

Section 2. Legal studies

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COMPARATIVE ANALYSIS OF FRANCHISING AGREEMENT WITH OTHER INSTITUTES

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Abstract

The article “Comparative analysis of Franchising agreement with other Institutes” analyses Franchise contract in contrast with these agreements. According to these agreements it’s emphasized what are similarities and differences of the contracts mentioned above. It represents scientific points of view over “Franchise Business Agreement and other Agreement’s Instruments of Legislative Character”. This comparative analysis aims to explore how franchising agreements differ when considered alongside agreements or business models of other institutions, such as licensing agreements or distributorships.

Keywords: *Franchising, licensing agreement, distributorships*

Introduction and Research Objective

Franchising agreements are a common method for expanding business operations, especially for brands looking to replicate their success in new locations with minimal investment. These agreements outline the relationship between the franchisor (the brand owner) and the franchisee (the business operator) and provide detailed terms on the use of trademarks, business systems, marketing, and operational guidelines. However, the specifics of these agreements can vary significantly across different industries, regions, and institutions.

What’s the concept of “distribution agreement”? Unfortunately this is unknown con-

cept for Civil Code and we should seek it its analysis in doctrine branch. There are some developments by a certain number of scientists regarding to a new distribution contract (exclusive right of sale contract), that provides a buyer with exclusive right to sell seller’s product- which is required by certain customers in the concrete territory. Providing complex of exclusive rights is a concept that is shared by franchise and lease agreements as the similar feature. Through a franchise, a person or group of people (franchisee) receives the right to market products and/or services using the trademark or trade name patent, know-how (commercial infor-

mation) of an existing business (franchisor). The franchisee usually pays a licensing fee, uses particular operating methods and has an ongoing obligation to pay the franchisor a portion of revenue. In return, the franchisor offers advertising and marketing, training, and potential financing of the business.

In case of distribution agreement (Albaric C., Dickstein M., 2017) the following obligations are taken into account for distributors: obligation to purchase and then sell in the name of franchisor or via franchise business account; taking a responsibility of choosing appropriate market place. Do not create obligations for the producer (parent company). This doesn't mean that "within the framework of distribution agreement grantor and distributor aren't able to regulate availability of trade mark and trade name as well as providing rights of protected objects of intellectual property. But existing conditions really matters and seem to be of secondary importance in contrast with terms and conditions for sale of products that involves purchasing product and then sell via its name and account. It should be observed that several points get under influence of franchise business legal regulation but we can't talk of equity in this respect" (Schwenken, C., Riedl, H., 2024).

These represented agreements can be isolated by one thing that is economic interest of the parties entering a franchise business. For example, economic interest for franchise agreement is associated with the profit that you make due to exclusive rights.

The meaning of economic interest conveys improvement of level of sales of produced goods territorial limits condition is the main concept in distribution. Extent of territory may be brought within its compass. Unlike it for franchise agreement it isn't of great importance.

Notwithstanding their minor similarities constructions upon which these agreements are based on really differs from each other to a certain extent. Property Management Agreement implies that an owner hereby appoints Manager as his lawful agent and attorney-in-fact with full authority to do any and all lawful things necessary for the fulfillment of this agreement to manage, operate, control, rent and lease the following described property and the second part takes respon-

sibility to use this property for the benefit of the owner according to his interests. The object of power of attorney this is complex of exclusive rights that may

appear to get in the hands of confidant (confident manager). A power of attorney is a document that evidences the creation of a relationship between two people who are designated as the "principal" and the "agent". The principal designates the agent in the document, and the agent is authorized to act on the principal's behalf – to stand in the shoes of the principal – for whatever business the power of attorney permits. A power of attorney can be general, so that the agent can conduct any sort of business on behalf of the principal, or it may be specific, limited to the transactions expressly provided for in the document. Third parties may treat the agent as if he or she is the principal in any transactions which the agent is authorized to conduct. Powers of attorney are commonly used in all sorts of business activities, and are very frequently executed on behalf of individuals.

According to the law a beneficiary acquires exclusive rights to manage his or her own business activities. In franchising beneficiary becomes eligible to use exclusive rights to his succeed in his entrepreneurial activity and he is to pay a right-holder certain price for them.

According to power of attorney management agreement, confidant i.e. in this case as the agent is authorized to act on the right-holder's behalf and uses exclusive rights to manage entrepreneurial activities on behalf of franchisor observing principal's interests and when franchise makes profit he transfers the total income to the right-holder and retains only his entrepreneurial salaries. A confident manager doesn't use his own bank account (the revenue account of administration) but principal i.e. right-holder acts according his own interests covering private expenditure.

Exclusive rights of protected objects are considered to be isolated property of power of attorney. Franchising aims at acquiring effectiveness and profit on intellectual property, a right-holder provides entrepreneur with these rights in exchange for payment and protecting date expiration and restrictions beneficiary uses them for his succeed. As

scientists remarks, under this circumstance the part who gives away intellectual property is privileged one, called professional entrepreneur and the object of franchising the part interested in gaining useful properties to benefit himself (Sheikh S., Singleton S., 2020). Then the author concludes that management this is put objects qualitatively in different positions and it consists of property possession and benefit as well as its management and control. entrepreneur is not a right-holder but the one who receives intellectual property, and this is confidant accredited professional manager –entrepreneur.

According to power of attorney management agreement salary is given not to the right-holder (as it happens in franchising) but to the part who is entitled to all the rights and is responsible for it reliable for business activity. Besides this, in franchising a right-holder gets payment (some amount of money) in exchange for swapping intellectual property, but a manager gets payment (i.e. salary) for management and performing job duties.

In conclusion, already mentioned contract constructions can be differentiated due to the significant feature is the fact that management includes being authorized, but franchising draws line at the same probability, because the right to benefit from franchise doesn't involve acquiring rights on complex of exclusive rights of protected objects. The subject matter of power of attorney management as well as in franchising is provision of complex of exclusive rights. And features discussed above will help us

to talk about differences that cause these constructions to be used for different legislative regime. As it has been observed the main principle of franchising is transferring exclusive rights to beneficiaries. It's very important to analyze what's the difference between a franchise construction and concession institute (cession). Concession is considered to be universal law of obligation institute. In its concrete meaning, this law refers fundamentally to regulation for concession agreements i.e. enacting protocols by

commitment concession that involves creditor's claim to the services of a second party. "This institute doesn't involve transference of exclusive rights. When in franchising beneficiary is provided with exclusive rights on the results of intellectual activity directly connected with right-holder's personality. In this case concession institute as well as franchise agreement both of them provide opportunities on exclusive rights but the difference we should seek in the nature of these rights. If concession institute enacts regulation for the commitment of fulfilling requirements, franchising mediates transference of exclusive rights. One major difference between them is that giving up some demands or making concession is weird and unfamiliar to franchising.

A right-holder transfers right to franchisee to use complex of exclusive rights but at the same time he retains exclusive right to the results of an intellectual activity. As the author concludes there is no connection between exclusive license of the rights and exclusive right to the results of an intellectual activity, in other words there is no transfer of intellectual property act that refers to commitment concession.

Conclusion

Franchising is a unique business model that offers more control, support, and brand consistency compared to other institutional agreements like licensing, joint ventures, distributorships, and affiliate marketing. The level of control, investment, risk, and support varies significantly between franchising and these other models, making it crucial for businesses to choose the model that best aligns with their goals, resources, and expansion strategies.

Franchising is ideal for businesses looking to rapidly scale with control over operations and brand consistency, while other models such as licensing or distributorships may suit companies that prefer lower investment, less control, and greater flexibility for their partners.

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