

## IDArb

### LIST OF ARBITRATORS WITH EXPERIENCE IN DISTRIBUTION

#### Submission Form

#### Detailed Profile / CV

##### **Susanne Margossian**

General Counsel and Head of Legal Department UP International, Geneva, Switzerland (Novalac)

Susanne Margossian is a highly experienced professional in international legal matters, particularly international distribution, supply and research contracts as well as corporate and labor law. Before joining the French Baby-Food company United Pharmaceuticals SAS as Head of the Legal Department in 2006, she worked in an international Paris-based law firm as “Avocat” (admitted to the Bar of Paris). She recently moved to Geneva, Switzerland, to accompany the international growth of the UP group.

Member of the administrative council of the “Association des Juristes français et Allemands” (A.J.F.A.), Member of “Avocats Conseils d’Entreprise” (ACE), Member of the UIA International Sale of Goods Commission and the Contract Law Commission, Member of the “Association des Juristes d’Entreprises Français” (AFJE). Within these associations and others (such as I.B.A., Master 2 Droit des Affaires appliqué au monde de la Santé à l’Université Jean Monnet Saint-Etienne, etc.), she frequently acts as speaker in professional education and training programmes.

As attorney (“avocat”), she represented French and international clients in commercial litigation before the French courts and acquired some experience in mediation. As in house counsel of United Pharmaceuticals, she is in charge of an international distribution network in over 60 countries worldwide, on all five continents, including the negotiation and drafting of the contracts, their management and execution, anti-trust issues, and disputes, in cooperation with external attorneys. She has little experience in arbitration and has never acted as arbitrator.

You will find hereafter some examples of distribution cases she has been involved in as in-house counsel.

**Case 1.** A French company signed a trade agreement with a Portuguese company appointing such company as exclusive distributor for its products in Portugal. The agreement was entered into in the year 2000 for a fixed term of 8 years, renewable in writing prior to the end of its term. A few months before the end of the term, the distributor informed the French company of the re-organisation of its group structure following the acquisition of its mother company by a Dutch group. It therefore asked to assign the ongoing agreement to another Portuguese company which the French company refused. However, the French company accepted to enter into negotiations with the new

Portuguese company in order to enter a new distribution agreement. During such negotiations and in spite of the expiration of the initial agreement and the refusal of assignment, the French company sold its products to the new Portuguese company who distributed and promoted them in Portugal. One year later, the negotiations failed and the French company informed the Portuguese company of the end of their commercial relationship, giving a six-month notice. The Portuguese company claimed that the commercial relationship had been continued and sustained since the year 2000, date of the initial trade agreement, and that it was entitled under French law to a notice period not less than 15 months or an appropriate indemnity.

**Case 2.** A Swiss company had a long-standing relationship with a Greek distributor. The fixed-term contract, subject to Swiss law, was renewed twice by written agreement between the parties. Towards the end of the third term, the performances of the Greek distributor were disappointing and the parties tried to renegotiate the terms of the contract. The negotiations failed and the contract was not renewed. The Greek distributor claimed a goodwill indemnity and an indemnity for *culpa in contrahendo* for breaking off the negotiations. The Swiss company filed a counterclaim, alleging that the Greek distributor had invoiced expenses for promotion and advertising which were unjustified. There was also a trademark issue, the Greek distributor launching its own line of products, similar to the contractual products and with a similar trademark. The trademark has been challenged before the European and national trademark offices and the Greek distributor's new supplier (in Holland) as well as the supplier of its packaging (in Denmark) forbidden to supply under the similar trademark.

**Case 3.** A Swiss company signed an exclusive distribution agreement with an important pharmaceutical group based in Switzerland, for distribution of its products in China, through its Chinese subsidiary, on the basis of an ambitious business and promotion plan. The launch of the products was scheduled in 2008. In that year, the Supplier faced some difficulties, due to a contamination affecting its products in Europe which triggered supply shortages and other problems. In an emergency meeting, the parties agreed to postpone the planning and Supplier agreed to compensate Distributor for the marketing and sales costs incurred due to the frustrated launch. After the meeting, a change in management and strategy occurred at Distributor's group and Distributor ceased to purchase and to promote the products. After injunction by Supplier, Distributor ordered the contractually required minimum quantities, but without proper promotion, forecasting or sales strategy. Supplier initiated Arbitration proceedings and claimed, *inter alia*, damages for lost profits until the term of the Agreement.

**Case 4.** A French company entered into a distribution agreement with a German company for distribution of its products in Germany on an exclusive basis. The contract was drafted in English, subject to French law and to the jurisdiction of Belgian courts. A dispute arose as to the promotion and advertising of the products, the French company asking the German distributor to respect its contractual obligations and the latter explaining that it was impossible to comply with them. At the same time, the German distributor informed the French company of the acquisition of its activity by another French group and asked for the assignment of the contract to another subsidiary. The

French company refused, notably because the new distributor wanted to renegotiate the contract and reduce considerably its obligations. Thereafter the German company terminated the contract, invoking a clause in the contract allowing for early termination in case of non-attainment of the minimum purchase quantities. The French company contested the termination and asked for damages. The disputed issue was whether the German company could rely on the early termination clause to terminate the contract for its own lack of performance.

**Case 5.** A French company had an exclusive distribution agreement with a Taiwanese distributor. After termination of the agreement, the distributor continued to sell the products and to use the trademark and refused to transfer the governmental authorizations and registrations for the products. The distributor further claimed that the supplier had to buy back the remaining stock at sales price, although most of the products had expired or were close to expiry.