**SOME NOTABLE ISSUES ABOUT INTELLECTUAL PROPERTY IN THE**

**DISTRIBUTION CONTRACT**

Matters related to intellectual property have never been a matter of so much concern in this period. The research and development of the enterprise's intellectual property in most aspects of business development and competitive strategy, from the product development to the product design, from providing services to marketing, and from attracting financial resources, or exporting, distributing or expanding business (domestic and foreign) through licensing and commercial franchising. Depending on the purpose and strategy in developing product lines, enterprises can choose many forms and methods to sell products to consumers. However, selling by a distribution system is the essence and common, bringing enormous commercial value for enterprises. Besides some of the parties in the distribution contract's content, such as commodity prices, regulations on order and accept orders, discount, minimum order limit, product return, etc. The following article focuses on analyzing some content related to intellectual property terms that Manufacturers/Suppliers need to pay attention to in distribution contracts.

1. **Notes on the scope of use for intellectual property rights**

Intellectual property rights of the Manufacturer/Supplier is established depending on the specific type of intellectual property assets, which means the intellectual property rights are established when the property must be granted a protection title, such as trademarks (except well-known trademarks), industrial designs, patents or automatically protected, do not need to be registered if it meets some of the provisions of the law, which can be mentioned as trade names, trade secrets. When a Distributor uses intellectual property assets owned by the Manufacturer/Supplier, the scope is limited in protecting that intellectual property asset.

In addition, Distributors may only use intellectual property assets for the sole purpose of sales promotion, advertising promotion, marketing, etc. Accordingly, a Distributor is prohibited from deleting, defacing, obscuring or taking other behaviors to change any trademarks or trade names appearing on the product without the permission of the Manufacturer/Suppliers. Distributors have the right to use trade names, logos, trademarks, and other objects related to intellectual property rights only to the extent permitted by the Manufacturer/Supplier, not allowed to adjust or remove any marks or other identification forms, and not allowed to register marks or brands that is the same or similar to the Manufacturer/Supplier.

1. **Terms of confidentiality**

Placing the issue of information confidentiality is also helping one of the parties in the distribution contract protect its trade secrets against increasingly fierce competition. Trade secrets are generally defined broadly and include sales methods, distribution methods, customer profiles, promotional strategies, supplier and customer lists, production processes. Most distribution contracts have an applicable confidentiality clause, including content that is explicitly classified as confidential information or supposedly confidential information, in order to extend the scope of protection of the party whose confidential information needs to be protected, preventing violations of the other party. Typically, the parties will agree that the information confidentiality clause will remain in effect even if the contract is void or when the contract is terminated.

**3. Terms of commitment is the legal owner of intellectual propority assets**

In the distribution contract, the Manufacturer/Supplier sets many intellectual property concerns and requires the Distributor to comply. Nevertheless, the Distributor shall pay attention to requiring the Manufacturer/Supplier, a prerequisite, the Manufacturer/Supplier must be the legal owner of the intellectual property assets. Unlike the nature of the agency contract, after completing the order and delivery process, the ownership of the goods is transferred to the Distributor. The Distributor is the owner of the product, which has included one or more intellectual property assets. For example, a bottle of ABC liquor, the beverage product may have the brand "ABC, picture", the design of the can, and these two objects have been granted exclusive protection titles for the Manufacturer /Supplier.

If the Manufacturer/Supplier is not the legal owner of the intellectual property assets and still distributes the product having one or more than one any signs of intellectual property infringement. When there is a dispute, Distributors are likely to suffer tremendous damages. Terms of return or product warranty, to protect the parties' interests in the contract and balance the interests, usually the right to request a return or product warranty expires after a determined period. If after the expiration of the return and warranty period, there is a dispute about intellectual property issues, the Distributor will not be able to continue to do business and distribute the products, nor will be able to claim the warranty or return because the request has expired. There was an actual case, namely Judgment No. 41/2020/DS-PT dated July 28, 2020, on a dispute over intellectual property in the distribution contract that the High-level People's Court approved in Ho Chi Minh City handles and settles when the Distributor issued for importing, storing and selling products with signs of intellectual property infringement. According to the content of this judgment, the Distributor - Defendant is also unaware that the Manufacturer, who is also the supplier, has sold products with signs of infringement of intellectual property rights. According to the content of the judgment, Plaintiff requested Defendant to force an end to all acts of infringing upon the intellectual property rights including, but not limited to the importation, exploitation, circulation, trading, transportation, advertising, offering and storing products for circulation, forcibly recalling all products, forcibly destroying all products in stock as well as on the market, compensating damages for losses incurred to the Plaintiff due to an infringement of intellectual property rights. This will be extensive damage that the Distributor must bear when not committing to being the legal owner. The Distributor will likely find it challenging to have a basis to claim for damages arising. Although this appellate judgment has not yet made a specific decision to settle the dispute as mentioned above, the parties, while in the drafting and negotiation stage, should pay special attention to this issue to avoid and maximize damage in case of disputes.