



International Distribution Institute

# IDI CONFERENCE 2023

Bologna, 9-10 June 2023

## RESTRICTIONS ON THE FREEDOM OF CONTRACT To what extent can you trust that your distribution or franchise contract will not be reinterpreted or rebalanced by Courts



Distribution and franchise agreements are almost always concluded between parties having a different negotiating power. Thus, the relationship between supplier and distributor, and especially that between franchisor and franchisee, is generally characterised by an imbalance between the parties.

Lawmakers and courts tend to deal with this issue by protecting in various ways the “weaker” parties against possible abuses of their counterparts. This “rebalancing” of the respective positions can be made by imposing protective rules regarding specific situations (such as rules providing minimum terms for termination), or through the recourse to more general rules (like good faith or abuse of economic dependence) applied by the courts (or other authorities) to specific situations of imbalance.

The material impact of this protective trend varies substantially from country to country, due to the difference of legal rules and principles in force. Thus, common law courts tend to privilege the strict observance of the provisions agreed between the parties, while civil law courts are more inclined to “correct” or annul imbalanced clauses.

The purpose of our Yearly Conference 2023 is to analyse these less foreseeable situations in the light of the case law of various countries and to discuss a number of critical clauses and situations, in view of identifying possible alternative solutions which may achieve a reasonable balance between the interests of franchisors/suppliers and their “weaker” counterparts.

MORNING SESSION	
CHAIR	Fabio Bortolotti, Buffa Bortolotti & Mathis, Turin; Chair IDI
08:30-09:00	Registration
09:00-09:20	<b>Welcome</b> <b>Fabio Bortolotti</b> , Buffa Bortolotti & Mathis, Turin; Chair IDI, IDI country expert for Italy <b>Silvia Bortolotti</b> , Buffa Bortolotti & Mathis, Turin; Vice-Chair and Secretary General IDI, IDI country expert for Italy
09:20-09:40	<b>Introduction</b> <p>Distribution agreements are generally characterised by an imbalance of negotiating power between suppliers/ franchisors/principals on one side and franchisees/distributors/agents on the other one. Legislators and courts tend to approach this issue in various ways and through different means. Leaving aside the enactment of specific mandatory rules protecting a “weaker” party, additional principles and rules may apply to the analysis:</p> <ul style="list-style-type: none"> <li>• The <b>principle of good faith</b> which is recognised both in civil law and common law countries, but with very different degrees of effectiveness.</li> <li>• Prohibitions or restrictions of restrictive covenants, especially with respect to <b>post-termination clauses</b>, which implies a reasonableness test for their validity.</li> <li>• Finally, a more recent trend is that of dictating rules which invalidate at certain conditions <b>unbalanced clauses</b>, under the cover of <b>abuse of economic dependence</b> and similar principles.</li> </ul> <p>All these rules, which will be analysed in more detail by the following speaker are essential tools for protecting weaker parties against unbalanced contract provisions.</p> <p><b>Fabio Bortolotti</b>, Buffa Bortolotti &amp; Mathis, Turin; Chair IDI, IDI country expert for Italy</p>
09:40-10:10	<b>DISCUSSION PANEL. Encroachment, breach of exclusivity and reservation of rights in franchise agreements</b> <p>Franchising agreements normally imply exclusivity or at least a privileged situation of the franchisee with respect to possible competitors. The franchisee may be granted expressly or tacitly a territorial exclusivity, by preventing the appointment of other franchisees (or direct points of sale) close to its outlet. The franchisee may also be protected against direct sales by the franchisor or indirect sales through parallel channels (in the case of distribution franchising).</p> <p>In the absence of specific legal rules protecting the franchisee, the extent of its exclusive rights is freely negotiated between the parties, with the result that franchisors will normally be in a condition to impose the balance they consider more convenient. They may expressly exclude any exclusive right of the franchisee and state the franchisor’s unlimited right to appoint other franchisees close and to reserve its right to market the contractual products directly or through parallel networks in competition with the franchisee.</p> <p>In common law countries Courts traditionally tend to respect clauses which unequivocally exclude any exclusivity in favour of the franchisee, but recent cases have partially changed this approach. In civil law countries this kind of clauses is often considered to be ineffective, as being contrary to the principle of good faith or as an abuse of economic dependence.</p> <p>The panelists will discuss possible balanced solutions which may reasonably satisfy both parties involved.</p> <p><b>CHAIR: Silvia Bortolotti</b>, Buffa Bortolotti &amp; Mathis, Turin; Vice-Chair and Secretary General IDI, IDI country expert for Italy  <b>Jean-Philippe Arroyo</b>, J.P. Karsenty &amp; Associés, Paris  <b>Allan Dick</b>, Sotos LLP, Toronto  <b>Nicole Liguori Micklich</b>, Urso, Liguori &amp; Micklich, P.C., Westerly</p>
10:10-10:20	Discussion

10:20-10:50	<p><b>DISCUSSION PANEL. Penalty and liquidated damages clause: where can they be declared null or readjusted by Courts</b></p> <p>Penalty and liquidated damages clauses are often included in distribution contracts, and more often in franchise agreements.</p> <p>Are those clauses always valid and effective? Can Courts intervene if they consider the amount not fair or the clause excessively unbalanced? How should those clauses be drafted to avoid being voided by Courts?</p> <p><b>CHAIR: Maged Ackad</b>, Ackad Law Office, Cairo; IDI country expert for Egypt</p> <p><b>Hector Ferreira</b>, Hughes &amp; Hughes, Montevideo; IDI agency and distribution country expert for Uruguay</p> <p><b>Hikmet Koyuncuoglu</b>, Koyuncuoglu &amp; Koksall Law Firm, Istanbul; IDI franchising country expert for Turkey</p> <p><b>Beata Krakus</b>, Greensfelder Hemker &amp; Gale, Chicago</p>
10:50-11:00	<b>Discussion</b>
11:00-11:30	<b>Coffee break</b>
11:30-12:00	<p><b>DISCUSSION PANEL. “Hot issues” regarding termination of distribution and franchising agreements</b></p> <p>Distribution and franchising contracts tend to last for long periods of time; they may be concluded to an indefinite time or, more frequently, for a period of several years with a possible renewal at their term.</p> <p>Termination is always a critical issue which implies substantial problems, especially for franchisees/distributors, who made investments in view of a long-term agreement.</p> <p>A critical issue regards the situation where termination, in compliance with the applicable procedure (i.e. respecting the termination period) is nevertheless contrary to fair dealing, or may consist in an “abuse of right”: termination in contradiction with implied assurances given to the distributor/franchisee, who has made investments on this assumption; appointment of a new distributor during the termination period.</p> <p>Finally, also agreements which provide the right to terminate to one party only may as well be considered unlawful.</p> <p><b>CHAIR: Ronald K. Gardner</b>, Dady &amp; Gardner, Minneapolis</p> <p><b>Itamar Anaby</b>, S. Friedman, Abramson &amp; Co., Haifa; IDI agency and distribution country expert for Israel</p> <p><b>Irene Grassi</b>, Cocuzza &amp; Associati, Bologna</p> <p><b>Christophe Grison</b>, Fidal, Paris</p> <p><b>Kentaro Tanaka</b>, TMI Associates, Tokyo; IDI country expert for Japan</p>
12:00-12:10	<b>Discussion</b>
12:10-12:40	<p><b>DISCUSSION PANEL. Validity and effectiveness of post-termination non-compete clauses</b></p> <p>One of the franchisor’s main concerns after termination is to prevent the franchisee to transfer the goodwill acquired under the franchisor’s image to possible competitors. Franchisors (and suppliers) often try to achieve this goal through post-termination non-compete clauses, which must respect certain limits of time and territory, but those types of clauses are not always enforceable as written.</p> <p><b>CHAIR: Federico Rizzo</b>, Diadora, Caerano San Marco (TV)</p> <p><b>Tessa De Monnik</b>, Parker Advocaten, Amsterdam; IDI franchising country expert for Netherlands</p> <p><b>Oswaldo Marzorati</b>, Allende &amp; Brea, Buenos Aires; IDI country expert for Argentina</p> <p><b>Heather Perkins</b>, Faegre, Denver</p> <p><b>John Pratt</b>, Hamilton Pratt, Warwick; IDI franchising country expert for UK</p>
12:40-13:00	<b>Discussion</b>
13:00-14:30	<b>Lunch</b>

<b>AFTERNOON SESSION</b>	
<b>CHAIR</b>	<b>Fabio Bortolotti</b> , Buffa Bortolotti & Mathis, Turin; Chair IDI
14:30-15:00	<p><b>DISCUSSION PANEL. Validity and effectiveness of jurisdiction and arbitration clauses</b></p> <p>In several jurisdictions there is a trend to challenge jurisdiction and/or arbitration clauses, which are regarded as unbalanced in distribution and franchise agreements. National courts (or public authorities) in some cases declare such clauses null and void, although they are consistent with the law and with the applicable international Conventions, etc. just based on the assumption that they put the weaker party in a too burdensome position.</p> <p><b>CHAIR: Ercüment Erdem</b>, Erdem-Erdem Law Office, Istanbul; IDI agency and distribution country expert for Turkey</p> <p><b>Christophe Hery</b>, Altaïr Avocats, Paris</p> <p><b>Pascal Hollander</b>, Hanotiau &amp; van den Berg, Brussels; IDI franchising country expert for Belgium</p> <p><b>Stephan Jäger</b>, Jaeger Heintel Rechtsanwälte mbB, Munich; IDI agency and distribution country expert for Saudi Arabia</p>
15:00-15:10	<b>Discussion</b>
15:10-15:30	<p><b>Procedures aiming at reducing the risk that franchisees challenge unbalanced clauses after signing the agreement</b></p> <p>Franchisors frequently try to reduce the risk that franchisees challenge unbalanced clauses after having signed the agreement, through clauses whereunder the franchisees recognize to have examined the critical clauses and declare their express acceptance. The effectiveness of this approach is dubious, especially where the franchisees object that they were not aware of the clause or did not understand its real impact.</p> <p>Franchisors attempt to overcome this problem through specific pre-contractual procedures, like that of requesting the prospective franchisee to indicate, before signing the contract, the clauses that he considers unbalanced.</p> <p>The speaker will first explain in general terms the effectiveness of clauses whereby the franchisee declares to agree with the critical clauses, and in particular more sophisticated clauses like the clause mentioned in Papa John's/ Doyley case.</p> <p><b>John Pratt</b>, Hamilton Pratt, Warwick; IDI franchising country expert for UK</p>
15:30-16:00	<b>Coffee break</b>
16:00-16:20	<p><b>Dealing with different levels of protection from country to country. What strategies for a multi-country distribution/franchising network?</b></p> <p>When a distribution/franchising network covers several countries with different kinds of protection against unbalanced clauses, the franchisor will face the problem of negotiating agreements which comply with the requirements of differing local laws. However, this kind of solution conflicts with need to manage the relationship with their distributors/franchisees on the basis of a standard agreement applicable to the whole network.</p> <p>The apparently simplest solution is to impose the application of the supplier's/franchisor's law and arbitration/jurisdiction the country of the latter. However, in case of conflict with local mandatory rules, the derogation from the governing law of the franchisee's country as well as choice of the jurisdiction foreign courts or arbitration may not be effective.</p> <p>If local rules protecting franchisees are overriding mandatory rules, (like, for instance, those on the abuse of economic dependence) the contract clauses which do not conform to them may be disregarded by the local courts, which courts may claim jurisdiction even where the parties have agreed on the jurisdiction of other courts of arbitration.</p> <p>A possible solution could be that of drafting contract conditions which comply with the laws of all countries involved and to provide adaptations to the local law only where no other solution is available. The setting up of such a standard franchise agreement is not impossible, but requires information about the mandatory rules of each country involved. This is made easier by the information provided in IDI's country reports.</p> <p>Another possible solution could be that of submitting the contract to general principles of law (<i>lex mercatoria</i>) together with the Unidroit Principles as will be discussed in the next presentation.</p>

	<b>Giuditta Cordero-Moss</b> , Faculty of Law, University of Oslo, Oslo
16:20-16:40	<p><b>Drafting a standard franchise agreement to be used word-wide, governed by the Unidroit Principles. To what extent can this kind of approach be practicable?</b></p> <p>Where franchisors or suppliers intend to create a common framework for a standard distribution or franchising agreement, to be used all over the world, they need to identify the governing law of the agreement. Thus suppliers and franchisors tend to choose their own law as the governing law.</p> <p>But would it be possible, as alternative solution, to submit the contract to a set of a-national rules like the Unidroit Principles? This kind of solution would have the advantage of basing the agreement on a set of internationally accepted rules, expressly made for cross-border agreements, but would still need to respect overriding mandatory rules of the respective countries.</p> <p>A solution could be that of drafting a standard contract that respects the generally accepted rules against imbalance, based on the Unidroit principles, which would at the same time include a reference to the disclosure rules of the franchisee's country.</p> <p><b>Marcel Fontaine</b>, Université de Louvain, Louvain-la-Neuve</p>
16:40-17:00	<b>Discussion</b>

## IDI General Meeting

**17:30 - 18:30**

At this general meeting, to which non-members are also invited, the officers of IDI will inform the members about the current situation of the Association, the results achieved in 2022 and the plans for the following years.

The participants will be kindly invited to share their views and opinions about the activity of IDI and make suggestions for the future.

#### Workshop 1: IP protection of retail offline and online store's layout

The workshop aims at discussing the protection of the layout of retail stores both in brick and mortar and in online shops ("trade dress"). Different intellectual property tools, are available, including: protection of works of architecture (copyright), industrial design, three-dimensional trademarks, unfair competition, etc.. This IP protection is used by brand owners against competitors, but also in the framework of a franchise agreement or selective distribution systems, e.g. against former franchisees or distributors.

How are those protecting tools acknowledged and applied in case law in different geographical regions of the world? How to draft specific provisions in retail agreements in order to extend and enforce such protection?

<b>CHAIR</b>	<b>Marco Venturello</b> , Venturello e Bottarini, Avvocati, Turin
09:30-09:50	<b>IP protection of the layout of offline and online shops: the brand owner's perspective</b> Several companies have started seeing the shop layout (not only of brick and mortar but also of online shops) as an important asset and this leads them to increase the level of protection through the registration of IP rights (e.g. design, copyright, three-dimensional trademark etc.). There are of course pros and cons in talking this decision: what are the main evaluations made by the brand owner in this framework? <b>Tiziana Campigli</b> , in2law-Deloitte Legal, Milan
09:50-10:00	<b>Discussion</b>
10:00-10:40	<b>DISCUSSION PANEL. Available IP protection in different areas of the world</b> The choice of IP protection of the online and offline shop layout can have some criticisms, for instance regarding costs; the need to register new trademarks, copyrights, designs in case of modifications; etc. What are the relevant aspects to be considered in order to make an appropriate choice? The panelist will examine and describe the available tools, based on the main case-law developed for each type of protection (IP, contractual, unfair competition) in their own jurisdictions. <b>CHAIR: Anders Fernlund</b> , ASTRA Advokater, Stockholm <b>Paul Jones</b> , Jones & Co., Toronto; IDI franchising country expert for China <b>Susan Meyer</b> , Greensfelder, Hemker & Gale, P.C., Chicago <b>Cristóbal Porzio</b> , Porzio, Rios, Garcia & Asociados, Santiago; IDI agency and distribution country expert for Chile <b>Luca Trevisan</b> , Trevisan & Cuonzo, Milan
10:40-10:50	<b>Discussion</b>
10:50-11:20	<b>Coffee break</b>
11:20-11:50	<b>DISCUSSION PANEL. How to draft effective contractual provisions for de-characterising the shop</b> In order for the brand owner to ensure an effective de-branding at the end of a contractual relationship with a former franchisee, selective distributor or other retailer, it is essential that appropriate contractual provisions are drafted. The speakers will examine specific contract clauses included in franchise and retail distribution agreements, as well as in contracts with online platforms. Such clauses must be valid and enforceable in the relevant jurisdiction, as it will be tested more in details in the following panel of discussion. <b>CHAIR: Anna Gibello</b> , MVVP - Advocaten/Avocats, Bruxelles <b>Kathryn Kotel</b> , Kotel Law, Dallas <b>Melissa Murray</b> , Bird & Bird LLP, Dubai <b>Claudia Santos Cruz</b> , MLGTS Advogados, Lisbon; IDI franchising country expert for Portugal

11:50-12:00	<b>Discussion</b>
12:00-12:30	<p><b>DISCUSSION PANEL. The enforcement of IP rights in different jurisdictions</b></p> <p>Departing from well drafted contractual clauses as well as the registration of IP rights to protect the “trade dress” of the shop layout, how can such legal instruments be effectively implemented, in order to obtain interim measures and other effective court interventions? The speakers will answer those possible questions from the perspective of their own jurisdictions.</p> <p><b>CHAIR: Marco Hero</b>, Schiedermaier Rechtsanwälte, Frankfurt am Main; IDI franchising country expert for Germany</p> <p><b>Deborah S. Coldwell</b>, Haynes and Boone, LLP, Dallas</p> <p><b>Nathalie de Quatrebarbes</b>, Quatrebarbes, Paris</p> <p><b>Roberta Obinu</b>, Golden Goose, Treviso</p> <p><b>Bernard Vanbrabant</b>, Prof. Université de Liège and Of Counsel Liedekerke, Bruxelles</p>
12:30-13:00	<b>Discussion</b>
13:00-14:30	<b>Lunch</b>

## Workshop 2: Contractual strategies aimed at minimizing risks of possible goodwill compensations at the end of the contract

For principals and suppliers (and in certain countries also franchisors) one of the main concerns is always the goodwill indemnity to be paid to their commercial agents, distributors (and franchisees) at the end of the contract. Although it is commonly accepted that the goodwill shall be shared between the two parties, in each jurisdiction there may be specific strategies or precautions to be taken by principals/suppliers at the beginning of the contractual relationship, in order to minimize that risk, within the limits allowed by the applicable law and case-law. The purpose of this workshop is to analyse those strategies with a cross border perspective, in order to find possible analogies and/or common approaches.

<b>CHAIR</b>	<b>Petr Mrazek</b> , Associated Law office Vítek & Mrázek, Prague; IDI agency and distribution country expert for Czech Republic
09:30-10:00	<p><b>DISCUSSION PANEL. Preparing for negotiation of the goodwill indemnity pursuant the “German model”</b></p> <p>In those EU countries which have implemented the “German model” of the EC 653/1986 Directive, and in possible other countries where the goodwill indemnity is based on the increase of clientele and turnover, the most common strategy followed by principals consists in keeping (or including in the agreement) an historical situation of the clientele and turnover existing at the beginning of the contract, to be compared with the situation at the end of the contract: in cases where the agent/distributor has only maintained the situation at the same level, there will be arguments for challenging the right of indemnity or to claim for a limited amount to be granted by Courts. What are the pros and cons? Alternatively, would it be useful to agree with the agent and provide in the contract an amount of indemnity and even to pay at least part of it during the contractual relationship?</p> <p><b>CHAIR: Olga Szejnert-Roszak</b>, SWKS Szejnert, Winnicka, Kowalczyk, Sosnowska, Warsaw; IDI agency and distribution country expert for Poland</p> <p><b>Ignacio Alonso</b>, Even Abogados, Madrid; IDI agency and distribution country expert for Spain</p> <p><b>Gustav Breiter</b>, Viehbock, Breiter, Schenk &amp; Nau, Mödling; IDI agency and distribution country expert for Austria</p> <p><b>Arianna Ruggieri</b>, Buffa Bortolotti &amp; Mathis, Turin</p>
10:00-10:10	<b>Discussion</b>
10:10-10:40	<p><b>DISCUSSION PANEL. Termination for cause as a mean for avoiding indemnity</b></p> <p>In most jurisdiction the indemnity/compensation is not due to the agent/distributor/franchisee, if the principal/supplier/franchisor terminates the agreement due to a material breach of the</p>

	<p>agent/distributor/franchisee's contractual obligations. To what extent can this principle be applied to specific obligations, such as the attainment of a minimum turnover, sending reports etc.?</p> <p><b>CHAIR: Patrick Rohn</b>, Thouvenin rechtsanwälte, Zurich; IDI agency and distribution country expert for Switzerland</p> <p><b>Mariaelena Giorcelli</b>, Buffa Bortolotti &amp; Mathis, Turin</p> <p><b>Daniela Mayer</b>, Kinstellar, Zagreb; IDI agency and distribution country expert for Croatia</p> <p><b>Stephen Sidkin</b>, Fox Williams, London</p>
10:40-10:50	<b>Discussion</b>
10:50-11:20	<b>Coffee break</b>
11:20-11:50	<p><b>Setting-off the clients' portfolio with the goodwill indemnity</b></p> <p>The French Court of Appeal of Pau in 2021 confirmed the validity and effectiveness of an agreement between a principal and an agent providing for the set-off between the value of a customers' list transferred by the principal to the agent at the beginning of the contract and possible commissions and/or indemnity due to the agent at the end of the relationship. This decision is now final, since it has not been challenged before the French Supreme Court. Is this a useful option for the principal? Can this strategy be applied also in jurisdictions other than France, e.g. in EU countries which have implemented the "German indemnity"?</p> <p><b>Christine Borfiga</b>, Vatie, Paris</p> <p><b>Raimond Emde</b>, GvW Graf von Westphalen, Hamburg; IDI agency country expert for Germany</p>
11:50-12:00	<b>Discussion</b>
12:00-12:30	<p><b>DISCUSSION PANEL. Strategies concerning the choice of forum and applicable law</b></p> <p>A possible strategy often considered by principals and supplier in this framework is the provision of a choice of forum clause in favour of a court based outside the agent/distributor/franchisee's country (or even an arbitration) together with an applicable law which does not provide for the indemnity compensation. To what extent such strategies are effective, considering the overriding mandatory character of the relevant rules? Is there a risk of the relevant decision/award to be considered not enforceable in the agent/distributor/franchisee's country? Is that choice always appropriate?</p> <p><b>CHAIR: Margherita Salvadori</b>, Department of Law, University of Turin</p> <p><b>Florian Amereller</b>, Amereller Legal Consultants, Dubai; IDI agency and distribution country expert for UAE</p> <p><b>Renato Bucher</b>, MLL Legal, Zurich</p> <p><b>Frédéric Fournier</b>, SELARL REDLINK, Paris; IDI agency country expert for France</p> <p><b>María Fernanda González</b>, PM Abogados, Bogota</p>
12:30-13:00	<b>Discussion</b>
13:00-14:30	<b>Lunch</b>

### Workshop 3: Adapting distributorship and franchise agreements to the new EU competition rules (VBER 720/2022)

The new EU VBER 720/2022 and the relevant Guidelines introduced some important improvements and amendments to the previous text, allowing companies to structure and organize their distribution network in different EU countries, taking advantages of such implementations (e.g. extending possible territorial restrictions to the distributor's customers, introducing some limitations to distributors' and/or franchisees' online sales, reorganizing the off-line/on-line distribution etc.). The IDI distribution model contracts already include some amendments in this respect, but the aim of this workshop is to exchange views and opinions on possible actual amendments to the agreements as well as to discuss about possible strategies based on the new rules.

<b>CHAIR</b>	<b>Fabio Bortolotti</b> , Buffa Bortolotti & Mathis, Turin; Chair IDI, IDI country expert for Italy
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09:30-09:50	<p><b>Introduction</b></p> <p>Last year the new VBER was issued and we have had an in-depth discussion about the new rules. Subsequently, we have revised the IDI Antitrust Report as well as the IDI distribution contracts, introducing some amendments (to the limited extent admissible, considering that they are general model contracts). This year we will discuss how to update the main contractual clauses to the changes introduced in the new VBER. The main critical issues are the following:</p> <ul style="list-style-type: none"> <li>• The definition of active and passive sales: online advertising; language used, etc.</li> <li>• The clause regarding the distributor's obligation to refrain from active sales, including passing on to direct customers, but only towards territories exclusively allocated to the supplier or to others.</li> </ul> <p>«The Distributor agrees not to actively promote sales (e.g. through advertising, or by establishing branches or distribution depots) into the territories reserved by the Supplier exclusively for himself or allocated by the Supplier to other exclusive distributors or buyers and to extend such restriction also to its direct customers.»</p> <ul style="list-style-type: none"> <li>• The possibility to restrict active or passive sales to non-authorized distributors within a territory where the selective distribution network is operated.</li> <li>• The exemption of restrictions of online sales which do not have the object of preventing the effective use of internet or of preventing the use of an entire online advertising channel.</li> <li>• The limitations imposed in the context of dual distribution.</li> </ul> <p><b>Fabio Bortolotti</b>, Buffa Bortolotti &amp; Mathis, Turin; Chair IDI, IDI country expert for Italy</p>
09:50-10:20	<p><b>DISCUSSION PANEL. Online restrictions</b></p> <p>The general definition of online sales which exempted by the VBER: Restrictions of online sales and online advertising <b>which do not have the object of preventing the effective use of internet or the use of an entire advertising channel</b>: Recital 15, Preamble Reg. 720/2022. Only restrictions that prevent the effective use of the internet by buyers and their customers can be categorised as hardcore.</p> <p>The actual application of these criteria to specific restrictions:</p> <ul style="list-style-type: none"> <li>• use of third party platforms;</li> <li>• use of AdWords;</li> <li>• use of comparison tools;</li> </ul> <p>The panelists will analyse recent case law and discuss how to adapt specific contract clauses (and contractual policies) concerning online sales to the new scenario, by examining actual examples of contractual clauses and policies.</p> <p><b>CHAIR: Martine De Koning</b>, Kennedy Van der Laan, Amsterdam</p> <p><b>Sara Citterio</b>, Trussardi, Milan</p> <p><b>Alban Curral</b>, Carlara International, Paris</p> <p><b>Benedikt Rohrßen</b>, Taylor Wessing, Munich</p>
10:20-10:30	<p><b>Discussion</b></p>
10:30-11:00	<p><b>DISCUSSION PANEL. Complying with rules on “untrue agents” in retail agreements</b></p> <p>In the last years, it is becoming quite common to sell at the retail level through commission agents (or similar legal notions, like in Italy the so-called «contratto estimatorio»), in order that the products remain the franchisor's/supplier's property until they are sold to the final customer in the store; in this framework the franchisor/supplier has more flexibility regarding possible shifting of the stock and is entitled to decide the retail price of the products, while the retailer has a reduced investment to make. Would the agent/franchisee be regarded as an “untrue agent” under the 2022 Guidelines in this case? What would be the actual consequences in such a case?</p> <p>The definition of agent (Guidelines, § 29) includes the commission agent, which means that we must decide whether he is a true or untrue agent; he does not bear the risks of a reseller, but he delivers directly to the customer and cashes the price, which characteristic brings him closer to a distributor/reseller.</p> <p>Assuming that he is to be considered as an “untrue” agent, he should be able to determine the resale price by granting discounts, which is in theory feasible, since he cashes directly the price of the products sold. As regards clauses prohibiting the agent to promote business outside the contractual territory, these should in theory comply with Article 4 (b) of the Regulation, which means that he should remain free to accept unsolicited orders from customers established outside his territory. However this issue does not appear to be relevant with respect to agents acting at the retail level.</p> <p><b>CHAIR: Silvia Bortolotti</b>, Buffa Bortolotti &amp; Mathis, Turin; Vice-Chair and Secretary General IDI, IDI country expert for Italy</p>

	<p><b>Mattia Govi</b>, Max Mara Group, Reggio Emilia</p> <p><b>Peter Gregersen</b>, Aumento Law Firm, Copenhagen; IDI agency and distribution country expert for Denmark</p> <p><b>Karsten Metzloff</b>, Noerr Partnerschaftsgesellschaft mbB, Berlin</p>
11:00-11:30	<b>Coffee break</b>
11:30-11:50	<p><b>Dealing with dual distribution</b></p> <p>Due to the development of online sales, most suppliers have begun selling their products online in parallel with the traditional brick and mortar distribution network. This implies, at least in theory, possible restrictions of competition between the supplier and its resellers (distributors/franchisees). Regulation 720/2022 has introduced substantial limitations regarding the exchange of information between the supplier and his buyers/resellers.</p> <p>The speaker will analyse the borderline of admissible and non-admissible exchanges of information and discuss possible contractual solutions in view of complying with the VBER 2022.</p> <p><b>Joseph Vogel</b>, Vogel &amp; Vogel, Paris; IDI distribution country expert for France</p>
11:50-12:00	<b>Discussion</b>
12:00-12:30	<p><b>DISCUSSION PANEL. Active and passive sales revisited</b></p> <p>In the context of the VBER 2022 the importance of the distinction between active and passive sales has substantially increased, since the traditional prohibition of absolute territorial protection of distributors (affirmed in the Grundig case, and maintained thereafter), tends now to be limited to active sales only. In other words, distributors and their customers are free to sell into exclusive territories of other resellers, provided they don't do it actively, i.e. they don't take the initiative of such parallel sales.</p> <p>This trend has the advantage of increasing the free circulation of goods, but it gives rise to substantial problems regarding the distinction between active and passive sales.</p> <p>The panelists will discuss the definitions of active and passive sales introduced in Articles 1(1)(l) and 1(1)(m) of regulation 720/2022, and its application to a number of borderline situations, like the language used in online advertising.</p> <p>Finally they will discuss an update of the clause prohibiting active sales, like the following one:</p> <p>«The Distributor agrees not to actively promote sales (e.g. through advertising, or by establishing branches or distribution depots) into the territories reserved by the Supplier exclusively for himself or allocated by the Supplier to other exclusive distributors or buyers and to extend such restriction also to its direct customers.»</p> <p><b>CHAIR: Fabio Bortolotti</b>, Buffa Bortolotti &amp; Mathis, Turin; Chair IDI, IDI country expert for Italy</p> <p><b>Emanuele Cristoferi</b>, Belron Italia (Carglass), Milan</p> <p><b>Barbara Terriere</b>, ASTREA Attorney-at-law, Antwerpen; IDI distribution country expert for Belgium</p> <p><b>Walter Van Overbeek</b>, Houthoff, Amsterdam; IDI distribution country expert for Netherlands</p>
12:30-13:00	<b>Discussion</b>
13:00-14:30	<b>Lunch</b>

## Conference Social Program

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**Thursday 8 June 2023 - Welcome cocktail and dinner** **from 6:00 pm**

IDI is pleased to offer a **welcome cocktail and buffet/dinner** to all the attendants.

**Venue:** I Portici Hotel Bologna

Via Indipendenza, 69

40121 Bologna (Italy)

**Pre-registration** for the Conference will be held **from 6:00 to 7:30 p.m.**



Please, confirm your participation by selecting the relevant box in the registration form.

\*\*\*\*



**Friday 9 June 2023 - Gala Dinner**

**from 8:00 pm**

**Venue:** Palazzo Gnudi,  
Via Riva di Reno, 75/3°-77,  
40122 Bologna



Reservations should be made at your earliest convenience, due to the limited number of places.  
We will provide more detailed information in due time.



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## Practical Information

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### Conference venue:

I Portici Hotel Bologna  
Via Indipendenza, 69  
40121 Bologna (Italy)

**Language:** English

### Fees:

<b>900€</b>	Non IDI member
<b>500€</b>	IDI member having paid his/her yearly subscription fee
<b>400€</b>	Any additional participant within the same premises of the same organisation as the first participant (i.e. having the same address and VAT code)

Please, **add 22% (VAT)** to your payment (**applicable for both foreign and Italian participants**).

The fee includes the cocktail/dinner on June 8, 2023, coffee breaks, lunches and paper documentation. Information about special discounts granted to specific associations will be provided to the relevant associations.

### Discount policy:

Kindly note that the discounts **cannot be cumulated** and they can be applied on the **full fee of 900€ only**.

### Gala dinner:

**Venue:** Palazzo Gnudi, Via Riva di Reno 77, 40122 Bologna

**Fee:** 110€ per person.

Please, **add 22% (VAT)** to your payment (**applicable for both foreign and Italian participants**)

### Continuing Legal Education / Continuing Professional Development Credits:

Accreditation for CPD/CLE will be required for this conference. In order to request an attendance certificate, please, send an email to [editorial.board@idiproject.com](mailto:editorial.board@idiproject.com)

### Registration and cancellation:

**Registration on-line:** <https://www.idiproject.com/news/event/2023-idi-annual-conference/>

**Registration by Email:** Please, fill in the registration form, and send it by email to:  
**[editorial.board@idiproject.com](mailto:editorial.board@idiproject.com)**

**Payment:** Registration online: **Credit card or bank transfer.** After having completed the payment, you will receive a confirmation of your registration by e-mail  
Registration by email: **Bank transfer only.** Confirmation of your registration will be sent after having received the registration form together with the evidence of the payment  
For bank transfer payment, the payment should be transferred with no cost to IDI

NO CHEQUE PAYMENTS WILL BE ACCEPTED

**Cancellation** Cancellation requests received by IDI **on or before 30 May 2023**, will be subject to a 20% administration charge of the total fees paid. **After that date no refunds are possible.**

### Dress Code:

The conference dress code is business attire for working sessions and smart casual for the welcome cocktail.

### Hotel Accommodation:

**I Portici Hotel Bologna\*\*\*\*s:** <https://www.iporticihotel.com/> , via indipendenza 69. You can send an email to [reservation@iporticihotel.com](mailto:reservation@iporticihotel.com) or call: +39 051 42185

Other **hotels** close to the conference venue can be found at: <https://tinyurl.com/en-bolognawelcome-IDI23>

Since many other events take place in Bologna on the same dates of the IDI conference, **we strongly suggest you to book your hotel as soon as possible.**

# REGISTRATION FORM

First Name ..... Last Name .....  
Company ..... Address ..... ZIP/ Postal code .....  
City ..... Country ..... Value Added Tax (VAT) Code .....  
E-mail ..... Phone ..... Fax .....

(in case of more participants, please, fill-in a registration form for each participant)

**WORKSHOPS:** (Saturday, 10 June 2023): please specify which workshop you will attend:

- ☐ I will attend the **FIRST WORKSHOP (IP protection of retail offline and online store's layout)**
- ☐ I will attend the **SECOND WORKSHOP (Contractual strategies aimed at minimizing risks of possible goodwill compensations at the end of the contract)**
- ☐ I will attend the **THIRD WORKSHOP (Adapting distributorship and franchise agreements to the new EU competition rules (VBER 720/2022))**

**SOCIAL EVENTS:**

- ☐ I will attend the **WELCOME COCKTAIL/BUFFET DINNER** on Thursday 8 June 2023 (included in the conference fee)
- ☐ I will attend the **GALA DINNER** on Friday 9 June 2023

**FEES:**

**IDI Conference**

- ☐ **€ 900:** Non IDI member
- ☐ **€ 500:** IDI member having a valid subscription on the day of the conference
- ☐ **€ 400:** Additional participant
- ☐ **€ 400:** Country Expert
- ☐ **€ 200:** Speaker

**Gala dinner**

- ☐ **€ 110** Ticket for the gala dinner (please, specify the number of tickets: .....)

Please **add 22% (VAT)** to your payment for both foreign and Italian participants

**TOTAL AMOUNT:**

**€: .....**

**PAYMENT:**

Please make a bank transfer marked «9-10 June 2023 Conference», including a clear reference to the name of the participant at the following account:

Bank: Banca Sella, Piazza Castello, Torino (Italy)

Account Name: IDI Project s.r.l.

Account Number: 052879649600

ABI: 03268 CAB: 01000

IBAN: IT86X0326801000052879649600

SWIFT: SELB IT 2B

The payment should be transferred with no cost to IDI. NO CHEQUES payments are ACCEPTED.

**Please complete this form and return it, with your payment made out to: [editorial.board@idiproject.com](mailto:editorial.board@idiproject.com)**

Date .....

Signature .....

PRIVACY: All personal information is processed by IDI confidentially and in compliance with the provisions contained in the Italian Legislative Decree 196 of 2003. All personal information stored on our system is secured against unauthorised access. All users may exercise their rights provided by Article 7 of Dlg 196/2003, by sending a request to: [privacy@idiproject.com](mailto:privacy@idiproject.com)