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SALES AND DISTRIBUTORSHIP CONTRACTS IN NEW JERSEY

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New Jersey's Economy

New Jersey sits on the east coast of the United States and is bordered by New York, Pennsylvania, the Delaware river and the Atlantic Ocean. Among the states, New Jersey's population has one of the highest per capita income and the highest medium household income. The state's economic engine is driven by a host of pharmaceutical, biotechnology, technology, gaming and telecommunications companies.

The Sales Representatives' Rights Act

In New Jersey, the Sales Representatives' Rights Act, N.J.S.A. 2A:61A-1 *et seq.* (the "SRR"), grants certain rights to sales representatives for payment for their services. Under the SRR, a sales representative is defined as "an independent sales company or other person, other than an employee, who contracts with a principal to solicit orders and who is compensated, in whole or in part, by commission but shall not include one who places orders or purchases exclusively for his own account for resale." N.J.S.A. 2A:61A-1. The SRR provides that upon termination of the contract with a sales representative, the principal (the person who hired the sales representative and produces, imports, or distributes a product) must pay any commission that is unpaid to the sales representative within 30 days of termination of the contract or 30 days of when the commission is due, whichever is later. If the principal fails to make such payment, the sales representative will be entitled to damages in the amount of three times the commission plus attorney's fees and other costs. These rights cannot be waived by contract. However, if the court finds that the sales representative's suit was frivolous, the principal will be entitled to attorney's fees and costs.

In addition, under the SRR, any principal who is not a resident of the State of New Jersey who contracts with a sales representative is deemed to be doing business in the State. Thus, a foreign company who hires sales representatives in New Jersey must seek qualification to do business in New Jersey.

A Pennsylvania Limited Liability Partnership

California

Delaware

Florida

Nevada

New Jersey

New York

Pennsylvania

Freedom of Contract

New Jersey law allows parties to freely negotiate agreements and allows for great latitude in allocating risks of loss. The State has a strong public policy in enforcing agreements. Even if an agreement is unfavorable to one of the parties, the courts will generally enforce the contract. Contracts, however, can become unenforceable if the contract is deemed manifestly unfair or oppressive, violates public policy, lacks consideration, constitutes fraud, contains mutual mistakes, or otherwise violates the law.

Conflict of Laws and Forum Selection.

In New Jersey, the law of the place where the contractual obligation was made ordinarily governs. Absent a specific contractual clause expressing the parties' clear intent regarding which state's law should apply, New Jersey applies the "most significant relationship" test to determine which law is applicable. In this test, the court considers seven general considerations in its analysis: (1) the needs of the interstate and international system, (2) the relevant policies of the forum, (3) the relevant policies of other affected states and the relevant interests of those states in the determination of the particular issue, (4) the protection of justified expectations, (5) the basic policies underlying the particular field of law, (6) certainty, predictability, and uniformity of result, and (7) ease in the determination and application of the law to be applied. In other words, this test focuses on which state has the most meaningful connections with the transaction and the parties. The state with the most significant relationship has its law applied to the issues at hand.

New Jersey Franchise Practice Act

The New Jersey Franchise Practices Act, N.J.S.A. 56:10-1 et seq., (the "FPA") may also govern the relationship between certain parties when one of the parties is distributing goods and services in the State while using the trademark of another party. Under the FPA, a franchise is defined as "a written arrangement for a definite or indefinite period, in which a person grants to another person a license to use a trade name, trade mark, service mark, or related characteristics, and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement, or otherwise." N.J.S.A. 56:10-3. However, the FPA only applies when (1) a franchisee is required to establish or maintain a place of business within the State of New Jersey, (2) where gross sales of products or services between the franchisor and franchisee covered by such franchise exceeds \$ 35,000 for the 12 months next preceding the institution of suit pursuant to the Act, and (3) where more than 20% of the franchisee's gross sales are intended to be or are derived from such franchise.

The FPA establishes certain restrictions and guidelines between a franchisor and franchisee. For example, a franchisor must give 60 days' written notice prior to the termination, cancellation, or declination to renew a franchise contract. Franchisees are also prohibited from assigning or selling their interest to another party without following certain written notice requirements. The FPA also invalidates certain contractual provisions. Provisions such as waivers or releases from personal liability, provisions that require unreasonable standards of performance, and provisions that allow for changes in management for reasons other than good cause are all unenforceable.

New Jersey courts have also held that forum selection clauses are presumptively invalid under the FPA.

About the Firm

Fox Rothschild is a law firm built to serve business leaders. Clients come to us for guidance because we understand their issues, their priorities, and the way they think. We help them manage risk and make better business decisions by offering practical, innovative legal advice. We deliver a full range of legal services--from the traditional (Litigation, Corporate, Labor and Employment) to the emerging services (Art, Intellectual Property, Tech and Venture Finance).

Over the past 100 years, we've become 450 lawyers in 15 offices coast to coast. And we're growing! But growth isn't the goal. Giving clients the resources they need to succeed is what we are all about.

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