

Timely Advice on Exiting a Distribution Agreement

Recent ruling clarifies criteria for reasonable notice when exiting a distribution agreement
The High Court decision of Jackson Distribution Ltd v Tum Yeto Inc has given some useful guidance on factors to consider when looking at exiting a distribution agreement says Shaw Stapely, Associate at Thomas Eggar LLP. In particular, it has had a significant impact in clarifying what constitutes a reasonable period of notice when terminating otherwise than for breach.

This is likely to be an issue where there is no formal written agreement or the contract itself is silent on the issue (which means a 'reasonable period' of notice will usually be implied by law).

Case Study

In this case, the parties agreed that Jackson Distribution would be the sole distributor for certain goods of Tum Yeto via a series of emails, and each sent their own form of draft agreement to the other, neither of which were signed.

Two and a half years later, Tum Yeto purported to terminate the agreement without notice, which Jackson contested. The court considered what were the agreed terms of the arrangement and on what basis could Tum Yeto terminate it?

In the absence of a written agreement, the court implied a term that the distribution arrangement should be terminable on reasonable notice.

What is reasonable notice?

The court considered various factors including:

- " the length of the relationship between the parties;
- " the lack of formal arrangement between the parties;
- " the extent of Jackson's early investment;
- " the percentage of Jackson's turnover made up of Tum Yeto's supplies; and
- " that Jackson had agreed not to sell competing products.

The court concluded that a reasonable notice period in this case would be nine months and Jackson was entitled to damages for the nine-month period from when Tum Yeto had purported to terminate the agreement.

What should manufacturers do to protect themselves?

Commenting on the case, Shaw Stapely, Associate at Thomas Eggar, LLP stated:

Termination of distribution agreements can be tricky for manufacturers and this case gives a useful checklist of facts to consider when deciding what is reasonable notice. However, each case will depend on its facts and periods of six and three months have been held to be "reasonable" in the circumstances. For the distributor, a period of notice needs to be sufficient to allow the manufacturer the ability to find alternative business.

Ultimately, there is of course no substitute for having a written contract with defined termination provisions and express notice periods.

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