

Torino, June 14. 2014.

IDI Conference 2014

Discussion panel: What type of action should be taken by the supplier when his customer is gradually becoming a distributor?

Poland - notes

Verdict of the Polish Supreme Court dated January 14. 1997 (I CKN 52/96)

The distinction between the various types of the intermediary contract was noted by the Supreme Court. The qualification of the contract in question (contract between the plaintiff and the defendant) was difficult. The Supreme Court stated however that the contract did not contain the provisions “*typical for the dealer agreement i.e. for the contract on the distribution of goods*” and defined the contract as a contract of exclusive trade representation (exclusive license contract). The Warsaw Appeal Court in the same case ruled that the term “distribution” has not only an economic meaning and defined a “distributor” as an independent businessman, who undertakes to (1) sale (2) on the given market (3) the goods, very often of the top quality, (4) delivered by the producer. The characteristics of the distribution contract are: its constancy, framework character and the additional obligations such as promotion of the goods, existence of the network, compliance with the producer’s guidelines, mutual loyalty. Such distribution contract should be distinguished from the contract concluded between the producer and a wholesaler; the wholesaler is only an intermediary, who – **unlike the dealer** – does not bring benefits to the producer.

Verdict of the Polish Supreme Court dated July 17, 2003 (Peugeot case)

An entrepreneur distributing products through authorized dealers is obliged (towards the buyers of such products) to check reliability of the dealer, and supervise his/her commercial activity.

Facts: On September 13, 1996 the Plaintiff concluded an agreement with M-M Company (Distributor), based on which the Plaintiff paid to M-M Company half of the price of the car and was to receive the car not later than within the specified time frame. The Plaintiff had never received the car and sued the Supplier for the payment of the lost amount was paid to the Distributor.

The Supreme Court stated that the tort liability of the Distributor as the direct author of the damage raised no doubts. However, the Defendant (Supplier) was liable, pursuant to Article 430 of the Polish Civil Code [“Whoever on his own account entrusts the performance of an act to a person, who in carrying out that act is supervised by him and has the duty to follow his instructions, shall be liable for the damage caused by that person in the performance of the act entrusted to him.”]. Although the representatives of the Defendant (Supplier) received

Wspólnicy Zarządzający: Zbigniew Drzewiecki, Andrzej Tomaszek Wspólnicy: Julian Bielicki, Anna Gołębiowska, Marcin Juszczyk, Małgorzata Kacperska, Tomasz Ludwik Krawczyk, Rafał Roszkowski, Olga Szejnert-Roszak, Marcin Szymański

Biuro we Wrocławiu:
ul. Krupnicza 13/106a, 50-075 Wrocław
tel. (+48) 71 780 49 74
fax. (+48) 71 780 49 74
e-mail: wroclaw@dt.com.pl

Belvedere Plaza
ul. Belwederska 23, 00-761 Warszawa
tel. (+48) 22 840 95 00
fax. (+48) 22 840 95 10
e-mail: dt@dt.com.pl

Biuro w Poznaniu:
ul. Mickiewicza 24/6c, 60-836 Poznań
tel. (+48) 726 671 346
fax. (+48) 61 624 38 28
e-mail: poznan@dt.com.pl

www.dt.com.pl

the information concerning high risks of the commercial relationship with the Distributor, they did not react on the dissatisfaction of his clients. Therefore, the Supplier negligently enabled the Distributor to trick his clients of their money. The Defendant was selling the cars. He had an obligation to be anxious about the interests of the clients of the Distributor as he gained profits from the activity of the Distributor. Therefore, the entrepreneur distributing products through authorized dealers had an obligation (towards the buyers of such products) to check reliability of the dealer and supervise his commercial activity.

Consequences of the consideration of the buyer as a distributor under the Polish law:

- no goodwill indemnity;
- no special termination period;
- no special regime for the rights and obligation of the parties.

Termination period – general rule in the Polish Civil Code:

Pursuant to Art. 365¹ PCC the long-term (perpetual) contractual relationship shall expire in accordance with contractual term, legal term or customary term, and in the absence thereof - without delay after the termination's notice is effective. It applies to the distribution contract (oral one as well) concluded under the Polish law. The Article 365¹ of the PCC came into force July 10. 2001, but it is confirmed in the Polish doctrine and jurisprudence that the possibility of termination of the perpetual relationship existed before July 10. 2001, as well.

The literature concludes that Article 365¹ PCC has two basic functions: (1) it confirms basically the existence of the termination mechanism of each perpetual obligation relationship and (2) it contains the interpretation directive as far as the time of expiry of the obligation is concerned, what has a significant practical impact in case the termination period is not provided contractually or by the binding law. According to the literature Article 365¹ PCC has an absolute character (*ius cogens* provision) and therefore the parties to the perpetual contract may not exclude the possibility of its termination.

The Polish Supreme Court confirmed in the justification of its verdict dated December 7. 2000 (II CKN 351/00) that the perpetual obligation may be terminated by each party, anytime, with no need of any particular circumstances which justifies the termination and called the earlier verdict in this respect i.e. verdict of the Polish Supreme Court dated April 6, 2000 (II CKN 264/00).

The Polish court most probably would accept 6 months termination period in case of long-term distribution relationship, although there is no any case law on this matter. In general, 3 months termination period for long-term relationship is commonly accepted.

Prepared by:

Olga Szejnert-Rozak

Country Expert for Distribution (Poland)

szajnert-rozak@dt.com.pl