

The Complexity of Market Withdrawal for Dealers and Manufacturers

Market withdrawal. The phrase can send shivers down the spine of corporate executives and dealers alike. It conjures up mental images of hemorrhaging bank accounts, failed marketing initiatives, unwanted products and vacant showrooms.

The concept of market withdrawal not only presents a nightmare scenario for both manufacturers and dealers from a business perspective, it raises difficult legal questions as well. Are there any limitations on when a manufacturer can decide to withdraw its products from the market? What legal obligation does a manufacturer have to its dealers when the manufacturer decides to pull its products from the market? How much advance notice must the manufacturer provide? Does market withdrawal amount to constructive termination of a manufacturer's dealer agreements and, if so, can the manufacturer make the necessary showing to justify that termination? Each of these questions – and several others – could be the subject of its own Alert. Suffice it to say, any situation involving market withdrawal is likely to raise significant and complicated legal questions.

A Balance of Interests

Perhaps as a result of the inevitable complexity of market withdrawal situations, the law seems to reflect an attempt to balance the interests of both manufacturers and dealers. While most people would agree that it is not in anyone's interest to continue the production and sale of a product that is failing in the marketplace, a situation involving market withdrawal is seldom that simple. Inevitably, some dealers will enjoy success with the products in their local markets and consequently will have a different perspective on the viability of the products. Likewise, manufacturers sometimes act based on multiple motives. Perhaps product viability or profitability is a legitimate concern for the manufacturer, but maybe market withdrawal also benefits the manufacturer 1) by opening up the marketplace for another line-make by that same manufacturer or 2) by the same parent company that owns the withdrawing manufacturer. In such a situation, dealers might rightfully question whether the manufacturer's assessment of product viability has been inappropriately skewed by other business interests.

Rebadging

Rebadging is one example of a situation in which market withdrawal could be clouded by a manufacturer's other business interests. Rebadging typically occurs when a manufacturer takes a product or product line from one line-make and puts a badge from a different line-make on it. In these situations, it is not uncommon for the manufacturer to cease offering the product or product line under the original badge. For dealers of the original line-make, the effect of this type of rebadging is equal to market withdrawal: they have lost the product or product line. While rebadging is

not necessarily forbidden in every situation, many states have laws that limit a manufacturer's ability to rebadge its products in a manner that would harm its dealers.

Conclusion

Unique in complexity from both a business and legal perspective, market withdrawal can be a reasonable solution to an unfortunate situation for manufacturer and dealer alike. Or it can be an abusive attempt by a manufacturer to benefit at the expense of its dealers. If your business is facing the unpleasant reality of market withdrawal, your best bet is to solicit the input of an experienced attorney who can help you evaluate the situation in light of all the circumstances to ensure that your livelihood is not being compromised. Only with keen guidance can you be sure you are adequately protecting your investment in your business.

For Further Information

If you have any questions about the complexities of market withdrawal, please contact Wayne A. Mack at 215.979.1152 or wamack@duanemorris.com or J. Manly Parks at 215.979.1342 or jmparks@duanemorris.com or the lawyer in the firm with whom you are regularly in contact.