

# Global Marketing

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Ninth Edition, Global

Edition

## Political, Legal, and Regulatory Environments

### Chapter 5

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# Learning Objectives

1. Understand the elements of a country's political environment that can impact global marketing activities.
2. Define international law and describe the main types of legal systems found in different parts of the world.
3. Understand the most important business issues that can lead to legal problems for global marketers.
4. Describe the available alternatives for conflict resolution and dispute settlement when doing business outside the home country.
5. In general terms, outline the regulatory environment in the European Union.

# Sovereignty

- **Sovereignty:** Supreme and independent political authority
- “A sovereign state was considered free and independent. It regulated trade, managed the flow of people into and out of its boundaries, and exercised undivided jurisdiction over all persons and property within its territory. It had the right, authority, and ability to conduct its domestic affairs without outside interference and to use its international power and influence with full discretion.”

Richard Stanley  
President, Stanley Foundation

# Sovereignty & Global Market Integration

- Some believe that global market integration is eroding national economic sovereignty
- In the EU, individual countries gave up their rights to a national currency, product standards in exchange for better market access
- **“The ultimate resource of a government is power, and we’ve seen repeatedly that the willpower of governments can be overcome by persistent attacks from the marketplace.”**

~ Neal Soss, Economic Consultant

# Political Risk

- Risk of change in political environment or in government policy that would adversely affect a company's ability to operate effectively and profitably.
- When perceived political risk is high, a country will have a difficult time attracting foreign direct investment.
- Some governments offer political risk insurance.

# Political Risk

- Some examples of political risk include:
  - War
  - Social unrest, fractionalized by language, ethnic and/or religious groups
  - Orderly political transfer
  - Politically motivated violence
  - International disputes
  - Change in government/pro-business orientation
  - Social conditions (population density and wealth distribution)
  - Corruption, nepotism
  - Crime
  - Labor costs
  - Tax discrimination
  - Exchange controls, tariff barriers
  - Dependence on and/or importance to a major hostile power
  - Repatriation restrictions

# Taxes

- Government taxation policies
  - High taxation can lead to black market growth and cross-border shopping
    - High taxes in China leads to smuggling of oil, cigarettes, PCs, film
    - In Great Britain, cars returning from France bring on average 80 bottles of wine back
- Corporate taxation
  - Companies attempt to limit tax liability by shifting location of income

# Seizure of Assets

- **Expropriation**—governmental action to dispossess a foreign company or investor
  - Compensation should be provided in a “prompt, effective, and adequate manner”
- **Confiscation** occurs when no compensation is provided

# Seizure of Assets

- **Nationalization**—a government takes control of some or all of the enterprises in an entire industry
  - Acceptable according to international law if:
    - satisfies public purpose
    - includes compensation

# Seizure of Assets

- **Creeping expropriation**—limits economic activities of foreign firms
- May include:
  - Limits on repatriation of profits, dividends, or royalties
  - Technical assistance fees
  - Increased local content laws
  - Quotas for hiring local nationals
  - Price controls
  - Discriminatory tariff and nontariff barriers
  - Discriminatory laws on patents and trademarks

# International Law

- The rules and principles that nation-states consider binding among themselves
- Pertains to property, trade, immigration and other areas
- Disputes between nations are issues of public international law
  - World Court or International Court of Justice (ICJ);
  - Judicial arm of the United Nations

# International Court of Justice



ICJ, The Hague, Netherlands

- Judicial arm of the United Nations founded in 1947
- Settles disputes between nations
- Offers advice on legal issues submitted by various international agencies

# Common Law vs. Civil Law

- The Napoleonic Code of 1804 drew on the Roman legal system and is the basis for continental European law today. Code law is also known as civil law.
- U.S. law is rooted in English common law.



# Common Law vs. Civil Law

- **Common Law**

- Disputes are decided by reliance on the authority of past judicial decisions
- Companies are legally incorporated by state authority
- Code law is used in only a few areas; the U.S. Uniform Commercial Code fully adopted by 49 states, Louisiana still influenced by French civil law

- **Civil Law**

- Legal system reflects the structural concepts and principles of the Roman Empire
- Companies are formed by contract between two or more parties who are fully liable for the actions of the company

# Islamic Law

- Legal system in many Middle Eastern countries
- *Sharia*—a comprehensive code governing Muslim conduct in all areas of life, including business
  - Koran—Holy Book; like code law
  - Hadith—like common law
    - Based on life, sayings, and practices of Muhammad
    - Identifies forbidden practices “haram”

# Sidestepping Legal Issues

- Get expert legal help
- Prevent conflicts
  - Establish jurisdiction
  - Protect intellectual property
  - Protect licenses and trade secrets
  - Avoid bribery
  - Advertising & promotion

# Jurisdiction

- Refers to a court's authority to rule on particular types of issues arising outside of a nation's borders or to exercise power over individuals or entities from different countries.
- Employees of foreign companies should understand the extent to which they are subject to the jurisdiction of host-country courts.
- Courts have jurisdiction if it can be demonstrated that the company is doing business in the state in which the court sits.

# Intellectual Property

- Intellectual property must be registered in each country where business is conducted.
  - Patent—gives an inventor exclusive right to make, use, and sell an invention for a specified period of time
  - Trademark—distinctive mark, motto, device, or emblem used to distinguish it from competing products
  - Copyright—establishes ownership of a written, recorded, performed, or filmed creative work

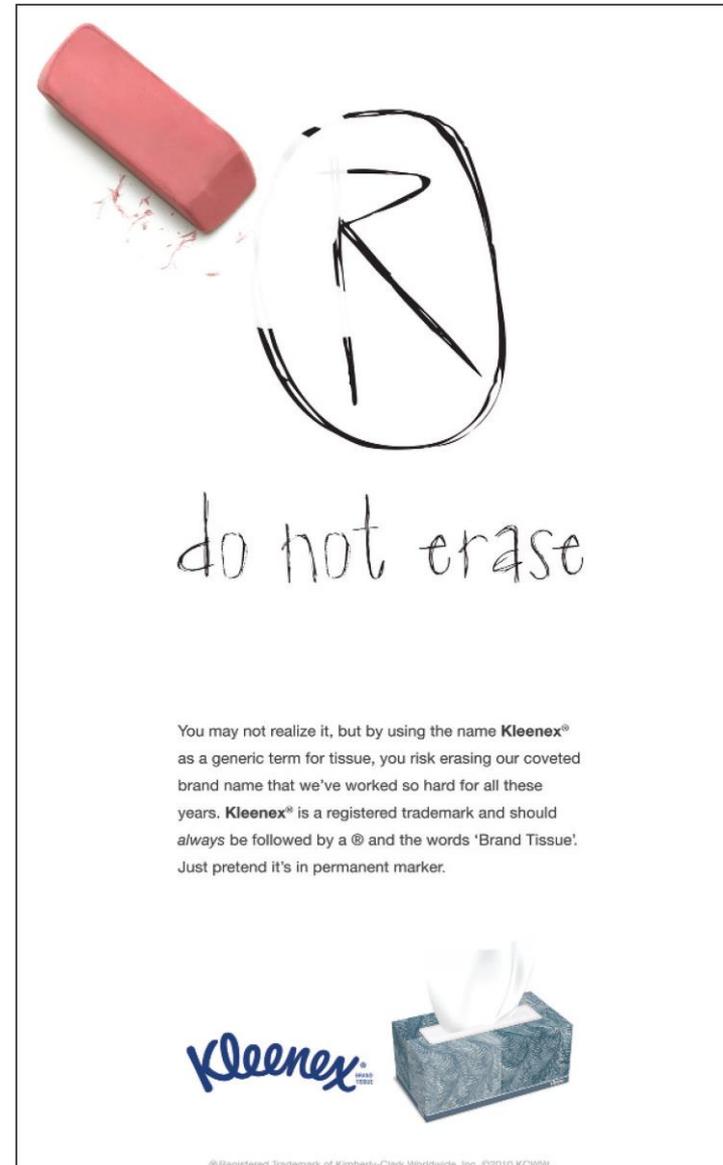
# Infringement of Intellectual Property

- Counterfeiting—unauthorized copying and production of a product
- Associative Counterfeit/Imitation—product name differs slightly from a well-known brand
- Piracy—unauthorized publication or reproduction of copyrighted work

# Intellectual Property

“You may not realize it, but by using the name **Kleenex**® as a generic term for tissue, you risk erasing our coveted brand name that we’ve worked so hard for all these years.

**Kleenex**® is a registered trademark and should always be followed by the ® and the words ‘Brand Tissue’. Just Pretend it’s in permanent marker.”



# A Tale of Two Budweisers

Budweiser is a registered trademark of Anheuser-Busch/InBev, the world's largest brewing company.

AB/InBev couldn't use the Budweiser brand globally because the Budejovický Budvar brewery in Budweis, Bohemia, established in 1895, beer was "Budweiser, the king of beers".

In 2011, Europe's Court of First Instance ruled that both companies could use the name in the U.K.



# Protecting Intellectual Property

- In the U.S., registration is with the **Federal Patent Office**
- In Europe, applicants use **the European Patent Office** or register country-by-country
- Soon the **Community Patent Convention** will cover 27 countries
- **Madrid Protocol** trademark owners are protected in 74 countries with 1 application

# Protecting Intellectual Property

- World Intellectual Property Organization
  - Governed by the Madrid Agreement and the Madrid Protocol
  - A specialized unit of the UN; based in Geneva, Switzerland
  - Mission: Promote and protect intellectual property worldwide
  - Has easy-to-understand booklets that can be printed directly from its website

# Protecting Intellectual Property

- International Convention for the Protection of Industrial Property
  - Also known as the Paris Convention
  - Honored by almost 100 countries
  - Facilitates multi-country patent registration, ensures that once a company files, it has a “right of priority” in other countries for one year from that date
- Patent Cooperation Treaty
  - Over 100 countries cooperate with patent applications
- European Patent Convention
  - the EU and Switzerland

# U.S. Companies Receiving the Most Patents, 2013

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|                           |       |
|---------------------------|-------|
| 1. IBM                    | 6,788 |
| 2. Samsung Electronics    | 4,652 |
| 3. Canon Kabushiki Kaisha | 3,918 |
| 4. Sony                   | 3,316 |
| 5. LG Electronics         | 3,117 |
| 6. Microsoft              | 2,814 |
| 7. Toshiba                | 2,679 |
| 8. Panasonic              | 2,649 |
| 9. Hitachi                | 2,399 |
| 10. Google                | 2,190 |

# Antitrust

- Laws are designed to combat restrictive business practices and to encourage competition
  - Enforced by FTC in the U.S., Fair Trade Commission in Japan, European Commission in the EU
  - The Sherman Act of 1890 prohibits certain restrictive business practices including fixing prices, limiting production, allocating markets, or any other scheme designed to limit or avoid competition.
    - Applies to U.S. companies outside U.S. borders and to foreign companies operating in the U.S.

# Antitrust Rulings

| Companies Involved  | Global Antitrust Review  | Antitrust Review in USA   |
|---|--|---|
| Acquisition of Anheuser-Busch (United States) by InBev (Belgium/Brazil), 2008, \$52 billion                                 | Deal approved in China but company is prohibited from pursuing Huaran Snow or Beijing Yanjing.                                 | Approved; InBev was required to sell Labatt USA.                  |
| Merger of Sony Music (Japan) and BMG (Germany), 2004  | Approved by EU.  | Approved.   |
| Acquisition of Honeywell (United States) by GE (United States), 2001, \$40 billion  | Deal was vetoed on grounds that merged firm would be stronger than competitors in aviation equipment.                          | Deal was on track for approval, subject to conditions.            |
| Joint venture between music businesses of EMI Group PLC (Great Britain) and Time Warner (United States), 2000, \$20 billion | EU regulators expressed concern that the new EMI–Time Warner would dominate the growing market for digital music distribution. | Deal was scrapped in October 2000 before regulatory review began. |

# Licensing and Trade Secrets

- **Licensing** is a contractual agreement in which a licensor allows a licensee to use patents, trademarks, trade secrets, technology, and other intangible assets in return for royalty payments or other forms of compensation
- Important considerations
  - What assets may be licensed
  - How to price assets
  - The rights granted

# Licensing and Trade Secrets

- Trade secrets are confidential information or knowledge that has commercial value and is not in the public domain and for which steps have been taken to keep it secret
- To prevent disclosure, use confidentiality contracts
- The Uniform Trade Secrets Act has been adopted by most U.S. states
- NAFTA was first international agreement protecting trade secrets
- TRIPS, Trade-Related Aspects of Intellectual Property Rights signed by members of GATT

# Bribery and Corruption

- Foreign Corrupt Practices Act
  - Requires publicly held companies to institute internal accounting controls that would record all transactions
  - Makes it a crime for a U.S. corporation to bribe an official of a foreign government or political party to obtain or retain business
  - Prohibits payments to third parties when there is reason to believe it may be channeled to foreign officials
- Omnibus Trade and Competitiveness Act
  - Allows for “grease” payments to cut red tape; i.e., getting shipments through customs, getting permits

# 2014 Corruption Rankings

| Rank/Country   | 2014 CPI Score | Rank/Country      | 2014 CPI Score |
|----------------|----------------|-------------------|----------------|
| 1. Denmark     | 92             | 166. Eritrea      | 18             |
| 2. New Zealand | 91             | 166. Libya        | 18             |
| 3. Finland     | 89             | 166. Uzbekistan   | 18             |
| 4. Sweden      | 87             | 169. Turkmenistan | 17             |
| 5. Norway      | 86             | 170. Iraq         | 16             |
| 6. Switzerland | 86             | 171. South Sudan  | 15             |
| 7. Singapore   | 84             | 172. Afghanistan  | 12             |
| 8. Netherlands | 83             | 173. Sudan        | 11             |
| 9. Luxembourg  | 82             | 174. North Korea  | 8              |
| 10. Canada     | 81             | 174. Somalia      | 8              |

# Conflict Resolution

- Litigation
- Formal arbitration
  - Settles disputes outside of court
  - Groups agree to abide by panel's decision
- 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)
  - Most important treaty regarding international arbitration signed by 107 countries

# The Regulatory Environment

- Agencies, both governmental and non-governmental, enforce laws or set guidelines for conducting business
- Marketing activities affected by international and regional economic organizations
  - EU
  - WTO

# Regional Economic Organizations: The European Union

- The **Treaty of Rome** established the European Community which became the EU
- It created the **Council of Ministers** which is the main decision-making body along with the **European Commission, the European Parliament, and the European Court of Justice**
- The **European Council** guides integration-related issues, i.e, monetary union