

Product Distribution and Franchise Team

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THE "BIG ORDER" SCAM

A company received what appeared to be a lucrative offer from a potential customer located in China. The offer concerned a large order of the company's products, with payment to be backed by a letter of credit from a well-known bank. Once the basic terms had been agreed to, the company was to send a representative to China to finalize the details and sign the contract.

While the use of a letter of credit provided some comfort with respect to payment risk, preliminary due diligence on the potential customer raised questions about the legitimacy of the offer. For example, there seemed to be little connection between the business of the customer and the products being ordered. Also troubling was the fact that the domain of the customer's website did not match the domain of the customer contact's email address, which appeared to be a free email service. Additionally, the customer's lack of interest in reviewing product samples and the tone of the correspondence suggested that the customer might have been working from a script, rather than actually negotiating the deal. The most significant red flag, however, was the customer's insistence that the company send a representative abroad to conclude the deal in person.

A number of smaller and middle-market companies have received similar "offers" conditioned upon travel by a representative of the company to China. Once abroad, the representative is pressured into incurring expenses for "notarization" or other fees, funding extravagant signing dinners or purchasing gifts (*e.g.*, local art) to facilitate signing. After signing, the representative returns home to learn that the "customer" and the lucrative offer were nonexistent.

While this iteration of the scam relies on the travel requirement (and several companies have indicated that the "customer" rapidly lost interest after learning that no representative would be sent), the lack of a travel requirement does not mean that an offer is not a scam. Accordingly, when evaluating potential offers, be sure to also watch for the following:

- unsolicited large initial offers, often with no request for samples/testing;
- the lack of a connection between the potential customer's business and the products to be sold;
- different domains for the potential customer's website and the contact person's email address; and
- cues in correspondence that suggest that the potential customer is working from a script.

If you receive an offer with these characteristics, be wary. Reinhart's Product Distribution & Franchise Team can help you assess whether a potential offer may be a scam, as well as help you negotiate terms of sale and identify related issues (*e.g.*, compliance, IP protection, tax structuring/export incentives, etc.) that frequently arise when selling to legitimate foreign customers.

The *Reinhart Headlines Product Distribution and Franchise Law E-Alert* provides general information about topical issues. It should not be construed as legal advice or a legal opinion. Readers should seek legal counsel concerning specific factual situations confronting them.