



The International Distribution Institute

NEW CHALLENGES IN INTERNATIONAL DISTRIBUTION

Distribution contracts with Department Stores and Sales through Internet

Venice

18-19 May 2012



IDI Annual Conference

Friday, 18 May 9:00 17:00

Saturday, 19 May 9:00 13:00

Scuola Grande di San Giovanni Evangelista

International Distribution Institute (IDI) invites you to take part, on 18 and 19 May in Venice, in an **event of great importance** for attorneys, company lawyers and practitioners dealing with international contracts.

More details about these events can be found in the following pages as well as in the IDI website (www.idiproject.com)



The International Distribution Institute



Friday, 18 May - Saturday, 19 May

Scuola Grande di San Giovanni Evangelista

San Polo 2454

Distributing within Department Stores and through Internet

Three parallel workshops on termination of a master franchise agreement, drafting sales contracts for distributors and alternative solutions among commercial agents and other intermediaries

The **International Distribution Institute (IDI)**, the leading organization dealing with international distribution law, will hold its 2012 annual conference in Venice.

The conference is addressed to **lawyers and businessmen** involved in negotiating, drafting and managing international distribution contracts (agency, distributorship, franchising, etc.) and will deal with a number of topical issues which justify an in-depth discussion between the participants and qualified experts in this field.

The conference is divided into a **main session** (on Friday 18 May) and three **parallel workshops** on specific issues chosen by IDI in collaboration with its members (on Saturday 19 May, morning).

Negotiating agreements for distribution within department stores (concessions, corners, etc.)

Morning Session - Friday 18 May 9:00 - 13:00

Selling products within specific areas in a department store is a very important means of distribution, especially for luxury goods, which can benefit from the renown of the department store and of the neighbouring suppliers. At the same time this is a profitable activity for the department store, if it can offer a selection of prestigious brands to its customers.

There is a variety of types of contract dealing with these situations: concessions; corner agreements; shop-in-shop; consignment agreements; *contrat de vente à condition*; *contrat de démonstration*; although certain issues are common to many of them.

The purpose of this session is on the one hand to give a general overview of the various types of agreement and on the other hand to identify and discuss critical issues and possible solutions.

CHAIRMAN

Fabio Bortolotti: Buffa Bortolotti & Mathis, Torino; President IDI; Chair ICC Commission on Commercial Law and Practice (CLP); IDI country expert for agency, distribution and franchising (Italy)

08:30 - 09:00

Registration

09:00 - 09:10

Welcome

Fabio Bortolotti: Buffa Bortolotti & Mathis, Torino

09:10 - 09:30

Presentation of the IDI website

Silvia Bortolotti: Buffa Bortolotti & Mathis, Torino; Member of the IDI Council and Secretary General IDI

09:30 - 09:50

Contracts whereby a supplier is granted a space within a department store, shopping mall or similar organization: a general overview.

Suppliers of branded goods (especially luxury goods) are developing sales of their products within organizations (department stores, shopping malls, factory outlet centers) where they can be present in specific spaces with their trademark, image, consumer service, etc. This result can be achieved through a variety of solutions: concessions, corners, shop-in shop, with their trademark and image in locations, which may be distinguished with respect to a number of aspects: control of the space allotted; who sells the products; how the products are sold (consignment, wholesale, etc.)

Fabio Bortolotti: Buffa Bortolotti & Mathis, Torino

09:50 - 10:10

What Makes a Successful Concession? A lawyer's view of some of the key elements to creating a retail partnership that works for both parties.

Alec Latimer: General Counsel and Company Secretary, Brown Thomas and Selfridges

10:10 - 10:40

Direct sales by the supplier, consignment or wholesale? A panel discuss the pro's and con's of the various options.

One possible solution (mainly in concessions) is that the supplier himself sells his products in the department store (through his own cash registers or through those of the department store). The second option (common in corner agreements) is that the products are supplied on a consignment basis and that they are purchased and resold by the department store when the customer purchases (or pays) them. The third option is that they are simply purchased by the department store for resale, with or without a right to return unsold goods. The panel will discuss pro's and con's and possible ways to structure these options.

CHAIRMAN: Marco Hero: Tigges Rechtsanwälte, Munich; IDI country expert for franchising (Germany)

Barbara Mantovani: Benetton Group S.p.A., Ponzano Veneto (TV)

Gemma Garcia: El Corte Inglés, Madrid

Giovanna Manca di Nissa: Gucci, Legal and corporate department, Gucci Spa, Firenze

10:40 - 11:00

Choice of the conceded space, outfitting, relocation and duration/termination.

The supplier wishes to obtain and maintain the best possible position, while the department store wants to be sure that the space is as profitable as possible and wants to be able to change it where appropriate. The agreement reached between the parties will be a compromise between these two requirements. Another critical issue is that of the outfitting by the supplier or by the store (with a contribution by the supplier)? Two speakers coming from the two sides, will discuss their experience.

Igor San Juan: G-Star Raw CV, Amsterdam

11:00 - 11:30

Coffee Break

11:30 - 11:50

Employees and staffing. The critical issues.

Staffing in concessions and corner agreements can present many challenges for both the vendor and the department store. In this presentation we will explore some of the challenges and risks that may arise in Canada and the US as a result of these arrangements, namely the potential risks associated with co-employment and deemed employer.

Lorraine Kuska: General Counsel & Corporate Secretary Holt Renfrew, Toronto

11:50 - 12:10

Avoiding legal constraints: domestic rules on commercial lease contracts, administrative rules requiring permits or licenses for selling at the retail level.

Many domestic laws have rules on commercial lease contracts which protect the lessee, by granting long contract terms, automatic renewal and/or an indemnity in case of termination. How can the application of these rules be avoided? Another problem arises in countries where special permits or licenses are needed for selling at the retail level: do these rules apply to the supplier who sells under a concession agreement, or is he covered by the license granted to the store?

Stefano Artuso: General Counsel, COIN, Venezia-Mestre

12:10 - 12:40

Panel on the legal qualification of the (re)sale by the department store of goods supplied on a consignment basis: legal and antitrust constraints.

When the goods remain the supplier's property until actual delivery to the final purchaser, there are different legal constructions used to govern this issue. In some cases the goods are sold to the store under conditions of their resale; another solution is that they are sold by the store in its own name but on behalf of the supplier (commission contract). A further problem is to see how the different options reflect on the prohibition of resale price maintenance (RPM).

CHAIRMAN: Ignacio Alonso: Advocatia Abogados, Madrid; IDI country expert for agency and distribution (Spain)

Dorota Wiellowicz: Legal Manager for International Markets, Yves Rocher Group

Luciana Bassani: Dannemann Siemsen Advogados, Rio de Janeiro; IDI country expert for franchising (Brazil)

Silvia Bortolotti: Buffa Bortolotti & Mathis, Torino; Member of the IDI Council and Secretary General IDI

12:40 - 13:00

Discussion

13:00 - 14:30

Lunch

Selling through the Internet without jeopardizing the existing network and the supplier's corporate image

Afternoon Session - Friday 18 May 14:30 - 19:00

Being present on the Internet as a seller is becoming a "must" for many manufacturers. However, this may conflict with the expectations of the existing network, which need to be taken into consideration by working out adequate strategies. On the other hand, when distributors wish to sell the supplier's products on the Internet, the supplier must decide how to control that this does not damage its image or negatively affect its distribution network. In this context the supplier can use his rights as owner of the trademark, but he must at the same time take into account the antitrust constraints, especially in the EU.

CHAIRMAN

14:30 - 14:40

Ercument Erdem: Erdem & Erdem, Izmir; IDI country expert for agency and distribution (Turkey)

Presentation of a number of websites, showing the various possible approaches.

Manufacturers who want to sell on the Internet can create their own website and/or sell through portals where several producers have a more or less dedicated space. Also department stores can present themselves and the brands they sell on Internet, with or without the possibility of selling the products. The speakers will show a number of interesting examples.

Claudia Kolb: Gucci Legal and corporate department, Gucci Spa, Firenze
Stefano Artuso (Excelsior): General Counsel, COIN, Venezia-Mestre

14:40 - 15:00

Internet strategies and the relation with the existing distribution network.

Manufacturers cannot avoid being present on the Internet, not only for promoting their image, but also as sellers of their products. This inevitably creates competition and conflict with the traditional distribution network. The first question which arises is to look for the best possible strategy for minimizing conflicts and competition with the existing network. The panel will analyze and discuss possible options.

Edward Miller: Reed Smith, London; IDI country expert for agency and distribution (UK)

15:00 - 15:20

Drafting license agreements for the use of suppliers trademark on a website where his products are proposed for sale.

To what extent is a reseller who has purchased branded products entitled to sell them on the Internet without the permission of the brand owner? And if the brand owner is willing to grant a license, which limitations can he impose on the reseller? What recommendations for the drafters?

Marco Venturello: Venturello e Saraceno, Avvocati, Torino

15:20 - 16:00

Department stores and their Internet website: how should suppliers react?

Most department stores are now online. Suppliers often impose strict conditions on such sales. Is there a more flexible approach which can still protect the interests of both parties?

Barbara Vogel: De Bijenkorf, Amsterdam
Charlotte Dencer: LK Bennett, London

16:00 - 16:20

Coffee break

16:20 - 16:40

PANEL on European antitrust and Internet sales. To what extent can the supplier impose limitations on Internet sales to his resellers after the Fabre judgment?

The European Commission tends to strictly limit the possibility to prohibit or limit the reseller's right to sell on the Internet. Now that the question has been decided by the Court of Justice in the Fabre case, it is important to make the point of the situation and give some guidance to manufacturers who have the need to impose reasonable limitation on the way resellers promote and sell their products on the Internet.

CHAIRMAN: Didier Ferrier: Professor of Law, University of Montpellier; Vice-President IDI; IDI country expert for agency, distribution and franchising (France)

Cesare Galli: IP Law Galli, Milano

Frédéric Fournier: Redlink, Paris

Regula Walter: Richemont, Geneva

16:40 - 17:00

Discussion

Individual contacts with IDI Country Experts

Individual Contacts - Friday 18 May 17:00 - 17:30

After the afternoon session the IDI Country Experts will be available for individual contacts with the participants.

The updated list of the country experts present at the conference and available for individual contacts can be found at <http://www.idiproject.com/new/conference/individual-contacts-2012.pdf>

Request forms for meetings with the expert(s) will be enclosed in the informative sheets handed out at the conference.

General meeting of the members of the International Distribution Institute

Meeting IDI members - Friday 18 May 17:30 - 19:00

In this general meeting, to which non members are also invited, the officers of IDI will inform the members about the current situation of IDI, the results achieved in 2011 and the plans for the following years.

The participants will be kindly invited to share their opinions about the activity of IDI and make suggestions for the future.

Social Event: Gala Dinner (20:30)

On Friday evening (May 18, 2012) a Gala Dinner will be held at the Scuola Grande di San Giovanni Evangelista. Reservations should be made in time due to the limited number of places.



Critical issues arising in case of termination of a master franchise agreement

Workshop 1 - Saturday 19 May 9:00 - 13:00

When a master franchise is terminated, several issues arise for the parties involved: master franchisor, master franchisee and the network of subfranchisees. The speakers will examine the various issues as well as possible precautions to be taken in order to minimize the negative impact of such event.

CHAIRMAN

09:30 - 09:40

John Pratt: Hamilton Pratt, Warwick; IDI country expert for franchising (UK)

General introduction.

What are the most common reasons for termination of a master franchise agreement and what are the issues?

John Pratt: Hamilton Pratt, Warwick; IDI country expert for franchising (UK)

09:40 - 09:50

The position of the master franchisor.

Is the master franchisor always interested in taking control over the network of subfranchisees created by the master franchisee? Further solutions could also be considered, e.g. the possibility to transfer the network to a new appointed master franchisee.

Jeffrey A. Brimer: Faegre & Benson LLP, Denver

09:50 - 10:00

The position of the master franchisee.

What are the strategies that a master franchisee can use to avoid termination? Does a master franchisee have to assist in the process?

Ronald K. Gardner: Dady & Gardner, Minneapolis

10:00 - 10:20

The position of the subfranchisees.

If the master franchisor decides to step in, they may run the risk of not receiving the necessary assistance. Further problems may arise if the network is transferred to a new appointed master franchisee.

Jeffrey A. Brimer: Faegre & Benson LLP, Denver
Ronald K. Gardner: Dady & Gardner, Minneapolis

10:20 - 10:40

Interactive discussion

10:40 - 11:10

Coffee Break

11:10 - 12:00

PANEL: Contractual solutions which may help to overcome the critical issues.

The members of the panel will analyze possible contractual solutions aiming at facing the possible termination as well as the necessary coordination between the master franchise agreement and the contracts with the subfranchisees.

CHAIRMAN: Silvia Bortolotti: Buffa Bortolotti & Mathis, Torino; Member of the IDI Council and Secretary General IDI
Carl Zwisler: Gray, Plant, Mooty, Mooty & Bennett, PA, Washington DC; IDI country expert for franchising (U.S.A.)
Rocio Belda: Garrigues, Madrid
Saurabh Misra: Saurabh Misra & Associates, Mumbai; IDI country expert for franchising (India)

12:00 - 12:30

Goodwill indemnity due to the master franchisee and/or to subfranchisees in case of contractual termination by the master franchisor.

In some jurisdictions franchisees are granted goodwill indemnities at the end of the contract under certain circumstances: in some cases the rules on commercial agents are applied analogically, in others, the franchisee's right to recover its investment is protected. The members of the panel will address those issues under their respective jurisdictions.

Hikmet Koyuncuoglu: Koyuncuoglu & Koxsal Law Firm, Istanbul
Luciana Bassani: Dannemann Siemsen Advogados, Rio de Janeiro; IDI country expert for franchising (Brazil)

12:30 - 13:00

Discussion

Drafting sales contracts/general conditions for distributors: would the European Common Sales Law be an appropriate tool?

Workshop 2 - Saturday 19 May 9:00 - 13:00

A distributorship contract necessarily implies a flow of sales from the supplier to the distributor. These sales will often be governed by the supplier's general conditions applicable to all customers. However, there are issues which require a different approach when the customer is a distributor bound to the supplier by a long term contract. The speakers will examine first of all the relationship between the distribution contract and the rules governing the sales to the distributor and its impact on jurisdiction. Thereafter they will deal with the choice of the law applicable to the contract: domestic law? Vienna convention on international sales (CISG)? European Common Sales Law ? Finally some of the critical clauses will be examined and discussed.

CHAIRMAN

Burghard Piltz: Brandi Lawyers, Gütersloh

09:30 - 10:00

The relationship between the distributorship contract and the contracts of sale between supplier and distributor.

The normal way to structure a distribution agreement is to have a "framework contract" which deals with the main obligations of the parties and to enter into sales contracts for the supply of the goods to the distributor. It is common practice that these contracts are governed by general conditions of the supplier annexed to the distributorship contract. However these two aspects must be coordinated. Thus for example certain particular aspects which distinguish the distributor from other customers (like, for instance discounts, after sale service, etc.) will often dealt with in the distributorship contracts. Moreover jurisdiction may not be the same.

Ingrid Meeussen: LVP Law, Brussels, IDI country expert for agency and distribution (Belgium)

10:00 - 10:40

PANEL: Which law should govern the contract of sale? A comparison between the CISG (Vienna convention) and the draft European Common Sales Law.

Many questions between suppliers and distributors arise from the sales contract. It is therefore important to decide in advance the applicable law. In some countries there is a widespread opinion that domestic law (with the exclusion of the UN convention on international sales (CISG or Vienna convention of 1980) should be applied. The majority of experts are in favour of applying the Vienna Convention, now a new option (the European Common Sales Law) is discussed. And, where the Vienna convention is to be applied, there is the further problem of the domestic law governing the matters not covered by the CISG.

CHAIRMAN: Fabio Bortolotti: Buffa Bortolotti & Mathis, Torino

Burghard Piltz: Brandi Lawyers, Gütersloh

Jelena Perovic: Faculty of Economics University of Belgrade

10:40 - 11:10

Coffee Break

11:10 - 11:30

Jurisdictional problems regarding disputes arising in the context of contracts of sale. The recent case law of the EC Court of Justice on Article 5.1, Brussels I Regulation.

Where the sales contracts are not expressly ruled by the distributorship contract, it is not always clear whether possible jurisdiction clauses in the distributorship contract also apply to the contract of sale. Furthermore if disputes arise under the sales contract and no valid choice of forum clause has been agreed, there is (within the EU) the problem to decide who can bring the counterpart before its own courts on the basis of Article 5.1 of Regulation 44/2001, on which there are interesting decisions of the European Court of Justice.

Paolo Lombardi: Buffa Bortolotti & Mathis, Torino

11:30 - 12:30

The critical clauses in general conditions for sales.

There are several clauses which the seller must include in the general conditions, like time of delivery and consequences of a possible delay, liability for damages arising out of non-conformity (or delay) and possible limitations (e.g. only repair and replacement), terms for invoking non-conformity, choice of the applicable law, forum and/or determination of the place of delivery. The panel will discuss the main critical clauses and possible drafting options.

CHAIRMAN: Fabio Bortolotti: Buffa Bortolotti & Mathis, Torino

Diego Saluzzo: General Counsel Iveco Group, Torino

Leslie Thiele: Whiteman Osterman & Hanna LLP, Albany (NY); IDI country expert for agency and distribution (U.S.A.)

Shalini Agarwal: Clasis Law, London; IDI country expert for distribution (India)

12:30 - 13:00

Discussion

The notion of commercial agency and its borderlines. Are there alternative solutions with other types of contracts?

Workshop 3 - Saturday 19 May 9:00 - 13:00

The rules on agency put substantial constraints on principals (period of termination, indemnity, etc.) especially in certain legal systems. A question frequently asked by businessmen is whether it is possible to achieve similar results (i.e. distributing their products) through other types of intermediaries, not subject to the protective rules on agents. The purpose of this session is to better understand the borderline between agents and other intermediaries in order to be able to evaluate when, and at which conditions, a different solution can be appropriate.

CHAIRMAN

Didier Ferrier: Professor of Law, University of Montpellier; Vice-President IDI; IDI country expert for agency, distribution and franchising (France)

09:30 - 10:00

The notion of commercial agency, and its borderlines, with particular reference to the European directive.

Magnus Nedström: Sigeman & Co, Malmö, IDI country expert for agency and distribution (Sweden)

10:00 - 10:30

Commercial agency and negotiation of contracts. The case of agents who promote business without negotiating.

Didier Ferrier: Professor of Law, University of Montpellier; Vice-President IDI; IDI country expert for agency, distribution and franchising (France)

10:30 - 11:00

Can a commission contract replace a commercial agency agreement?

Alberto Venezia: Alberto Venezia avvocati, Milan

11:00 - 11:30

Coffee Break

11:30 - 12:30

Commercial agents and occasional intermediaries not having a continuous obligation to negotiate contracts.

CHAIRMAN: Olga Szejnert: Drzewiecki, Tomaszek & Partners, Warsaw; IDI country expert for agency and distribution (Poland)

Ágnes Szent-Ivány: Sándor Szegedi Szent Ivány Komáromi Eversheds, Budapest; IDI country expert for agency and distribution (Hungary)

Pedro Da Costa Mendes: CNCM Advogados, Porto; IDI country expert for agency and distribution (Portugal)

Peter Gregersen: Horten, Copenhagen; IDI country expert for agency and distribution (Denmark)

12:30 - 13:00

Discussion

IDI Conference: New Challenges in International Distribution (18-19 May 2012)

Venue

Scuola Grande di San Giovanni Evangelista
San Polo 2454
Calle de la Laca, 2454
30125 Venezia

Documentation

A CD-Rom containing all documents discussed at the conference.

Fee

800€ first participant

300€ for additional participants within the same premises of the same organisation as the first participant (i.e. having the same address and VAT code)

300€ for IDI members (subscribers) having paid their yearly subscription fee

The fee includes coffee break, lunch and documentation.

Gala dinner

100€ (per person) Please, remember that places are limited and must be reserved in time.

Please **add 21% (VAT) to your payment (for both Italian and foreign participants)**.

Registration and Cancellation

Registration Online

Registration can be made through the IDI website, at the page: <http://www.idiproject.com/conference-registration.ucw>

In that case, you can pay with credit card or by bank transfer. After complete payment, you will receive a confirmation of your registration by e-mail or fax.

Registration by Fax

Alternatively, you can fill in the registration form, and send it by fax to:

IDI Project Srl,
Via Alfieri 19,
10121 Torino (Italy)
fax: + 39 011 574 11 41

In case of registration by fax, payment shall be made by bank transfer and confirmation of your registration will be sent after having received the registration form together with the evidence of the payment.

Payment

Credit card (only for on-line registration) or bank transfer.

NO CHEQUE PAYMENTS WILL BE ACCEPTED.

Cancellation

Cancellation request received in writing by IDI Project on or before 8 May 2012 will be subject to a 20% administration charge of the total fees paid. After that date no refunds are possible.

Hotel Accommodation

Accommodation is not included in the registration fee. The following hotels are all close to the venue of the conference, but **do not have** any specific rates for participants to the IDI conference:

Hotel Cavalletto & Doge Orseolo**:** <http://cavalletto.hotelinvenice.com/?source=googleh>

Ca' Nigra Lagoon Resort**:** <http://www.hotelcanigra.com/it/design-hotel-venezia/10-0.html>

Hotel Bellini-Boscolo**:** <http://boscolobellini.hotelinvenice.com/?source=googleh>

Hotel Ai Due Fanali**:** <http://www.aiduefanali.com/it/information/hotel-venezia/1-0.html>

Please, be informed that **several other events will occur in the same period of the IDI conference, therefore we kindly suggest you to book your hotel as soon as possible.**

You can find further hotels by visiting the following website: <http://www.hotelinvenice.com/>

REGISTRATION FORM

Full Name	_____	Company	_____
Address	_____	Zip Code	_____
City	_____	Country	_____
VAT Code	_____	Email	_____
Phone	_____	Fax	_____

Workshops: (Saturday, 19 May)

Please specify to which workshop you would like to attend (only one per person):

- I will attend the workshop one: Critical issues arising in case of termination of a master franchise agreement
- I will attend the workshop two: Drafting sales contracts/general conditions for distributors: would the European Common Sales Law be an appropriate tool?
- I will attend the workshop three: The notion of commercial agency and its borderlines. Are there alternative solutions with other types of contracts?

Fees (in case of more participants, please fill in a separate form for each participant)

- IDI Conference 968 € First Participant
18-19 May 2012 363 € Second or Third Participant
 363 € IDI Member
 121 € ticket for the gala dinner (please, specify the number of tickets:....)
- Total Amount € (prices already include 21% VAT, applicable to both Italian and foreign participants)

Payment

Please make a bank transfer marked "18-19 May 2012 Conference", including a clear reference to the name of the participant.
The bank transfer details are the following:

Bank: Banca Sella, Piazza Castello, Torino (Italy)
Account Name: IDI Project s.r.l.
Account Number: 052879649600
ABI: 03268 CAB: 01000
IBAN: IT86X0326801000052879649600
SWIFT: SELB IT 2B

NO CHEQUES PAYMENTS ACCEPTED

Please complete this form and return it, with your payment made out to:

IDI Project Srl,
Via Alfieri 19,
10121 Torino (Italy)
Fax: + 39 011 574 11 41

Date _____ Signature _____