Introduction

As HP grows and prospers, its people are becoming more sophisticated in their approach to the legal issues faced by the company in its field marketing activity.

HP has long had a policy of conducting its affairs in strict compliance with the letter and spirit of the law and adhering to the highest standards of business ethics. For an HP employee, an understanding of legal issues affecting field marketing should begin with an understanding of this policy.

The more sophisticated approach that has become appropriate with growth and prosperity requires additional knowledge. The employee not only needs to be aware of the consequences of illegal and unethical conduct, but also needs a deeper understanding of the legal rights and responsibilities that arise in everyday business transactions. This booklet is intended as a resource for your development of that additional knowledge.

This booklet is a companion to another HP publication, **Standards of Business Conduct.** Together, the two booklets cover most of the legal issues of interest to field marketing personnel.

1. **Standards of Business Conduct** states HP policy with regard to conflicts of interest, payment practices, competitive activity and procurement. It summarizes laws affecting restraint of trade, competitive information, restrictions on resale, price discrimination, unfair trade practices and monopolization. Violation of these trade regulation laws could result in prison sentences and fines for HP employees as well as fines, treble damage liability, injunctions and other sanctions against HP.
2. **Legal Issues in Field Marketing** begins with a general description of the types of legal liability faced by HP, including liability for money damages under contract law and tort law. It outlines the procedural steps involved in civil litigation in the United States. It discusses the scope of your authority to speak for HP. It explains basic principles of the law applicable to HP's obligations to customers—in the broadest sense, the law of promises. It describes the company's legal departments and suggests effective ways for you to use the company's legal resources.

Neither booklet is a manual. Neither one exhausts the rules and exceptions that may apply to a tricky situation. Neither is a substitute for legal advice about such situations from the company's legal staff. Both are intended as simplified introductions to the increasingly complex legal environment in which HP field marketing now takes place.

The Legal Environment

General

An effective understanding of the legal environment requires more than knowing how to avoid illegal activity. For example, it may not be illegal to break a promise, but breaking a promise can result in a claim for compensation by a customer who relied on the promise and suffered an economic loss as a result. To protect the legal interests of HP, you not only must avoid illegal and unethical activity, but also must guard HP against needless exposure to claims for money damages.

Criminal and Civil Liability

When society, through government, determines that certain conduct is harmful to the public interest, the conduct is prohibited and people who persist in it can be punished for doing so. In other words, such activities are classified as *crimes*, and those who commit them are subject to *criminal liability*. A criminal action is investigated and prosecuted by the government on behalf of the public.

Many activities that are not *illegal* (that is, not classified as crimes) can still harm the economic or personal interests of private parties. The party harmed by such activity may be entitled to compensation, typically money damages. The obligation to pay such compensation is called *civil liability*. A civil suit is prosecuted by the party who claims to have been harmed, called the *plaintiff*, against the party claimed to have caused the harm, called the *defendant*.

Certain conduct may result in both criminal and civil sanctions. For example, a physical assault can result in a jail sentence for the assailant, and if the assailant has the resources to pay damages, the victim may also sue the assailant to recover hospital bills, lost wages and general damages for pain and suffering as the result of the attack.

Clients often tell their attorneys about the facts of a situation and then ask, "Can this person sue us on the basis of these facts?" In the United States, the answer to the question, "Can this person sue?" is always, "Yes." There is no effective requirement that the plaintiff have a good chance of winning before he is entitled to file a civil suit. As a result, the important question is not whether the plaintiff can sue, but rather whether he will prevail when the case is heard and decided by a court. As a further result, we necessarily think in terms of *minimizing* rather than *eliminating* our exposure to civil liability. The risk of such liability is always with us.

Types of Civil Liability

In an everyday business transaction, many kinds of rights and responsibilities may give rise to civil liability. The four most important categories are contract law, tort law, trade regulation law, and patent, trademark and copyright law.

1. **Contract Law.** A *contract* is an agreement between two or more parties providing for an exchange of value, such as an exchange of products for money.

   The contract is fundamentally the deal between the parties rather than any document in which the parties have described the deal. If the deal falls through as the result of one party's fault, the other party may be entitled to damages for breach of contract. A civil suit based on contract law may claim that products are of unsatisfactory quality, that money is still due and owing or that promises are unfulfilled.

2. **Tort Law.** In the legal tradition of England and most English-speaking countries, civil wrongs other than breach of contract are called *torts*. A tort is an unreasonable interference with the interests of others.

   (a) *Accidents*

   The single most important category of tort litigation relates to physical injuries. If an HP product is unreasonably dangerous as the result of defective design or manufacture, HP may be liable to anyone who suffers a physical injury caused by the defect.

   Since this kind of tort liability is completely independent from liability under contract law, it is generally impossible for a manufacturer to escape it by means of *disclaimers* (that is, denials of liability) in the manufacturer's standard contracts.

(b) *Intentional Torts*

Fraud, theft and libel can also give rise to tort litigation in the business environment.

If a plaintiff claims that a defendant failed to live up to a contractual promise, the plaintiff may characterize the broken promise as having been intentionally deceptive and therefore fraudulent. This characterization would make the broken promise a tort as well as a breach of contract. A plaintiff who claims that his trade secrets have been misappropriated talks about them as having been stolen, just as he would if a burglary had taken place. Libel and slander suits are seldom successful where the plaintiff and defendant are business rivals, but unfair comments about a competitor can amount to an unfair practice under trade regulation laws as well as defamation under tort law.

3. **Trade Regulation Law.** Antitrust and trade regulation laws in the United States, the European Economic Community and many other jurisdictions create both civil liability and criminal penalties for restraint of trade, monopolization and other improper competitive practices. These laws are summarized in *Standards of Business Conduct.*

   Civil liability under the trade regulation laws of the United States can result in an award of *treble damages*. This means that the party harmed by anticompetitive activity can recover three times the amount of the economic losses involved.

4. **Patent, Trademark and Copyright Law.** A broad view of the rights and responsibilities involved in an everyday business transaction should also recognize the importance of civil liability under patent, trademark and copyright law. For HP field marketing personnel, the chief impact of these legal concerns relates to the right and wrong ways to handle confidential information, which will be discussed at a later point in this booklet.

Procedural Steps in Civil Litigation

1. **Summons and Complaint.** A civil suit begins with delivery of a *summons* and *complaint* to the defendant on behalf of the plaintiff.

   The complaint tells the plaintiff's side of the story. It may recite what are called *legal fictions* as well as assertions of fact; it may ask for damages that are greatly out of proportion to any injuries actually suffered. These features of the complaint should be kept in focus because, despite the fictions and exaggerations that may be involved, news reports about a civil suit tend to repeat the claims made in the complaint as if they had already been established as the truth.

   The complaint also identifies the parties claimed by the plaintiff to be responsible for the loss that has occurred. If an employee of a company like HP is named as a defendant along with the company, it is often because the plaintiff wants to frighten the employee or believes that naming the employee as a party will make it easier to obtain testimony and documentary evidence for trial of the case.

2. **Answer.** The defendant must file an *answer* to the complaint, typically twenty or thirty days after the summons and complaint are delivered.

   If the defendant fails to respond within the time set by law, the court has the power to give the plaintiff substantially all of the relief he has asked for, without a trial on the merits of the case, in what is called a *default judgment.* If HP receives a summons and complaint, the HP people familiar with the underlying dispute must therefore communicate and cooperate with the company's legal staff as quickly as possible so that a timely defense to the suit can be organized.

3. **Pretrial Discovery.** In the United States, the procedural stage in civil litigation which takes the most time and effort is the process called *pretrial discovery.* The objective of discovery is to give each side in the case an opportunity to learn about all of the witnesses and evidence available to the other side before the case goes to trial.

The most common kinds of discovery are interrogatories and requests for admissions, depositions and requests for production of documents.

(a) *Interrogatories and Requests for Admissions*

Interrogatories and *requests for admissions* are written questions prepared by one side in the suit which must be answered in detail and under oath by the other side. These questions may ask for the identity of witnesses or the location of evidence; they may also ask for the answering party's contentions about the facts in dispute.

It is not uncommon for even a relatively insignificant suit to require preparation of answers to ten or fifteen pages of interrogatories and requests for admissions.

(b) *Depositions*

A *deposition* is a formal interview of a witness in the case by lawyers for both sides. In this context, a witness is not necessarily a first-hand observer, but may be anyone who has access to relevant information.

The deposition is usually conducted in a lawyer's office. Although no judge is present, the witness is put under oath to answer truthfully and a court reporter is present to prepare a word-for-word transcript of the questions asked and answers given. The transcript may be used at trial either because the witness is unavailable to testify or to *impeach* (that is, challenge) what the witness says in the courtroom.

(c) *Requests for Production of Documents*

Each party to the suit may demand that the other parties turn over copies of any documents or other records available to them that may be relevant to the case or may lead to identification of evidence for trial. While these demands are called *requests for production of documents,* they can be backed up by court orders if the party who receives them does not comply with them.

If a customer sues HP because he is unhappy with the performance of an HP product, he is entitled to inspect and copy the sales file, the service file and the credit and collection file pertaining to the transaction in question. He would be entitled to see the sales representative's calendar and the customer engineer's notes regarding service calls even if these materials were kept at their desks, in their briefcases or at their homes. The customer would even be entitled to see HP's interoffice memos or other files regarding similar complaints by other customers, if any existed, as long as the complaints were in some way relevant to his claim.

4. **Trial.** Most of us are familiar with the trial stage of litigation through news reports of celebrated cases. A major trial is a costly undertaking, both in terms of legal expenses and in terms of the time involved for witnesses, managers and others who help present each party's case.

In the United States, each side in a civil suit bears the expenses of retaining its own attorneys and absorbs the expenditures of time and effort made by its people in preparing for trial and appearing at trial. The winner does not collect lawyers' fees from the loser (except under statutes like the civil rights laws and the Employee Retirement Income Security Act, which specifically provide for recovery of such fees).

When HP employees learn that a plaintiff has brought what they feel is an unjustified suit against HP, they often ask, "What if we sue him back? If he loses, can we make him pay for our time and trouble?" In the United States, the answer is generally, "No."

Agency

General

A corporation is nothing more than a legal mechanism for organizing the efforts of people. In a sense, a corporation consists of people.

More specifically, a corporation is an enterprise in which activities are carried out by one set of people, the employees, while ownership of assets rests in another set of people, the shareholders. In this respect, a corporation is different from other business forms, like the partnership and the sole proprietorship, in which activity is carried out directly by the people who own the enterprise. One of HP's strengths is the fact that many of its employees are also its shareholders, but their rights and duties in the first role are legally distinct from their rights and duties in the second.

The legal relationship between a corporation and its employees is that of a *principal* and its *agents*. The authority of the employee to speak or act on behalf of the corporation is governed by the law of *agency*.

Actual and Apparent Authority

One can think of the agent as standing in the shoes of the principal; while the agent is wearing those shoes, his statements and actions have the same legal effect as if they had been made by the principal. The authority of the agent may be *actual* or *apparent*, and actual authority may be *express* or *implied*.

1. **Actual Authority.** The agent's *actual authority* to *bind* the principal (that is, to incur liability for the principal) is created by the principal's instructions and conduct conferring power upon the agent.

   Explicit instructions create *express actual authority*. For example, when HP designates a sales manager as an authorized signature for bids and government contracts above a certain dollar amount, the manager has express authority to sign such documents on behalf of HP.

   Implied actual authority is the power that goes along with a larger, more general grant of express actual authority, such as the power that customarily goes along with a title. For example, since most people would assume that a personnel manager has the power to offer a job to an applicant, authority to do so goes with the manager's position.

2. **Apparent Authority.** Even without actual authority, the agent may still bind the principal by the exercise of *apparent authority*. Apparent authority arises when a third person is led to believe that the agent has been given power by the principal and the third person changes position in reasonable reliance on that belief.

   Suppose a customer calls HP and asks for a firm quotation on a product. The HP switchboard refers the call to a temporary clerk, and the clerk responds with a letter which states the price for the product as shown in the current instrument catalog, although not as shown on the current price list. The customer has every reason to think that the person who responded has authority to issue the quotation. If the customer then acts in reliance on this appearance of authority by passing up a one-time opportunity to buy a competitor's product at a better price, HP cannot successfully argue that the clerk's letter was not a binding commitment because the letter was unauthorized.

   Even if the principal instructs the agent *not* to do something, but fails to make the instruction clear to those with whom the agent deals, and instead creates the appearance that the agent has the power to perform the forbidden activity, the forbidden activity may be within the scope of the agent's apparent authority.

Liability of Principal

While the agent is standing in the shoes of the principal, his actions as well as his promises may create liability for the principal. For example, if the agent is negligent or engages in fraud or theft in the course of his duties for the principal, the principal is liable to the parties hurt by the agent's conduct. In this context, it is said that the acts of the agent are *imputed* to the principal.

Knowledge as well as conduct can be imputed to the principal. Suppose a customer is having problems with the performance of an HP product, calls HP to complain and talks to a sales manager in another product discipline rather than to support personnel for the product. If the customer later claims that HP failed to respond to the call, the knowledge of the manager is imputed to HP even though the manager may not even have understood everything the customer had to say. Giving information to *someone* at HP may be legally equivalent to giving information to *everyone* at HP.

Agents other than Employees

A corporation may act through agents other than its employees. For example, it can hire an independent firm to provide service for its customers. If it continues to receive payments under its service contracts and tells its customers that the firm is performing service on its behalf, the firm would perform as an agent.

The fact that other corporations may be agents of HP is important in the context of HP's relationships with third party sellers of HP products, such as dealers, distributors and original equipment manufacturers (OEMs). Since the scope of an agent's authority to act on behalf of a principal can depend upon appearances, the purchaser's perception of the third party seller's authority to speak or act on behalf of HP can determine HP's liability for the third party's promises and performance.

Suppose a college bookstore carries five or six different lines of calculators and personal computers, including those manufactured by HP. If the HP logo is part of a display in the store, a purchaser is not likely to think that the store is a branch office of HP, and HP does not become liable for the store's promises regarding the performance of the HP products, much less for the store's promises regarding the non-HP products that the store also carries.

Change the facts, and assume the store uses the HP logo and no other sign or logo of any kind on its door, its business cards and its business stationery. If a reasonably intelligent person could conclude that the store is a branch office of HP on the basis of the way the HP logo is used, the purchaser might successfully argue that HP is responsible for all of the store's commitments and all of the store's unbranded products.

Where HP has chosen to do business through dealers, distributors and OEMs, HP is careful to define the separate roles of HP and the third party and to avoid creating false impressions. Since the liability of HP will depend on appearances, HP must help the purchaser understand that HP and the third party, although they complement one another, are independent entities, and that the third party is responsible for its own commitments and products.

Contracts

General

Every HP employee depends upon sales for his or her paycheck. The importance of sales underscores the importance of contract law, since every sale involves a contract.

Many people think of a contract as consisting of written terms and conditions; many refer to those terms and conditions as *verbiage* (that is, an excess of meaningless words). Properly understood, the terms and conditions of a contract are far more than verbiage. More to the point, a contract is far more than terms and conditions. A contract is a transaction involving the behavior as well as the words of many people. To understand the legal issues that arise in HP field marketing activity, you should be aware of the legal effect of your statements and conduct in light of contract law.

What is a Contract?

1. **Definition.** A *contract* is an agreement between two or more parties providing for an *exchange of value*. The value to be exchanged, called *consideration*, may consist of products, services, money or promises.

2. **Formation.** Contracts are formed by *offer* and *acceptance*. Since every contract involves an exchange of value, every contract involves at least a basic kind of negotiation by each side. "I'll sell this product for five dollars." "I'll buy it for five dollars." The match-up of offer and acceptance when negotiations are complete is called a *meeting of the minds*.

3. **Terms.** The terms and conditions of the contract measure the value to be exchanged; they define what each party expects to give and what each party expects to get. "I'll sell this product for five dollars provided that you pay me within thirty days." "I'll buy it for five dollars and pay as you've asked if you deliver within ten days."

4. **Behavior.** Although terms and conditions are important to the contract, the contract is really the deal between the parties rather than any document in which the parties have described the deal. For this reason, there can be a contract where there is no document; there can even be a contract where there are no words.

   For example, if you walk into a barber shop, sit down in a chair and let the barber cut your hair, you have made a contract to pay the going rate for the haircut even though you never said you agreed to do so.

Written and Unwritten Terms

In the United States and most English-speaking countries, courts will usually refuse to enforce a contract for the sale of goods involving more than a certain value unless *part* of the contract is in writing and signed on behalf of the party resisting enforcement.

There is an important exception to this rule. Where the parties have behaved as if they had a signed agreement, courts may enforce the contract to prevent unfairness even if nothing has been signed. The basic rule, however, is that there must be at least a partial writing and a signature.

A formal typewritten or printed document obviously can satisfy the requirement that a contract be partially in writing. A great many less formal documents can also satisfy the requirement. For example, a single telegram or a series of letters between a seller and a buyer can add up to a written contract. A quotation or a purchase order can satisfy the requirement; a few words jotted down on plain paper sometimes can as well.

Questions often arise as to whether the parties intended that a particular letter or other document or even an oral statement would be part of the contract between them. In general, the more important the statement is, the more likely courts are to hold that it was part of the contract. Courts are reluctant to deprive a buyer of a valuable promise from a seller because the promise was made informally.

Battle of the Forms

The terms and conditions that apply in an everyday transaction are typically the ones set forth in the standard paperwork for the transaction. HP's terms are set forth in a purchase agreement form, a quotation form or an acknowledgment form. The customer may have its own terms as part of its purchase order form. The possibility that HP's terms may not match up precisely with the customer's terms results in what is called the *battle of the forms*.

The law traditionally required a precise *meeting of the minds* (that is, complete agreement) between the seller and the buyer before any term of a contract was enforceable. In the United States, this traditional requirement has been weakened. In a contract for the sale of goods, courts may enforce many of Party A's terms even though Party B never explicitly agreed to them as long as Party B had notice of them and failed to object. One can have notice of terms even though one does not read or understand them, particularly if the sale is a commercial transaction rather than a consumer transaction.

The terms set forth in HP's standard forms have been drafted with care as precise definitions of HP's commitments regarding products and support. The risk in using the customer's form is that the customer's terms will redefine HP's commitments so as to create obligations that HP cannot reasonably meet. If every sales and support transaction uses HP forms to the fullest possible extent, HP will have made commitments it can live up to, and customer satisfaction will be enhanced in the long run.

Promises and Warranties

Most of us think of a *warranty* as a promise by a manufacturer to repair a product if it fails within the first 90 days or one year after it is sold. In fact, this commitment by the manufacturer is no more than a specific example of promises regarding products. Under the law, a warranty is any promise regarding a product that influences the customer's decision to buy the product. Almost any promise is a warranty to the customer if the customer relies on it.

No magic words are needed to create a warranty. The seller need not say, "I guarantee that this product will last for five years" or "Our firm commitment is that this product will last for five years." The seller need only say, "This product will last for five years," if the purchaser reasonably understands the statement as creating a commitment on the seller's part.

A manufacturer's sales forms usually contain a *disclaimer of express warranties*. Such a clause states, in effect, that the 90-day or one-year service commitment made by the manufacturer is the only commitment regarding the product to which the manufacturer is willing to be held.

Assuming that a transaction takes place on the basis of the manufacturer's forms rather than the customer's forms, will this disclaimer of express warranties effectively prevent the customer from holding the manufacturer to its other commitments?

The answer is often "Yes," but occasionally "No." Courts are sympathetic to buyers who rely on statements made by sellers with sophisticated technical knowledge and significant bargaining power. When courts are sympathetic to the buyer, they are likely to find that neither party to the contract intended the disclaimer to exclude a particularly valuable and explicit promise on which the buyer obviously relied.

Moreover, if a promise made in connection with a sale amounts to misrepresentation or fraud, the buyer can rely on tort law rather than contract law in enforcing its rights, and in that way defeat the seller's efforts to protect itself through language in the contract.

When these principles are combined with the principles of agency law, the clear implication is that the standard warranties in a manufacturer's forms can often be expanded or overridden by field marketing personnel.

Breach and Damages

Since the contract is the entire deal between the parties, if any part of the deal falls through as the result of one party's fault, the other party may be entitled to *damages for breach of contract.*

In general, the civil liability of the party responsible for a breach of contract extends to all damages directly or indirectly caused by the breach. In a contract that provides for the exchange of products in return for money, the single most important element of such damages is the loss of the value expected from the transaction. If a buyer drives a hard bargain and negotiates a contract to purchase for five dollars a product that is reasonably worth ten dollars, then, in the event of the seller's breach, the buyer would be entitled to the difference between the five dollar payment it would have made and the ten dollar value it would have received.

Another common element of civil liability for breach of contract is *consequential damages* (that is, damages that result from the circumstances surrounding the breach rather than loss of value). Suppose that a buyer uses a product in the operation of its business. If the product fails, the buyer may not only be entitled to compensation for loss of the value of the product, but also to profits lost as a result of the interruption of its operations.

Most manufacturer's sales forms include a *disclaimer of consequential damages.* In effect, such clauses provide that the manufacturer's liability for any breach of contract will be limited to the loss of value incurred by the customer and will not extend to the customer's other losses, such as lost profits, lost goodwill or lost time in attempting to make products work. From the manufacturer's viewpoint, this limitation is essential because civil liability for consequential damages puts the manufacturer in the position of providing insurance for the success of the customer's application.

In the United States, if a contract contains a disclaimer of consequential damages, the disclaimer will usually be enforced by the courts. (Once again, if a promise made in connection with a sale amounts to misrepresentation or fraud, the customer can rely on tort law rather than contract law in enforcing its rights, so that a contractual disclaimer may not be relevant.)

Setting the Customer's Expectations

Since a warranty is any promise on which a customer relies in making the decision to buy a product, the key to the legal rights and responsibilities of the parties to a contract is often the nature of the customer's expectations.

In this respect, your strategy for minimizing risk under contract law may coincide with your strategy for maximizing success in your business relationships. Setting a customer's expectations at a realistic level as soon as possible and as honestly as possible avoids creating unrealistic commitments and at the same time promotes goodwill.

It is both poor sales strategy and poor legal strategy to make vague, open-ended promises. "You'll get all the support you need from us." While the seller's lawyer might argue that such statements are too vague and too remote to create legally enforceable obligations, they may create a climate of misunderstanding in which the customer becomes frustrated enough to file a civil suit.

The Sale/No Sale Decision

If a prospect cannot be talked out of unrealistic expectations and is unwilling to make the commitment needed to become a successful user of HP products, it may be necessary to decide, after consultation with field management, that HP simply will not deal with that prospect. In the United States and most other countries, the general rule is that HP can refuse at the outset to do business with anyone. (Of course, once HP has promised to make a sale or has accepted an order, it is generally too late to back out.)

Refusals to deal with a prospect must be handled with great care. HP's decision not to do business must be *unilateral;* if other manufacturers or other customers are involved, the refusal could amount to a boycott or restraint of trade under antitrust and trade regulation laws.

To avoid misunderstanding, the prospect should simply be told that "HP has decided not to do business with you at this time." Any effort to explain the decision is likely to cause an argument and may be misconstrued as evidence of an improper motive on HP's part.

Deciding not to do business with a prospect is obviously a last resort for difficult situations rather than an everyday part of field marketing strategy. However, the *no sale decision* is available as an option when an effort to set reasonable expectations has failed.

Futures

HP field marketing people encounter two distinct problems regarding *futures:* whether HP can *sell* them and whether HP can *disclose* them. In this context, a future is an unreleased product which has not received approval for inclusion on the HP Corporate Price List.

1. **Selling Futures.** Futures may not be *sold.* HP Corporate Marketing Policy prohibits *quoting* (that is, offering for sale) any product not approved for the Corporate Price List. Should a customer request the right to purchase an unreleased product, the most that can be done is to sell a current product with the right to substitute any new product that might be released.
2. **Disclosing Futures.** Futures can be and often are *disclosed,* but such disclosure is a risky proposition. The unreleased product may never become available; if it does, it may not have the projected features at the projected price with delivery at the projected time. As a result, discussion of futures may create impossible commitments for HP.

   Disclosure of futures can also undermine HP's patent position in countries where public announcement of a product still to be patented makes it difficult or impossible to obtain the patent.
3. **Procedure.** If it is determined that the benefits of disclosing a future outweigh the legal risks, the disclosure must be made with caution. The decision to discuss the future must be made in Division Marketing by someone with the authority to implement the product plans under discussion. Any disclosure made by the field must be consistent with factory intentions.

   The customer to whom the disclosure is made should receive a letter from HP, emphasizing that HP's plans are subject to change and that HP can make no commitments as to performance, price or availability of a product until the product is released.

Careful Communication

As this booklet has already noted, we necessarily think in terms of *minimizing* rather than *eliminating* our exposure to civil liability for problems like breach of contract. There will always be a risk that claims will be made against us, since a customer may have a bad experience involving HP products or HP support for reasons that are not HP's fault, and any customer who feels dissatisfied is free to file a civil suit.

The best means of minimizing the risk of liability for breach of contract is careful communication. HP should explain to the customer what HP products and HP support can and cannot be expected to do. HP should also explain the customer's need to make a commitment of effort to work with HP successfully. Finally, all the members of the HP team should communicate fully with each other so that promises to the customer will be fulfilled. If all this communication has taken place, the customer is not likely to be a plaintiff in a breach of contract action.

Confidential Information

HP Information

HP documents are company property which should not be disclosed outside HP unless released for publication. As noted in *Standards of Business Conduct,* HP has established procedures for designating particularly sensitive documents as "Company Private," "Company Confidential" or "For Internal Use Only." These procedures should be carefully followed in marking and dealing with such documents.

Another topic discussed in detail in *Standards of Business Conduct* is the use and disclosure of inside information, such as information regarding new products, trends in sales, orders or profitability and other financial data. Generally speaking, the company must control the way in which this kind of information is made public because it may affect the price of HP stock in the securities markets. A discussion with a customer or someone else outside the company about performance against targets thus reflects bad legal judgment as well as questionable sales strategy.

If a reporter or financial analyst approaches HP for information about such subjects, by company policy only designated HP officers and representatives of the corporate treasurer's office are authorized to respond on the company's behalf.

Customer Information

Just as HP is concerned about its confidential information, customers and prospects are legitimately concerned about their confidential information. HP employees need to respect this concern without jeopardizing HP's position under patent and copyright law.

1. **Nondisclosure Agreements.** Customers sometimes ask HP representatives to sign *nondisclosure* or *confidential disclosure* agreements. These agreements typically acknowledge that the HP employee is receiving proprietary information and promise that neither HP nor the employee will use or disclose what is learned.

   One problem with these agreements is that the information disclosed may not in fact be proprietary, but may instead be in the public domain or may even involve technology independently developed somewhere within HP. The effect of this kind of agreement may be to deprive HP of the right to make use of knowledge legitimately available to HP in HP's products and processes.

   Another problem with these agreements is that they often impose an absolute duty to prevent release of the information disclosed, unlimited in duration and unqualified by any possible excuse, even though HP may find it impossible to live up to that responsibility.

   Some nondisclosure agreements focus on data security rather than proprietary knowledge about products and processes. Even where this is the case, the agreement may be so broadly worded that it still presents a threat to HP's position in the patent and copyright field.

   HP employees should ordinarily refuse to sign nondisclosure agreements. If it seems necessary to sign one, the HP Technical Legal Department should be consulted.

2. **Unsolicited Product Ideas.** Similar issues are presented when a customer approaches HP with an unsolicited product idea. Disclosure of the idea to HP may lead to a patent infringement suit against HP by the inventor. Even if the idea is not patentable, so that the public is free to use it, HP can be excluded from using it if HP received it under an implied burden of confidentiality or an implied obligation to compensate the person who submitted it.

   To avoid such problems, an HP employee should not receive an unsolicited product idea without guidance from the HP Technical Legal Department.

Confidentiality and Pretrial Discovery

During pretrial discovery in a civil suit, HP cannot refuse to reveal existing documents on the grounds that they were prepared for the company's private use or were marked "Company Confidential" or "For Internal Use Only." HP can sometimes resist a demand to produce documents on the grounds that they contain trade secrets. However, courts frequently handle this argument by requiring that the documents be shown only to the lawyers for the opposing party, who must then refrain from disclosing their contents to marketing or laboratory people who might profit from seeing the technical information.

The single significant exception to the rule requiring production of evidence in the course of discovery relates to documents prepared by HP attorneys or by people working with HP attorneys. In limited circumstances, these documents may have privileged status as *attorney-client communications* or *attorney work product.*

HP has no reason to fear that its legal interests will be damaged by the disclosure of its internal documents as long as those documents reflect the HP way of doing things: honest assessment of the facts and high standards of professionalism and personal ethics. Nonetheless, the discovery process is burdensome even where all of the information produced is innocent. Major litigation in the United States usually involves hundreds of hours of effort by employees in identifying, retrieving and presenting documentary evidence. As a result, it is the responsibility of every HP employee to assure orderly retention and prompt disposition of company documents as part of the company's records management program.

Export Sales

General

Roughly half of HP's products are sold to customers outside the United States. Moreover, many U.S. customers purchase products for export. The legal considerations for this export business include appropriate pricing, obtaining export licenses and dealing with export-import houses.

Pricing

International markets are more expensive for HP to serve than the U.S. market. In order to recover these additional expenses, HP has established export prices which may apply to products destined for use outside the U.S.

Orders for export cannot always be identified by where they are placed. Export prices generally apply to orders having one or more of the following characteristics:

1. Placed by a company on HP's list of "Firms Participating in Export Trade."
2. Specifying 230 volts, 50 Hz or unusual power line operation.
3. Requesting export packing or marking.
4. Requiring export information, such as:
   (a) cubic volumes or package weights, especially in metric terms;
   (b) U.S. Government Schedule B or export licensing information;
   (c) GSA Form 1236 Terms and Conditions or other AID documentation.
5. Direct shipment abroad or delivery to an intermediate consignee in the U.S. known to be an overseas shipper or freight forwarder.
6. Payment terms involving payment against letters of credit or other specialized banking requirements.

However, in some instances the U.S. list price may be appropriate even though the order is for ultimate export. (See HP Corporate Marketing Policy, International Orders, for further details.) It is important to treat customers fairly by consistently charging the appropriate price when exports are involved.

Export Controls

U.S. export regulations may impose restrictions on sales of HP products to be used abroad. These regulations may require prior approval by the U.S. Government for such sales. All questions should be resolved before an order is accepted, and acceptance of the order may be subject to arrangements for the relevant license. HP's failure to comply with export control regulations may result in restrictions on HP's ability to sell abroad in the future.

Export-Import Houses

When orders or inquiries are received from export-import houses, HP asks the export-import house to suggest that the prospective purchaser contact the local international sales office. This is because there are relatively few occasions where export-import houses are able to perform a useful function in supplying HP products. Instead, they tend to isolate their customers from the technical assistance, warranty service and support available from the local sales office.

Export-import houses may in some cases provide unusual credit terms, combine a number of small shipments or secure all of their customer's requirements. Under these circumstances, and upon receipt from the user of a letter appointing the export-import house as its duly authorized agent, HP will accept export-import orders at the applicable export price.

Dealing with Attorneys

HP Legal Departments

HP has three legal departments: the Tax Department, which is part of the corporate treasurer's office; the Technical Legal Department, which handles patent, trademark and copyright matters, including confidential disclosure issues; and the General Legal Department, which handles problems outside the tax and patent fields. Most legal problems encountered in HP field marketing activity are likely to be handled by the General Legal Department.

General Legal Department Organization

The operations of the General Legal Department in the United States are based in Palo Alto, California. Most marketing issues, including drafting of HP's standard terms and conditions, are handled by the Palo Alto staff. Several attorneys in the Department are stationed outside corporate headquarters to provide support on a regional basis.

The international operations of the Department are based in Palo Alto (Intercontinental Sales) and Geneva, Switzerland (European/African/Middle Eastern Sales). The European arm of the Department also has attorneys based outside Geneva to provide support for individual countries. The individual attorney you should contact for a marketing problem in the international area can be identified by contacting the appropriate international operation.

General Legal Department Involvement

The General Legal Department's primary role is to advise on methods of doing business which minimize legal exposure before HP enters into a transaction.

The company's legal staff is not large enough to get involved in all business transactions or all customer disputes. Field marketing people should rely on HP's standard terms and conditions and operating policies to resolve the majority of problems. Problems not resolved in this fashion should first be brought to the attention of management, particularly those in the contracts administration function, before HP lawyers are consulted. When a proposed deviation from standard practice is extreme or the potential exposure to the company is unduly large, the General Legal Department should be called.

The General Legal Department will provide legal advice, but business decisions regarding risk to HP are yours or your manager's. With this in mind, the company's lawyers will provide alternate courses of action and define the exposure and risk associated with each. They will foreclose any course of action which is impermissible because of exposure to criminal penalties and will strongly advise against any course of action which, although not against the law, presents unreasonable risk to the company with no attendant benefit. They will advise that deviations from company policy must be approved by the appropriate level of management.

The Department gets involved in disputes arising from customer complaints when HP's initial efforts to resolve the disputes on an amicable basis seem likely to fail. Whenever an HP employee is informed by a customer that a proposed course of action by HP may result in a legal reaction (that is, in a lawyer's involvement on the customer's behalf or in litigation), an HP attorney should be consulted. Whenever legal action has been taken against the company and court papers are served on an HP office, an HP attorney must be involved immediately.

When you communicate with an HP attorney, he or she will expect that the information you give is detailed, factual and complete. This is especially important when a dispute or litigation is at issue. Legal advice can be no better than the information on which it is based.

Relationship to Other Standards and Guidelines

This booklet is intended as a brief description of the legal environment for HP field marketing activity. It is not intended to be, nor can it be, a complete statement of company standards and policy.

The following publications may provide additional information:

- Standards of Business Conduct
- HP Corporate Marketing Policy
- ICON and European Operating Manuals
- HP Financial and Accounting Manual
- HP Advertising and Sales Promotion Policy and Guidelines
- HP Contracts Manual

The most valuable resource in any field marketing problem is the perspective and experience available through your manager. These documents and the organizations that support them can provide additional help when a problem arises.