

Termination of an international Agency agreement

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French law (as European law) provides very protective regulations for the commercial agent (Law of 25 June 1991 which is now codified under the articles L.134-1 and seq. of the French Commercial code). Article L134-12 states that " If their relationship with their principal ceases, commercial agents shall be entitled to an indemnity for the loss suffered. Commercial agents shall lose the right to this compensation if they have not notified the principal, within one year of the cessation of the contract, that they intend to use their rights. The legal successors of commercial agents shall also benefit from the right to compensation when the cessation of the contract is due to the death of the agent.". The agent has to provide evidence of the harm. Nevertheless, in practice, French courts still sometimes refers to notion of loss of goodwill ("clientèle") and estimate the loss to an amount equivalent of two years of commissions.

Article L134-13 provides that : " The compensation specified in Article L.134-12 shall not be due in the following cases: 1° The cessation of the contract is caused by the serious negligence of the commercial agent. 2° The cessation of the contract is initiated by the agent unless this cessation is justified by circumstances attributable to the principal or due to the age, infirmity or illness of the commercial agent, as a result of which the continuation of the latter's activity can no longer be reasonably required; 3° In accordance with an agreement with the principal, the commercial agent cedes to a third party the rights and obligations held under the agency contract." Nevertheless, in a decision dated 28 November 2000, The French Cour de Cassation (Commercial Chamber) decided that the Law dated 25 June 1991, codified under the numbers L.134-1 and seq. of the commercial code is a protective measure which is a public policy provision and mandatory in domestic law but is not mandatory ("loi de police") in the international legal order (the decision was concerning the claim by a former agent to be awarded indemnities pursuant to the termination of his agreement by an American company. The contrat was subject to the Laws of the State of NY.). Moreover, if there is non competition clause within the agreement, the manufacturer is entitled to oblige the agent not to represent competitors. Article L.134-14 of the Commercial Code) provides that : "The contract may contain a non-competition clause applying after its cessation. This clause must be established in writing and shall cover the geographical sector and, if applicable, the group of persons entrusted to the commercial agent and the type of goods or services which the latter represents under the contract. The non-competition clause shall be valid only for a maximum period of two years after a contract ceases".