

QUESTION 11 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV

Best Brakes contracts to be exclusive sales representative for Allied Aftermarket Products, a Michigan corporation that manufactures brake parts and oil/engine filters. Best Brakes' contract is to sell Allied's brake products line throughout Michigan from January 1, 2007 through December 31, 2008. The contract also provides that only an Allied vice president has authority to modify any contract provision and that any and all modifications must be mutually agreed upon and in writing. The Best Brakes' contract does not cover sales of Allied's filter products because another sales representative, Fab Filters, has a similar contract to sell that product line throughout Michigan.

In June 2007, one of Best Brakes' largest customers, Excellent Auto Repairs, expressed dissatisfaction to Best Brakes with the service Fab Filters was providing. Excellent Auto asked Best Brakes to take over Allied's filter sales to Excellent Auto, promising that it would mean a significant increase in filter business.

Allied's Vice President of Operations, Paul Processes, also heard from Excellent Auto of its desire to switch its filter business to Best Brakes. Wanting to please the customer, Processes called Best Brakes and confided that Allied wanted it to handle the filter sales for Excellent Auto. Best Brakes agreed and asked Processes to confirm the agreement in writing. Processes, not wanting to put anything in writing at least until Fab Filters' contract expired, responded that his word was binding on Allied and was all that was needed, and that Allied would pay Best Brakes commissions on all sales--brake parts and filters--starting immediately. Processes also promised that any renewal agreement would include both brake parts and filters.

Satisfied, Best Brakes began handling filter sales to Excellent Auto. However, when Best Brakes received its quarterly commission payment, Allied included no payment for the filter sales. Best Brakes promptly called Processes, who explained that Best Brakes' contract only covered brake products and that, since there had been no written modification as required by the contract, there would be no commissions on filter sales.

Best Brakes would like to sue Allied to collect the commissions on filter sales that it believes it has earned, and should continue to earn at least through the end of its contract term. What advice do you give Best Brakes? Explain your answer.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV*****