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

Re: Legality of Promotional Fee
Bonuses

Dear Mr. Abraham:

You have requested our opinion as General Counsel to the Foodservice Sales & Marketing Association ("FSMA") with respect to the legality of certain distributor bonus programs offered to Sales and Marketing Agencies for making promotional fee payments to distributors and/or obtaining increases in promotional fee allowances from their Manufacturers.

As we understand these programs the distributors award certain bonuses to Sales and Marketing Agencies like trips, voice mail lines and event invitations based on the dollar amount of the allowances paid to the distributor.

In the food industry, promotional fees, like advertising fees, are the expense of the Manufacturer and it is the Manufacturer who specifies their use. Agencies never make payments from their own account to distributors as they may be deemed to be illegal kickbacks as described below. An Agency is required to spend a Manufacturer's promotional funds in accordance with the Manufacturer's plan.

Under Section 2(d) of the Robinson-Patman Act, a Manufacturer is prohibited from granting advertising or merchandising allowances to a Customer "...unless such payment or consideration is available on proportionately equally terms to all other customers competing in the distribution of such products or commodities." Under Section 2(f) of the

Robinson-Patman Act, it would be unlawful for a Customer to induce a Manufacturer into granting a discriminatory price.

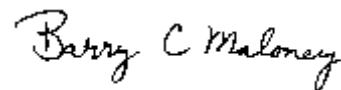
Thus, unless a Manufacturer is prepared to match the increased promotional fees on a proportionately equal basis with all customers, these bonus plans would result in discriminatory pricing in violation of the Robinson-Patman Act.

With respect to the requests by distributors to accept an allowance from an Agency's own account, such payments would be deemed to be illegal kickbacks as well as a violation of Section 2(c) of the Robinson Patman Act which prohibits the payment of or acceptance of "any allowance...to the other party to such transaction..." Section 2(c) of the Robinson-Patman Act prohibits the granting of a discount in lieu of commission and the requested payments from Agency could only come from an Agency rebating the commissions it receives from its Manufacturers.

Finally, Article IV, Section 2(a) of the FSMA By-laws requires an Agency to be independent from a trade buyer. If an Agency paid an allowance and received a bonus from a distributor, they would violate this By-law. Moreover, Article IV, Section 2(b) of the FSMA By-laws requires Agency members to be bound by the FSMA Code of Ethics. Canon No. 1 of the Code of Ethics thereof states: "No Member should engage in any inconsistent or irreconcilable activity, or knowingly permit any transaction to occur through their offices which is not fair to clients and customers alike."

Accordingly, we recommend that all FSMA Agency Members not participate in such programs.

Sincerely yours,



Barry C. Maloney