

## Tailor Sales Strategy to Cater to New Consumer Frugality

From luxury stores like Tiffany to promotional chains like J.C. Penney, retailers are reporting that consumers are asking for discounts.

While some upscale retailers, like Tiffany, have held firm on prices, most major retailers have conceded to offer some incentive to convince consumers to part with their cash. But broad sales and discount programs may be short-sighted in light of a fundamental shift in consumer buying habits.

While some analysts predict that consumer spending will rebound later this year, others expect that the mentality of American consumers may be permanently altered.

Consumers may realize that they can—or must—maintain a more disciplined approach to buying. Some have learned that by treating products with care, they'll last longer. Others are enjoying the simplicity of having fewer belongings.

The danger is that deep discounts now could encourage a lasting expectation among consumers.

Retailers can tailor promotional and sales strategies to cater to this new frugality while still protecting pricing. Here are a few ideas from fellow retailers:

- Offer a product mix that reflects a range of price points to fit every budget. Having a low-priced option in stock discourages discounting of more expensive items.

- Reward repeat customers through frequent shopper programs and resist offering discounts to bargain hunters who will always seek out the best deal.

- Keep discounts in the market and in your store. Offer a discount to customers who join a local advocacy organization. Present a gift card with the purchase of a bike to encourage additional spending.

Strategic offers will ensure that the culture of your store remains one of value not discounting.

## Guest Editorial

## Patent Reform Act Could Impact Ongoing Innovation in Industry

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New patent reform legislation recently introduced in Congress is the latest attempt at major patent law reform. The proposed legislation, the Patent Reform Act of 2009, is similar to unsuccessful patent reform legislation introduced into Congress in 2007. While substantial debate in Congress has yet to begin, significant opposition has already formed.

The legislation seeks to move U.S. patent law forward to conform it to ever-changing technology and to promote innovation and economic development. As proposed, it would alter U.S. patent law in significant ways and potentially affect your business given ongoing innovation in the bicycle industry.

**First-To-File.** The Patent Reform Act seeks to modify the U.S. patent system from a first-to-invent system to a first-to-file system in which credit for an invention is based on the filing date of the patent application. A first-to-file system would not give credit to the date of invention. Rather, the priority date for an invention would be established on the date that a patent application is filed. The first-to-file system favors expedited patent application filings, and could prejudice those who delay filing.

**Damages.** The Patent Reform Act also seeks to address damages related to infringement of a patented invention. It incorporates a gatekeeper provision, which would make the district judge a gatekeeper tasked with instructing

the jury regarding the methodologies and factors that have a legally sufficient evidentiary basis. This provision substantially conforms to existing damages calculation methodologies, but gives the judge a more prominent role in filtering the information that will be considered by a jury.

**Post-Grant Review.** The Act modifies some aspects of existing Reexamination proceedings, and provides an additional post-patent grant review mechanism—a petition for cancellation—that may be initiated by a third party. The Senate Judiciary Committee removed the availability of post-grant review procedures based on evidence of prior public use or sale in the United States. In doing so, the post-grant review procedures out-

lined in its current form conform to the procedures that were approved by the House of Representatives in 2008.

**Patented Article Marking.** The Patent Reform Act would codify virtual marking provisions that allow association of a patented article with a patent number via the Internet when the word 'patent' or 'pat.' is provided on the patented article with an Internet posting. This virtual marking provision conforms the standard for marking patented articles to today's technologically-driven world and will likely provide a welcome alternative to existing marking requirements.

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