

# FSMA LEGAL BRIEF

*A Legal Newsletter for Members from FSMA  
General Counsel Maloney & Knox, PLLC*

## Accounting for Commissions from Online Sales A Contract Rider

(March 2019)



Online sales to Operators are projected to rise substantially over the next 2-5 years. Amazon and similar digital sellers are ramping up their efforts to capture foodservice share. It's important for foodservice Manufacturers to include online sales volume when calculating Sales Agency commissions, as Agencies create the demand for Manufacturer products regardless of where the products come from.

FSMA recommends that Agencies advise their Manufacturers that it is the Manufacturer's responsibility to pay commissions on such online sales and **request that their Manufacturer sign a Contract Rider (see FSMA recommend contract form attached) specifying that commissions will be paid on all online sales.**

Since all Manufacturer/Agency Contracts provide for payment of commissions, it is necessary to add a Rider Contract to clarify the position on these sales through eCommerce. Accordingly, we have prepared the attached Contract Rider to utilize with your Manufacturing clients to make sure that Agencies receive the commissions each month on Online sales.

**FSMA Legal Counsel Member Benefit:**

As part of membership benefits, all FSMA Members are entitled to an initial free counsel on legal issues affecting their business by FSMA's General Counsel, Barry Maloney, Esq. Thereafter, services are supplied to members at a 20% discount.

Barry has represented sales and marketing agencies and manufacturers on a myriad of legal issues for more than 30 years and is the author of several legal manuals on agency law, legal briefs for trade association newsletters, and has represented sales & marketing agencies on mergers and acquisitions and collection of unpaid commissions. In addition to being an attorney, Barry is a Certified Public Accountant, and formerly was Senior Branch Counsel to the Division of Corporate Finance of the Securities and Exchange Commission in Washington, DC.

**Attorney Contact Information:**

To reach the FSMA General Counsel, please use the following contact information:

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**INTERNET SALES - CONTRACT RIDER**

**THIS CONTRACT RIDER** is entered into by the undersigned (“**MANUFACTURER**”) and the undersigned (“**AGENCY**”) on the dates indicated below.

**WHEREAS, MANUFACTURER** and **AGENCY** have entered into a Sales & Marketing Agency Contract (“Contract”), pursuant to which **AGENCY** provides sales and marketing services as specified in the Contract; and

**WHEREAS,** the Contract provides for **AGENCY** to receive commissions as specified therein on all sales into the specified territory; and

**WHEREAS,** from time to time **MANUFACTURER** receives payments from Buyers by means of Internet purchases of products delivered into **AGENCY**’s (“exclusive”) territory; and

**WHEREAS, MANUFACTURER** is responsible for the payment of commissions on all sales into **AGENCY**’s territory;

**NOW, THEREFORE,** the **PARTIES HERETO AGREE** to amend such Contract as follows:

**Internet Sales.** **MANUFACTURER** will supply to **AGENCY** a report by Purchaser’s name of all Internet sales into **AGENCY**’s territory on a monthly basis and pay the commissions thereon to **AGENCY** in accordance with the terms of the Sales and Marketing Contract.

**MANUFACTURER:** \_\_\_\_\_  
Print Name  
By: \_\_\_\_\_  
Print Name and Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

**AGENCY:** \_\_\_\_\_  
Print Name  
By: \_\_\_\_\_  
Print Name and Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

*(FSMA Recommended Contract)*