



International Distribution Institute



NEW ISSUES IN INTERNATIONAL DISTRIBUTION

The new EC regulation on vertical restraints How to deal with insolvency of distributors/franchisees

2010 Annual Meeting of the International Distribution Institute

FRIDAY 11 JUNE AND SATURDAY 12 JUNE 2010, TURIN (ITALY)



The **International Distribution Institute (IDI)**, the leading organization dealing with international distribution law, will hold its 2010 annual conference in Torino.

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 has been organized in collaboration with the European Company Lawyers Association (ECLA), the Italian member association of ECLA (Associazione Italiana Giuristi di Impresa: AIGI), the Piedmont Arbitral Chamber and ICC (International Chamber of Commerce).

The conference is divided into two **main sessions** (on Friday 11 June) and three **parallel work-shops** on specific issues chosen by IDI in collaboration with its members (on Saturday 12 June, morning).

THE TWO MAIN SESSIONS

This year the main session (Friday, 11 June) is devoted to **two different themes** of general interest for those involved in distribution:

- The new EC **block exemption regulation on vertical restraints**.
- Problems arising **when distributors or franchisees/master franchisees are or may soon become insolvent**.

Morning session: the European rules on vertical restraints

The new block exemption, which replaces regulation 2790/1999, is a basic instrument of guidance for companies which enter into distribution contracts within the EU and wish to make sure that their dealings conform to the European antitrust rules.

Since the regulation does not bring very important changes, the session will give an update of the present state of the law with respect to a number «hot» issues:

- Commercial agency agreements falling under Article 81 (now Article 101);
- Criteria for calculating the 30% threshold;
- Active and passive sales through the Internet.

Furthermore, during the session possible strategies and **standard clauses which comply with the new regulation** will be proposed and discussed.

Afternoon session: how to deal with insolvency of distributors/franchisees

This session will analyze and discuss some critical issues which arise when a member of the network who buys and resells (distributor, dealer, direct or master franchisee) faces financial problems which may result in insolvency and, in the worst case, bankruptcy.

Should the supplier accept delayed payments so that the distributor can remain on the market? Or should he stop supplying? Which is the supplier's responsibility towards the creditors of the distributor if he «keeps him alive»? Is the supplier entitled to require a change of the usual payment conditions (e.g. advance payment, bank guarantees or letters of credit) when risk of insolvency arises? What is the impact of bankruptcy laws on these issues?

These and other questions will be discussed in practical terms during the session.

THE THREE SPECIALIZED WORKSHOPS

The second session (Saturday June 12, morning) will deal with three parallel **workshops** on the following themes:

International arbitration and distribution: how to make it effective

This workshop will first of all present a study on arbitral case law regarding international distribution, which will make it possible to have an overview of the prevailing trends in arbitral jurisprudence in this field.

Thereafter, a panel of company lawyers will speak about their experience and especially some critical aspects of international arbitration.

Finally speakers from arbitral institutions will discuss the remedies which may help reducing the main reasons for criticism.

Parallel imports and trademark protection

Global marketing of branded products inevitably implies the need to protect local distribution networks from parallel imports.

Trademark protection may be a means to fight against parallel imports, and protect distribution networks in the countries having higher price levels.

The session will examine when parallel imports of goods can be prevented and when not, according to the law of different countries or economic areas (like the European Union) and a panel will discuss the possible strategies which can be implemented by companies.

How to obtain and maintain control over the location of the sales outlet

In retail distribution, the right place for the outlet is of material importance. Obtaining and maintaining the right location for the retail outlet is crucial issue, as well for the dealer/franchisee (in the relation with his landlord), as for the supplier/franchisor, who will try to maintain the location for his network in case of change of the dealer/franchisee.

The workshop will examine mainly the following problems:

- How can the retailer protect himself against his landlord. What are his rights in case of termination of the lease? E.g., do rules on commercial leases apply to franchisees?
- How can the supplier/franchisor obtain control over the location of his retailer, in order to continue selling through such location after contract termination?

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On Friday evening a gala dinner will be held in the master apartment of Palazzo Saluzzo Paesana, one of the most beautiful XVIII century mansions of Torino. The dinner will be provided by the staff of a prestigious restaurant of the city.

Reservations should be made in time due to the limited number of places.

For more information see the practical information hereafter.



FRIDAY, 11 JUNE 2010

Two topical issues in distribution: the new EC regulation on vertical restraints and dealing with insolvency of distributors and direct/master franchisees

Morning session: The new European rules on vertical restraints.

- CHAIRMAN** **Fabio Bortolotti**, Professor of Law, University of Torino; Buffa Bortolotti & Mathis, Torino; President IDI; Chair ICC Commission on Commercial Law and Practice (CLP); Member AIGI
- 09:15-09:35 **Welcome**
- 09:35-09:50 **Presentation of the IDI website**
Silvia Bortolotti, Buffa Bortolotti & Mathis, Torino; Member of the IDI Council and Secretary General IDI
- 09:50-10:10 **The new block exemption regulation. An overview of the main changes with respect to regulation 2790/1999.**
The drafting process and the main issues raised during the consultation process. The changes with respect to the previous regulation. The cars block exemption.
Paolo Cesarini, DG Competition, European Commission
- 10:10-10:30 **The rules applicable to agency agreements. Is it necessary to change all existing agreements?**
The new version of the Commission's guidelines on agency agreements. Is it appropriate to follow the Commission's guidelines? In the affirmative case, how to draft an agency agreement which would not infringe Article 81?
Jaap van Till, Van Till Advocaten, Amsterdam
- 10:30-10:50 **The application of the 30% threshold to the distributor's market and its practical consequences – Active and passive sales.**
The block exemption does not apply to agreements which imply that a threshold of 30% of the market is exceeded. This rule applied, under regulation 2790/1999 only to the market share of the supplier. Now it extends also to the distributor's market, which may give rise to problems, since a distributor may have a strong position on a very limited geographic market.
Laurent Flochel, Professor of Economics ; Vice President, Charles River Associates, Paris
- 10:50-11:10 **Coffee break**
- 11:10-11:30 **Drafting contract clauses in distribution and franchising contracts which comply with the new regulation.**
After the entry into force of the new block exemption, it may be useful to begin working out contractual clauses which comply with the requirements of the European rules.
Fabio Bortolotti, Professor of Law, University of Torino; Buffa Bortolotti & Mathis, Torino, Member AIGI
- 11:30-12:30 **PANEL on Internet sales under the new block exemption regulation.**
Internet sales is becoming a «hot» issue in recent years. The European Commission seems to take a very strict position, whereby the freedom of a distributor (dealer, importer, franchisee) to sell through Internet should be almost unlimited. Suppliers who wish to have their products resold according to certain conditions, need to control Internet sales by their distributors and even to forbid them if this is not in accordance with their marketing needs. The panel will discuss these issues, also considering the jurisprudence of the Court of Justice and national courts.
CHAIRMAN: Didier Ferrier, Professor of Law, University of Montpellier; Vice-President IDI
Fabio Bortolotti, Professor of Law, University of Torino; Buffa Bortolotti & Mathis, Torino; Member AIGI
Daniela Della Rosa, General counsel, Gucci Spa, Firenze; Member AIGI

Regula Walter, Richemont, Geneva

Carl Zwisler, Gray, Plant, Mooty, Mooty & Bennett, PA, Washington DC

12:30-13:00

Discussion

13:00-14:00

Lunch

Afternoon session: Dealing with insolvency of distributors/franchisees.

CHAIRMAN

Klaus Meyer Swantee, Retired Partner of Derks Star Busmann, Amsterdam. Member of the IDI Council

14:00-14:30

How to deal with a distributor facing a critical financial situation? The view of two company lawyers.

When a distributor is unable to pay the products supplied, the supplier is put before a difficult choice: he may accept postponement of payment and thus increase the distributor's financial exposure, or stop supplying, which may push the distributor towards bankruptcy. How to keep the distributor alive without increasing financial exposure: direct sales to customers with commission to the distributor; consignment stock; advance payment and payment guarantees for future supplies?

Diego Saluzzo, General Counsel Iveco Group, Torino; Member AIGI

Edoardo Betto, Legal Counsel, Piaggio & C. S.p.A., Pontedera

14:30-15:00

Minimizing risks in advance: possible contractual solutions.

Suppliers will try to reduce risks of insolvency through appropriate commercial means (advance payment, bank guarantees, etc.) and contractual solutions, like clauses permitting to suspend supplies in case of financial risk (even before breach of payment obligations) or justifying contract termination in case of non-payment or delayed payment. The two speakers will discuss the various solutions and their practical experience.

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

Claudia Kolb, Legal and corporate department, Gucci Spa, Firenze

15:00-15:20

A very critical situation: insolvency or bankruptcy of a master franchisee.

The disappearance of a master franchisee can cause substantial problems to the master franchisor as well as to the franchised network. The speaker will examine the problems which arise in such context and the solutions which may be provided contractually in advance.

Aldo Frignani, Professor of Law, University of Torino, Frignani & Associati, Torino, Member AIGI

15:20-16:00

PANEL on the impact of the distributor's bankruptcy in different jurisdictions.

The panel will address the following questions: in case of bankruptcy of the distributor, which transactions with the supplier can be revoked? Is it possible to terminate the contract and to appoint another distributor once bankruptcy has been declared? Is it possible to recover goods in his possession if there has been retention of title? Can the supplier be held responsible towards the creditors of the distributor if he has continued supplying notwithstanding the insolvency.

CHAIRMAN: Edward Miller, Reedsmitth, London

Anders Fernlund, Advokatfirman NOVA AB, Stockholm

Simon Hotte, Fidal, Lyon

Paolo Lombardi, Buffa Bortolotti & Mathis, Torino

Ingrid Meussen, LVP Law, Brussels

Olga Szejnert, Drzewiecki, Tomaszek & Partners, Warsaw

16:00-16:30

Discussion

Individual contacts with IDI Country Experts (16:30-17:00)

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/conference-contacts.html>

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 (17:00-18:30)

In this general meeting, to which also non members are invited, the officers of IDI will inform the members about the current situation of IDI: the results achieved in 2009 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 (20:00)

On Friday evening (June 11, 2010) a Gala Dinner will be held in the master apartment of Palazzo Saluzzo Paesana, one of the most beautiful XVIII century mansions of Torino. The dinner will be provided by the staff of a prestigious restaurant of the city. Reservations should be made in time due to the limited number of places.

The cost of the gala dinner is 100 € (plus 20% VAT).

SATURDAY, 12 JUNE 2010

FIRST WORKSHOP

The recourse to international arbitration: when should it be chosen and how should it be managed in order to be effective.

The workshop aims at providing a practical information on the actual criteria applied by the courts when calculating the goodwill indemnity for agents (and for distributors, where applicable) and about possible means for limiting the amount in question.

CHAIRMAN: **Didier Ferrier**, Professor of Law, University of Montpellier; Vice-President IDI

09:30-09:50

Is arbitration always the appropriate solution for resolving disputes?

Arbitration is frequently used for distributorship contracts and master franchise agreements, where considerable amounts of money can be involved. Less frequent for commercial agency, for which "normal" arbitration may have disproportionate costs, but the problem may be overcome through forms of simplified arbitration. The great advantage of arbitration is that it gives the opportunity to be judged by persons having actual knowledge of the issues involved

Oswaldo Marzorati, Allende & Brea, Buenos Aires

09:50-10:00

A research on arbitral jurisprudence on international distribution.

Presentation of a research on arbitral case law made under the direction of Prof. Didier Ferrier. Analysis of the trends which emerge from such research: consideration of contract rules and business practice; under standing of the reality of trade; good faith and fairness.

Didier Ferrier, Professor of Law, University of Montpellier; Vice-President IDI

Fabio Bortolotti, Professor of Law, University of Torino; Buffa Bortolotti & Mathis, Torino, Member AIGI

Nicolas Charbit, Concurrences/e-Competitions Chief Editor, Paris

- 10:00-10:40 **PANEL on practical experience of arbitration. Conflicting views of corporate lawyers.**
 Panel of corporate lawyers discussing their experience. Is it true that arbitrators tend to make both parties happy? Is it true that costs of arbitration are excessive? Is it true that arbitration procedures are too long? Or is it a problem of choosing the right institution and the right counsel? The respective roles of the corporate lawyer and counsel in deciding litigation strategies.
CHAIRMAN: Fabio Bortolotti, University of Torino; Buffa Bortolotti & Mathis, Torino; President IDI; Member AIGI
Stefano Artuso, General Counsel, COIN, Venezia-Mestre; Member AIGI
Andrea Montanari, Legal affairs director, F.A.T.A. Spa, Pianezza (Torino); Member AIGI
Ulisse Spada, Senior Vice-President, corporate and legal affairs, Piaggio & C. S.p.A., Pontedera; Member AIGI
- 10:40-11:00 **Coffee break**
- 11:00-11:20 **What can be done to improve the functioning of arbitration. The experience of the ICC Court of arbitration.**
 The recent reforms of the ICC Court regarding availability of arbitrators. Other means to warrant efficiency and rapidity. The revision of the ICC arbitration rules.
Francesca Mazza, Counsel at the International Court of Arbitration and Secretary to the Commission on Arbitration
- 11:20-11:40 **The quick arbitration procedure of the Piedmont Arbitration Chamber.**
 The special procedure introduced by the Piedmont Arbitration Chamber. How it works. Practical experience and satisfaction of the users.
Paolo Montalenti, Professor of corporate law, University of Torino, Member of the Council of the Piedmont Arbitral Chamber
- 11:40-12:00 **Developing arbitration in the Mediterranean area.**
Hassan Alami, President of Centre Euromed de Médiation et d'Arbitrage (CEMA)
- 12:00-12:30 **Discussion**

SECOND WORKSHOP

Parallel imports and trademark protection.

- CHAIRMAN:** **Erwin Gärtner**, Gärtner, Stübel, Baumann & Partners, Stuttgart; Member of the IDI Council
- 09:30-09:50 **The general principles: trademark protection, exhaustion, parallel imports.**
 The use of trademarks for preventing parallel imports. The principle of regional exhaustion. Possible types of approach: European Union and other jurisdictions. Policy problems: protecting the trademark owner or the consumer?
Cesare Galli, IP Law Galli, Milano
- 09:50-10:20 **Protecting distribution networks against parallel imports: the point of view of business.**
 The need to prevent parallel imports is the inevitable consequence of different price levels in different markets. Which are the various means the supplier can use? How to adapt strategies to different legal environments.
Veerle Bouckaert, Legal Counsel BasicNet S.p.A., Torino
Igor San Juan, Legal Counsel G-Star International B.V.

- 10:20-10:40 **How to draft clauses which protect the supplier against parallel imports.**
Distribution contracts: clauses prohibiting sales in certain areas; clauses prohibiting sale to non-approved licensing contracts: limitations to be imposed upon the licensee; cases where their breach may amount to a trademark infringement.
Marco Venturello, Venturello e Saraceno, Avvocati, Torino
- 10:40-11:00 **Coffee break**
- 11:00-12:00 **PANEL on parallel imports and trademark protection in various areas.**
Experts of different countries will discuss the means (if any) and limits of actions against parallel importers of original goods, in their jurisdiction.
CHAIRMAN: Cesare Galli, IP Law Galli, Milano
Italy: Marco Venturello, Venturello e Saraceno, Avvocati, Torino
Japan: Souichirou Kozuka, Sophia University, Tokyo
Spain: Rocio Belda de Mergelina, Garrigues, Madrid
Turkey: Hikmet Koyuncuoglu, Koyuncuoglu & Koksal Law Firm, Istanbul
Ukraine: Nataliya Mykolska, Vasil Kisil and Partners, Kiev
- 12:00-12:30 **Discussion**

THIRD WORKSHOP

How to obtain and maintain control over the location of the franchisee's outlet.

- CHAIRMAN:** **Marco Hero**, Tigges Rechtsanwälte, Munich
- 09:30-09:50 **The growing importance of securing the location in distribution franchising: an overview of the various solutions.**
A favourable location of the shop is essential in distribution franchising. Getting such locations and not losing them is a crucial aspect for both parties of a franchising contract. What are the strategies to be recommended in this context? Possible solutions.
Marco Hero, Tigges Rechtsanwälte, Munich
- 09:50-10:20 **The strongest option for the franchisor: direct control over the premises.**
The franchisor may decide to acquire ownership of the premises or to lease them in his name. In this case he has two types of options: lease (or sublease) the premises to the franchisee, or lease the business (i.e. premises + authorizations, personnel, furniture, etc.). In some jurisdictions the second solution (affitto d'azienda, location-gérance), may avoid the application of mandatory rules on commercial leases.
Silvia Bortolotti, Buffa Bortolotti & Mathis, Torino; Member of the IDI Council and Secretary General IDI
Dorota Wiellowicz, Legal counsel for international markets, Yves Rocher Group
- 10:20-10:40 **Lease of the premises by a third party with option in favour of the franchisor.**
Lease with an option to step in in favour of the franchisor. How to draft the contract. Possible conflicts with mandatory rules. How to limit the risks for the franchisor.
Carl Zwisler, Gray, Plant, Mooty, Mooty & Bennett, PA, Washington DC
- 10:40-11:00 **Coffee break**
- 11:00-12:00 **PANEL on effectiveness of control of the location in the context of franchising.**
A number of experts will exchange views on their experience with regard to disputes arising from sublease agreements between franchisors and franchisees as well as with regard to contracts between franchisees and their landlords, with an option to step in in favour of the franchisor. To what extent such clauses are effective? The risk of conflict with mandatory rules on commercial lease contracts.

CHAIRMAN: Carl Zwisler, Gray, Plant, Mooty, Mooty & Bennett, PA, Washington DC

Luciana Bassani, Dannemann Siemsen Advogados, Rio de Janeiro

Claudia Cruz, AVM Advogados, Lisbon

Paul Jones, Jones & Co., Toronto (expert for China)

Patrick Lindgren, Advocare Law Firm, Helsinki

Anders Thylin, Thylin Advokatbyrå AB, Stockholm

12:00-12:30

Discussion

PRACTICAL INFORMATION

- Venue:** Centro Congressi Torino Incontra, via Nino Costa, 8, 10123 Torino
- Language:** English
- 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 organization as the first participant (i.e. having the same address and VAT code);
300 € for IDI members having a valid subscription on the day of the conference.
The fee includes the coffee break, lunch and documentation.
Company lawyers (ECLA/AIGI Members): 20% of discount on the total amount.
- Gala dinner:** 100 € per person. Please, remember that places are limited and must be reserved in time.
Please **add 20% (VAT)** to your payment (**for both Italian and foreign participants**).

Registration and cancellation

- Registration on-line:** 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. The payment should be transferred with no cost to the organizers.
NO CHEQUE PAYMENTS WILL BE ACCEPTED.
- Cancellation:** Cancellation request received in writing by IDI Project on or before 1 June 2010 will be subject to a 20% administration charge of the total fees paid. After that date no refunds are possible.

Hotel Accommodation and Tourist Information

Accommodation is not included in the registration fee. For your information, the following hotels are close to the venue of Friday 11. A limited number of rooms have been reserved at special rates to the IDI conference participants: in order to receive the discounted rate, please contact the hotels directly and specify that you are attending the IDI conference.

- Golden Palace****** (<http://www.goldenpalace.thi.it/>) Special price: 170€ per night.
Tel: +39-(0)11-5512111 Fax: +39-(0)11-5512800 Email: smina-goldenpalace@thi.it
The deadline for making reservation in this hotel is May 13, 2010.
- Hotel Sitea****:** (<http://www.thi.it/>) Special price: 130€ per night.
Tel: +39-(0)11-5170171 Fax: + 39-(0)11-54 80 90 Email: sitea@thi.it
The deadline for making reservation in this hotel is May 13, 2010.
- Hotel Victoria****:** (<http://www.hotelvictoria-torino.com/>) Special price: 120€ (standard), 145€ (deluxe) per night.
Tel: +39-(0)11-5611909 Fax: +39-(0)11-5611806 Email: reservation@hotelvictoria-torino.com
The deadline for making reservation in this hotel is April 20, 2010.

REGISTRATION FORM

First Name Last name
Company Address
ZIP/ Postal code City
Country Value Added Tax (VAT) Code
E-mail Phone Fax.....

WORKSHOPS: (Saturday, 12 June 2010):

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

- I will attend the FIRST WORKSHOP: The recourse to international arbitration: when should it be chosen and how should it be managed in order to be effective.
- I will attend the SECOND WORKSHOP: Parallel imports and trademark protection.
- I will attend the THIRD WORKSHOP: How to obtain and maintain control over the location of the franchisee's outlet.

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

- IDI Conference (11-12 June 2010):
- € 800: First participant
 - € 300: Second participant
 - € 300: Third participant
 - € 300: IDI member (subscriber), having a valid subscription on the day of the conference.
 - € 100: Ticket for the gala dinner (please, specify the number of tickets:)
 - Company Lawyers (ECLA/AIGI Members): 20% of discount on the total amount.

TOTAL AMOUNT:

Please **add 20% (VAT)** to your payment (**for both Italian and foreign participants**).
€:

PAYMENT:

Please make a bank transfer marked «11-12 June 2010 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

PRIVACY: All personal information is processed by IDI confidentially and in compliance with the provisions contained in the Italian Legislative Decree 196 of 2003. All personal information stored on our system is secured against unauthorised access. All users may exercise their rights provided by Article 7 of the Italian Legislative Decree 196 of 2003, by sending an informal request to privacy@idiproject.com