

LAW OFFICES  
**MALONEY & KNOX, LLP**  
5225 Wisconsin Ave., NW, Suite 316  
Washington, D.C. 20015-2014  
(202) 861-8810 (202) 293-1702 fax

Rick Abraham, President  
Foodservice Sales & Marketing Association  
1810 J York Road #384  
Lutherville, MD 21093

Re: Termination Commissions

Dear Mr. Abraham:

You have asked us as General Counsel to the Foodservice Sales & Marketing Association (“FSMA”) the legal requirements with respect to the payment of commissions to Sales and Marketing Agencies for services rendered after their notice of termination until the conclusion of their representation.

Under principles of agency law which govern the relationship between a supplier/principal and its independent Sales and Marketing Agency, commissions are earned when an Agent’s services are performed, namely, the securing of an order. Agencies are entitled to commissions on confirmed orders even if the shipments and payments occur after the termination of representation.

Often, suppliers are confused on this point and believe that their liability for commissions ends following the last day of representation. On the contrary, it ends with the payment of commissions for services completed through the termination, regardless of when payment or shipments occur.

Even in the absence of a contract, an Agency may bring an action in “*quantum merit*” to obtain commissions on services performed prior to termination. Also, various state laws have provisions governing payments of commissions to Agencies following termination.

A summary of these laws may be found in the *FSMA Legal Manual*, Chapter 6, Section A. Generally, these laws provide for punitive damages (generally double or triple), attorney’s fees and court costs, if such commissions are not paid within the specified period of time.

Sincerely,

Barry Maloney