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Media Contact:
Dena Jacobson
Lages & Associates
(949) 453-8080
dena@lages.com

AGMA to Tech Manufacturers: Contract Provisions Key to Reducing Warranty, Service Abuse Exposure

Identifies Best Practices for Successful IP Protection

LOS GATOS, Calif., October 24, 2017 – Attention OEMs and service providers: Your profitability is being threatened. Warranty fraud and service abuse continue to run rampant in the tech industry, diminishing your ability to be competitive – and affecting your bottom line. Defined as the use of services and support without proper entitlement or authorization, [service abuse](#) can be difficult to identify, but its effects are not. They include, but are not limited to: a decline in customer confidence and company reputation, increased costs of products and services for end users, loss of revenue, increased gray market activity, loss of new product sales, and increased R&D costs. [AGMA](#), a non-profit organization and the largest group solely focused on [intellectual property protection](#) in the high-tech industry, has identified a series of best practices that, when implemented correctly, will go a long way toward protecting your brand. The first of these is centered around channel partner contracts – and the devil is in the details.

Your channel partners play an integral role in your business – you rely on them to help market and deliver your products and services to end users. The delegation of these essential activities to a third party necessitates the use of a contract. By having contracts in place with clear language, strong terms and conditions, and well-defined provisions that spell out liabilities

for breaches, you set clear expectations with your partners, paving the way for a mutually beneficial relationship.

A strong, clear contract contains provision metrics that will govern partner performance, and covers the incentives that partners will receive in recognition of good performance as measured by these metrics.

Right to Audit Clause

You have a right to audit your channel partners as you see fit, and you should be exercising it. After all, your brand is at stake. Are you sure your channel partners are acting in compliance with brand standards? Are they complying with regulatory requirements? These and many other questions can be answered during an audit. Audit clauses can help avoid warranty fraud and service abuse by serving as a discovery device.

The audit clause should be very specific, covering the desired period of time, describing who will conduct the audit, and detailing out what types of records and documents will be requested.

There are several different ways to conduct audits. For example, partners can be audited at random, with each partner being audited once every two years. An alternative approach would be to select partners to be audited based on suspected contract deviation. Metrics, past performance, feedback, and whistleblowers can all be used to determine the likelihood of deviation and assist in determining audit priorities. When deciding who will conduct audits, some OEMs use their own employees while others employ third parties such as KPMG, Deloitte or PricewaterhouseCoopers LLP (PwC). No matter the frequency or method desired, the specifics should be clearly detailed in your audit clause.

Consequences for Non-Compliance

Let's say you uncover suspicious activity at one of your partner companies. Your contract should include provisions that allow you to send a demand letter asking for repayment for non-legitimate service. Best practices dictate that you should attempt to negotiate in order to solve the issue amicably. If no agreement can be made, the issue can be taken to either civil or criminal court, depending on whether or not a clear intent to defraud has been determined. Financial and legal implications for non-compliance should be clearly outlined in your contracts.

“While no contract is ironclad, by covering all of your bases in a clear manner, your channel partner contracts will be an instrumental tool in efficiently managing your network of partners,” noted AGMA president Sally Nguyen. “AGMA’s mission is to educate technology companies on the many different activities that threaten their intellectual property. Sharing insights and best practices is an effective way to foster collaboration as we join together to tackle these challenging brand protection issues.”

As an industry association, AGMA is chartered with addressing key threats to intellectual property in the high-tech industry. To learn more about AGMA, please visit www.agmaglobal.org.

About AGMA

AGMA is a non-profit organization comprised of influential companies in the technology sector. Incorporated in 2001, AGMA’s mission is to address gray market fraud, parallel imports, counterfeiting, software piracy, and service abuse of technology products around the globe. The organization’s goals are to protect intellectual property and authorized distribution channels, improve customer satisfaction and preserve brand integrity.

AGMA welcomes technology manufacturers, as well as persons or entities that own or hold intellectual property rights to finished goods outside the technology industry; government and law enforcement officials; product and service providers who provide goods and/or services to combat gray market fraud, counterfeiting and warranty and service abuse threats. AGMA uses a variety of avenues to cultivate change in the marketplace, including event speaking, educational initiatives, benchmark studies, industry guidelines, and, where appropriate, public policy advocacy. To learn more about AGMA’s initiatives or to become a member, please visit www.agmaglobal.org or follow them on [LinkedIn](#) and [Twitter](#).

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