

Changing How Products Get From the Manufacturer to the Customer: Common Questions and Risks

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PRACTICES Procurement and Supply Chain Management, Retail, Food, Beverage and Restaurant, Franchise and Distribution

It starts with the best of intentions: A startup medical device company has just sold to a larger enterprise with an established sales team and customer base and no longer needs distributors. A consumer packaged goods company has just bought a brand and needs to transition to a new team of brokers. A growing company is finally ready to take its supply chain captive, including the distribution of products to customers, and no longer needs small distributors or sales representatives. Then, surprisingly, rather than joining together to celebrate good fortune and new opportunities, the manufacturer or marketer of products finds itself embroiled in a bitter dispute with departing distributors, brokers, or sales representatives, or subject to demands for payment for goodwill that such parties believe that they have built for the manufacturer's brand.

A current example is Kellogg's new supply-chain model — the transition from direct-store delivery to a retail-warehouse model — which eliminates the need for its independent distributors and streamlines distribution to keep up with e-commerce and rising consumer demands. Kellogg's transition to its modern supply-chain model is currently receiving significant push back from a handful of its independent distributors that have been terminated as a result. Kellogg's story will not be the last, and rising consumer expectations on fast, cost-efficient delivery will certainly continue as growing e-commerce platforms set the standard.

As with most business matters, advance planning is crucial to avoiding disputes with distributors, sales representatives, brokers, and similar parties when a company changes its distribution strategy. Where possible, a look at what could be in the future might present a company with an opportunity to develop a strategy that works for both the company and its business partners. When that is not possible, knowledge of the common pitfalls of terminating or refusing to renew distribution agreements, broker agreements, and sales representative or referral agreements helps to inform the manufacturer of whether there is risk, and if there is risk, then what the risk actually is, and eventually, a way to a solution that in many cases may help avoid costly and distracting litigation.

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