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SALES AND DISTRIBUTION IN CANADA

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The Canadian legal system is based on the common law tradition with the exception of the Canadian province of Quebec, which is based on civil law.

There are three levels of government in Canada: federal, provincial and municipal. Laws from each level of government may govern aspects of sales and distribution in Canada.

There is little legislation governing the relationship between a manufacturer/supplier and a distributor or agent. This relationship is generally governed by the common law of contract. Canadian courts will usually enforce the terms of a parties' contract unless such terms involve illegal activity or are contrary to public policy.

It is important for parties to accurately address all aspect of their sales and distribution arrangement in a written agreement, especially issues concerning collection of payment, whether security will be taken for payment, territorial size and exclusivity, the scope of an agent's authority and termination rights. In Canada, unless a right to terminate the agreement without cause is expressly provided for in the contract, the terminating party may be required to provide the other with reasonable notice before termination. What constitutes reasonable notice is fact-specific and depends on the unique circumstances of the relationship between the parties.

Regulation and Liability

Sale of Goods

There is a significant amount of consumer protection legislation dealing with the sale of goods to end-users in Canada. This legislation may vary from province to province.

Competition Act

Parties selling goods in Canada must ensure their trade practices are not prohibited under the federal *Competition Act*. The *Competition Act* is a very comprehensive piece of legislation, which outlines trade practices which are prohibited, and even criminal, in Canada. Some trade practices which are considered criminal in nature in Canada include bid-rigging, predatory pricing and price fixing.

Language

The majority of the population of Canada is English-speaking, however, Canada is officially a bilingual country. Parties wishing to distribute and sell goods in the province of Quebec should be aware of the federal and Quebec laws which were created to protect and promote the survival of the French language. Generally, all promotional materials used in Quebec must be in French or have a French version available.

Labeling

Suppliers and manufacturers should ensure compliance with federal legislation such as the *Textile Labeling Act* and the *Food and Drugs Act*, which govern labeling and packaging standards.

Liability in Contract and/or Tort

Under the law of contract and/or tort, manufacturers and suppliers may be sued and held liable for injury or death or for damage to property occurring in connection with products distributed and sold in Canada.

Intellectual Property

To have patent protection in Canada, a Canadian patent must be registered.

Registration of a trademark is recommended. Registration of trademarks in Canada are not mandatory, however, the degree of protection available to the owner of an unregistered trademark may be limited only to those specific geographic areas where the trademark is well known and recognizable.

Taxes

Non-residents who sell or distribute products in Canada may still be subject to certain tax remittance requirements under the federal *Income Tax Act*. Furthermore, amounts paid by a resident of Canada to a non-resident for certain fees may be subject to withholding tax on the gross amount of such payments. Parties intending to sell or distribute products in Canada are strongly encouraged to consult with a qualified tax professional to ensure compliance with Canadian tax laws.

UN Convention of Contracts for the International Sale of Goods

Canada has ratified the Convention of Contracts for the International Sale of Goods.

Convention on Recognition and Enforcement of Foreign Arbitral Awards

Canada ratified the Convention on Recognition and Enforcement of Foreign Arbitral Awards on May 12, 1986.

Links

- Competition Bureau of Canada: www.competitionbureau.gc.ca