



The hinge factor
Case study
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GARRIGUES

Rocío Belda de Mergelina

Termination of Distribution Agreement



- Distribution Agreement between Buscadores and HH Bv
 - Existed at least as from 2006
 - Terms were very poor
 - Subject to Dutch law
- Distribution Agreement between Preguntas and HH Bv
 - Sale of company: no change of control clause
 - Continuity in the relationship
 - Assignment of the Agreement: no consent
 - Tacit consent v. new agreement
- Can HH Bv's exclusive rights be challenged?
 - Non-written
 - Competition law

- Can the agreement be terminated by HH Bv?

- Termination *ad nutum*
- Termination for breach of contract
 - Decrease of sales
 - Increase of prices

- Is Preguntas entitled to compensation in case of termination?

- Lack of notice period
- Per clientele
- Damages

- Was Preguntas liable for damages to customers?
 - Personal damage could be claimed by customers under consumers protection laws.
 - Material damage could be claimed by customers under civil law rules on contractual liability
- Is HH AG liable for Preguntas alleged damage?
 - Battle of forms
 - Enforceability of a clause of full indemnity for damages
 - Contractual liability under Civil Code in the absence of contractual provision
- Do HH BV and/or HH AG have an action against Preguntas for any moral damages caused to HH as a result of sales of faulty hinges by Preguntas when replacement was available?

Thank-you for your attention

rocio.belda@garrigues.com