
(503) 226-8654

Portland

1331 NW Lovejoy Street
Suite 900
Portland OR 97209
www.aterwynne.com
Main Tel: (503) 226-1191
Main Fax: (503) 226-0079

Seattle

601 Union Street
Suite 1501
Seattle WA 98101
www.aterwynne.com
Main Tel: (206) 623-4711
Main Fax: (206) 467-8406

Menlo Park

3723 Haven Avenue
Suite 126
Menlo Park CA 94025
www.aterwynne.com
Main Tel: (650) 566-1443
Main Fax: (650) 325-2340

Salt Lake City

341 S Main Street
Suite 309
Salt Lake City UT 84111
www.aterwynne.com
Main Tel: (801) 532-2721
Main Fax: (503) 226-0079

SALES REPRESENTATIVE AND DISTRIBUTORSHIP CONTRACTS IN OREGON

By: Akana K.J. Ma, Douglas D. Morris and Thomas M. Karnes

The Oregon legislature and courts have articulated a body of statutes and case law touching upon various aspects of sales representative and distributorship arrangements. Similar to other jurisdictions in the United States, Oregon's law of contracts is based on common law principles, which are in turn supplemented by statute.

Freedom of Contract

Oregon law provides that the terms negotiated by the parties to an agreement should generally be enforced. One notable exception, however, is the Oregon sales representative statute described below.

Oregon adheres to an objective view of contract interpretation and construction. In accordance with that objective view, Oregon courts will treat the text and context of a contract as the best representation of the parties' intended agreement. In other words, Oregon judicial interpretation of an agreement begins and ends with the words of the contract.

One consequence of the value that Oregon courts place on the text of a contract is that courts are generally reluctant to consider extrinsic evidence of the parties' intent. With respect to contracts for providing services, Oregon courts will look to extrinsic evidence only in limited circumstances. For instance, Oregon courts will consider extrinsic evidence to explain the circumstances under which the contract was made, to explain ambiguous terms, or to establish that the contract was entered into through fraud or misrepresentation. On the other hand, Oregon courts interpreting contracts for the sale of goods under the Oregon Uniform Commercial Code, which could include many distributorship agreements, are more likely to consider extrinsic evidence pertaining to course of dealing and usage of trade. Nonetheless, even with respect to contracts for the sale of goods, Oregon courts will only consider such extrinsic evidence to supplement or qualify, but not to contradict, the express terms of a contract.

Oregon Sales Representative Statute

Although Oregon generally allows parties significant leeway in drafting the terms of their contractual relationship, Oregon's sales representative statute imposes a number of non-waivable requirements on contracts between manufacturers and sales representatives. Oregon's sales representative statute will apply in instances where the manufacturer and sales representative both satisfy various conditions. First, the manufacturer must: (i) not have a permanent or fixed place of business in Oregon; (ii) use a sales representative to solicit orders for its products at wholesale; and (iii) compensate the sales representative on commission. Second, the sales representative must: (i) solicit wholesale orders; (ii) be compensated by commission; (iii) not place orders or purchase for its own account or for resale; and (iv) not sell or take orders for the sale of products to the ultimate consumer.

If the Oregon sales representative statute applies to a particular sales representative contract, the statute requires that, upon termination of that contract, the manufacturer pay the sales representative all commissions accrued under the contract within fourteen (14) days after the effective date of the termination. A manufacturer that fails to timely pay the sales representative any commissions due under the statute is liable for the total amount due, interest on the amount due at a rate of nine percent (9%) per annum until paid, and three (3) times the damages if the manufacturer's failure to pay was willful. Moreover, in the event of a suit to enforce the above requirements, the Oregon sales representative statute permits courts to award costs and attorney fees to the prevailing party. In addition, manufacturers are subject to the jurisdiction of Oregon courts for disputes arising out of sales representative contracts governed by Oregon statute.

Oregon's sales representative statute applies only to contracts involving sales representatives, not to contracts between manufacturers and distributors. Nonetheless Oregon also regulates certain types of distributorship arrangements. For example, an Oregon statute imposes a number of requirements on agreements between manufacturers and wholesale distributors of malt beverages.

Oregon's regulation of sales representatives and distributors is noteworthy for its relative lack of substantial restrictions and protections, since absent provisions in the contract, there is otherwise no statutory right for sales representatives or distributors to be paid compensation solely resulting from their termination.

Other Issues

Oregon law touches upon various other issues that are likely to arise in a typical sales representative or distributorship arrangement. First, sales representative and distributorship agreements commonly include noncompetition provisions. Oregon case law and statutes impose a number of conditions on the enforceability of such noncompetition agreements. For noncompetition provisions generally, Oregon courts require that such provisions be reasonable in light of the circumstances. In assessing whether a noncompetition provision is reasonable, Oregon courts balance the promisee's legitimate interest in the noncompetition provision, the hardship that the provision will impose on the promisor, and the likelihood that enforcement of the provision will injure the public interest.

Oregon statutes impose further conditions on the enforceability of noncompetition agreements in the employment context. Depending on the degree of the manufacturer's control over the time and manner that the sales representative or distributor performs their work, among other factors, a sales representative or distributor could constitute an employee of the manufacturer. Oregon statutes provide that a noncompetition agreement will be unenforceable in the employment context, subject to some limited exceptions, unless: (i) the agreement is entered into prior to starting work or at the time of a subsequent bona fide advancement; (ii) the employee is exempt from Oregon minimum wage and overtime laws; (iii) the employer has a "protectable interest," such as trade secrets; and (iv) the employee earns more than a specified annual income. Furthermore, such noncompetition agreements will not be enforceable for a period longer than two (2) years from the date of the employee's termination.

Second, the financial and business arrangement between the manufacturer and the sales representative or distributor could qualify as a franchise under Oregon law. Stated broadly, sales representative or distributorship arrangements may constitute a franchise if the arrangement grants the sales representative or distributor the right to engage in the business of distributing goods or services under a marketing plan or system prescribed in substantial part by the manufacturer. If an arrangement qualifies as a franchise, the Oregon franchise statute requires that the manufacturer disclose certain information to the purchasers of the franchise interest. A manufacturer's failure to satisfy those disclosure obligations could result in civil penalties. Oregon law does not require that franchisors register with the Oregon Attorney General. Unlike some other states, Oregon does not have any specific statutory restrictions regarding the sale of "business opportunities."

Third, manufacturers should consider the tax implications of entering into sales representative and distributorship arrangements in Oregon. Specifically, such an arrangement could potentially trigger the Oregon corporate excise tax or corporate income tax, as well as other state and local taxes. Oregon imposes its corporate excise tax on corporations doing business in Oregon. A corporation is doing business in Oregon if, among other factors, the corporation has an office or place of business in Oregon, or if the corporation has an "economic presence" through which the corporation regularly takes advantage of Oregon's economy to produce income. By contrast, Oregon imposes its corporate income tax on corporations that are not doing business in the state but receive income from Oregon sources. Oregon levies its income tax only upon income that is not otherwise subject to the Oregon corporate excise tax. Corporations with income from inside and outside of Oregon will apportion that income for purposes of ascertaining their Oregon taxable income. That apportionment may occur within a single corporation or within a "unitary group" in the case of two or more corporations that share certain common attributes.

Oregon's tax regime generally treats pass-through entities, such as limited liability companies, in a manner similar to the federal tax code. Unlike many other states, Oregon does not, with limited exceptions, have a statewide sales tax.

Finally, sales representative and distributorship arrangements can raise a number of issues with respect to Oregon's antitrust laws. The most common antitrust issues presented by sales representative and distributorship arrangements include resale price maintenance (i.e., the seller and reseller agree that the reseller will charge a particular price for the goods on resale), territorial and customer restrictions, exclusive-dealing and requirement contracts, and tying

arrangements. Oregon courts generally treat the Oregon antitrust statutes as mirroring the federal antitrust regime.

The above issues can be complex, and conclusions will vary significantly depending on the facts of each unique situation. Manufacturers that are interested in pursuing a sales representative or distributorship arrangement in Oregon are advised to assess such issues with local counsel.

Oregon Resources

- **Oregon Department of Revenue:** <http://www.oregon.gov/DOR/forms.shtml>. The Oregon Department of Revenue is responsible for collecting Oregon taxes. The Department's website offers resources relating to the Oregon corporate excise tax and corporate income tax, as well as various other Oregon state and local taxes.
- **Oregon Division of Finance and Corporate Securities:** <http://www.cbs.state.or.us/external/dfcs/>. The Oregon Division of Finance and Corporate Securities (DFCS) is part of the Oregon Department of Consumer and Business Services, which has jurisdiction over all securities and other financial instruments offered in Oregon. The DFCS's website offers resources relating to Oregon franchise law.
- **Oregon Economic & Community Development Department:** <http://econ.oregon.gov/>. The Oregon Economic & Community Development Department's mission is to promote Oregon industry. The Department maintains a website, www.oregon4biz.com, which describes various Oregon state programs designed for attracting and supporting businesses.