

Ponte Costa, Raquel

From: Harrelson, Martina <Martina.Harrelson@wilmerhale.com> on behalf of Eggers, Christofer <Christofer.Eggers@wilmerhale.com>
Sent: 24 March 2016 12:40
To: Ponte Costa, Raquel
Cc: VIPA; O'Daly, Cormac; Louis, Frédéric; Eggers, Christofer
Subject: Quote for Reviewing Cooperation Agreement and Quality Assurance Label Document

Dear Raquel,

my Brussels partners have asked me to review the GSH-documents on behalf of VIPA.

The documents are pretty much standard; they are in line with the German documents GSH is using. The Quality and Testing Regulations concentrate on technical issues. We have not seen any significant legal issues arising out of this type of contract in the past.

One small point I like to mention refers to No. 4.1 of the Quality and Testing Regulations. It says that products that comply "are to be marked with the quality mark". I assume that is what VIPA and the members wish. However, there may be circumstances when members do not want to use the mark even if a product qualifies. Therefore, we may want to say that they "may be marked with the quality mark".

In No. 5 the regulations say that changes are coming into effect within an appropriate period. I would propose to clarify that such an appropriate period will not be shorter than three to four months, whatever period the VIPA-members might need to evaluate such changes.

The only thing that you really want to speak about with GSH is in No. 2.3 of the Implementing Regulation in combination with No. 4 of the Trademark License Agreement. The costs of on-site inspections in the US may become an issue. I would assume that GSH may not agree to a prior approval of travel costs because that could include a warning for VIPA-members that inspections are to be expected.

I am not sure whether or not such inspections should come as a surprise to the VIPA-members. If that should be the case, I would propose to negotiate a travel budget in general and a cap for the costs of inspections.

Other than that, the documents are fine from my point of view. It has also been mentioned that you have been speaking with GSH on a certain kind of exclusivity. This, so far, is not mirrored in the contracts. In this respect, I like to point out that any kind of exclusivity might create a legal problem. If a US-based non-VIPA-member wants to enter the German market and claims that the use of the quality seal is crucial for the market entry may complain that an exclusivity for the benefit of VIPA-members leads to a restriction of competition. This could be a serious antitrust issue for GSH in Germany. I assume that is the reason why an exclusivity is not mentioned in the contract.

I am happy to discuss this in more detail any time.

Best regards,

Dr. Christofer Eggers
Rechtsanwalt

Martina Harrelson | WilmerHale
Secretary to Dr. Christofer Eggers
Ulmenstrasse 37-39
60325 Frankfurt am Main Germany

+49 69 27 10 78 203 (t)

+49 69 27 10 78 100 (f)

martina.harrelson@wilmerhale.com

Please consider the environment before printing this email.

This email message and any attachments are being sent by Wilmer Cutler Pickering Hale and Dorr LLP, are confidential, and may be privileged. If you are not the intended recipient, please notify us immediately—by replying to this message or by sending an email to postmaster@wilmerhale.com—and destroy all copies of this message and any attachments. Thank you.

For more information about WilmerHale, please visit us at <http://www.wilmerhale.com>.