



Commercial, Competition & Trade

Designing solutions that minimize risk and maximize the potential for success

Masuda Funai represents domestic and foreign-owned businesses from nearly every industry and profession regarding their commercial, competition and trade law challenges and objectives. Our decades of experience give us a unique perspective for analyzing the complex issues inherent in such matters, and in designing solutions that minimize our clients' exposure to risk while strengthening their chances for success.

Our competition and trade experience includes legal counsel pertaining to antitrust, unfair trade practices, import and export compliance, domestic and international sales and distribution agreements, secured sales arrangements, nationwide and cross-border logistics and FDA compliance, as well as government contracts, Buy American and Made in America matters. We counsel clients on the various federal and state laws and court decisions that impact today's competitive economy, including competitor collusion and false and/or deceptive and corrupt trade practices. We advise on pricing, trade secrets and intellectual property, false advertising, employee raiding and violations of covenants not to compete.

Our firm understands the legal and economic circumstances underlying trade-related initiatives. Our attorneys are knowledgeable in technical areas of the Lanham Act, federal and state fraud statutes, trade secret laws, the Sherman, Clayton and Robinson-Patman Antitrust Acts, trade dress and trade disparagement laws, as well as the Buy American Act and Buy America provisions.

We know how to interact with the state and federal agencies that supervise and govern competition and trade, including the Departments of State, Justice and Commerce, as well as the Federal Trade Commission and Food & Drug Administration. We are dedicated to overcoming the specific U.S. legal challenges presented by domestic, international, digital and commercial traffic in goods, services and communications. The true value of the counsel and representation our lawyers provide in competition and trade law is not only measured by the number of projects successfully completed for scores of regional and nationwide manufacturing, distribution, sales and service systems of domestic and foreign companies, but also by the many thriving working relationships we maintain with clients who retain us again and again.

In the event litigation should arise, we help our clients with domestic and cross-border disputes involving sophisticated competition issues. Our global network of resources allows us to leverage the experience of legal professionals worldwide in order to deliver comprehensive advice on domestic and international trade.

Range of Services

Sales & Distribution Agreements (including International)

At Masuda Funai, we evaluate, prepare and negotiate all types of contracts and agreements for our clients in their domestic and international business relationships with customers, suppliers, distributors, dealers, agents and sales representatives. Our skill in this area is both broad and deep, and includes the negotiation, documentation and enforcement of non-disclosure (NDA) and cooperation, sales representative and agency, distributorship and dealership, original equipment manufacturer (OEM), value added reseller (VAR), vendor managed and supplier managed inventory (VMI/SMI), and e-commerce agreements. We also advise on franchise law, product liability risk avoidance and supply chain operations and compliance, as well as antitrust implications for pricing and sourcing.

Our attorneys work with each business client to evaluate their options from both a legal and a business perspective and with consideration for the risks and benefits involving cost, result and timing. Our experience includes domestic and international counseling pertaining to vertical distribution rights pertaining to franchises, business opportunities and direct sales programs, including technology transfers. We regularly draft and finalize agreements and collateral documents that facilitate each clients' commercial objectives. Regardless of the distribution structure, we help our clients to create and maintain compliance programs pertaining to distribution-related registration, disclosure, filing and sales practices requirements in the U.S. and abroad.

Many of our clients are engaged in complex cross-border business relationships and transactions in Canada, Mexico, the Caribbean and elsewhere. We keep clients aware of changing business contract and agreement legalities in their relevant markets. While we focus on providing clients with certainty and dispute avoidance, there are distribution, sales and marketing circumstances that require — or cannot avoid — trial, arbitration or mediation. We carefully advise clients of the full array of risks and benefits involved in litigation and all alternative methods of dispute resolution and have extensive experience in trial and appellate courts and arbitration and mediation proceedings throughout the United States.

Antitrust & Unfair Trade Practices

The challenges surrounding antitrust and competition laws and regulations and the creation and implementation of successful trade practices often strike at the core of a company's business strategy. The ability to properly manage and avoid antitrust and unfair competition lawsuits while stopping competitors from illegal conduct is a critical element to realizing the full potential for ROI. At Masuda Funai, we understand the complex laws, regulations, obstacles and roadblocks associated with antitrust and trade-related matters, as well as the complications of doing business with competitors, and the interplay between antitrust and distribution law.

Our attorneys advise on arrangements with competitors and distributors, including mergers, acquisitions and joint ventures, as well as assist with pre-merger notification to the Federal Trade Commission (FTC) and the Department of Justice (DOJ), including Hart Scott Rodino filings. We advise on antitrust issues concerning product distribution, including OEM arrangements with competitors and provisions concerning exclusive

dealing and other distribution restrictions. Our firm works with clients on pricing issues and policies, including Minimum Advertised Price (MAP) policies and discount and incentive programs. We are also involved in other antitrust issues including product "tying" and refusals to deal.

Our attorneys provide a wealth of experience in creating and implementing policies, procedures and protocols that are practical and enforceable. Moreover, we work closely with businesses to design and customize proactive and effective antitrust compliance policies and training programs. We also assist clients in critical and sensitive internal investigations of antitrust complaints and issues.

In the event litigation ensues, we represent clients regarding a variety of civil antitrust litigation, including pricing, price discrimination and distribution claims spanning a number of jurisdictions. We also navigate clients through and beyond government investigations involving the DOJ and the FTC. In addition, we help "quarterback" multi-jurisdictional investigations and disputes by coordinating and liaising with counsel in other countries engaged to assist our clients.

Domestic & International Trade & Logistics

For many companies, logistics is one of the most challenging aspects of doing business both in the U.S. and abroad. Efficiently moving supplies, components and finished product from one point to another and on an international scale is often a hallmark of outstanding operations management practices. Masuda Funai advises businesses of all types and sizes on domestic and international logistics, including shipping operations and documentation, customs and import procedures, and export compliance for a wide array of products and destinations.

Our firm is more than just a group of lawyers who provide legal advice on transportation, but rather a part of this industry, which is governed by a maze of complex laws, regulations and procedural requirements. Our attorneys offer the guidance and legal counsel needed for logistics endeavors across the country and around the globe, helping suppliers and distributors to move their cargo efficiently and safely secure payment for such transactions. Whether the cargo moves by air, ocean or surface routes, we provide strategic counseling for the sourcing and routing of critical products, components and materials for international supply chains.

Our lawyers are also trusted advisers to carriers and transportation intermediaries, guiding them through licensing and ongoing regulatory compliance and transportation documentation, including the use of documents, delivery of goods, and review of terms and conditions in key shipping documents. We negotiate and document carrier, broker and warehouse agreements. In addition, we advise on transportation-related insurance issues such as coverage for goods in transit for air, ocean, surface and rail, coverage for goods in stock and storage, and the integration of such counseling into the full spectrum of commercial agreements as needed.

Our attorneys work closely with clients to design and implement preventive measures that detect unreliable customers and counterparties. We advise on collection matters related to bankruptcies of major importers and the resolution of cargo liens and conflicting claims by buyers, sellers and bailees over the disposition of cargo in transit or storage. We counsel our clients on the continuum of federal agency rules and security

requirements effecting their logistics initiatives, and create customized standard forms and shipping documents to ensure best practices. Our attorneys also represent clients in federal agency audits, complaints and investigations, as well as resolve customer and business-to-business disputes pertaining to logistics and transportation.

Import & Export Compliance

Smart legal and business strategies are at the core of complying with the complex challenges associated with global import and export compliance. At Masuda Funai, our attorneys consistently deliver the requisite depth of knowledge and experience needed to resolve the issues and obstacles pertaining to imports, exports, Customs and export controls, as well as the North American Free Trade Agreement (NAFTA) and free trade program counseling.

We navigate our clients through the entry and exit processes, including documentation and reasonable care obligations. Our experience ranges from classification, valuation, country of origin and ruling requests; to drawbacks, duty deferrals, protest filings, damages, penalty petitions, forfeitures, seizures, petitions and record-keeping requirements. We can ably guide our clients through Importer Self-Assessment Program (ISA) applications and ongoing compliance, as well as Customs audits and investigations, embargoes and import restrictions. We also counsel clients on alternative sourcing and supply chain management to avoid anti-dumping and countervailing duties.

Our lawyers understand, from practical experience and decades of practice, the business considerations and the legal ramifications associated with free trade agreements (FTAs) and NAFTA. We work with our clients to evaluate risk, determine eligibility and strategies for using FTAs and ensuring certifications and proper marking. We advise on compliance and training programs for each client's often specific needs and business operations. We assist with internal reviews of NAFTA Certificates of Origin, advocate our clients' position before customs authorities throughout the NAFTA verification, penalty petition and penalty avoidance processes.

Secured Sales

Sellers of products, such as inventory for resale or expensive and high-end machinery and equipment, can often improve their position with respect to both the customer and other creditors of the customer by obtaining a security interest in the products from customers, and following the necessary steps for the seller's protection. Because the legal requirements and corresponding documentation can be specific and complex, there are traps for the unwary that can result in potentially significant and costly ramifications for the seller. As a result, businesses require competent and proven legal counsel with extensive experience in this highly specialized area of practice.

For decades, Masuda Funai has been involved in the creation and enforcement of secured transactions under Article 9 of the Uniform Commercial Code in support of distribution and commercial agreements. Our firm has

successfully executed a multitude of these transactions, across numerous industries. We can assist in straightforward secured sales and in more complicated and structured credit sales.

Even though security agreements can mitigate the risk of default — unfortunately, default continues to remain a part of doing business. In the event a customer does not perform on an agreement, our attorneys work quickly with clients advising them of their potential options, such as voluntary or involuntary recovery of the collateral. We are also involved in other enforcement efforts such as confirming our client's priority in the collateral, preparing demand letters, commencing or defending litigation, and, in the event of customer insolvency, representing the creditor in the customer's bankruptcy proceedings.

Food, Beverage & FDA Compliance

Businesses involved in the food and beverage industry know that complying with Food & Drug Administration (FDA) and other agency regulations is paramount to their bottom line. As the new era of food security brings frequent change in this area, food and beverage suppliers are faced with increased scrutiny and new challenges and opportunities. As a result, practical and forward-thinking legal counsel that meets the needs of food and beverage businesses is critical to their immediate and long-term success.

Masuda Funai represents domestic and foreign-owned food and beverage businesses on various aspects of FDA compliance, recalls, disclosures and inspections. We know how to apply complex laws — such as the Federal Food, Drug, and Cosmetic Act, the Perishable Agricultural Commodities Act (PACA) and California Proposition 65 — to the everyday business decisions facing our clients.

Our representation in this area ranges from initial market strategies and product development, submissions, GRAS assessments and notices; to agency inspections and responses; to advice on labeling, advertising and “health” and “all natural” claims; to manufacturing processes and ongoing reporting requirements. Our experience in working on such matters is significant.

In addition, we counsel and represent our clients on import/export-related matters involving Customs. This advice includes documentation and support for the admission of food and beverage shipments into the U.S., as well as guidance for importers during Customs and FDA examinations of import shipments.

Government Contracts & Buy America

Masuda Funai advises on all aspects of Buy American and government sourcing and procurement at the state, federal and local levels. We represent domestic businesses and foreign-owned companies involved in doing business with the U.S. and local governments. Our experience ranges from transit, trains and rolling stock, to machinery and high and low tech components.

We represent businesses in their commercial relationships with government and top-level governmental suppliers from inception to termination. We advise on the local, state and federal bidding process rules that apply to government contracts and grants. Of paramount importance, we understand how our clients' trade

secrets are protected throughout the public open bidding process at the state and federal levels and in a number of jurisdictions, including applications to state and federal courts in the event protections are inadequate or unavailable.

Of course, the U.S. government's objective is to Buy American, which can present significant challenges for our foreign-owned clients doing business in the U.S. As a result, we offer proven skill in advising on the Buy American Act (BAA), as well as regarding the rigid standards applied by the U.S. Trade Commission pertaining to the "Made in America" label. Our detailed analysis of often overlapping local, state and federal laws ensure client products are sufficiently "American" in origin to supply government and/or government funded buyers.

With decades of practice representing foreign-owned and, in particular, Japanese component suppliers involved in aerospace and defense contracts, we know how to guide suppliers and other companies through the complex government procurement process. Our familiarity with the many different rules and regulations, which can vary by industry and product, allow us to support our clients in realizing significant ROI when doing business with the U.S. government.