801.2

**Verne, B. Michael**

**From:** [redacted]
**Sent:** Friday, December 14, 2007 8:50 AM
**To:** Verne, B. Michael
**Subject:** Re: Informal opinion 0612002

Mike:

Following up on the attached email, what's the current view on an exclusive distributorship for a trademarked good (where the trademark - like [redacted] candy or [redacted] whiskey - is not used on other goods, unlike the [redacted] trademark), which almost inevitably includes giving the distributor an exclusive license to use the trademark in connection with distributing the product.

Thanks.
[redacted]

Sent from my [redacted]

----- Original Message -----
From: Verne, B. Michael <MVERNE@ftc.gov>
To: [redacted]
Cc: [redacted]
Sent: Wed Nov 28 09:27:13 2007
Subject: RE: Informal opinion 0612002

I obviously don't remember the details of the discussion from a year ago, but we have taken the position that an exclusive license for a trademark to be used for marketing a particular product or products is not an acquisition of an asset. For example, an exclusive license to use the [redacted] trademark on stadium seats, but the licensor would still be selling "exclusive" licenses to a wide variety of other product (cups, bobble-heads, etc) manufacturers. That type of arrangement can be differentiated from an exclusive license to a patent for a particular field of use. For example, an exclusive license for a patent used to manufacture, market and distribute a drug for veterinary use only, where the licensor retains all rights to the patent for human use, which would be considered an acquisition of assets. If an exclusive license for a trademark gives the licensee all rights to use of the trademark, then it would be treated the same as an acquisition of the trademark and would be considered an acquisition of assets.

Give me a call if you want to discuss.

-----Original Message-----
From: [redacted]
Sent: Tuesday, November 27, 2007 7:55 PM
To: Verne, B. Michael
Cc: [redacted]
Subject: Informal opinion 0612002

[redacted]
Mike:

I'm confused by the attached informal opinion in which you are described as agreeing that the grant of an exclusive trademark license is not an

asset acquisition for HSR purposes. I had thought that the clear rule, as described in Interpretation 27 in the current edition of the Premerger Notification Practice Manual was that "the grant of an exclusive intellectual property license is the transfer of an asset to the licensee." I'm aware that 27 says that "the grant of marketing and distribution rights" is not an asset acquisition, but I had understood that to refer to a grant of only marketing and distribution rights alone, without an accompanying license of the trademark rights. The attached opinion appears to say that any trademark agreement is merely an unreportable grant of marketing and distribution rights. But I'm quite sure that the PNO has advised us that we had to file for a number of exclusive trademark licenses and has accepted such filings. What's the answer?

Thanks.

[redacted]

[redacted]

An exclusive distribution agreement coupled with an exclusive license to use the trademark in connection only with distributing the product is not the acquisition of an asset.

12/14/07