

**CASE STUDY**

“**ABC Ltd.**”, headquartered in Mumbai, India, is a company that has been manufacturing “**Maharatna**”, an Ayurvedic hair oil, since 1954. Maharatna is reputed to have medicinal qualities that greatly improve hair growth and also provides pain relief. ABC Ltd. is well known in the Indian market and has a good reputation due to the quality of their products. They are also known for the support they provide to various causes such as polio vaccination drives and other public health initiatives. More recently, they have been involved in tasks such as giving out merit based scholarships to school kids to undertake University education. However, there were certain groups that alleged that the scholarship committee considered criteria such caste and gender and ABC Ltd. has been under fire for promoting dissension in the society. This has led to a decline in their market base and they had a board meeting on 18.02.2014 to brainstorm over newer ways of increasing sales.

Mr. Saurabh Yaccob, the COO of ABC Ltd. proposed the idea that the company should start exploring overseas markets. International expansion would help them regain their lost profits and reputation. His market research has shown great demand for Ayurvedic hair oil in the markets of **Republic of Iru**. Although the product has marginal presence in Iru, most orders from Iru to the company have been unsolicited orders even though the product is yet to receive approvals from the Food and Drug Administration of Iru. Mr. Yaccob wants to undertake a large scale marketing campaign to increase exports to Iru from India. He also proposes that if the products are as successful in Iru as they have been in India, manufacturing operations could be established there in the future so as to reduce tariff and other costs of exports.

The Board of ABC Ltd. is impressed with Mr. Yaccob’s research and authorizes him to take all necessary steps to take the strategy forward. Soon, ABC Ltd. receives a pitch from **Yaza Ltd.**, a distributor company in Iru. In his pitch, Mr. Zambam of Yaza Ltd. offers to enter into a distributorship agreement with ABC Ltd. and offers to purchase the product at a discount of 10%. Mr. Yaccob is initially concerned that Yaza Ltd. does not enjoy substantial market share in Iru and holds out for other bids. However, upon receiving no other pitch, he enters into negotiations with Mr. Zambam to sign a distributorship agreement.

Mr. Yacob proposes stern clauses to govern the marketing obligations of Yaza Ltd. as well as their ability to use their brand name and trademark. His primary concern is that an exclusive distributorship contract instead of a licensing type agreement will lead to loss of ABC Ltd.'s control over sales, marketing, and pricing but nevertheless, agrees to enter into a contract with Yaza Ltd. He is also worried about the weak IP regime in Iru as well as the possibility of adulteration and would like to protect his product against any infringement or any other act that might affect the reputation of the brand. He is also concerned that Yaza might not have the requisite presence in the market that ABC Ltd. desired. In order to win him over, Mr. Zambam informed him of the various distributors in Iru's market that Yaza has excellent relations with and who can be counted on should there be excessive demand.

Mr. Zambam from his side wants ABC Ltd. to sign a non-compete so that Yaza Ltd. are their exclusive distributors. Mr. Zambam also indicates a possible expansion of Yaza Ltd. in the neighbouring country, the **Republic of Zira**, and that they would be happy to distribute the product in Zira in the future. Additionally, Mr. Zambam was successful in convincing a hesitant Mr. Yacob to grant Yaza Ltd. the right to develop the product further in collaboration with their R&D unit. The reason behind Mr. Yacob's hesitance was that in a previous such agreement with another research entity, he had completely lost control over the sales of the augmented product after the distribution agreement was terminated. What convinced Mr. Yacob was Mr. Zambam's promise to shoulder all tax liabilities that might arise under the transaction. Additionally, Mr. Zambam is keen on developing a continuing business relationship with ABC Ltd. and would like this contract to govern all future transactions unless decided otherwise. Mr. Yacob does not comment on future expansion but is keen on keeping Yaza Ltd. happy for this prospect of future growth. Finally, Mr. Yacob and Mr. Zambam also discussed the current high-inflation phase in India and the possibility of revising royalties from time to time. They have negotiated and agreed that in case of any dispute arising among the parties, there shall be an attempted mediation, failing which the parties will opt for arbitration.

Mr. Yacob contacts you to draft a distributorship contract for ABC Ltd. and Yaza Ltd. He instructs you to keep in mind that both parties have concerns which the contract must address in a way acceptable to both. He also impresses upon the need for clarity since the distributorship will pass major control to Yaza Ltd. over the product.