
TEA TROUBLES CLIENT COUNSELING

Information for PlentiCo's Attorney

Your client directs a business unit focused on beauty and facial care within PlentiCo, an enormous multi-national company with consumer products in cleaning, hygiene, beauty, health, nutraceuticals, as well as snack foods and beverages. Six months ago, this unit launched three new products: a concentrated antioxidant green tea mixture, the facial steam units designed for tea mixtures, and a concentrated green tea topical facial mask mix. These products have been selling well, with favorable reviews in the blog sphere and print media.

Then, your client received a threatening letter from an attorney for Tea-Your-Health, Inc. The letter claimed that Tea-Your-Health was spun off from PlentiCo two years ago, and that PlentiCo's new health and beauty care tea-related products violated its contractual obligation (in the purchase agreement) to refrain from producing or distributing tea products for 5 more years.

You've now investigated the letter and the claim. You've learned that Tea-Your-Health was indeed purchased (and renamed) by some PlentiCo managers in the former beverage division, two years ago. In fact, language in the purchase and sale agreement states that, "For a period of 7 years, PlentiCo will refrain from producing tea products for consumer use and in any way competing with Tea-Your-Health by production and distribution of tea and tea-related products."

You know your client had NO idea of the existence of this agreement. The legal department didn't pick up the conflict because the new products were in health and beauty. Your client will no doubt protest, arguing that their tea facial care products do not compete with Tea-Your-Health because they are not beverages. PlentiCo executives and attorneys involved in the transaction confirm that Tea-Your-Health's principals had only talked about tea beverages, tea bags, loose tea, and the like, and the equipment purchased from PlentiCo related to tea as a beverage. Unfortunately, the scope of Tea-Your-Health's business was broadly described in the Purchase Agreement as "tea and tea products and accessories for consumption, health and well-being." There's no avoiding the plain language. The Tea-Your-Health lawyer states that his client wanted to launch tea-based products for skin care – including tea facial masks and the like – and shouldn't have to compete with PlentiCo's marketing and strong name in facial skin care products for the next five years. They would sue to claim PlentiCo's profits. If an injunction were issued, PlentiCo could be forced to recall these new products, including the facial machine.

Yesterday, you called your client to set up a meeting. In that conversation, you confirmed that Tea-Your-Health had been purchased (and renamed) by managers from PlentiCo's former beverage division. You agreed to meet to talk about the issue and next steps.

Get ready to give your client the bad news.