

# CONDUCTING BUSINESS

## Competition and Antitrust Laws

Simmons strictly adheres to what are called “competition” laws in many countries and “antitrust” laws in the U.S., both federal and state - - laws that protect competition around the world. Competition laws prohibit anti-competitive agreements, such as price-fixing conspiracies, and other conduct, such as predatory efforts to eliminate competitors. If your work involves sales, pricing, contacts with competitors, or any other competitive activity, or you supervise anyone with such responsibility, you should know the laws on fair competition.

### **Facts About Competition Laws:**

- ▶ **There Are Competition Laws Around the World.** Many countries, the European Union and individual states in the U.S. have laws prohibiting anticompetitive behavior, so depending on where you work, you should know the laws that apply to you.
- ▶ **They Can Cover Conduct Outside the Country.** Some competition laws – such as the U.S. antitrust laws – can apply even when the conduct occurred outside the country’s borders.
- ▶ **Penalties Are Severe.** In the U.S., individuals convicted of price-fixing often receive prison sentences, and companies have received fines of hundreds of millions of dollars. In the EU, fines for anti-competitive behavior can be ten percent of global turnover. In the U.S., customers and competitors can sue for three times the harm caused.
- ▶ **Careless Conduct Can Violate The Law.** What might appear to be ordinary business contacts, such as a lunch discussion with a competitor’s sales representative or a gripe session at an industry trade association, can lead to competition law violations.

### **Basic Rules to Know:**

**Certain agreements almost always violate competition laws. Never agree, or talk with or exchange information with competitors to:**

- Fix prices – this can include setting minimum or maximum prices, or “stabilizing” prices;
- Fix terms related to price, pricing formulas, credit terms, etc.;
- Divide-up markets, customers or territories;
- Limit production;

- Rig a competitive bidding process including arrangements to submit sham bids; or
- Boycott others in the marketplace – competitors, suppliers or customers.

Because of the risk, do not even discuss competitive matters with competitors – at any time or any place.

**Other activities may raise competition issues. Always consult with the Legal Department before:**

- Entering into joint ventures, mergers, acquisitions and marketing, purchasing or similar collaborative arrangements with competitors;
- Establishing exclusive dealings arrangements (e.g., contracts that require a company to buy only from Simmons);
- Tying or bundling together different products or services (e.g., contracts that require a buyer who wants one product to also buy a second “tied” product);
- Entering into “requirements contracts” (contracts where it is agreed that certain products, services or materials will be exclusively provided);
- Activities involving trade associations or setting industry standards;
- Serving as a director or officer in a company that competes with us; or
- Setting resale prices with resellers.

**Monopolizing or trying to monopolize markets and abusing a dominant position are illegal.**

► Competition laws make it illegal to monopolize or attempt to monopolize a market, and some other countries’ laws regulate the conduct of companies that obtain a “dominant position”. A dominant company may not try to prevent others from entering the market, or to eliminate competition, for example. Usually, competitors set prices to cover their costs – below-cost pricing may appear to be “predatory”. If there is a reason to price below cost, this should be reviewed with the Legal Department to assure that it is not predatory or in violation of any relevant law.

**Charging different prices to customers who are competitors may be illegal.**

► In the U.S., a complex law called the “Robinson-Patman Act” in some cases prohibits in certain circumstances charging different prices on sales of goods to customers who compete with one another. There are a number of exceptions and

defenses to this law. Associates with authority to set prices in the U.S. need to learn the requirements of this law and consult the Legal Department on pricing practices.

If you have questions or concerns about your responsibilities under the competition laws, consult Simmons' Legal Department.

**Question:** During a trade association meeting, I chatted with representatives of other bedding companies. One representative said, "I don't know about the rest of you, but our profit margins aren't as good as they used to be." Another said, "I wish we could do something about all those deep discounts." I nodded my head, but never said anything. Over the next few weeks the companies whose representatives were present during the conversation raised their prices. Was the discussion a problem? What should I have done?

**Answer:** Yes, this discussion definitely was a problem. A court might conclude that everyone present during the conversation, whether they said anything or not, had engaged in price-fixing even though there was never an explicit agreement. Because of this risk, if you find yourself present during a discussion of prices with competitors, immediately break away from the discussion in a way that makes it clear you consider this improper, and promptly call the Legal Department.

## Unfair Business Practices

Simmons competes vigorously for business, but some conduct in the name of competition is not consistent with the law or Simmons' commitment to integrity.

Never compete by using such unfair practices as:

- Disparaging or making false statements about competitors or their services;
- Stealing or misusing competitors' trade secrets;
- Cutting off a competitor's sources of supply;
- Inducing customers to break contracts with competitors;
- Requiring someone to buy from Simmons before Simmons will buy from them;
- and
- Paying bribes to help Simmons' business or to hurt a competitor.

## Gathering Competitive Information

To compete in the marketplace, it is necessary and legal to gather competitive information fairly. Some forms of information gathering are wrong and can even violate the law. At Simmons, we are committed to avoiding even the appearance of

improper information-gathering, so know what you can do and what you must be careful about. Legitimate sources of competitive information include:

- Newspapers and press accounts.
- Public filings.
- Talking with customers – but not to obtain confidential information.
- Customers giving you a competitor's proposal, BUT ONLY if it is not confidential. If it is a government bid, always consult with the Legal Department, before accepting a proposal.
- Trade shows, BUT NOT information from competitors, unless it is public information.
- Information publicly available on the Internet.
- Industry surveys by reputable consultants.

NEVER use the following:

- A competitor's confidential information – unless approved by the Legal Department.
- Papers or computer records brought by new hires from prior employers.
- Information marked "confidential," or something similar, belonging to anyone else – consult with the Legal Department if you have such information. Even if proprietary information just shows up on your desk, get legal advice.
- Marketing or other business information exchanged with competitors – this should NEVER be done.
- Information about a competitor's bid if you are involved in bidding, especially on government contracts – if you come into possession of such information call the [Open Door Line](#).
- Anything else that feels wrong.

If you have any questions about whether it is appropriate to accept or have certain competitive information, contact the Open Door Line.

## Money Laundering and Contraband

Law enforcement officials around the world are increasingly concerned about contraband and money laundering. Money laundering is the process by which individuals or entities try to conceal illicit funds, or otherwise make the source of their funds look legitimate. Simmons does not as a matter of policy, accept cash. If you are involved in a transaction involving significant sums of cash contact the [Open Door Line](#).

## Trade Restrictions, Exports and Boycott Laws

► **Trade Restrictions and Export Controls.** The U.S. periodically imposes prohibitions or other restrictions on export and trade dealings with certain countries, entities and individuals. Trade restrictions take many forms, including bans on:

- Exports to a sanctioned country;

- Imports from, or dealings in property originating in, a sanctioned country;
- Travel to or from a sanctioned country;
- New investments in a sanctioned country; and
- Financial transactions and dealings involving a sanctioned country or designated individuals and entities.

These restrictions also impose licensing requirements for export of certain products or technology.

The reach of these types of laws varies. They can restrict the activities of citizens or residents (including companies), with regard to certain countries, or the governments, financial institutions, firms or individuals resident in or identified with those countries.

When dealing with a new country, customer or supplier you should check to determine if any restrictions apply. You should also check export requirements regarding transfers of any technology or shipping of any products to another country.

An “export” is not only the transfer of a physical commodity – it can include the transfer of restricted information to a national of another country (even if the person works for an affiliated company) by:

- E-mail;
- Face-to-face discussions; or
- Visits to Simmons’ facilities (even by employees of foreign affiliates).

In all international dealings be sure you know and comply with all export controls and trade restrictions.

**U.S. Anti-boycott Act.** Under U.S. law, Simmons is required to report to the U.S. Government, and not to cooperate with, any request concerning boycotts or related restrictive trade practices. Associates may not take any action, furnish any information, or make any declaration that could be viewed as participation in an illegal foreign boycott. These laws were originally designed to respond to the boycott of Israel by certain Middle Eastern countries, but they apply to any boycott of countries friendly to the U.S. There are severe penalties for violation of these laws.

You should notify the Legal Department immediately and before taking any action if you receive any boycott-related requests for information or compliance, whether oral

or written. This includes requests that are part of an actual order and those that do not concern a specific transaction.

## **Licensing, Tariffs and Other Regulations**

Our business is governed by various laws and regulations. Some apply to all business units, others are business unit specific. There are policies and practices in place in each business unit to ensure compliance with their specific requirements. These policies help us to comply with Simmons obligations. Each business unit receives appropriate training material on their obligations related to these requirements.

The Legal Department monitors applicable laws and regulations and notifies each business unit of their obligations.

## **Customs and International Commerce**

As a general rule, importation and exportation of products is subject to various customs, commerce and fiscal laws and regulations. You must be sure that all imports and exports comply with these requirements, and that any information provided to customs, commerce and tax officials is accurate and truthful.

## **When the Government Is Our Customer**

Contracting with a federal, state or local government is a unique part of our business. When we contract with a government, we are in effect contracting with the public. This places us in a position of trust, with special opportunities and special responsibilities. Always avoid activities that may be perceived as attempts to improperly influence government agencies, officials and employees. Basic rules include:

- Never solicit or obtain unauthorized information, including competitive information, confidential bid information, source selection criteria or non-public agency reports or studies.
- Never offer or provide gifts, gratuities or entertainment without prior written approval of the Legal Department.
- Know and follow anti-kickback rules, including restrictions on gifts by those seeking business from the government and from government contractors.
- Understand “most favored customer” pricing and verify compliance.
- Conform strictly to the contract’s quality, quantity and testing requirements.
- Billing must always be accurate, complete, and in full compliance with the rules and regulations.

- Be truthful, accurate, current and complete in all representations and certifications.
- Know your customer's rules and regulations.
- Don't initiate any employment discussions with any current or former government employee until first consulting with the Legal Department.
- Specific prohibitions also apply to dealing with other businesses that have been suspended or debarred by governments.

## **Conflicts of Interest**

Associates have an obligation to conduct business within guidelines that prohibit actual or potential conflicts of interest. The purpose of these guidelines is to provide general direction so that associates can seek further clarification on issues related to the subject of acceptable standards of operation. Contact the [Open Door Line](#) for more information or questions about conflicts of interest.

An actual or potential conflict of interest occurs when an associate is in a position to influence a decision that may result in a personal gain for that member or for a relative as a result of Simmons' business dealings. Personal gain may result not only in cases where a member or relative has a significant ownership in a firm with which Simmons does business but also when an associate or relative receives any kickback, bribe, substantial gift, or special consideration as a result of any transaction or business dealings involving Simmons.

If an associate has any influence on transactions involving purchases, contracts, or leases, it is imperative that he or she disclose to an officer of Simmons as soon as possible the existence of any actual or potential conflict of interest so that safeguards can be established to protect all parties.

An associate, officer or director may not borrow from or lend to any customer or supplier.

## **Receiving Gifts and Entertainment**

A business gift other than of nominal value, may tend to reduce the objectivity which should exist in business dealings. Therefore, the acceptance of any business gift should be avoided if reasonably possible.

Associates shall not seek any gift or entertainment from any individuals or business organizations having dealings with Simmons, as suppliers or contractors. Moreover, associates shall not accept any gift or entertainment which could influence or appear to influence members from acting solely in the best interest of Simmons in matters concerning such individuals or organizations.

## **Guidelines for acceptable behavior:**

Associates shall not accept gratuities from any supplier or contractor. A gratuity is defined as anything provided in return for, in recognition of, or in anticipation of some service or act by the Simmons member.

Any gift or *series of gifts* which is of more than nominal value is not acceptable under this policy and shall be returned to the donor with an appropriate explanation. It is never permissible for an associate to accept a gift in cash or cash equivalents such as gift certificates, stocks, bonds or other forms of marketable securities.

A unique situation is presented by the "Frequent Flyer" programs offered by many airlines, hotels and car rental agencies. While Simmons is not, at this time, seeking to change the current practice of associate enjoyment of benefits personally accumulated, certain obvious principles must be strictly observed. It is expected that associates will never request nor modify flights or other arrangements for the purpose of accumulating additional points if it results in a higher cost to Simmons or is otherwise inconsistent with the best interests of Simmons.

Gifts to or entertainment of a relative (spouse, parents, children) of a Simmons associate, are considered the same as gifts to or entertainment of the Simmons associates.

## **Giving Gifts and Entertainment**

Just as we have strict rules for receiving gifts and entertainment, we must be careful in how we offer them. Using good judgment and moderation, occasionally exchanging entertainment or gifts of nominal value with a non-governmental individual or entity is appropriate unless the recipient's employer forbids this practice. Any courtesy should always comply with the policies of the recipient's organization.

Never offer or provide a gift, entertainment or anything of value if it is:

- Illegal;
- Known to be in violation of the rules of the recipient's organization (Ask first!);
- Cash or cash equivalent (such as gift certificates, loans);
- Unsavory, sexually-oriented, or otherwise violates our commitment to mutual respect;
- A "quid pro quo" (offered for something in return);
- Not recorded properly on Company books.

## **Outside Employment**

Associates may hold outside jobs as long as they meet the performance standards of their job with Simmons. All associates will be judged by the same performance standards and will be subject to the Company's scheduling demands, regardless of any existing outside work requirements.

If Simmons determines that an associate's outside work interferes with performance or the ability to meet the requirements of the Company as they are modified from time to time, the associate may be asked to terminate the outside employment if he or she wishes to remain with Simmons.

Outside employment that constitutes a conflict of interest is prohibited. For example, your outside employment cannot be with a customer, competitor, vendor or supplier. Associates may not receive any income or material gain from individuals outside Simmons for materials produced or services rendered while performing their jobs.

## **Hiring Relatives**

Relatives of associates may be hired only if they will not be reporting directly to or supervising a relative and will not occupy a position in the same line of authority within the organization. This applies to any relative, higher or lower in the organization, who has the authority to review employment decisions. Simmons associates cannot be transferred into such a reporting relationship. If the relative relationship is established after employment, the individuals concerned will decide who is to be transferred. If the decision is not made within 30 calendar days, management will decide.

Where a conflict of the potential for a conflict arises, even if there is no supervisory relationship involved, the parties may be separated by reassignment or terminated from employment.

Relative means spouse, mother or father, son or daughter, and brothers and sisters, nephews, nieces, either by blood or marriage, or unmarried persons living together.

## **Investments**

Associates and their close relatives need to be careful that their investments do not create conflicts of interest, impairing the associate's ability to make objective decisions on behalf of Simmons.

Conflicts can occur if investments are made in competitors, suppliers, or customers. This does not include investments in mutual funds and similar pooled investments. Any "substantial interest" in a competitor, supplier or customer requires prior approval of the Legal Department. A "substantial interest" means any economic interest that might influence or appear to influence your judgment. Some investments are always wrong:

- never invest in a supplier if you have any involvement in the selection or assessment of, or negotiations with, the supplier, or if you supervise anyone who has such responsibility; and

- never invest in a customer if you are responsible for dealings with that customer or supervise anyone with such responsibility.

## **Business Opportunities**

Associates, officers and directors are prohibited from:

- taking for themselves personally opportunities that are discovered through the use of Simmons property, information or position;
- using Simmons property, information, or position for personal gain; and
- competing with Simmons.

Associates, officers and directors owe a duty to Simmons to advance its legitimate interests when the opportunity to do so arises.

Associates, officers and directors may not serve as officers or directors of for profit organizations without prior approval of the CEO.

Contact the Legal Department with questions about Conflicts of Interest or if there are circumstances where a waiver of this policy is appropriate.

## **International Bribery and Corruption**

The U.S. Foreign Corrupt Practices Act, and similar laws from other parts of the world, prohibit bribes to foreign government and other officials (such as political candidates, political parties, employees of government-owned businesses, UN officials, etc.). A violation is a serious criminal offense for both companies and individuals, which can result in fines, loss of export privileges, and imprisonment for individuals.

Bribery and Corruption Laws:

- ▶ Apply to all Simmons associates, agents and representatives.
- ▶ Forbid:
  - Offering or giving anything of value to a foreign official for the purpose of obtaining or retaining business, or for any improper purpose. This includes payments to reduce taxes or customs duties.
  - Making improper payments through third parties – so companies must be diligent in selecting agents and partners.
- ▶ Require that companies keep accurate books and records so that payments are honestly described and not used for unlawful purposes.

Simmons requires more of its associates – we prohibit bribes to anyone, anywhere in the world, for any reason. To comply with this policy, remember that it is your responsibility to avoid these prohibited actions.

Never:

- Make an unauthorized payment, or authorize an improper payment (cash or otherwise) to a foreign official;
- Induce a foreign official to do something illegal;
- Shrug off or fail to report any indication of improper payments (known as “red flags”);
- Establish an unrecorded fund for any purpose;
- Make a false or misleading entry in company books; or
- Do anything to induce someone else to violate these rules, or look the other way when there might be a violation.

► **Facilitating Payments.** U.S. law permits certain “facilitating payments” to foreign government employees. Simmons prohibits these payments. Payments may never be made to any U.S. or foreign government employee.

If you need further information on international bribery laws, contact the Legal Department. In addition, as a general matter, if you are involved in international business, contact the Legal Department to make sure you understand the standards that may apply to your business activities.

**Question:** I was told that I could hire a consultant to take care of getting all the permits we need from a foreign government. He requested a \$40,000 retainer and said that he would use the money to “help move the process along.” Since we don’t really know where the money is going, do we have to worry about it?

**Answer:** Absolutely. You must know where that money is going and for what purpose it is being used. Moreover, the company is required to take steps to ensure that this money is not used as a bribe. You must seek the advice of the Legal Department.

## **Intellectual Property, Copyright of Others**

Sometimes an associate may need to share proprietary information with people outside Simmons – for example, so that a business partner with whom Simmons has selected to work can be an effective partner for us. However, even when there may seem to be a legitimate reason to share proprietary information, never disclose such information without your manager’s prior approval and unless under a written confidentiality agreement approved by the Legal Department.

Just as we protect our own confidential information, Simmons respects the proprietary and confidential information of others. This includes written material, software, music and other “intellectual property.”

Basic rules to follow:

- Do not bring to Simmons, or use, any confidential information, including computer records, from prior employers.
- Do not load any unlicensed software on any Simmons company computer.
- Do not accept or use anyone else’s confidential information except under an agreement approved by the Legal Department.
- Only copy documents and materials (including computer software) that are NOT copyrighted (for example, a government report) or when you have specific permission to do so.
- Do not use copyrighted materials (for example, portions of audio, video and off-the Internet or off-the air recordings) in materials you are producing without specific permission from the copyright owner – consult the Legal Department on whether “fair use” may allow the use of brief excerpts.

**Question:** I have an idea to reduce subscription costs for trade publications. My idea is that the office should get just one subscription to each journal or newsletter. The office copy would then be circulated to everyone in the office, with instructions to reproduce for their files any articles they might need. Is this a good, cost-cutting measure?

**Answer:** No. While we want to cut costs, part of your idea would violate copyright law. It is legal to circulate the publications, but not to have employees make separate file copies of articles for later use. If they need file copies, they must first obtain legal permission, or purchase additional copies of the publication.

## **Accurate and Complete Books, Records and Accounting**

A company’s credibility is judged in many ways – one very important way is the integrity of its books, records and accounting. In addition to our own commitment to accurately report financial performance, Simmons reports in accordance with generally accepted accounting principles (GAAP).

Every associate must help ensure that reporting of business information, computerized, paper or otherwise is accurate, complete and timely. This includes accurately booking costs, sales, time sheets, vouchers, bills, payroll and benefits records, regulatory data, and other essential company information.

In addition, all associates must:

- follow all laws, external accounting requirements and Simmons procedures for reporting financial information;
- never deliberately make a false or misleading entry in a report or record;

- never alter or destroy Simmons records, except as authorized by established policies and procedures;
- never sell, transfer or dispose of Simmons assets without proper documentation and authorization;
- always cooperate with internal and external auditors;
- never let anyone pressure you to make a false entry, and
- contact the Internal Audit Team, your local HR Manager or the [Open Door Line](#), with any questions about the proper recording of financial transactions.

**Question:** It is the last week in the quarterly reporting period. My boss wants to make sure we meet our numbers for the quarter, so he asked me to record a sale, even though the documentation will not be completed. I guess this won't hurt anyone – should I do what he says?

**Answer:** Definitely not. Unless a policy provides otherwise, sales can only be reported after the contract has been finalized.

## **Sales and Marketing Practices**

While we vigorously market and sell our products and services, we must also obey the law. You must not engage in illegal, unethical or deceptive activities to obtain business. You must accurately represent Simmons' products and services.

## **Consumer Protection and Disclosure**

Simmons has an unambiguous policy of fully, clearly and directly informing our customers of the terms and conditions of our services and agreements. This policy applies to all communications with customers, such as advertising, point of sale communications and customer service as well as direct sales. No one is permitted to deceive a customer. All marketing material is to be prepared by the Marketing Department, with final approval by the Legal Department.