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Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, May 15, 2012 11:41 AM
To: Verne, B. Michael
Subject: Trademark License Question

Mike -

I would appreciate your guidance on the following questions. Please let me know if you need any additional information. As always, thanks very much for your assistance.

Licensor currently markets L-Brand widgets, which are sold directly to various retailers through an existing licensee for the L-Brand, and also through Licensor's own and franchised L-Brand widget stores and L-Brand widget kiosks located at venues like airports. Licensor proposes to grant to a new Licensee an exclusive trademark license to use the L-Brand name for the manufacture, distribution, marketing and sale of L-Brand widgets for all classes/channels of trade, excluding the Licensor-owned and franchised widget stores and kiosks. Licensee would have an exclusive right to manufacture the L-Brand widgets and supply them to the Licensor's stores and franchisees.

Based on Informal Interpretation #0812011, we would conclude that the proposed trademark license, is not an asset acquisition for purposes of the HSR Act, since it is exclusive only within a certain field of use and expressly provides that Licensor and its franchisees will continue to own and use the trademark for purposes outside the scope of the license. In other words, it does not "transfer all rights associated with the trademark to the licensee, even against the licensor, as if the actual trademark is being acquired."

1. Please let us know if you agree, or if you need any additional information.
2. Please also let us know if your answer would change if, in addition to the license as described above, Licensee were to have a right of first refusal to expand its license to cover any non-widget products that Licensor seeks to out-license during the term of the license. We believe such a right of first refusal would not change the conclusion because the right of first refusal would not apply to any products that Licensor markets on its own or to products that currently are subject to out-licenses to other licensees. As in the original fact pattern above, Licensor and its current licensees would continue to own and use the trademark outside the scope of the Licensee's license, as would any new licensees that received licenses covering products for which Licensee chooses not exercise its right of first refusal.

Best regards -

[REDACTED]

[REDACTED]

AGNES -
K. WALSH (CONCUR)
[Signature]
5/15/12