

# Consumer Goods & Retail Roundtable



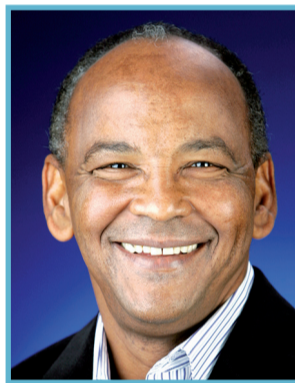
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**T**HE world of consumer goods and retail has been heating up and has clearly become one of the fastest growing and most vibrant business sectors in Southern California. The landscape of managing such businesses has rapidly evolved as well – with laws, regulatory protocols, best practices, consumer and business needs and industry trends seemingly changing by the season. To take a closer look at how this sector works, we asked several experts in the field to weigh in for a roundtable discussion. We hope you'll find the resulting dialogue to be an insightful resource – whether you are looking to buy, sell, launch or grow a business in this industry.



## CONSUMER ROUNDTABLE



'Consumers have become more resourceful in earning extra cash from selling anything from extra room space to renting their own tools. Consumers regularly sell unused or under-utilized goods on eBay, Craigslist and other sites. This creates more competition for the consumer goods industry but also provides additional cash to consumers for the purchase of newer goods.'

SCOTT P. SHAW

◆ **How would you describe today's overall climate for retail in Southern California? How have things improved over the last five years?**

**SHAW:** After some challenging years in the past, it now appears that the retail climate in California is poised for growth. We can see some improvement from emerging retailers who are opening new doors and looking to expand, while we see some larger national retailers struggling financially. The emerging retailers are developing both e-commerce and brick-and-mortar, and are simultaneously building both platforms. They seem to understand their niche in the retail landscape and are making significant progress. Digital marketing and advertising are also becoming increasingly important, as consumers are becoming more accustomed to buying products without physically seeing and touching them.

**APFELBERG:** Retail in Southern California is vibrant, though not always with respect to sales. Our region is still viewed as a tastemaker. As a result, manufacturers, distributors, retailers and customers are actively watching what we are doing and trying to get a foothold. The increased scope of web-based purchasing has meant, though, that a local company is not always the one to make the sale even though they may have been the one to put forth the product that is garnering attention.

**FRIEDMAN:** The current retail climate for most retailers remains challenging, with the last five years showing slow signs of improvement. Consumer belts are still tight, with average household income declining and costs holding steady. Retailers continue to respond with more discounting, which has a direct impact on their bottom lines.

◆ **How have recent trends in consumer behavior and purchasing habits affected the consumer goods industry?**

**GEIBELSON:** Trends in Reverse Showrooming, Disintermediation, and Recurring Revenue have created a new normal in the consumer goods industry. Reverse Showrooming involves consumers researching online and buying in a store, either in a traditional sense, or through a "ship to store" model or a "pick up in store" model. Disintermediation refers to direct-to-consumer sales, which have been facilitated by faster and cheaper shipping. Recurring Revenue models involve subscriptions for all manner of consumer goods and services. All of these sales practices have dramatically changed retailers' relationships with their customers. They have also magnified the need for a compliance program that ensures that products are consistently advertised and priced across channels, and in accordance with applicable law. While each of these trends presents a heightened opportunity to develop the customer relationship, they also heighten expectations and present opportunities for disappointments...and class actions.

**APFELBERG:** Because of the increasing sales online and the ease of price comparison in that platform, companies have had to alter their strategy for building brand and making sales. No matter what the price point, savvy companies are trying to create a memorable brand that clearly conveys their value proposition and distinguish themselves from their competitors. They are trying to create a "reason" to buy their product. Many companies are deciding to embrace rather than fight the fact that an increasing percentage of sales are made online and via mobile devices. Restoration Hardware is a great example of one of those strategies of turning stores into a showroom and making the sale online.

**FRIEDMAN:** Consumers are looking for discounts and will not spend unless they feel like they are getting a bargain. Consumers walk the aisles in-store, but then they pull out their smart phones to comparison shop online. They are aggressive about finding the best price before committing to a purchase. The industry needs to be more creative in attracting customers. Retailers need to make social networking and the internet an integral part of their business plans. The local retail store may become a thing of the past as more and more manufacturers go vertical with their own retail stores. We are starting to see a trend whereby retailers are starting to manufacture merchandise for their own stores to increase gross profit margins. As the manufacturers go vertical, the retailers are going to need to respond and produce merchandise with the store brand to compete with the manufacturers.

**SHAW:** Some trends, and their impact on the consumer goods industry are: 1) Going Mobile. The ability to stay connected away from the home and office has never been easier – and online and mobile advertising has never been more lucrative. The reason is obvious – online and mobile sales continue to grow exponentially. This trend has impacted the consumer goods industry on virtually every level – from advertising, to production, and delivery of goods. 2) Bargaining. Deal giants like Groupon and Living Social, as well as countless online sites and apps offer steep discounts for consumer goods. There is such an abundance of deals such that consumers increasingly don't expect to pay the full price for goods. The resulting demand for more and more deals means brands will need to integrate these with customer loyalty programs. 3) The Sharing Economy. Consumers have become more resourceful in earning extra cash from selling anything from extra room space to renting their own tools. Consumers regularly sell unused or under-utilized goods on eBay, Craigslist and other sites. This creates more competition for the consumer goods industry but also provides additional cash to consumers for the purchase of newer goods.

**MASSIE:** More consumers are shopping online. That's why UPS partnered with comScore to develop the UPS Pulse of the Online Shopper study—an insider's guide to what consumers are looking for and what drives shoppers to choose

one retailer over another. Here are some of the trends found in the study:

- Free shipping continues to be the most preferred option when checking out online.
- 93% of online shoppers have taken action (such as add more items to cart, choose slowest transit time offered, or join loyalty programs) in order to qualify for free shipping.
- Online shoppers want to see total purchase information at checkout, including shipping costs, and the majority prefer to see the expected arrival date rather than the number of days to arrive.
- More than half of online shoppers have chosen "ship-to-store" with 4 in 10 making an additional purchase while in the store.
- Returns options heavily influence consumers' likelihood to complete a sale, with restocking and shipping fees being the most impactful deterrents.

◆ **What changes in legislation are expected to have the greatest impact on retailers and manufacturers of consumer goods?**


**APFELBERG:** Legislation along with continued awareness of the properties of materials and a desire for organic and non-harmful components will drive up costs of manufacture (hopefully in line with the public's willingness to pay a premium) and use of such decisions for branding purposes. For instance, the current review by regulators of sunscreens could be a game changer for the industry.

**GEIBELSON:** The Legislature and numerous interest groups are looking hard at Proposition 6567 California's Safe Drinking Water and Toxic Enforcement Act – that requires warnings for products that cause cancer or pose reproductive risks. Prop 65 has resulted in innumerable claims related to consumer goods containing a listed substance. Most settle quickly because they are too expensive to defend, although manufacturers and retailers frequently contest whether the amount of the substances in the subject products can ever actually cause harm. Regardless, the warnings are now everywhere, causing people to question their utility. Changes to laws and regulations related to accessibility requirements under the Americans With Disabilities Act and California's Unruh Act and Disabled Persons Act may also have a significant impact on retailers. Access suits continue unabated and are at this point a virtual tax on businesses even after performing CASp inspections unless prompt remediation is performed.

◆ **What are the main challenges and opportunities facing retailers and manufacturers of consumer goods doing business in California compared to other states?**

**SHAW:** Employment laws and workers compensation are common challenges for retailers in California. On the one hand, California is trying to encourage growth and promote jobs, but on the other hand the laws are at times anti-employ-





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ANDREW APFELBERG



er. It is well known that most manufacturing is done overseas. Some companies in the past few years are really trying to bring jobs and manufacturing back to California, and they are doing well. Consumers will typically pay a premium for goods manufactured in California. If companies can successfully navigate the legal mine field for manufacturing in California, they will see an amazing opportunity to create quality products with a meaningful story behind the products.

**GEIBELSON:** Class actions and the protection of confidential information (including customer lists, business plans, and processes) from competitors present the main challenges in California compared to other states. California's prohibition (with limited exceptions) on noncompetition agreements makes the protection of trade secrets and confidential information more difficult and more delicate. And California's liberal class action rules and its Unfair Competition Law and False Advertising Law continue to pose an unparalleled challenge for retailers doing business here. The business risk posed by these laws is amplified by statutory damages for violations of law that cause no injury, such as requesting personal identification information (including ZIP codes) as part of credit card transactions, and recording customer service calls without customers' consent. These laws have also emboldened public prosecutors to seek dramatic changes in company procedures over miniscule pricing errors.

**APFELBERG:** Challenges include higher tax rate, human capital costs and risks of litigation. Opportunities include being able to create new product categories and have them rapidly adopted by a community that thirsts for something new and better. Southern California will always be among the handful of regions around the world that are ahead of the trends. We also are home to many celebrities and athletes who can influence others through their use or endorsement of a product.

◆ **What do you project will be the major issues and risks facing retailers in the next 3-5 years?**

**MASSIE:** Retailers' major issues in the next 3-5 years will be to effectively streamline their supply chain in order to operate as efficiently as possible. With the globalization of sourcing raw material, manufacturing, and distribution, it is imperative that retailers have a sound strategy for all levels of their supply chain. Retailers should consult with their global logistics partners to devise, implement, and monitor an effective operating plan - from "concept to products on their shelves". These phases should include a comprehensive plan for goods, funds, and information. In addition, the shift of offline to online retail represents both a risk and an opportunity for retailers. To mitigate the risk retailers must look for opportunities to differentiate themselves from the mass of online retailers by connecting more closely with consumers. There will be significant opportuni-

ties to engage with consumers through social media and other one to one forums that improve customer loyalty. Retailers must realize that their work isn't done once the sale is made. They must continually try to engage with consumers in a meaningful, valuable way.

**FRIEDMAN:** Retailers are going to be challenged by branded manufacturers opening their own retail channels of distribution through web sales and their own retail stores. Manufacturers see an opportunity to capture gross profits at both the fabricating and selling levels. How will retailers compete with this? They will need to follow the trend and start manufacturing and developing their own brands. They will also have to create an environment in the store that will entice customers to visit on a regular basis, which may encompass setting a place for people to socialize. Booksellers like Barnes & Noble, for example, were early to recognize the advantages of this, and more retailers will begin to adopt this model of interfacing with their customers and providing ways for customers to interface among themselves within the brand environment.

**GEIBELSON:** In addition to more frequent but smaller class actions, data breaches like the recent ones at some of the nation's largest companies will continue to present risks to retailers of all sizes. The concept of Big Data is exciting. But after it is collected, it is often unused, or is used ineffectively or incompletely. Too many companies keep data for the sake of participating in the Big Data frenzy without accounting for or handling its risks. If the data is not being used, delete it. And if the data is not going to be used in the future in an intentional and strategic way, don't collect it.

**SHAW:** Some issues and risks include: 1) Employee turnover - or lack of worker continuity. Employees coming in and out of your business as if it were a revolving door creates big problems for human resource professionals who must constantly find and train new staff, which can eat up valuable time and resources. 2) Auditing. Retail businesses are regularly engaged in competition with one another, and this competition can create price wars, forcing a need to keep tight control over inventory and other important data. The retail industry is often faced with inefficient and poor auditing plans that make competing with other companies difficult. Existing auditing systems may be outdated and provide inadequate audits needed to stay competitive. 3) Economic Uncertainty. The retail industry as a whole is largely dependent upon the economic wellbeing of the nation. As the nation prospers and people have more money to spend, the retail industry generally flourishes. However, in more difficult economic times, the retail industry is often faced with potential shrinkage. The current economic outlook appears good, but it is difficult to predict when a downturn will occur. 4) Technology. Keeping up with the pace of modern technology is another problem the retail industry faces. For

instance, retail point of sale technology often uses computer systems that are several years behind the computer industry as a whole. Also, the inability of retail industry technology to keep up with initiatives such as mobile digital coupons is a problem that the industry regularly faces. Given the rate of turnover and the constantly changing economic environment, constantly upgrading and keeping their equipment and networks running on the newest technologies can be difficult for retail leaders.

◆ **How about consumer goods manufacturers? What challenges do they face in the next 3-5 years?**




**GEIBELSON:** The tip of the iceberg in false advertising class actions has been the "Natural" litigation - cases in which consumers contend products are not actually naturally made. While "natural" cases continue to be filed, other buzz words are emerging as consumers' next targets for manufacturers' advertisements - "non-GMO," "organic," "gluten free," and "handmade" to name a few. Given recent changes in class action law, and since manufacturers don't always know who their customers are, these cases are now being filed against retailers as well. As Proposition 65 claims continue to be pressed aggressively, manufacturers will have to redouble their efforts to confirm that their products - particularly products they white label, and ingredients or components they buy from others - do not contain substances about which Proposition 65 warnings must be given.

**FRIEDMAN:** Manufacturers have been finding their gross profit margins squeezed by the retailers for many years and they are fighting back by going direct to the consumer. We are going to see this trend only increase in the years to come. Branded manufacturers are in the best position to expand and change their business models to fit this vertical distribution. The manufacturer is now into social media, blogging and other new methods to connect directly with consumers.

◆ **Why is important for retail companies to enter global markets online, especially if it appears so complex to do so?**

**FRIEDMAN:** Retailers need to recognize that it is time to bring the mountain to their customers. The customers of the 21st century are conducting much of their lives online, and that includes purchasing. Baby boomers still like to get in the car and drive to the malls to look for something special, but that group of shoppers will be spending less money in the years to come as they approach retirement. Retailers better understand who will be buying and how to market to that group. Technology has made the world a much smaller place, and retailers can reach literally anywhere to sell. The local mom and pop retail store is becoming a dinosaur, as department stores and manufacturers increasingly go vertical with their own retail establishments. Local retailers need to think beyond brick-and-mortar.



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MICHAEL A. GEIBELSON

**MASSIE:** Domestic growth in the retail market by 2020 is forecasted at 1.7 times that of GDP; 4 times for online commerce; and 7 times for online cross-border. Nearly 95% of the global consumers are outside the US, with 59% of them living in rapid-growth markets. Companies need to ensure they partner with carriers that provide an array of services that are guaranteed on time around the world and incorporate easy-to-integrate, affordable, scalable, turn-key online solutions that minimize the complexities of global commerce. For example, UPS offers solutions like UPS i-parcel to ensure that the complexities of global commerce are removed.

◆ **What cybersecurity and data privacy challenges are on the horizon?**

**GEIBELSON:** Companies have to remain vigilant and proactive about data breaches on point-of-sale (PoS) systems. That risk is expected to expand to mid-layer targets including payment processors and management firms, along with the increased use of ransom-ware – the ability to hijack data and hold it up for significant ransom demands. With greater retail dependency on the cloud and mobile applications, these data-rich applications will also be targeted. This risk only underscores the importance of demanding redundancies in data sources, and placing greater legal demands on vendors to account for these risks. Companies are increasingly participating in Information Sharing and Analysis Centers (ISACs) such as the Retail Cyber Intelligence Sharing Center. ISACs like this have been helpful in other industries to share information about threats, and prevent and minimize the effects of breaches.

◆ **How has social media played a role in this industry?**

**FRIEDMAN:** Social media is a fact of life in the 21st century and almost certainly beyond. For retailers, it is a gift since unlike traditional advertising there is no media cost associated with maintaining a web site or Facebook, Twitter, Snap Chat or other accounts. Not only is the media cost removed from the equation, social media gives retailers an opportunity to engage with customers in a way that traditional media could only dream about. They can start dialogs, implement frequency programs, host special events and connect with customers in a limitless number of ways. Visit a retail web site and you can get a 360-degree view of the store. Want to zoom in on a product? Just click.

**APFELBERG:** It has enhanced the power and reach of bloggers, influencers, public figures and companies whose products are relevant to the part of the population that shops online. It is only going to increase as more and more digital natives obtain the levels of disposable income to have their purchases make a meaningful difference.

**SHAW:** Social media has revolutionized the con-

sumer goods industry. Consumers buy an increasing amount of goods online, and through mobile apps – including social media applications. Online advertising is more pervasive and important than ever. Businesses tailoring to the desires of consumers cannot afford to avoid social media marketing.

◆ **What are some of the best ways for a retailer to build its brand and elevate itself from the competition?**

**APFELBERG:** The best strategy always comes from within. An honest evaluation of the company, product and perception in the community will inform which of the many brand-building opportunities will be most effective. It must be genuine, resonate with the core and aspirational purchaser demographic and be communicated in a way that they can best hear it (and share it with others in their network). Examples include cause marketing, premium products, being emblematic of a luxury lifestyle (for a high price point product) or an edgy/hip lifestyle (for a lower price point product, product placement in relevant media content, co-branding with likeminded products/services, cultivating relationships with influential bloggers and influencers and celebrity or athlete endorsement/investment.

**SHAW:** Creativity is always important. Like other brands, retailers face the same challenges of trying to establish a brand identity that will remain relevant to consumers. Retailers who continue to focus on innovation will elevate itself from the competition. New creative marketing techniques and strategic business planning will allow retail brands to elevate themselves from competitors who remain stagnant.

**FRIEDMAN:** Retail has always been an experiential business. Whether customers are shopping in-store or online, the purchase experience has as much to do with retail success as the price. This is as true for online shopping as for brick-and-mortar. To be competitive, retailers need to utilize every channel available to connect with their customers and reinforce the brand experience. That includes maintaining active social media channels to create as many touch points with their customers as possible. It also includes pushing out communications to reach customers strategically and frequently, such as the digital newsletters and daily or weekly email promotions that many retailers have incorporated as part of their standard marketing programs. Retailers are also starting to manufacture items specifically for their stores that enhance the brand name. Cafes and free wifi access give customers the opportunity to spend time in the store, which enhances the relationship and supports point-of-purchase. Driving customer traffic continues to be a focal point for retail PR firms, which are tasked with both in-store and online marketing programs.

**MASSIE:** The best way for a retailer to build its brand and elevate itself from the competition is

to individually connect with its current consumer base and seek potential consumers using innovative and a multitude of tactics. Retailers can no longer rely on generic campaigns to reach the masses of consumers and expect to differentiate themselves from their competitors. The execution of omnichannel retailing that allows consumers to browse, shop, and purchase from an integrated set of channels (brick & mortar, catalog, on-line) that are uniquely designed for individual consumers will be the leaders in their respective retail industries. In addition, having the ability to provide various means of shopping (desktop, tablet, smartphone, etc) will give the clear advantage to any retailer. Essentially, creating a differentiated and seamless shopping experience across all channels.

◆ **Can you define “omnichannel” and discuss how it impacts a retailer’s financials?**

**MASSIE:** Omnichannel is a multichannel approach to the buying experience that seeks to provide the end consumer with a seamless shopping experience whether it is a click (web) or brick (store) transactions. Consumers expect to be able to research, review, buy, pick-up, receive and return anywhere with any device. Options such as “ship from store” create margin improvement opportunities while “ship to store” creates the revenue generation since consumer tend to purchase additional items at the time of pick up. Also critical, is the reduction of stock outs across buyer access points. If items are not available, consumers will seek other options and may not return to you for future purchases. Other impact areas include returns and optimizing of your distribution network.

◆ **How important is celebrity branding, investment or endorsement to building a brand for consumer goods?**

**FRIEDMAN:** Celebrity endorsements can be extremely effective if they are either spontaneous, based on actual personal experience with a brand, or if they are supported by a marketing budget that is sufficient to truly imprint the value proposition with the target customer. Retailers of course benefit from the product demand that such campaigns can create, but there is no free lunch. They are paying for the campaign in higher wholesale costs and ultimately the product must appeal to the customer with styling and fit.

**SHAW:** Combine beauty and business, and you can create a powerful brand. However, celebrity branding is a luxury, not a necessity. In today’s social media driven world, entrepreneurs can develop their own celebrity cache by writing books, becoming experts in their industry, and using social media to harness the power of their brands.

**APFELBERG:** This is a very important component to building brand because, if done properly, it can be extremely effective in a short amount of time

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NOEL MASSIE



and result in immediate sales. Celebrities and athletes now have large followings of people who aspire to be like them (and therefore use the same products) or who respect their opinions (and therefore will buy something that the celebrity or athlete creates or thinks is good). There is a built-in community of these folks that interact on the celebrity's Facebook, Instagram and other social media outlets who, in turn, will influence one another. This is why there must be honesty and close alignment between the product and the person that is endorsing it, creating it or whose name/image/likeness is incorporated into the product, packaging or advertising. The exclusivity that you get from the celebrity or athlete in connection with their endorsement means that you have a legitimate barrier to competition. None of the other companies in the marketplace can have a product that is closely associated with such public figure. Even if the products themselves are similar, this is a distinguishing factor that cannot be overcome.

◆ **What are some of the best practices for a branding or endorsement campaign promoting a consumer product?**

**SHAW:** One of the best practices is to have a consistent multi-level campaign across numerous channels. Consumers are reactionary and when they are consistently seeing a branding message from different channels, the message is imprinted in their minds. Often companies with successful branding or endorsement campaigns will also create a back-story to help promote the product.

**APFELBERG:** Always start with an analysis of celebrities that have influence with the core customer demographic. Then do the same with the aspirational demographic as well as the other real stakeholders in the success of your business (e.g., distributors and retailers). Next determine whether a license or an endorsement deal will best suit the company's strategic plan and budget as well as the desires and schedules of the celebri-

ties that are being considered. Have meaningful conversations where both sides can share goals and expectations for the relationship. Only then do you want to draft and sign documents.

◆ **What advertising and sales practices pose the biggest threat for class action suits against retailers and manufacturers of consumer goods?**

**GEIBELSON:** Representations about the price and quality of products as being "on sale" or "up to X% off" or from regular inventory (in outlet stores) have spurred a recent wave of class actions. Performance representations have also become increasingly attractive to plaintiffs. Recurring Revenue sales models such as subscriptions and negative options – where charges continue periodically until canceled – are also an emerging threat. Retailers' failure to provide necessary disclosures and make canceling easy and accessible will surely continue to induce class



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RON FRIEDMAN



actions. With respect to edible products, the tip of the iceberg in false advertising class actions has been the "Natural" litigation. Other buzz words are emerging as consumers' next targets for manufacturers' advertisements – "non-GMO," "organic," "gluten free," and "handmade" to name a few. Given recent changes in class action law, and since manufacturers don't always know who their customers are, these cases are now being filed against retailers as well.

◆ **What advice would you offer to an early-stage manufacturer seeking growth capital?**

**APFELBERG:** Seek more than money. Understandably, it is really difficult to find someone to back a company without a long track record. However, early-stage companies need other things just as much as capital. They need relationships, mentoring, branding, management teams and key employees and education on running a larger business in this particular industry. Try to find backers that can provide some or all of those in addition to cash.

**FRIEDMAN:** Early stage companies need to look to family and friends for initial startup capital. Once they have established themselves with sales and have demonstrated an ability to manage their businesses, then they can look for outside financing. The best source of funds will come from the factoring community, which has always been able to support start-up and growth-stage companies short of capital. The factors will loan money on accounts receivable and inventory to some degree. These companies should be working with an outside accounting firm that can assist with financial reporting, forecasting and introductions to the capital markets.

◆ **How effective are acquisitions in the branded consumer products space in creating value?**

**APFELBERG:** If there is strong alignment between the products of the buyer and the seller, then there can be significant value created. One brand will be viewed through the eyes or in combination with the other. Thus, they both speak to the same demographic (e.g., Apple and Beats by Dre) then it creates positive goodwill and resulting sales. If they do not speak to the same demographic, then both brands suffer because of confusion in the marketplace over who the company and products "really are" as well as potential feelings of rejection or disappointment by the customers and stakeholders. Nobody wants to see their grandfather wearing the same shirt as they are.

◆ **What are some main challenges in the growing Direct to Consumer retail market?**

**MASSIE:** All carriers have faced this difficulty. The carrier goes to your house and leaves a note saying "We Came By With Your Package." It's costly for the carriers and diminishes the customer experience. The great news is the carriers realize there is a new era in home delivery.

Consumers want their delivery on their time. They may even want to setup a confirmed 2-hour window for their delivery. UPS has a solution called My Choice that allows consumers to get home deliveries on their schedule. My Choice provides the consumer a new level of flexibility and control over home deliveries with both a free and a paid membership. Retailers should also consider creating a strategy to encourage consumers that will not be home to consider other delivery options like delivering to work or alternate delivery locations like The UPS Store.

◆ **What are the key issues that arise in branded consumer M&A or financing -- and how can you prepare in advance to address them?**

**APFELBERG:** Major issues include brand confusion (as discussed in the prior question), competition for shelf-space and internal resources (e.g., design team, promotional dollars) among the family of products and whether the expected synergies (e.g., increased buying power, more efficient operations) are realistic within the timeframe set forth in the model prepared to analyze the potential acquisition. The single best thing you can do to prepare is to do self-analysis of what you need/want out of an acquisition target in order to accomplish your company's strategic plan and view each potential seller through that lens. If they do not fit well, then pass on the deal even if it is an exciting opportunity or good value. The next best thing is to prepare in advance an integration plan and team and encourage the seller to do the same. The closing is not the finish line of the race; it is truly only getting out of the starting blocks.

◆ **What should investors look for when considering getting involved in a branded consumer products company?**

**FRIEDMAN:** Management is one of the most important considerations in determining whether to invest in a branded company. If the acquirer is looking for management to stay on and continue to run the business, pick partners you like, respect and can work with. Life is too short to be battling with management; your goals and visions need to match up. Also, look at the brand and determine if it is growing or stagnant. As an investor, you need to know what you bring to the table that can help drive the business to the next level of success.

**APFELBERG:** The traditional considerations of whether the company has a sustainable business model and skilled management team always apply. In addition, you need to think about what this brand stands for, its current and likely future relevance and how it can (or cannot) evolve over time. Without a long runway for the brand to have meaning and expand then the likelihood of a meaningful liquidity event is lessened. If the company has co-branding or celebrity license or endorsement deals, consideration needs to be given to how the investor feels about being associ-

ated with such people and whether the celebrity will remain enthusiastic about the company or product once the investor comes in. If the presence of an investor makes the celebrity less eager to promote the product or do the extra things that are impactful but may not be required under the contract then the value of that license/endorsement will be significantly diminished.

◆ **How important is it to train retail employees on workplace legal matters before they become lawsuits?**

**SHAW:** Very important. In many cases, your retail employees are your eyes and ears into your day-to-day operations. Having trusted employees that can identify potential legal issues before they become hurdles can save you a lot of money. Employment class action lawsuits are rampant in California, but they can often be avoided with proper training and counseling. Retailers in particular are a target for employment and consumer class actions. Retailers need to meet at least yearly with their legal counsel to review and analyze new laws so they can update their employees and plan accordingly.

**GEIBELSON:** There are generally two types of plaintiffs in class action lawsuits: professional plaintiffs, and unhappy customers. There is no protection from the former other than compliance with the law. But there are a whole lot of class actions that never would have been filed if customer service was taught throughout the organization as way to protect the bottom line in addition to its own merit. It's a simple and self-evident premise that is always too conspicuous, and commonly too expensive in its breach. If customers were more often given respectful explanations of company policy (assuming company policy complies with the law), fewer class actions would be filed.

◆ **Some people view merchant services as a commodity. Why is that a mistake?**

**MASSIE:** In today's ever-changing mobile marketplace, a low cost alone isn't enough. Customers expect to make purchases whenever they want, with multiple payment options. And while retailers want to make it easy for them to do business, it makes it harder for the retailer. They need business partners that provide retailers with access to safe, feature-rich payment processing. These retailers should be requesting simple-to-set-up merchant services programs with unmatched flexibility and secure, comprehensive data management.

◆ **Gift cards provide a significant source of revenue to retailers. What are the most important issues associated with launching a gift card program (legal, accounting, etc.)?**

**GEIBELSON:** Before anyone sells a gift card in California, there is no substitute for reading the Civil Code starting with Section 1749.5. Except under specified circumstances, gift cards sold in



## Why Transparency is Critical to Effective Distributor-Manufacturer Collaboration

By KULLEN BIRKELAND

**E**FFECTIVE collaboration between manufacturers and distributors has never been more important. Customers are increasingly demanding high-quality items, timely delivery and low costs. Successfully aligning these three elements — quality, schedule and cost — is essential. This requires a strong, transparent relationship between the manufacturer and distributor.

### Transparency in the real world

For example, when a Southern California distributor of precision tooling wanted to expand its product line, the company knew it needed to either invest in new equipment and training, or acquire a competitor with the desired capabilities. After considering acquisitions and doing extensive competitive market analysis, the distributor ultimately decided to partner with a manufacturer, and become the U.S. distributor for that manufacturer. The manufacturer gained a first-time U.S. presence, and the Southern California distributor gained a new product line. Since the distributor already had a significant sales presence and understood the industry, it was a natural fit.

But what made the relationship truly productive was the level of transparency. The two companies trusted one another with information about competitive intelligence, margins, expectations, inventory, pricing, potential uses of the product, catalog numbers, collective benefits, customer responsiveness, and many other areas outside the purview of a normal distribution relationship. Both parties went in with eyes wide open to the possible risks and long-term competitive challenges. Key to the relationship's success was the mutual trust and shared commitment to getting the best result for their customers.

Effective collaboration is greatly enhanced by the ability to communicate and collaborate with supply chain partners in real time, rather than by old-school, untimely methods such as spreadsheets and paper documentation. Having online visibility and access to distributors' documentation, sourcing information and audits gives supply chain partners — and customers — confidence in both the supplier's business practices and the end product.

### Why is transparency important?

Transparency enhances collaboration and makes distributors more valuable to manufacturers

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California (as opposed to gift certificates given away as part of a loyalty program, for example) cannot have expiration dates or service fees. And most importantly, employees have to be trained that if a gift card is valued at less than \$10, they have to give the customer its value in cash on request.

◆ **Culture can be very important to a company. Can you talk about what this means and how does a manufacturing company or retailer hold on to their culture as they grow?**

**SHAW:** Company culture is often overlooked when a company begins to experience growth and they are trying to ensure legal compliance. Successful companies understand that they cannot and will not sacrifice their culture. A company's culture is its DNA, so it is very important to maintain the culture through growth. It can be challenging at times to maintain the company culture, but it is arguably the key element to sustainable growth.

## REWRITING THE ODDS

When retailers and manufacturers face litigation with consumers, competitors, and business partners.

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## CONSUMER ROUNDTABLE

'When it's done right, transparency in the distributor-manufacturer relationship can be a game changer. It can enable distributors to go beyond warehousing and storage to offer a full continuum of services, such as sales, customer service, repairs, replacement parts, support in various languages, etc. These added capabilities make distributors more valuable to manufacturers, and may allow them to take a bigger cut of the profits.'

KULLEN BIRKELAND



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by lowering the risk of disintermediation, a common worry among distributors. Disintermediation is when manufacturers go directly to the end user, bypassing a traditional distributor. In a recent survey by Modern Distribution Management and Grant Thornton, 76% of participants indicated that this practice was a concern.

Transparency has other advantages. Sharing operational information enables both sides to achieve higher margins, get to market faster, boost the competency and market connection of sales staff, and lower distribution costs. The California distributor already had a strong presence in its market, thereby reducing costs significantly.

That's not to say that there aren't potential setbacks, such as exposing your client base or product line to an untrustworthy competitor. Identifying

a reliable partner with mutual business interests can be a challenge. Also, over time, one party may choose to move in another direction. The partnership needs a structure and agreement that sets clear terms, including how to dissolve the relationship if one or both parties want out. Ideally, even if the partnership ends, both parties will have gained knowledge and benefits they can leverage going forward. As with any relationship, there will be challenges along the way, but transparency will help resolve issues in an open, collaborative manner.

#### A mutual benefit

When it's done right, transparency in the distributor-manufacturer relationship can be a game changer. It can enable distributors to go beyond warehousing and storage to offer a full continuum of services, such as sales, customer service, repairs, replacement parts,

support in various languages, etc. These added capabilities make distributors more valuable to manufacturers, and may allow them to take a bigger cut of the profits. Close collaboration — aided by transparency — also enhances distributors' long-term viability and reduces the risk of disintermedia-

tion. The more value and competency distributors deliver to manufacturers, the more conducive it is to mutual information-sharing. Ultimately, transparency enhances distributors' value proposition.

*Kullen Birkeland is the Los Angeles Office Managing Partner for Grant Thornton LLP.*

## Tips for Transparent Manufacturer-Distributor Relationships

- Take steps upfront to make sure you are working with a trusted collaborator and a coveted business partner.
- Anticipate challenges and include those considerations when you document agreements.
- Inevitably, issues will arise. Continue to monitor these arrangements and address issues early and directly.
- Consult your professional services firm for insights and practical solutions to reach your objectives.

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