



International Distribution Institute

## **Competing perspectives of post-termination obligations in cross-border distribution and franchise agreements**

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## **Items to consider when negotiating post-termination obligations:**

- Non-compete covenants
- Confidentiality covenants
- Inventory and its related issues
- Obligations related to ongoing contracts

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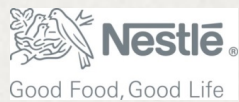
- Balance, setoff and clearing issues
- Compensation and remedies
- Deregistration of agreement and assignment of related rights
- Governing law and jurisdiction



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## AAW BUSINESS LINES

### CONSUMER GOODS



**HERSHEY'S**



### PHARMACEUTICAL



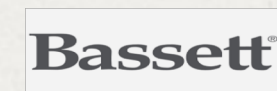
### HOME APPLIANCES



### SPORT & FASHION



### FURNITURE



# Compensation and remedies claims

- Termination has happened - now what??
- Contract:
  - Compensation clauses?
  - LDs?



# Compensation and remedies claims

- **Remedies:**
  - actual damages
  - future lost profits
  - loss of investment
  - goodwill indemnity or compensation



## **Dispute Resolution**

- Governing law and jurisdiction in case of disputes
- Arbitration: Seat and tribunal
  - The Rules make a difference!
  - Availability of Interim Relief?
  - Enforceability

# Dispute Resolution

- **Litigation**
  - Local rules and customs
  - Decision-maker?
  - Application of chosen law?
- **Venue**



## Executory Issues Post-Termination

- Obligations related to ongoing contracts, orders & tenders
- Avoiding penalties and fines
- Inventory and its related issues
- Dealing with expired/defective goods
- Maintenance/warranty obligations

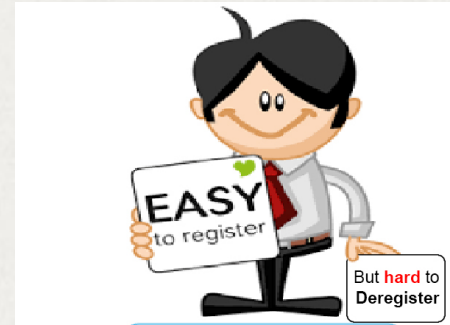


## **Executory Issues Post-Termination**

- Balance, setoff, and clearing issues
- Enforcing personal guarantees and the like
- Surviving indemnification obligations
- Stop supplying any approved or future orders within the notice period
- Cease and desist notice

# Deregistration of agreement and Related Issues

- **Exercising business solutions:**
  - Power of attorney to deregister
  - Undertaking letter to transfer the permits
  - Authorization letter to appoint distributors
  - Preventing any disruption of services.

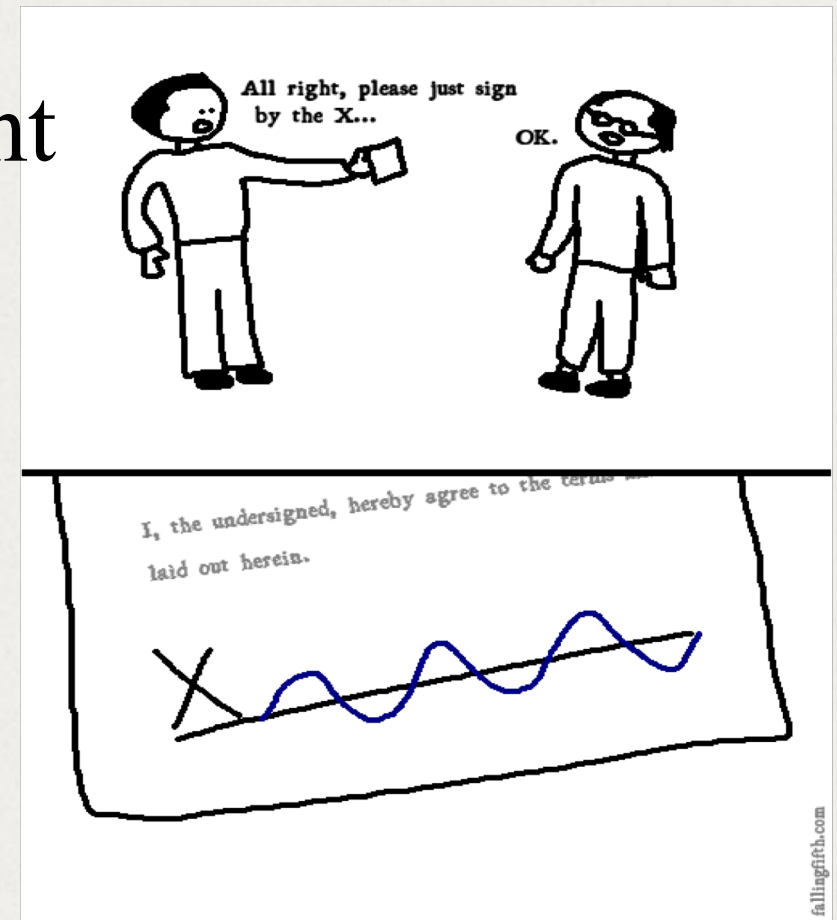


## **Deregistration of agreement and Related Issues**

- Accepting full responsibility for any claims, damages and expiries.
- Furnishing Supplier with copies of all valid contracts and a list of inventory.
- Undertaking letter not to conduct any parallel import nor to compete.

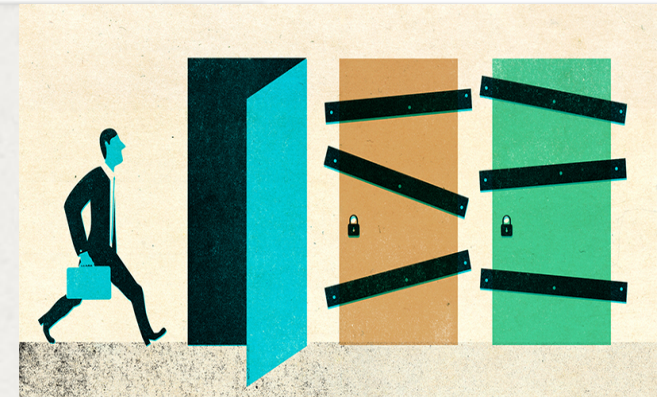
# Deregistration of agreement and assignment of rights

- Find an amicable settlement if possible!



# Non-Compete Issues

- Applicable Law
- Defining clearly and narrowly:
  - What activity is restricted and why?
  - I.P. protection & goodwill preservation
  - Geographic and temporal restrictions
- Overcoming aggressive covenants:
  - Unilateral covenantor reduction of scope
  - “Blue pencil” invitations



# Non-Compete Issues

- **Efficient remedies:**
  - Injunction
  - Damages
- **Alternative remedies:**
  - Site controls
  - Non-solicitation agreements
  - Garden leave
  - Business purchase options
  - Disable software



# Confidentiality Covenants

- Defining clearly what is confidential or a trade secret
- Do geographic & temporal restrictions apply?
- Remedies: Injunctions? Liquidated damages? Mediation?

# Questions & Discussion





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**THANK YOU**

## **Intellectual Property Rights**

- Prevent damage to brand between notice and termination/nonrenewal effectiveness.
- Unique master franchising issues.
- Define and protect I.P. (trademarks, trade secrets, including customer lists, confidential information, copyrights.).

## **Intellectual Property Rights**

- Remove trademarks from the Internet & domain name registrations
- Fair and efficient removal of franchisee/agent/distributor as brand representative.
- Protect goodwill. Who owns it; how is it valued?

## **Issues related to Physical Assets**

- Inventory and its related issues
- Repurchase right ( saleable-shelf life-spare parts)
- Selloff period