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DealBuilder NDAExpress: Raising Efficiency To A New Level

The Editor interviews Debora M. Welch, Assistant General Counsel, Henkel of America, Inc.

Editor: Ms. Welch, would you tell our readers something about your professional experience?

Welch: I graduated from law school in 2001, following which I joined Bayer Pharmaceuticals Corporation and continued working on an MBA, which I obtained in 2005. My boss at Bayer had been selected to become Chief Legal Officer at Henkel of America, Inc. – which is not a pharmaceutical company – and I was asked to join his legal team. I decided that the career change would represent a professional challenge and a terrific learning opportunity.

Editor: Please give us an overview of Henkel of America, Inc.

Welch: Henkel is a *Fortune* Global 500 company, and many of its products are well known, including Dial® soaps and body washes, Purex® laundry detergents, Right Guard® antiperspirants, Loctite® adhesives and a variety of haircare products. In 2007 its global sales – its products can be found in 125 countries – were about 19.2 billion dollars, about 20 percent from North America. Henkel operates in three strategic business areas: home care, personal care and adhesive technologies. Its products constitute about 750 distinct product brands.

Editor: I understand that, among other things, you are responsible for the DealBuilder NDAExpress project at Henkel. What is DealBuilder?

Welch: DealBuilder is an automated system for contracts. NDAExpress is an automated online self-creating contract

database specifically for NDAs – non-disclosure agreements.

While at Henkel my boss had become interested in having some sort of automated system for its contracting process, and when I joined his team in January of this year it was a front-burner issue. Until that point all of our contract work – including monitoring and tracking – was paper-based. That meant that people in the legal department had responsibility to ensure that contracts with outside parties had been fully executed and that such contracts were where they were supposed to be and available to those charged with implementing them. In point of fact, this was not a high priority responsibility. This meant that the contracts were often relegated to the bottom of the priority list which, in turn, made for some degree of frustration on the part of Henkel's clients who were unable, for example, to exchange the confidential information necessary to get a project underway.

I was asked to speak to several people at Business Integrity to discuss their DealBuilder automated contracting process system, which led to our acquisition and implementation of the system.

Editor: Were there competitive products on the market?

Welch: There were two other companies we considered, but Business Integrity's offering appeared to be in a class by itself. Their process was customizable with respect to Henkel's operations, and its efficiency was an essential component to achieving customer satisfaction. I person-



Debora M. Welch

ally visited Gabrielle Walker, Assistant General Counsel at Cadence Design Systems, Inc. in San Jose and was walked through the NDAExpress system that she implemented with her client groups, which convinced me that this was a process that would work extremely well within Henkel.

Editor: Would you walk us through the system?

Welch: We are just now completing a pilot phase with our engineering group, consisting of about 25 users. The walk-through began in August and, as I say, is just about finished. The feedback has been very good, and the most significant factor is the system's turnaround time.

The user is first presented with a brief online questionnaire, which has been prepared by our group. Assuming the questions are properly answered, the user receives a standard pre-approved NDA agreement which can then be sent out for execution within minutes. If the response to our questionnaire indicates that a legal review is in order, the matter comes to me in the form of a Legal Work Request. That may result in the issuance of a non-standard NDA agreement, but the principal benefit of the process is the reduction of the number of lawyers needed to review non-standard agreements from three or four to just one. In turn, that means that the clients of our department know where to go in a situation involving a non-standard NDA agreement, and they are able to track the status of their agreement very quickly.

Editor: How did you go about "selling" DealBuilder to your clients?

Welch: With the engineering group, I did a training session built on the proposition that efficiency – no delays – was essential and

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that working with this system was easy. I even created a first-time online user demo and mini tutorials on specific subjects, including a glossary and FAQs – frequently asked questions. NDAExpress allows users to quickly search, create and track NDAs from start to finish. It eliminates legal review for standard agreements while maintaining the appropriate level of legal review for non-standard terms. Although NDAExpress will not eliminate the need for legal counsel entirely, it will more readily identify the issues that require legal attention.

In addition, I serve as a live resource for our clients. I am available for consultation just about any time, and I think that has resulted in the perception that our legal department is ready, willing and able to help them develop solutions to the issues they confront in the marketplace.

Editor: What kind of training do you provide on an ongoing basis?

Welch: Other departments within the organization are beginning to come to us with requests for similar training sessions. What we have done for the engineering group, we can replicate elsewhere, and that process is now underway. I think that every time we go through such an undertaking we learn something and refine the process, which means that each department is going to be able to build its own experience on that of the earlier groups.

Ultimately this is meant to extend across the entire company – which, as I have indicated, operates on a global basis – and to other agreement templates, not just NDAs. This is a very extensive undertaking.

Editor: How do you go about ensuring that, in the name of enhanced efficiency, something does not slip through the cracks? That the contract is properly reviewed prior to execution?

Welch: The system has created safeguards customized to the user. An incomplete, non-compliant or non-standard response to any question on the online questionnaire is automatically picked up and routed to legal for review. In our case, that means the response is routed to me and results in almost immediate contact with the person providing the initial answer to the questionnaire. If, on the other hand, there is no response to trigger a legal review, the pre-approved NDA is sent out for execution. In almost all cases, the parties have an agreement ready for execution within minutes.

Editor: Please share with us your thoughts on the benefits to a company of having an automated contracting process in place.

Welch: In order to have an automated process in place, the company must have a broad range of clients amenable to the system. By that I mean the process is not terribly helpful where, for whatever reason, the clients do not have access to computers. That aside, if the persons within the company are properly trained in the use of the system, the savings in terms of the company's commitment of legal resources are enormous. In addition, the ability of the company's clients to share confidential information with outside parties, efficiently and securely, is enormously enhanced. That serves, of course, to improve their business.

As for immediate benefits, the old system was paper-based, which meant that highly-paid and specialized professional personnel were obligated to review the extensive documentation that underlies just about any transaction, from the simplest to the most complex, in today's business world. There were persons whose job consisted of acting as gatekeepers between the various operational departments of the company and the legal department. The communications network in place to ensure that status updates were available was extraordinary and, of course, often served no purpose other than to clog the system. With NDAExpress, we avoid the bottlenecks built into the old system and, even more importantly, we are able to utilize the experience and skills of our attorneys to the greatest extent possible. That is, we free up our attorneys to focus on those contracts and transactions that do require legal input or review.

NDAExpress also enables us to better manage the executed NDAs than was the case in the past. By storing all of the fully executed NDAs at a single site, we have eliminated the follow-up process needed to ensure that each client possessed a paper copy of its own, while permitting access to such NDAs to all personnel of the legal department and NDAExpress users.

Editor: What are the dangers of not having such a system in place?

Welch: The absence of such a system does not add value, very simply put, to the efforts of the legal department. In our case, our client is going to perceive that it is the legal department that is the cause of delays. Prior to NDAExpress we processed annu-

ally several hundred NDAs – most of which, in fact, did not really require legal review – requiring some 3 or 4 dedicated attorneys.

Editor: Can DealBuilder be adjusted to ensure compliance with a variety of jurisdictions, say, U.S. and foreign?

Welch: Yes. Our parent company is in Germany, and we would have control over, for example, the disclosure obligations or competition rules applicable in the German and EU framework. I would work with Tim Allen at Business Integrity to ensure the system's operation was in compliance with the regulatory and statutory regimes we had identified.

Editor: Nevertheless, there are going to be contractual arrangements that must be painstakingly negotiated. Do you have any way of quantifying the impact DealBuilder has had in terms of freeing up attorneys to deal with these arrangements?

Welch: At this point in time it is a little difficult to quantify the impact of DealBuilder. We have just completed our first pilot with one department. Nevertheless, I have noticed a decrease in the number of NDA reviews that we handle. Consequently, those who would otherwise be addressing the NDAs now handled through NDAExpress are directing their efforts elsewhere – and improving the legal department's responsiveness thereby – and *that* represents a significant savings in that the Chief Legal Officer is not required to either hire additional in-house counsel or retain expensive outside counsel to handle the non-standard matters now being addressed by attorneys tied up with standard NDAs in the past.

Editor: Please take us through the tracking and management of obligations after the NDA is signed.

Welch: NDAExpress has the unique capability of recording access restrictions, marking requirements, and data destruction details. It also offers advanced customizable management reporting capabilities that allow me, as the contract administrator, to create reports based upon criteria that I choose.

In light of the success we have had to date, I look forward to implementing this success across the other departments, divisions and affiliates of Henkel Corporation.