

ISSUES IN INTERNATIONAL DISTRIBUTION AND SALES

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Business Considerations in International Distribution and Sales

A. Definitions

1. Distributor
2. Sales Representative/Sales Agent
3. Licensee

Business Considerations in International Distribution and Sales (cont'd)

B. Selecting a Distributor or Sales Rep in Your Target Country

1. Knowledge of Your Target Country's Market
2. Knowledge of Your Business
3. Financial Resources

Business Considerations in International Distribution and Sales (cont'd)

4. Language and Communications Capabilities
5. Experience with U.S. Businesses
6. Other Business Operations
 - A. Avoid the “Inadvertent Employee”

Business Considerations in International Distribution and Sales (cont'd)

7. Beware of Distributors and Sales Reps Who Want a Large Territory
8. Beware of Distributors and Sales Reps Who Want Exclusive Territories

Business Considerations in International Distribution and Sales (cont'd)

C. Tax Considerations in Your Target Country

1. U.S. Tax Laws Will Tax You on Your Worldwide Income
 - A. Availability of Credits in the U.S. on Corporate Income Taxes that You Pay in Your Target Country

Business Considerations in International Distribution and Sales (cont'd)

2. Tax Laws in Your Target Country

A. Taxes on Your Income in Your Target Country

1. What Constitutes a Permanent Establishment in Your Target Country?
2. Power and Authority to Bind

B. VAT/Sales Tax in Your Target Country

Business Considerations in International Distribution and Sales (cont'd)

D. The Laws of Your Target Country

1. Regulations Applicable to Distributorship and Sales Rep Relationships
2. Contract Law
 - A. Formalities
 - B. Legalization and Recording of Contracts

Business Considerations in International Distribution and Sales (cont'd)

- C. Language Requirements
- D. Enforceability of Restrictive Covenants
 1. Non-competition Clauses
 2. Non-disclosure Clauses

Business Considerations in International Distribution and Sales (cont'd)

3. Commercial Law
 - A. Sale of Goods
 - B. Warranty
 - C. Usury Restrictions
 - D. Letters of Credit
 - E. Guarantees
 - F. Insurance

Business Considerations in International Distribution and Sales (cont'd)

4. Governing Law

A. Selected by the Parties?

5. Arbitration

A. Will Courts of Your Target Country Compel Binding Arbitration?

Business Considerations in International Distribution and Sales (cont'd)

- B. Are Arbitral Awards Enforceable in Your Target Country?
 1. If Arbitration Is Conducted Outside of Your Target Country?
 2. If U.S. Law Is Applicable to the Arbitration?
 3. If International Rules (e.g., ICC Rules) Govern the Arbitration?
- C. Can Courts in Your Target Country Interfere with the Arbitration Proceeding?

Business Considerations in International Distribution and Sales (cont'd)

6. Termination

- A. Exclusive vs. Non-exclusive
- B. Almost Impossible
- C. With Just Cause
- D. Without Just Cause
- E. Automatic Renewals

Business Considerations in International Distribution and Sales (cont'd)

E. Protection of Intellectual Property Rights

1. Different Categories
 - A. Trademarks and Service Marks
 - B. Patents
 - C. Copyrights
 - D. Know-how and Technology

Business Considerations in International Distribution and Sales (cont'd)

2. International Protection

A. No Single Worldwide System of Trademark Registration

B. *But* Multi-Country Protection Is Possible

1. Paris Convention

A. Provides National Treatment to Foreigners

B. 6 Months' Priority for Filing Date

2. European Union

Business Considerations in International Distribution and Sales (cont'd)

3. Trademark and Service Mark Protection
 - A. Products and Services Must Be Registered in Each Appropriate Class
4. Failure to Register or to Use Will Result in a Loss of Your Rights

Business Considerations in International Distribution and Sales (cont'd)

5. Management of Trademarks and Service Marks Internationally
 - A. Combat Infringement or You May Lose Your Rights
 - B. Avoid Inappropriate, Offensive, Derogatory or Indecent Words (e.g., Mexican “No Va”)

Financial Considerations in International Distribution and Sales Agency

A. Repatriating Funds from Your Foreign Distributor or Sales Rep

1. Government Approvals and Permits in Force in Your Target Country
2. Currency Risks

Financial Considerations in International Distribution and Sales Agency (cont'd)

3. Payment Terms

- A. Wire Transfer
- B. Irrevocable Letter of Credit
 - 1. Processing Time
 - 2. Bank Fees

Questions?