



TEA TROUBLES MEDIATION (IN CAUCUS ONLY)

Confidential Information for the PlentiCo Client (also known to PlentiCo's lawyer)

You direct 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. Eighteen months ago, your unit launched three new products: a concentrated antioxidant green tea mixture, facial steam units that deliver the mixture, and a concentrated facial mask mix. These products are selling well with favorable reviews in the blogosphere.

Unfortunately, you recently received a cease and desist letter from a lawyer for a small company, Tea-Your-Health, that claims to have been spun off from PlentiCo two years ago. The letter claims that PlentiCo's tea-related products violate the Purchase Agreement for the deal, especially this:

For 7 years PlentiCo will refrain from producing tea products for consumer use or competing in any way with Tea-Your-Health by producing or distributing tea or tea-related products.

The letter threatened to file an arbitration case against PlentiCo and seek a court order to bar it from selling these products.

You met with your in-house lawyer, who confirmed that Tea-Your-Health was spun off from PlentiCo and that Tea-Your-Health was indeed purchased by a group of former PlentiCo managers. You were unaware of any deal made by this upstart company with PlentiCo's beverage division since PlentiCo's legal department failed to pick up on any potential conflicts.

You think this is a silly, lawyer-created problem. PlentiCo is a big, powerful company. You feel that the Tea-Your-Health people should show some loyalty and appreciation towards their former corporate benefactors- but instead they are seeking to extort you!

You are adamant about continuing with these products. Your PlentiCo unit has invested considerable funds in developing and producing these product lines, and you have a long-term contract with a supplier to manufacture the facial machine. All three products are selling well and contribute significantly to your unit's overall profits.

Your lawyer seems sympathetic to your point of view. He has argued that the purpose of the contract clause was to protect Tea-Your-Health from direct competition with PlentiCo. The PlentiCo executives who negotiated the deal maintain that the Tea-Your-Health representatives discussed mainly tea beverages, tea bags, and loose tea. Furthermore, Tea-Your-Health only purchased PlentiCo's beverage production equipment. Your products



don't compete with Tea-Your-Health because they are not beverages. That argument should be a winner with any arbitrator, or so you feel.

Nevertheless, you took your lawyer's advice to allow the dispute to go to mediation.

In today's mediation, during the joint session, the Tea-Your-Health representative had the nerve to say that its business plan all along was to launch tea-based products for skin care, including facial masks and the like. That is why they had the Purchase Agreement describe their scope of business as "tea and tea products and accessories for consumption, health, and well-being." They now say that they would never have signed the agreement if it explicitly limited the non-competition terms to include merely beverages. You strenuously disagreed with PlentiCo's lawyer, citing the original understanding the PlentiCo negotiator had, chiefly that the purpose for (and thus the meaning of) the language in the Purchase Agreement was to protect Tea-Your-Health from PlentiCo's competition in the sale of beverages only. PlentiCo's new health and beauty products can't compete with Tea-Your-Health- they are not beverages. As you've expressed to the mediator, either Tea-Your-Health's people are lying now, or they were deliberately hiding their intentions at the time by only mentioning beverages in the discussions.

You have been in the mediation session for much of the day and the negotiations appear to have stalled. Tea-Your-Health is demanding more than US \$2 million, or a lower dollar amount with an agreement that PlentiCo won't sell the new products for at least three years. You have offered \$20,000 just to make the nuisance go away. You have told the mediator you are not inclined to go much higher.