FAQS ON U.S. LEGAL TOPICS OF INTEREST TO CANADIANS – FRANCHISE LAWS

June 12, 2008

Question: I own a furniture manufacturing company in Ontario. We are considering expanding our product base into the United States by using sales representatives and distributors to sell our products in the United States. Will our distribution relationship with U.S. sales representatives or distributors be subject to any U.S. distribution laws?

Answer: Distribution in the United States is subject to increasing legal regulation. As part of your export plan, you should examine any proposed distribution relationship with a U.S. intermediary to determine whether the relationship will be subject to U.S. franchise or other distribution laws.

The U.S. federal government and about one third of the states have franchise laws that could apply to business arrangements not traditionally viewed as franchises, including your sales representative and distributor relationships. Additionally, many states have enacted business opportunity statutes, sales representative laws, dealership laws and industry specific laws that could also apply to these relationships.

If your intermediary will have a large territory, more than one distribution law may apply and each should be reviewed before entering into the relationship. If possible, you may want to structure the relationship to legitimately avoid applicable distribution laws because compliance with these laws can be both time consuming and expensive. Avoidance of these laws is typically achieved by avoiding one of the definitional elements of the applicable law or qualifying for an available exemption.

It is important to determine whether U.S. distribution laws apply to the intermediary relationship because non-complying companies, and even their owners, officers, and directors, may be subject to remedies depending on the particular facts and law. Remedies could include actions for damages, injunctions, rescission, civil fines, and criminal penalties.

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