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International Agency and Distributorship Agreements

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BOOK REVIEWS

International Agency and Distributorship Agreements

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DISTRIBUTORSHIPS, AGENCY AND FRANCHISING IN AN INTERNATIONAL ARENA, edited by Dennis Campbell and Louis Lafli, Kluwer Law and Taxation Publishers, Boston, Massachusetts (1990), ISBN 90-6544-504-8, 222 pp., \$59.00.

CLASEN, THOMAS F., INTERNATIONAL AGENCY AND DISTRIBUTION AGREEMENTS, Butterworth Legal Publishers (USA), Salem, New Hampshire (1991), ISBN 0-88063-296-9, 4 Volumes, looseleaf, \$425.00.

COMMERCIAL AGENCY AND DISTRIBUTION AGREEMENTS: LAW AND PRACTICE IN THE MEMBER STATES OF THE EUROPEAN COMMUNITY, general editor, Guy-Martial Weijer, Graham & Trotman, London, distributed in the United States by Kluwer Academic Publishers Group, Norwell, Massachusetts (1989), ISBN 1-8533-358-1, 430 pp., \$145.00.

The negotiation and preparation of international agency agreements is the bread and butter work of the American international practitioner. So much time is spent on these commercial relationships that they have come to occupy a special place in the consciousness of U.S. international lawyers. Indeed, some law schools offer courses exclusively on this subject.¹ There are perhaps three explanations for the attention given to this relatively narrow area of commercial practice. First, unlike many other "international" commercial transactions, international agency and distribution agreements are not just domestic transactions with an additional international aspect. By definition, they almost always involve parties located in different countries, and their preparation involves a consideration of at least two legal systems. Second, international agency and distribution agreements are among the few international relational contracts to

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1. See, e.g. 1990-1992 University of Denver College of Law Bulletin 12 (1989).

which small businesses are frequently parties. Unlike transnational mergers and acquisitions, construction agreements and the creation of corporate networks, they are not the exclusive preserve of large companies and their lawyers. Finally, the relationship of foreign agents or distributors and U.S. suppliers is a particularly difficult one and has become the subject of much governmental regulation and litigation.

There was a time when one of the principle measures of an international practitioner's worth was awareness of sources of information. For preparers of international agency and distribution agreements, foreign regulations were in disparate sources, usually untranslated. International business transactions courses in law schools which had a practical orientation often exuded the atmosphere of a secret society, with (frequently adjunct) teachers sharing with students not so much knowledge as sources of information. Paucity of information, happily, is no longer the norm, as the appearance of these books demonstrates. Each is different, and each successfully achieves its purpose, although that purpose is not as well explained by each editor.

Leading the pack in practically every respect, including price value, even at \$425.00, is Thomas F. Clasen's *International Agency and Distribution Agreements*. This is an excellent endeavor, and it fills a long-standing need. The first of the four volumes in the set is a comprehensive, well-written treatise which covers U.S. and foreign legal aspects of the international agency and distribution relationship. The volume is divided into three parts. The first is called *Preliminary Considerations*, and is just that. The second, called *Legal Issues*, focuses on foreign laws which regulate the agency and distributorship relationship,² U.S. and foreign (primarily EC) antitrust laws,³ tax considerations,⁴ intellectual property issues,⁵ and "other U.S. legal considerations."⁶ The third section, *Drafting International Agency and Distribution Agreements*, contains a very well-organized analysis of considerations, such as dispute resolution, commissions, payments and termination. Two useful forms of agreement are included as models; these are annotated with references to other parts of the book.

The other three volumes consist of articles by practitioners in some fifty countries. These articles contain translations of the relevant foreign statutes,⁷ and add the necessary detail and hard law to the conceptual

2. THOMAS CLASEN, *INTERNATIONAL AGENCY AND DISTRIBUTION AGREEMENTS* Ch. 5 (1991).

3. *Id.* at Ch. 6.

4. *Id.* at Ch. 7.

5. *Id.* at Ch. 8.

6. *Id.* at Ch. 9. This section addresses the always thorny Foreign Corrupt Practices Act and Anti-Boycott laws.

7. Lawyers affected with certain *Weltmüdigkeit* might say that statutory provisions in some of the countries covered (Yugoslavia, for example) are really only the point of departure on a rather stormy voyage, but every journey must have a beginning.

framework contained in the first volume. Although they all cover similar material — nature of the relationship, limitations on use, exclusivity and termination — they are not identically organized. The presentation does not suffer for the inconsistency. Indeed, an argument can be made that the differences in emphasis reflect differences in importance. One assumes the country chapters will be regularly updated, and if so, they will constitute the substantive information one will need to prepare an agreement to be performed in the countries treated.

Commercial Agency and Distribution Agreements: Law and Practice in the Member States of the European Community, edited by Guy - Martial Weijer, is, as the title indicates, much more limited in scope than the Clasen book. This is not to denigrate it, because in my view its authors have succeeded at covering the more limited topic. The book is a product of the *Association Internationale des Jeune Avocats* in Belgium, and contains a chapter written by a local practitioner for each of the Member States. There is a separate chapter which focuses exclusively on Community law.⁸ The organization of the chapters is very rigid, the outline for each country being identical. The emphasis is on the statutory regulation of agency and distributorship agreements. There is no drafting advice or forms. The chapters are informative and well-written, and many readers will prefer the uniformity of organization to the more individual approach of the country chapters. But for the existence of the Clasen book, Weijer would be a significant contribution to the literature. As it is, the book provides a less expensive summary of the statutory law of a more limited geographic area. The only significant drawback is that it will quickly become dated. Presumably, subsequent editions will appear, but practitioners who frequently work with agency and distributorship agreements will like Clasen's looseleaf approach.

Distributorships, Agency and Franchising in an International Arena, edited by Dennis Campbell and Louis Lafili, is the least ambitious of the books surveyed here. It is a collection of essays which briefly examines various issues associated with agency, distributorship and franchising agreements. The essays were originally presented at a conference held in Austria in 1989, and the book reflects the benefits and detriments of such a format. The benefits are ease of approach and breadth of coverage. The articles are surprisingly even, and are all written in a chatty style which reveals their genesis as addresses. The detriments are repetition and incomplete coverage of the material.⁹

The authors assume a minimum level of knowledge about these topics, and the book cannot be intended as a reference work. Perhaps the book could have been more accurately titled *Some Current Issues of In-*

8. EC antitrust regulation is handled in the first volume of the Clasen set.

9. Notwithstanding the title of the collection, Japan receives twelve pages of material, and Latin America, probably the most difficult area of the world for U.S. suppliers, is treated only by a ten page discussion of economic integration.

ternational Distribution Law: A Colloquium. Within these limitations, the book is informative, and I found it interesting. Although there are summaries of the regulatory schemes of a number of countries, the speakers were clearly more interested in discussing what one of the editors calls "macro-economic and macro-political considerations."¹⁰ Practically all of the contributors discussed the effects of the revitalized EC in 1992. Two contributors included forms, an agency agreement and a franchise agreement, both of which are useful and well-done.

Interestingly, both the Campbell and Weijer books discuss franchising as well as agency and distribution. Clasen gives the topic of franchising less emphasis.¹¹ However, this rapidly evolving method of international operation is closely related to commercial agency and distribution conceptually, and may well join them as a significant area of practice.

Overall, the Clasen work may well be the best book practitioners can buy on international agency and distribution agreements. Those interested in the EC and those who do not wish to spend \$425.00, will be well-served by the Weijer book. The Campbell and Lafili book, although not a reference work, contains much useful information.

10. DISTRIBUTORSHIPS, AGENCY AND FRANCHISING IN AN INTERNATIONAL ARENA 1 (Dennis Campbell and Louis Lafili eds., 1990).

11. CLASEN, *supra* note 2, at § 3.3(b).