

- Formed to progress the industry's efforts, efficiencies and standards
- Run by officers elected from the member body

Though not for profit businesses can band together to form such associations, all the businesses must fall within the same industry to be considered a trade association.

#### **Officers at Risk**

Directors' and Officers' (D&O) insurance is important because it can protect the decision-makers of a trade association from legal backlash from competition laws.

Even the most careful trade association officers cannot guarantee the actions of all its members. It is important that trade association officials do not tolerate any discussion that violates the Competition Act 1998 and clearly state that the association rejects such action entirely.

One important step any officer of a trade association can make is setting up extremely strict guidelines for meeting etiquette and discussion. A policy explicitly addressing these guidelines should be created and read by every member involved with the association.

#### **Price-Fixing**

The most targeted area for competition laws is price-fixing. Many actions of trade associations or its individual members can be construed as a form of price-fixing. As a general rule, members should never discuss profit margins or income at any time.

Specifically, dangerous topics are:

- Prices
- Credit Terms
- Profit Rates
- Pricing Strategies

## **Trade Association Risks**

Insight for business owners and risk managers provided by

### ***Crendon Insurance Brokers Ltd***

Trade Associations face unique challenges that many other not for profit entities do not experience. The role of a trade association as a gathering point for an industry to solve problems and share ideas can lead to allegations of monopolistic behaviour. Simply put, a trade association, though not designed to earn money itself, can be accused of acting like a conglomerate company; the regulations and decisions it seeks to impose can essentially limit aspects of a free market.

By definition, a trade association is simply any organisation of businesses that operates within the same profession or industry. These associations generally have similar characteristics, such as:

- Not-for-profit
- Publically active or committed to public relations for the industry

It does not matter if discussion of these topics leads to decreased prices for consumers; any adjustment of price due to discussion between competitors may be a violation of the Competition Act 1998.

### **Adjustments of Standards and Trade Policy**

The next area of concern should be standardisations and memberships. One of the major goals of a trade association is to overcome problems and share ideas.

Unfortunately, official action by an association to implement some standards can be regarded as a legal violation. Many members of such an association may want to push for a different type of production or waste management, but official action can quickly be condemned as fixing the market for one kind of service.

In order to avoid legal actions, an association must make standard-setting decisions free of influence from any party who stands to profit from the new requirements. However, past cases have shown that supposedly unbiased members or third-parties have been able to lie to trade associations during the standard-setting process. When the standards were ratified, significant legal actions were brought against the trade association (as well as the instigators).

If not properly defended against, these legal actions can lead to massive fines, product loss and defamation of character. Accurate record keeping and strong policies can help clear your association of guilt, but the time and money lost while fighting the case will still be significant.

### **Suppliers**

Another major area of risk is supply control and shared supplier information. Violations occur whenever a trade association involves itself with the relationship between suppliers and its members. Associations are in no way to suggest or recommend specific product suppliers to their members, nor are they allowed to reveal standard pricing or rates provide by those suppliers.

Favoured supplier violations usually end up revealing themselves through price-fixing, as trade members

begin purchasing and selling at identical rates. In general, this issue should be easy to avoid in official association statements, but may be impossible to control among average association members.

### **Customer Control**

The final major pitfall for a trade association is territory agreements or customer division. Member companies of a trade association should refrain from making agreements about customer allocation, marketing or servicing in specific areas.

### **Protecting a Good Name**

Trade associations exist under close scrutiny from government, non-association businesses and private citizens. Actions taken by officers of an association may not imply any violations of law, but that does not mean member businesses, if convicted of such a violation, will not try and implicate the association.

Quality D&O insurance policies work to protect the reputations of a trade association, its board members and the good name of the skilled industry itself. An experienced broker can help create a plan that safeguards the hardworking officers of your trade association. Contact **Crendon Insurance Brokers Ltd** to learn more about cover needs in the delicate world of business liability.