

Ignacio ALONSO

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UNIVERSITY STUDIES AND OTHERS DEGREES

- Law Degree 'Universidad Pontificia de Comillas' (ICADE, Madrid, Spain, 1988).
- Licence Spéciale in European Law: Centre d'Études Européens 'Université Libre de Bruxelles' (Brussels, Belgium, 1991)
- Master Degree in Tax Law. ('Centro de Estudios Financieros, Madrid, 2000-2001).
- Diploma in Bank and Stock Exchange law (Madrid Bar Association [MBA], 2002)
- International Tax Planning. 'Centro de Estudios Financieros' (Madrid, 2005-2006).
- Specialist in Civil and Commercial Mediation (250 hours) (Thomson-Reuters, Madrid, 2013).
- Special Course on Arbitration (60 hours) (MBA, 2016).
- Special training in 2017: in Negotiation Harvard for mediators (MBA, 16 hours); Negotiation, emotions and difficult situations (Signum Notaries Foundation, 16 hours); In-depth on Civil and Commercial Mediation (MBA, 54 hours).

PROFESSIONAL ACTIVITY

- Between 1990 y 1991 I started my professional career with some consulting activities in a private Firm in Brussels and a brief period of six months in the European Commission.
- From November 1991 to February 1997 I worked as an Associate-Lawyer in an International Law Firm in Madrid, with relevant presence in general law, but also company, commercial and banking law. I started dealing with my first cases in distribution and franchising, tax law, foreign investments and competition law amongst others.
- In February de 1997 I founded with a partner the Law Firm Aguado & Alonso, then Advocatia Abogados until 2013 with offices in Madrid and Tenerife (Canary Islands). My activity as managing partner consisted in the organization of the Firm and the coordination of the Commercial Law Department and the advising of foreign companies and Groups in Spain as Secretary of the Board and in most of their commercial activity. The Firm was the correspondent member in Madrid of the Legal Netlink Alliance with more than 70 law firms round the world and more than 1,500 lawyers.
- In 2013 I founded with a partner EVEN ABOGADOS (www.evenabogados.com) a boutique law firm highly specialized in all forms of distribution agreements and litigation.

- From 2004 I am the *Country Expert* at the **International Distribution Institute (IDI)** (www.idiproject.com) dealing with Distribution and Agency Law. From 2017 I am also permanent member of the Council of the IDI.
- Our firm was awarded several times as Franchise Spanish Law Firm of the Year (CorporateINTL legal awards 2010, 2011 and 2012).
- I have also been admitted as arbitrator at the Madrid Bar Association Arbitral Court for Distribution/Agency/Franchising, corporate law, and civil and commercial contracts; as mediator for civil and commercial disputes at the *media/CAM* (Madrid Bar) and at the Spanish Ministry of Justice.

DISTRIBUTION CASES

CASE 1

In my very first case related to distribution we dealt with a Scottish manufacturer of beverages who had signed a letter with a Spanish company recognising some rights regarding the distribution of their beverages in our country. The letter was really very short (not more than one paragraph of six lines), did not mention anything about distribution conditions but was used during several years by the parties to introduce the products in the Spanish market. After a quite long period relationship in which the Spanish party sold those products, the Scottish manufacturer decided to terminate it. The discussion here was whether the letter was a real distribution agreement or not and therefore the nature of the relationship, the conditions applied (particularly the exclusivity in the territory), the notice period for termination and the clientele compensation.

CASE 2

An Italian agent signed an exclusive agency agreement with a Spanish manufacturer for the representation in Italy and San Marino. The agreement was slightly modified six years later, and then substituted four years later by a new exclusive agency agreement but with similar clauses. Another four years later, the manufacturer decided to terminate the agreement because the non-attainment of the minimum sales by the Agent but sending a previous notice of almost six months. In this case we had to deal with the duration of the agreement (the discussion was about the total duration taking into account the different contracts), the correctness of the termination by breaching of the agreement (the sales were in fact lowered in the last years but nothing in the agreement obliged the Agent to reach a certain level) and, of course, if the goodwill compensation (clientele) was due or not and the amount.

CASE 3

An Italian manufacturer appointed an exclusive Agent for Spain. This Agent had the obligation to find clients (resellers, not direct purchasers) and to organize the selling of products in different the regions according to the Agent's criteria. Then the clients (resellers) put the orders to the Agent and he transmitted them to the manufacturer who sent the products and invoiced the clients-resellers. Several years later the Manufacturer and the Agent terminated by mutual decision the agency agreement, the Agent received all the compensations and the Manufacturer appointed a new Distributor. The Manufacturer informed the clients that orders should be placed

from that moment to the new Distributor instead of the Agent. Then, most of the clients (resellers) sued the Manufacturer because they considered they had distribution agreements with him and asked for goodwill (clientele) indemnity for the termination of their agreements. The discussion in this case was whether the clients were in fact real distributors (from a legal point of view) or mere resellers appointed by the Agent, if their agreements were in fact terminated and if they had right to goodwill (clientele) compensation.

CASE 4

A German and Danish Group had an agent in Spain with a mixed contract of distribution and agency. The manufacture of contractual goods was organized in two different companies: the German one for the main products and the Danish one for the spare parts, but both companies acted under a common trademark although the Spanish party acted as an Agent for the products and as a distributor for the spare parts. Once the mixed agreement was terminated, the Spanish party sued both companies asking for goodwill compensation. The question we had to deal with was the mixed nature of the contract, the calculation of the goodwill compensation in each case, particularly taking into account to the possibility of future advantages for the principals to continue the business and the evidences the Agent-Distributor used to prove his arguments, as well as other damages indemnities or future commissions claimed.

CASE 5

A German manufacturer appointed a distributor for Spain and Portugal. The contract had a clause sating not very clearly the duration of one year with the possibility to renew it every year and (at the same time) the possibility to terminate it by giving a one-year previous notice. Nine months after the signature, the manufacturer sent a notice to not to renew the contract the following year due to the lack of activity of the distributor during that period (no sales of a single product were produced). In this case we had to deal with the interpretation of the duration of the agreement, the termination by breaching of the agreement, particularly giving the special circumstance of the nature of the products and their market (the distributor alleged that orders needed more than nine months to be organized).

CASE 6

A company appointed some franchisees by signing a license trademark agreement permitting the use of such trademark and the concept. The franchisee did not receive when negotiating the agreement the complete disclosure information related to the franchise and the information and procedures contained in the Manual or the financial information simply did not exist or were not as complete as it should be. Some of the franchisees decided to terminate the agreement because of the lack of assistance, the lack of a real and complete know-how and decided to continue providing the same (or very similar) services to the same clients and premises but by modifying the external aspect. In this case we discussed about the nature of the agreement (if it was a real franchise or not) and if the licensees could terminate the agreement and continue the activity.

CASE 7

A manufacturing company produced some foodstuffs and had developed a particular concept to sell them within well-known Department Stores through and in specific kiosks with a particular performing procedure. The manufacturer signed a Cooperation agreement assuming all the liabilities with respect to its client (the Department Store), but was authorized to sub-license its rights and obligations to third parties operators. Each kiosk was, then, directly managed by each Operator, linked to the manufacturer by a different specific franchise agreement. In this case we had particularly dealt with the renewal conditions of the Cooperation agreement, negotiating the basis for a development and termination of some kiosks and, in connexion, as well, with the third parties' franchise agreements.

OTHER PROFESSIONAL ACTIVITY RELATED TO DISTRIBUTION

Further to the litigation cases I have also participated in negotiations for the signature, revision and termination of several agency, distribution, consignment and franchise agreements in several markets such as services (restaurants, art, personal services), manufacture of industrial products (boilers, industrial machinery), clothing, sports, foodservice, beauty products, beverages, toys... and with clients from different countries and legal cultures: particularly Italy, Germany, Portugal, France, UK and the United States.

I have also been (or I still am) Secretary of the Board of Directors of international distribution groups in different fields such as personal beauty and perfumes, foodservice, pharmaceutical products, professional software, industrial components and machinery, home and outdoor products...

TEACHING, LECTURES, PANELS AND CONFERENCES

- I have been lecturer in European and Competition Law at the Centro de Estudios Europeos at the Universidad de Alcalá de Henares (Madrid) from 1994 to 2005.
- From 2006 to 2013 I have been Associate Professor at the Law School of the University Autónoma in Madrid, in commercial law particularly Market Law (competition, trademarks, advertising law) and Company Law, as well as courses at the Master Degree in Company Law.
- I have also been speaker in different forum and international congresses in commercial (particularly Distribution Law) and tax issues. Amongst others:
 - ✓ *Antitrust Law Conference: Spanish Competition Law* (Cambridge, 1994);
 - ✓ *El final del período de transición en la importación de medicamentos* Seminars on Economical Politics (University of Alcalá de Henares, 1995).
 - ✓ Introduction to antitrust law: *Introducción al Derecho de la competencia* (Escuela de Administración Pública, La Rioja, Spain, 2000);
 - ✓ *Expatriation of individuals. Exit Tax and anti-abuse clauses* (Union Internationale des Avocats (UIA) congress, Lisbon, 2003);
 - ✓ Distribution contracts, practical aspects: *El contrato de distribución: la práctica en España y Alemania* (Congress of the German-Spanish Jurist Association, Salamanca, 2005).

- ✓ *Organizing the termination of agency and distributorship agreements. The critical issues. Clauses which entitle a party to cancel the termination period by paying an indemnity* (International Distribution Institute (IDI), Vienna 2007).
- ✓ *The role of tax lawyer in the international transactions.* (UIA. Paris, 2007)
- ✓ *International Agency and Distribution agreements: Contratti con agenti e concessionari all'estero. L'indennità di scioglimento del rapporto nei rapporti con agenti e distributori stranieri.* (Camera di Commercio Industria, Artigianato e Agricoltura di Torino, Turin, 2008)
- ✓ *Indemnities for Agents and Distributors: The calculation criteria.* (IDI Annual Conference. Turin 2008).
- ✓ *Goodwill indemnity in distributorship contracts. Spanish recent case law. Possible new statutory rules protecting distributors* (IDI Annual Conference. Barcelona, 2009).
- ✓ *Comment faire face aux difficultés financières du concessionnaire de vente* (Association Française des Juristes d'Entreprise & International Distribution Institute, Lyon, 2012)
- ✓ *Discussion Panel: the legal qualification of the (re)sale by the department store of goods supplied on a consignment basis: legal and antitrust constraints.* (IDI Annual Conference. Venice, 2012)
- ✓ *The new European rules on jurisdiction and enforcement of judgments: Regulation 1215/2012 (Brussels 1 Regulation)* (IDI Annual Conference. Munich, 2013)
- ✓ *Arbitration and Mediation as alternative dispute resolutions.* Conference at the Universidad Pontificia de Comillas (ICADE, April 2013)
- ✓ *Discussion panel: What type of action should be taken by a supplier when his customer is gradually becoming a distributor?* (IDI Annual Conference. Turin, 2014)
- ✓ *Who decides on the validity of choice of forum clauses in agency, distributorship and franchising agreements? Unilateral jurisdiction clauses and clauses avoiding internationally mandatory rules* (IDI Annual Conference. Porto, 2015)
- ✓ *What is the impact of the EC Agency Directive on contracts with non-EU principals?* (IDI Annual Conference. Turin, 2016)
- ✓ *Facing product liability claims* (IDI Annual Conference. Florence, 2018)

PUBLICATIONS

Some articles, comments and studies:

- * Report on parallel imports [*Informe sobre las importaciones paralelas en la Unión Europea. Especial consideración del Artículo 47 del Acta de Adhesión* (Ed. Centro de Estudios de Derecho Europeo Farmacéutico, 1995);
- * *Competition Laws of Europe. (Spain)* (Ed. Butterworths, 1995). Chapter related to Spain.
- * On VAT: *El IVA aplicable en el arrendamiento de viviendas para empleados.* (German Chamber of Commerce in Spain, 2006).
- * On tax aspects on inheritances: *Sucesiones y Patrimonio ¿Impuestos en extinción?* Magazine "Ideas & Negocios" (December 2007)

- * Distribution and case-law: *La cuantía de la indemnización por clientela en los contratos de distribución en España. La sentencia de 15 de enero de 2008 del Tribunal Supremo*. Revista Wirtshaft de la Cámara de Comercio Alemana en España (June-July 2008).
- * Clientele compensation in Agency and Distribution agreements: *Criterios jurisprudenciales sobre la indemnización por clientela en los contratos de agencia y distribución*; in “*Treinta años de integración europea*”. (Ed. Juruá, 2009)
- * *Getting the Deal Through Franchise. Chapter to Spain*. (Editions 2009-2011 and 2015-2017)
- * *Getting the Deal Through Distribution & Agency. Chapter to Spain*. (Editions 2015-2017).
- * *The commercial Agency agreement*. Chapter in “*Los contratos mercantiles y su aplicación práctica*”. Ed. Bosch, Wolters Kluwer, Madrid 2017.

I have also published some short posts or comments on different blogs related to:

Agency: «*Agents and distributors: how to claim clientele compensation*»; «*Commercial agency: sub-agents and employees*»; «*Some clues on evidences in procedures claiming for goodwill indemnity*»; «*Claw-back clauses in Agency agreements: a judgement and recommendations*».

Distribution: «*Eight key points to distinguish: supply or distribution agreement?*»; «*The non-attainment of the agreed minimum turnover*»; «*Six questions in commercial distribution contracts*»; «*Distribution contracts and goodwill (clientele) indemnity on gross or net margins*».

Franchising: «*What is and is not a franchise (ideas before signing a Franchise agreement)*»; «*Franchisors: when do they have to register*»; «*The settlement of conflicts in franchise agreements*»; «*Some thoughts on non-competition clauses in franchise agreements*»; «*Mediation and franchise agreements: recommendations and drafting of special clauses (three posts)*».

LANGUAGES AND MISCELLANEOUS

Spanish: Native.

French, English and Italian: I indistinctly and simultaneously use all three languages with complete professional competence both spoken and written: correspondence, drafting of documents, publications, negotiations...

Professional Associations to which I belong: Madrid Bar Association, International Distribution Institute (Country Expert for Spain). Arbitration Court of the Madrid Bar Association (section of commercial and distribution law). *medialCAM* (Mediation Section at the Madrid Bar Association).

In the past I have also participated at the *Union Internationale des Avocats* (also as Vice-President of the Tax Law Commission) and the *Associazione Internazionale di Giuristi Lingua Italiana*.

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