
TEA TROUBLES MEDIATION (IN CAUCUS ONLY)

Information for the Mediator

You are mediating a dispute between PlentiCo, a large multinational consumer product company, and Tea-Your-Health, a small company that was spun off from PlentiCo's beverage division two years ago. The owners of Tea-Your-Health are former PlentiCo beverage division managers.

It's undisputed that Tea-Your-Health was spun off from PlentiCo's beverage division and that there were extensive negotiations about Purchase Agreement terms. Its plain language states:

"For 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."

Approximately six months later (eighteen months ago), PlentiCo's facial health and beauty division launched three tea-related products: a concentrated antioxidant green tea mixture, facial steam units designed for the tea mixtures, and a concentrated green tea-based topical facial mask mix. These products have been doing well, with favorable reviews and excellent product placement with key influencers that is further driving public demand for the products.

After learning of these new PlentiCo products, Tea-Your-Health sent a cease and desist letter threatening arbitration for damages and injunctive relief. Both parties agreed to mediation.

You believe the PlentiCo explanation stating that their health and beauty division were unaware of the Tea-Your-Health deal and that PlentiCo's legal department didn't notify anyone of the potential conflict.

PlentiCo executives who negotiated the Purchase Agreement terms maintain that the Tea-Your-Health principals discussed mainly tea beverages, tea bags, loose tea, and other closely related items dealing only with the production of tea beverages. PlentiCo execs point to the fact that Tea-Your-Health only purchased beverage production equipment from PlentiCo's beverage division as evidence supporting their conclusion that the non-compete outlined in the Purchase Agreement was only touching upon tea-based beverages.

However, the scope of Tea-Your-Health's future business was broadly described in the Purchase Agreement as "tea and tea products and accessories for consumption, health, and well-being." In the mediation's main session, the Tea-Your-Health's representative stated that their longer-term plan had always been to launch tea-based products for skin care, including concentrated tea facial masks and the like. They maintain that Tea-Your-Health would only have agreed to the purchase and sale terms if they were protected from



PlentiCo's superior marketing and brand recognition via a non-compete with terms of at least five years.

At a minimum, PlentiCo's profits would be at stake in arbitration. If an injunction were issued, PlentiCo could be forced to recall the new products, including the steam facial machine.

It is late on the mediation day, and the parties appear to be at an impasse. Tea-Your-Health is demanding more than two million dollars, or a lower dollar amount with an agreement to refrain from selling the new products for at least three more years of the five. PlentiCo has only offered a token amount, \$20,000, and told you they are not planning to move much from there.

In both the joint session and earlier caucus rounds, PlentiCo's client and lawyer have strenuously argued that the entire purpose and meaning of the language in the Purchase Agreement was to protect Tea-Your-Health from competition with PlentiCo only in the specific vertical of tea-based beverages. They maintain that PlentiCo's new health and beauty products can't compete with Tea-Your-Health because they are not beverages.

Based upon what you've heard and what you've read in the documents, you disagree with PlentiCo's legal position while understanding why they feel blindsided by extending the restriction beyond beverages. You have served as an arbitrator in other cases. You believe that an arbitrator would apply the plain language in the Purchase Agreement, which does not limit its scope to beverages. Moreover, while PlentiCo's beverage division may only have had beverages in mind, Tea-Your-Health's plans were broader, as outlined in the Purchase Agreement's description of the scope of Tea-Your-Health's future business. PlentiCo is an enormous company with a sophisticated legal department, and they did much of the drafting. If they wanted to limit the scope to beverages, they could have and should have written it that way.

Based on your analysis, an arbitrator would likely find PlentiCo to have breached the contract. You also predict the arbitrator might just issue an injunction requiring PlentiCo to halt the sale and distribution of its new tea-related products for the remaining five years under the original Purchase Agreement.