



**Arthur M. Blank Center  
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## **David Pearlman**

David Pearlman was just about to finish his first full week of business. He already had two offices, the basement of his parents' house and the back seat of his 1973 Chevy Grand Prix. It was unclear which was more spacious, but the rents in both were quite favorable. It was Friday afternoon and David was busy in the basement office.

The summons was hand delivered to the house on Friday afternoon. I had never had any legal problems before, and had certainly never been served a summons before. My previous employer was suing me for \$100,000, breach of fiduciary responsibility and was seeking injunctive relief.

This was not exactly the storybook beginning for a new business venture, but one that is becoming more commonplace. Starting a new business is tough enough, but add in a lawsuit and many would be tempted to throw in the towel. There was no love lost between David and his former employer and David was not about to roll over and play dead. He could not bear to give Alvin the satisfaction, and he did not have much to lose. He had no savings, and did not own a thing except for a 15-year-old car for which he needed his mother to co-sign the auto loan in order to have the note approved.

### **David B. Pearlman**

David Pearlman grew up in Salem, Massachusetts. His mother taught hearing impaired students and his father was a Certified Public Accountant. David attended public schools until high school, when he attended St. Johns Prep in Danvers, Massachusetts. While in high school David worked at MVP sporting goods, Eastern Mountain Sports and Hilton Tent City. He loved to sell and thrived on his ability to explain his knowledge of products to customers to help them make the correct purchasing decision based on their needs and price range. While working in these retail positions, David was keenly aware of the salesman who regularly came in to the stores to meet with the managers. They did not all appear to do a great job, but every one of them appeared

to be making plenty of money. David did not know a lot about what these salesmen did, but felt pretty confident that he could do that job.

Following high school graduation in 1983, David attended the University of Massachusetts at Amherst. He initially was interested in becoming a veterinarian, but after a year of cleaning out farm stables, he decided to major in history. David was an average student and was not very motivated by school. He stretched out the four-year undergraduate program into five years, hoping to find his calling. He thought he might be interested in the law. He worked at the District Attorney's Office of North Hampton, Massachusetts during his senior year and although he found it interesting, he knew that law was not going to be the right career for him. David graduated in the spring of 1988 with the same dilemma most history majors have—what type of job can you get with a history degree?

### **Birth of a Salesman**

David's first job as a college graduate was in 1988. After graduation he joined a manufacturer's representative—as sub-representative—of winter sporting goods (skis and snowboards) within the six New England states. He worked with this company for about six months and did a lot of traveling, much more than he wanted to do and the financial rewards were far smaller than he felt his time contribution to be worth. An opportunity came along for another sales position and he took it. He was now selling children's clothing for a man who represented London Fog. He did that for about six months but didn't enjoy it. He did not enjoy the products and he felt that liking the product you sold was very important to being successful in sales.

David then contacted a headhunter to help him find a sales job. In the process of inquiring if the agency placed people in sales positions, he ended up accepting a sales position with that particular employment agency. The agency did not place clients in the sales field but in the banking and accounting fields. He found the training he received at this job to be invaluable. "They train you to sell as well as you possibly can. I didn't make a lot of money, but I learned a lot."

### **Manufacturer's Representative in Housewares**

After six months of working at the employment agency, David was getting the itch for change again. A friend of his mother mentioned to David that he had a friend, Alvin Peters, who ran a manufacturer's representatives business in housewares in New England. Peters Associates represented manufacturers, importers and distributors of houseware appliances, gadgets, cookware and a variety of tabletop items. As a manufacturer's representative they served as an intermediary between the parties they represented and the retail stores and chains. Manufacturer's representatives did not own the products they sold, but made a commission of 6-9 percent on all of the sales they brokered between the parties. Alvin was looking for someone to handle a certain part of New England. David thought it sounded like an interesting opportunity and he met with

Alvin. His initial meeting with Alvin piqued his interest. Alvin took him on the road to meet with a few of his accounts.

He lured me with something that I knew was kind of false at the time. He said, 'Well I'm not getting any younger [he was about 55 at the time] and I have kids that don't want to get involved in the business, and who knows, this could all be yours'.

David accepted the position, because it seemed more interesting than what he was presently doing as a headhunter, and began working for Alvin in January of 1990.

### **Peters Associates**

David was considered an "independent contractor", not an employee of Peters Associates. This meant that he was basically self-employed and was responsible for his own expenses including telephone bills, gas, car repairs, postage, tolls and travel expenses. David's title was "sub-representative", which meant that he wasn't the primary representative of the line but was acting on behalf of the primary representative, in this case Peters Associates. It was a general industry practice that you could work as a sub-representative covering the lines of a primary representative while also representing lines of your own, as long as the lines did not present a conflict. For example if you were sub-representing a line of coffee makers, you were prohibited from representing a competing line of coffee makers of your own. However, if the company you were acting as the sub-representative for did not represent a coffee maker, you were free to represent one yourself. David handled the retailers for Peters Associates in Massachusetts and Rhode Island while another sub-representative handled Maine, New Hampshire and Vermont and a third covered Connecticut. David only acted as a sub-representative of the lines, which were carried by Peters Associates, while the other two sub-representatives also had lines of their own. Alvin handled most of the larger retail chains throughout all of the territories and Alvin's wife ran the office.

Alvin's wife was mean. She was unpredictable and deceitful. Alvin was also dishonest and was not up front with me. Between the two of them they were terrible. They would yell and scream and they were irrational. They didn't pay me very well either. I was on straight commission, but there was a draw against the commission. If they didn't think I knew about a sale to one of my accounts, because the sale was written directly through the office, they wouldn't pay me a commission on it. As for the commissions they did pay me, they were paid on a commission statement such that I couldn't track anything. I didn't feel like I had any recourse. It was basically, if you don't like it you can leave.

Aside from the work environment at the office, David thoroughly enjoyed the business and he felt he was very good at it. He liked the traveling and loved meeting with his retail

accounts. When they had questions or problems he would seek guidance from Alvin. Alvin usually told David to talk to the manufacturer or find the answer himself when he was in the office. This autonomy aided in David's complete understanding of the business, as he would handle nearly all functional aspects of the firm. It also helped him develop relationships with the manufacturers, distributors and importers that Peters Associates represented.

## **Tradeshows**

There are two major gift shows for the housewares industry each year that David attended for Peters Associates. The National Manufacturers Housewares Association Show in Chicago is held every January and the New York Gift show every February. In 1990 David attended both the Chicago and the New York show. The trade shows provide an opportunity to meet with the manufacturers, importers and distributors as well as the retailers. The main purpose for these shows is to solidify existing relationships and develop new ones (i.e. pick up new lines to represent).

In November 1990, David was getting near the end of his rope with Peters Associates. He had worked with them for almost one year, twice as long as any prior job he had held. He decided that it was probably time to give law school a shot. While continuing to work at Peters Associates, he took the LSATs and was getting information on various law schools in Massachusetts.

In the meantime, he still needed to make a living and was biding his time with Peters Associates. In late February 1991, David attended the New York Gift Show. On the night of his arrival at the show he had dinner with Steve Monroe, another sub-representative of Peters Associates. Steve had been in the business for more than five years and carried some of his own lines in addition to the ones that he acted as the sub-representative for Peters Associates.

That evening David told Steve that he was fed up with Peter Associates and was planning to leave. Steve suggested to David that if he was so dissatisfied he should try to pick up some lines on his own. David had not really given this option too much thought in the past, as he was only 25 years old and thought of himself as relatively inexperienced. Steve's comments that night did a great job building up his ego, but David was still intent on going to law school.

## **Mr. Pepper**

The next morning David attended the gift show. He started off the day helping one of Peters Associates manufacturer's, Mr. Pepper run their booth. Mr. Pepper is one of the largest manufacturers and distributors of peppermills in the world. They carry about 100 models at any given time. The present owner's father had started the business, but it was his son who had carried it to another sales level. They have distributors in about 70-75 different countries.

David ran the booth with Mr. Pepper's National Sales Manager, Sharon Stengel, helping her write up orders for retailers. He had developed a nice working relationship with Sharon over the past year, and she had recognized the growth in the business in David's territory. David planned on helping out at this booth for a few hours and then going to help a couple of other Peters Associates manufacturers with their booths afterwards. While working with Sharon at the booth, she told him that Mr. Pepper was going to be letting Alvin go as the representative for their line. She told him that when he heard about this from Alvin, she wanted him to know that it had nothing to do with him. She told him that he had always done a nice job for Mr. Pepper. David spent the rest of the day working the other booths as he had planned, but in the front of his mind he was now giving some serious thought about going out on his own.

The next morning David went back the Mr. Pepper's booth and told Sharon that he was going to be going out on his own. He asked her if Mr. Pepper had already decided on who would be representing their line in New England. She said that a decision had not been made but that the issue would be discussed over the next few weeks. She asked David if he had put together a group yet, and he informed her that he was in the process of building one. He asked her if she would consider him to represent the Mr. Pepper line and she said that she would.

David had to act quickly. He talked to several people he knew in an effort to put together a team that could handle the Mr. Pepper line if they offered it to him. On March 14, 1991 Sharon called David to tell him that Mr. Pepper was going to ask him to become the new representative of Mr. Pepper for New England on a six month trial basis. David could feel his heart pounding with excitement. He assured Sharon that she would be making the right choice and that he would do a great job. He told her that after six months if they were not completely satisfied, they would not have to fire him because he would resign. Four days later, Mr. Pepper informed Alvin that they were terminating their relationship with Peters Associates. David continued working for Peters Associates until he resigned on March 23, 1991. On Monday, March 25, 1991 Mr. Pepper officially offered David the New England territory and he accepted.

David knew that it would not be long before Alvin heard that he was the new representative for Mr. Pepper. He decided that the best thing to do would be to call Alvin and tell him personally, rather than let him hear it from the "street". On Monday, exactly one week after he had started representing Mr. Pepper, David placed the call to Alvin. Before David could say anything, Alvin told him that he had heard that David was representing Mr. Pepper and said: "You will be hearing from me."

Four days later, David "heard from Alvin" in the form of a hand delivered summons to his parents' house. David was uncomfortable as he was charting some unfamiliar territory. He had never been served with a summons before. Alvin's summons included three separate requests. It was seeking injunctive relief to prevent David from representing Mr. Pepper until the entire lawsuit was adjudicated, it claimed that David

had committed a breach of fiduciary responsibility, and it was asking for treble damages totaling \$90,000 which was three times the lost annual commissions which Peter's Associates would forgo by losing the Mr. Pepper line.

I knew the lawsuit was coming. A few days before I had received the summons, Alvin had called Mr. Pepper and told them that he was suing me. He told them that he did not want to involve them and that if they let me go now it would not go that far.

David was afraid that Mr. Pepper would not want to get embroiled in his fight with Alvin. If they backed out now he would have understood. Luckily, they became defensive when threatened by Alvin and decided to stand behind David. David viewed Sharon Stengel, who was just a few years his senior, and the owner of Mr. Pepper as gutsy people. The owner was somewhat of a rebel and an entrepreneur himself and was not going to be bullied. He told Alvin "sue away and we'll see where it goes."

### **Motion for Injunction**

I told one of my best friends, Morris Porter, about the summons. Morris slapped me on the back and said 'Boy, I wouldn't want to be in your position'. So that's how the lawsuit started. Friday night I got it. I didn't sleep very well that weekend. I didn't have any money to lose and I was not concerned with him taking what I had. The biggest concern I had was the injunction he was seeking to prevent me from representing the line. That was the biggest concern I had. I was not concerned about the money. I was not concerned about anything else except for the injunction. I knew exactly what he was doing. I called Mr. Pepper and I said I understand you got a copy of the lawsuit. They are trying to stop me from selling your line, if the injunction goes through, I obviously can not represent the line, so I will resign. They understood the situation and were supportive.

On Monday David called an attorney to represent him. Unfortunately, Uncle Bob was in the process of retiring, and he did not want to take the case. He recommended David call the firm of Kraft and Hall, and talk to David's cousin Phillip Kraft, Esq. Phillip was a Harvard Law School graduate and had worked for a few large Boston firms before starting his own firm with his father.

I didn't really know Phillip very well. I called him and explained the situation. I told him I really don't have a lot of money. He said don't worry, I'll give you the cousin's discount. He charged me only half his normal hourly rate and let me pay as much as I could when I was able to.

The hearing for injunctive relief would be held two weeks later. In the meantime, David was free to continue selling Mr. Pepper's line. This should have been comforting to him, but he ran into operational problems he had not foreseen.

Within one week of receiving the summons, I had my car stolen in Connecticut. It had all my samples and everything inside of it. I slept in a hotel and when I came out in the morning the car was gone and there was glass all over the ground. I had all of my orders in the car. It was crazy. The case was going on, the injunctive hearing had not yet taken place, and I wondered how could it get any worse. I drove back 300 miles through the state of Connecticut picking up the back-up copies of the orders from all of my customers and re-writing them so that I could place the orders with Mr. Pepper. I had Mr. Pepper overnight me new samples. The car was found a few days later. All the samples were gone. But there were pink fuzzy dice hanging from the rear view mirror. I thought that was very odd at the time. Two years later I saw Alvin Peter's wife driving her car with pink fuzzy dice hanging from the rear view mirror. I'm not saying there is any connection, but . . .

The hearing for injunctive relief was held in Salem District Court. Prior to the hearing both parties filed their motions. The plaintiff's attorney, Harvey Hilo, filed a five-page motion entitled "Brief of Plaintiff in Support of Request for Preliminary Restraining Order". David's attorney filed a thirteen-page motion entitled "Defendant's Memorandum in Opposition to Plaintiff's Prayer for Injunctive Relief". David felt he had a good case and was confident, but all that changed as soon as Attorney Hilo began speaking.

[Attorney Hilo] said 'this young guy steals the business from this man who is getting ready to retire'. Every other word out of his mouth was 'steal', and each time he said it he was a little louder. I put my hand on my head. I thought that I was sunk. My cousin spoke second. He said contrary to what my 'brother' has said, this is the nature of the business. He then produced an affidavit from the national sales manager from Mr. Pepper stating that Alvin would have been fired with or without David, and that helped quite a bit (see Exhibit 1).

Attorney Hilo argued that David could sell Mr. Pepper to any accounts he wanted as long as they were not Alvin's accounts. Basically, this would mean that David could not represent Mr. Pepper as those consisted of most of the major accounts in New England. He then argued that David should be allowed to sell to all the other accounts until the lawsuit has been ruled on. David's cousin explained how that would effectively put David out of business. The entire meeting lasted a couple of hours.

About a week and a half later both parties returned to Salem District Court. David felt butterflies in his stomach. His fists were clenched and he gritted his teeth as he awaited the ruling from the judge. The judge announced [in the case of Alvin Peter's Associates v. David B. Pearlman] "motion for injunctive relief denied". It was music to David's ears.

Once the injunction was denied I was excited and I worked hard. I was on the road five days a week. I worked 18, 19 hours a day. I didn't sleep. My office was in my parent's basement. I sent faxes at three in the morning. It was the greatest and the toughest year of my life. Here I was starting what I called an 'empire' but was more like an anthill. It was mine and I never had so much success in my life. I had nothing to lose and everything to gain. Not only did I have the challenge of starting the business but I had the lawsuit [still looming] and that made the challenge greater and more stimulating.

### **A Two Pronged Attack**

Alvin's other tactic was to spread rumors about David. He was telling people David had an affair with the Mr. Pepper's sales manager in order to get the line. "He was very nasty. I must have had five people ask me if I really slept with her. Alvin never gave up, he pursued it up to the end."

Alvin quietly spread rumors about David any chance he got. His rumors were effective in keeping David from selling to two of the larger New England retail chains. David first became aware of what was happening when he was attempting to pick up another line. The manufacturer was doing a reference check on David. They were getting some nice recommendations until they called on one of their largest retail accounts, Table Tops Plus. The buyer said that he knew David had stolen a line from Alvin. He told the manufacturer that he did not want to deal with David and that he would only deal directly with the manufacturer. The manufacturer told David that they would hire him to represent their line in New England, but Table Tops Plus would be a house account because the buyer did not want to deal with him.

That was the first time it hit me what Alvin was doing. This was a major account that I was not able to sell to. I immediately wrote a letter to the buyer of Table Tops Plus which basically said: 'I'm 25 years old. I just started the biggest undertaking of my life. Against all odds I started this business. I work many hours and all I ask is that I'm treated fairly and given an audience with every buyer who could sell my product. If you never buy from me I will not be insulted, but if you don't allow me to come in, then you could put me out of business. And that is not right. If you truly know Alvin and he is truly a friend of yours, then you must know that what happened to Alvin was not my fault'. I sent that letter and called him a week later. He took my call



right away. He was clearly embarrassed when we talked. He said 'it's not that I don't want to deal with you'. I said 'great, when can we meet'? We met three weeks later. Now he's one of my biggest accounts.

A similar problem occurred at Lechmere. For over a year the buyer, who was a good friend of Alvin, would not buy a thing from David. He would take his calls but never bought anything.

After about a year and a half I called and said 'I hope you don't mind, I call you a lot and you never buy anything.' He said you have more energy than anyone I deal with, keep calling and eventually you'll have something that I'll buy. Ultimately I ended up doing a great business with them.

### **Pearlman Associates First Year**

Every October business normally slows down. But I kept writing orders. I opened about 171 new accounts for Mr. Pepper in New England that first year. They already had 600 New England accounts. There weren't anymore to be had. There was no stopping me. I went through the entire customer list. I activated inactive accounts and sold to customers who had never bought before. I won the award that year at the National Sales meeting held in Chicago for the rep. who opened the most new accounts, and they gave me a big plaque. I picked up another line which is now one of my best companies. They started with \$48,000 in annual sales in New England. I did \$75,000 with them my first year. I was their number one salesman. 1991 was the best year of my life. It was a year I will never forget. I made \$60,000 that year. That was more money than I had ever made. I was happy.

**Exhibit 1**

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT  
CIVIL ACTION NO: 91-2146

ALVIN PETERS ASSOCIATES, INC., )

Plaintiff )

V. )

DAVID B. PEARLMAN )

Defendant )

AFFIDAVIT OF  
SHARON STENGEL

I, Sharon Stengel, state of my own personal knowledge the following:

1. I am the National Sales Manager for Mr. Pepper Inc. (“the Company”). My business address is 145 Flatwood Avenue, San Francisco, California. I hold a bachelor’s degree from Stanford University and I have been with the Company for the past four and a half years.

2. The Plaintiff Alvin Peters Associates, Inc. (“Peters” or “Peters Associates”) has represented the Company in New England for the past nine years. For the last several years, we have had discussions within the Company about dropping Peters and hiring another representative. Among other things, the Company was displeased with Peters’ lack of cooperation with us, especially as regards to his response time to the Company. More specifically, there was a period of time when he would not return calls to our Vice President, Ron Petrocelli. In addition, we were never pleased with his failure to call on our target customers, nor the fact that two key accounts (Zarron’s and Lechmere’s) were lost in 1990.

3. In late January, 1991, the Company, after considerable discussion, determined to terminate its arrangement with Peters and to seek other representation. The Company's decision to hire a new representative had nothing to do with the Defendant David B. Pearlman. It was based solely on the Company's increasing dissatisfaction with Peters Associates.

4. I attended the New York Gift Show in New York from February 24, 1991, through February 28, 1991. At the show I manned the Company booth. By the time of the gift show, the Company had already decided to terminate Peters but had not yet notified him of the termination. This termination would have taken place at the gift show, however, Alvin Peters was only at the show one day, and we were very busy, since it was the opening day of the show.

5. In the course of the gift show, I saw and spoke with the Defendant David B. Pearlman who was, at the time, working as an independent contractor for Peters. David was the "sub-rep" on the "Mr. Pepper" product line manufactured by the Company. David had always done an excellent job for the Company. He knew the product line well and had an outstanding manner in dealing with customers.

6. In my discussions with David during the gift show, I informed him that the Company had decided to terminate its relationship with Peters Associates, before I knew David was starting his own group. I told David directly because he had worked the line the hardest, and spent tremendous effort to grow Mr. Pepper sales. I was disappointed that we were losing good sub-reps by making this change and felt obligated to tell David directly since he had worked our line the hardest. Later in the show, David said that he

was thinking of going out on his own. I made no offer or assurance to him of any kind regarding his taking over the representation of the Company.

7. While David expressed to me he was personally dissatisfied with his job, he made no critical comments about how Peters Associates handled the Mr. Pepper line. David neither impugned the Plaintiff's business nor did he suggest or request that the Company terminate Peters and turn the business over to him instead.

8. I returned to the home office in California after the gift show and had further discussions within the Company, this time as to whom to hire. We were considering hiring another group but finally decided to ask David to become our new rep.

9. I first notified Alvin Peters on March 18 that the Company was letting him go. I then notified David on March 25 that we wished to hire him as the new rep. David continued to write numerous orders through the Plaintiff's office up until the very day he resigned from the Plaintiff on March 23.

10. Even if the Company had never had any dealings with the Defendant, the Company would have terminated the Plaintiff as its New England representative. The Defendant in no way, caused, contributed to, or hastened the Company's decision.

FURTHER YOUR AFFIANT SAYETH NOT.

Signed under the penalties of perjury this 15th day of April, 1991.

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Sharon Stengel