

# COVID-19: PRESERVING BRAND EQUITY AND THE HEALTH OF A GO-TO-MARKET STRATEGY DURING THE PANDEMIC AND BEYOND

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## **Antitrust, Competition & Trade Regulation Alert**

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As consumer goods producers emerge from "fighting the first fires" of the COVID-19 shockwave, they will need to take stock of the long-term risks facing their brand equity and go-to-market strategies over the coming months and take steps in the short-term to mitigate these. In many cases, a simple and proactive communication strategy with the market could be the key to preserving brand value and preventing enduring damage.

## **CURRENT SLUMP NOT LONG-TERM DOWNTURN**

Makers of "non-essential" items, such as fashion or cosmetics products, have seen demand dry up overnight as a result of the Coronavirus confinement protocols and consumer uncertainties. In addition to short-term lost revenue, these suppliers could face major brand and price erosion and deterioration of their retail networks, if they fail to minimize unauthorized or irrational reselling of their products online during the crisis. This risk is particularly acute in the current conditions due to a glut of inventory in the market, and every economic incentive for resellers (including brick and mortar retailers) to convert it into cash however possible.

To limit this threat, manufacturers should be taking steps now with the goal of providing greater predictability and putting their partner relationships on a stronger footing during this challenging period:

- Gain appropriate visibility of network capacity to identify and focus resources on the key threats.
- Deploy an effective and careful communications strategy with authorized partners and unauthorized resellers, maximizing the available legal tools to control resale, whilst remaining commercially sensitive and limiting exposure under competition and antitrust laws (e.g. regarding resale pricing and price monitoring, adwords, online and marketplace resale restrictions, and cross-border selling, as applicable).
- Proactively propose commercial solutions and pain reduction measures to partners, to reduce the risks of excess stock or unrestrained resale while partnering with the brand's retail channel. Suppliers should also be conscious of the possibility of customers seeking to rely on force majeure provisions or contractual frustration principles to excuse their performance obligations. Depending on the circumstances, there may be greater overall value in seeking to find practical resolutions, such as stock buy-backs, temporary sales target waivers or promotional adjustments.

- Plan a promotional cycle that works to move stagnant inventory in a thoughtful manner, including evaluating options for adjusting inventory levels globally and identifying suitable routes to market for particular product lines; and
- Consider the medium and long-term impact of the company's short-term promotional and pricing decisions.

## SALES BOOMING?

The pandemic has, on the other hand, also led to a significant surge in demand for certain products, including both "essential" goods (such as medical, sanitizing, and grocery items) as well as products to which consumers are turning to ease their periods of isolation (such as equipment and goods for home fitness, entertainment, recreation and remote working). These brands may be facing unique challenges which could require them to:

- Evaluate practical options for fulfilling a sudden spike in demand, in circumstances where supplies may be extremely limited due to manufacturing, logistical and staff constraints. Options could include, for example, shifting stock around geographies or from different distribution partners, rationalizing product lines, entering into collaborations with third parties (including potentially competitors), and identifying available governmental support (for instance, some governments have offered to help international trading businesses find alternative sources of supply).
- Renegotiate or get out of contractual supply obligations. In addition to understanding the expected merits of relying on their force majeure terms or other legal "escape routes" (such as frustration), suppliers may need to act quickly to meet the (often short) notification formalities. A party is typically also required to demonstrate it has taken steps to mitigate its losses in order to enforce a force majeure clause, so a holistic commercial strategy (possibly including solutions such as those mentioned above) remains crucial.
- Gain visibility of wholesale and retail partners which might be struggling to satisfy customer demand or stay afloat, whether because of limited supplies or operational limitations. Whilst demand may be up for some products, many online retailers appear to already be struggling to meet this due to staff constraints and lack of clarity around which businesses are permitted to continue operating despite the governmental lockdowns. Brands may wish to evaluate if it is feasible to support key high quality retailers (for example with redistribution of supplies among the network) to avoid seeing their retail network replaced with a small number of high-volume players in the long term – the same goes for resellers facing a slump; and
- Identify risk areas for and beware of allegations of unfair trade practices, including stockpiling and price gouging (themselves or by their partners). International authorities have been quick to clamp down on such practices in the context of the pandemic. They could also result in negative brand associations in consumers' minds. Market visibility and an effective communications strategy may be required to manage this risk.

## LONG-TERM VIEW

A critical feature of this crisis for most consumer products will be the immediate and complete shift to online purchasing by entire populations for an indefinite period of time. This dynamic will almost certainly fundamentally

alter consumer behavior and channel engagement, not just during this crisis but permanently. Brands that recognize this new reality and adapt their business models to capture this opportunity while protecting and growing brand equity are more likely to thrive in the long term.

Brands should therefore, in addition to taking targeted steps to mitigate the risks above, use the opportunity of the next few months to strategically evaluate their go-to-market strategies and whether these will be fit-for-purpose in the post-COVID landscape.

## OUR TEAM

Our global brand equity team is well positioned to assist you in identifying the key threats to your go-to-market strategy in the coming weeks and months and in developing practical solutions to help you navigate these over this challenging period. Please reach out if you would like to speak with any members of our team or to obtain a copy of our COVID-19 - Go-To-Market Solutions Toolkit.

## KEY CONTACTS



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