

This past May, attendees at Foley & Lardner's 12th Annual Law of Product Distribution & Franchise Seminar submitted many written questions on matters ranging from state compliance to territory enforcement. While a few of these questions were specific to certain companies, the majority focused on industrywide topics that may be of interest to a variety of companies. Over the next few issues, *Legal News: Distribution & Franchise* will focus on answering those questions and providing more information on the legal implications of the dynamic and complicated distribution and franchise relationship. If you have any questions or suggestions for future issues, please contact us at distributionfranchise@foleylaw.com.

Question:

When a dealer resigns informally, does the manufacturer have to comply with state laws for terminations?

Answer:

A termination that is done by mutual agreement does not need to comply with any notice, good cause or other state law requirements for termination. However, we recommend that all such "mutual terminations" be documented, preferably in a written document signed by the dealer. That will prevent a dealer from later coming back and claiming that a mutual termination was actually a unilateral termination by the manufacturer/supplier in violation of state law.

Question:

"Checking the Applicable State Laws" is a common theme. Is there a "free," "quick" way to do that?

Answer:

Most of the applicable state statutes are available online, free, at Findlaw.com. However, there are only limited search capabilities within Findlaw. It is a very good source if you already know the citation to the statute. It is, or can be, much more difficult to use if you do not already have a statutory cite. The "Business Franchise Guide," published by CCH, is a good source for obtaining statutory citations. It, however, is not free, and must be purchased from CCH.

Please contact the authors of this article (listed below) or your Foley & Lardner attorney with any questions your company may have regarding this update.

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Question:

Is it OK to restrict a new distributor from carrying products from competitors or competing product lines?

Answer:

Because there are factual issues that relate to this question, there is no one-size-fits-all answer. The answer to this question will depend upon a variety of factors including the reasons for the restriction, whether the supplier has "market power" from an antitrust perspective, and whether the policy prevents the distribution of competing products. Typically these types of restrictions are referred to as non-price vertical restraints and are judged under the Rule of Reason. That means that if there are sufficient pro-competitive reasons that support the restriction, the restriction is lawful. Unless other competitors are somehow foreclosed from entering the market based upon this restraint, and so long as the manufacturer does not have "market power," restricting a distributor from carrying competitive products is usually acceptable.

Question:

If a manufacturer comes under new ownership, can the manufacturer rewrite the contracts?

Answer:

In part, this will depend upon what the existing agreements say. In addition, this will depend in part upon the nature of the ownership change. A stock deal would not provide the manufacturer with the basis to rewrite a contract, while an asset deal might. In an asset deal, it would further depend upon the dealer's contractual and state law rights. In any ownership change, it is certainly a good idea to examine the existing distribution contracts to determine the effect of the ownership change, but it will be a relatively unusual situation that the ownership change will allow the manufacturer to unilaterally rewrite the distribution agreements.

Question:

Is it possible to obtain articles authored by the presenters. If so, how?

Answer:

Yes, many of the presenters' previous written materials are available on our extranet site. If there are particular issues in which you are interested or particular articles that you would like to receive, you should feel free to contact the presenters directly. All of their contact information, including their e-mail addresses, is contained in the seminar materials.

In reviewing the questions and answers, you should be aware that the answers are not intended to provide legal advice with respect to any particular factual situation confronting an individual client. Almost all legal questions depend upon the facts of the particular situation, and as you know from attending the seminar, the legal answer changes from state to state and over time. If you have questions for which you need legal advice, you should speak directly with an attorney.
