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## Legal Update

### *Commencement of Limitations Period is Easily Triggered in Distribution Disputes*

Distribution disputes under the Puerto Rico Dealers Act ("Law 75") are governed by a three-year statute of repose that cannot be tolled by extrajudicial claims. Extrajudicial claims are the normal way of tolling the statute of limitations for tort actions under Art. 1802 of the Civil Code of Puerto Rico. Although the text of Law 75 itself identifies its breach as a tort, the Supreme Court of Puerto Rico has held that Law 75 is commercial in character and thus, subject to the principles of the Commerce Code.

As a consequence, the Supreme Court has ruled that the statute of limitations for Law 75 actions is three years instead of the normal tort period of one year. But as opposed to the latter, the limitation period for actions under Law 75 cannot be tolled in an extrajudicial fashion.. That means, that in almost all cases, the distributor has to file its Complaint in court within three years of the principal's act that it considers in violation of Law 75.

On May 2 of this year, the Court of Appeals for the First Circuit decided the case of Trafon Group, Inc. V. Butterball LLC, 820 F.3d 490 (1st Cir. 2016) In that case, essentially, the parties had a verbal distribution arrangement. Shortly after the initiation of the distribution agreement, the distributor learned that the principal was selling to a wholesaler in Florida, who in turn sold to a retailer in Puerto Rico. The distributor wrote a letter to the principal alleging that such conduct constituted a violation of the exclusive distribution rights of the distributor. The principal responded denying that any such exclusivity rights existed. The principal's letter went unanswered. The parties continued to conduct business together. The principal took the precaution of including in every invoice language denying the existence of an exclusive relationship. Other actions by the principal were not as clear on this point.

The key issue for the court is the point from which the three-year statute of limitations began to run.

After further disagreements on exclusivity between the parties, the distributor brought an action in federal court in 2013. The District Court ruled that the limitations period started when Trafon received the 2009 letter from the principal denying its claims of exclusivity, and that, as a result, Trafon's claims were time-barred. The case was dismissed.

The Court of Appeals affirmed the judgment. The court found that the principal's 2009 letter constituted an undermining act under Law 75 triggering the three-year statute of limitations that made the case time-bared by the time it was filed in 2013. In essence, the court is holding, based on previous case-law, that the mere announcement by the principal of its intention to act in contravention to a contractual covenant is enough to trigger the commencement of the limitations period. This



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commencement is not necessarily predicated on actual specific acts of the principal consistent with its contractual interpretation.

Good record keeping has always been a desirable practice in distribution relationships. But this case underscores the fact that a distributor has to be very careful in not ignoring actions, or even mere statements, from the principal that are inconsistent with the contractual relationship. Since the limitations period under Law 75 cannot be tolled in an extrajudicial fashion, careful consideration should be given to the time of filing claims in court.

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